

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2282

By Delegate Statler

[Introduced January 11, 2023; Referred to the
Committee on Fire Departments and Emergency
Medical Services then Finance]

1 A BILL to amend and reenact §29-3E-7 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §33-3-14d and §33-3-33 of said code, all relating generally to the
 3 distribution of certain taxes and surcharges to benefit volunteer and part-volunteer fire
 4 departments; defining terms; providing the method of allocation and distribution for
 5 proceeds of the fireworks safety fee deposited in the Fire Protection Fund; eliminating
 6 obsolete language; requiring the State Fire Marshal to provide certain information to the
 7 State Treasurer; and clarifying the requirements for distribution of funds in the Fire
 8 Protection Fund.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3E. FIREWORKS SAFETY.

§29-3E-7. Fireworks safety fee; administration; tax crimes; collections; remittances; deposits; distributions; rules.

1 (a) In addition to the sales tax, a fireworks safety fee of 12 percent of all sales is levied on
 2 retail sales of consumer fireworks in this state. The fee shall be distributed pursuant to the
 3 provisions of this subsection. The fee computation under this subsection shall be carried to the
 4 third decimal place, and the fee rounded up to the next whole cent whenever the third decimal
 5 place is greater than four, and rounded down to the lower whole cent whenever the third decimal
 6 place is four or less.

7 The State Tax Commissioner shall disburse all proceeds of the fireworks safety fee into the
 8 state treasury each month in the following manner:

9 (1) Seventy-five percent shall be deposited into a special account in the State Treasury,
 10 designated the Veterans' Facility Support Fund established by the provisions of §9A-1-11 of this
 11 code for expenditure on veterans' programs.

12 (2) Twenty-five percent shall be deposited into a special account in the State Treasury,

13 designated the Fire Protection Fund ~~established in section thirty-three, article three, chapter thirty-~~
14 ~~three of this code~~ shall be allocated and distributed in accordance with that section to each
15 volunteer fire company or department on an equal share basis by the State Treasurer according to
16 the requirements of §33-3-33 of this code.

17 (b) A person who purchases consumer fireworks in a retail transaction shall pay to the
18 retailer the amount of the fee levied by this section, which fee is added to and constitutes a part of
19 the sale price, and is collectible by the retailer who shall account to the state for all fees paid by a
20 purchaser. If the retailer fails to collect the fee, or fails to account to the state for the fees paid by a
21 purchaser, then the retailer is liable for the payment of the fee to the state.

22 (c) A retailer shall remit to the State Tax Commissioner no later than 30 days after the end
23 of each preceding month all moneys collected for such preceding month, pursuant to the
24 requirements of this section, and shall report such collections on forms and in the manner
25 prescribed by the State Tax Commissioner.

26 (d) All moneys so remitted, net of refunds and adjustments, shall be paid by the State Tax
27 Commissioner into the funds specified in this section.

28 (e) Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in
29 §11-9-1 *et seq.* of this code applies to the fees imposed pursuant to this article, with like effect as if
30 that act were applicable only to the fees imposed by this article and were set forth in extenso in this
31 article.

32 (f) The State Tax Commissioner shall propose legislative rules and may promulgate such
33 emergency rules as are necessary to implement the provisions of this article.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

**§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds;
effective date.**

1 (a)(1) For the purpose of providing additional revenue for municipal policemen's and
2 firemen's pension and relief funds and the Teachers Retirement System Reserve Fund and for
3 volunteer and part-volunteer fire companies and departments, there is hereby levied and imposed
4 an additional premium tax equal to one percent of taxable premiums for fire insurance and
5 casualty insurance policies. For purposes of this section, casualty insurance does not include
6 insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit
7 transaction or insurance on a debtor to provide indemnity for payments becoming due on a
8 specific loan or other credit transaction while the debtor is disabled as defined in the policy.

9 (2) All moneys collected from this additional tax shall be received by the commissioner and
10 paid by him or her into a special account in the State Treasury, designated the Municipal Pensions
11 and Protection Fund, to be allocated as follows: *Provided*, That on or after January 1, 2010, the
12 ~~commissioner shall pay 10 percent of the amount collected to the Teachers Retirement System~~
13 ~~Reserve Fund created in §18-7A-18 of this code, 25 percent of the amount collected to the Fire~~
14 ~~Protection Fund created in §33-3-33 of this code for allocation by the Treasurer to volunteer and~~
15 ~~part-volunteer fire companies and departments and 65 percent of the amount collected to the~~
16 ~~Municipal Pensions and Protection Fund: *Provided, however*, That upon notification by the~~
17 ~~Municipal Pensions Oversight Board pursuant to the provisions of §8-22-18b this code, on or after~~
18 ~~January 1, 2010, or as soon thereafter as the Municipal Pensions Oversight Board is prepared to~~
19 ~~receive the funds, 65 percent of the amount collected by the commissioner shall be deposited in~~
20 ~~the Municipal Pensions Security Fund created in §8-22-18b of this code. The net proceeds of this~~
21 ~~tax after appropriation thereof by the Legislature is distributed in accordance with the provisions of~~
22 ~~this section, except for distribution from proceeds pursuant to §8-22-18a(d) of this code~~

23 (A) Ten percent of the amount collected shall be deposited in the Teachers Retirement
24 System Reserve Fund, created in §18-7A-18 of this code;

25 (B) Twenty-five percent of the amount collected shall be deposited in the Fire Protection
26 Fund for distribution by the Treasurer to volunteer and part-volunteer fire companies and

27 departments according to the requirements of §33-3-33 of this code; and

28 (C) Sixty-five percent of the amount collected by the commissioner shall be deposited in
29 the Municipal Pensions Security Fund created in §8-22-18b of this code to be distributed in
30 accordance with the provisions of this section, except for distribution from proceeds pursuant to
31 §8-22-8a(d) of this code.

32 (b) Municipal Pensions Security Fund allocation and distribution. —

33 (1) Before August 1 of each year, the treasurer of each municipality in which a municipal
34 policemen's or firemen's pension and relief fund is established shall report to the State Treasurer
35 the average monthly number of members who worked at least one hundred hours per month and
36 the average monthly number of retired members of municipal policemen's or firemen's pension
37 and relief fund or the Municipal Police Officers and Firefighters Retirement System during the
38 preceding fiscal year. ~~Provided, That beginning in the year 2010 and continuing thereafter, the~~
39 ~~report shall be made to the oversight board created in §8-22-18a of this code. These reports~~
40 ~~received by the oversight board shall be provided~~ The reports received by the Municipal Pensions
41 Oversight Board shall be provided annually to the State Treasurer by September 1.

42 (2) Before September 1 of each calendar year, ~~the State Treasurer, or the Municipal~~
43 ~~Pensions Oversight Board once in operation,~~ shall allocate and authorize for distribution the
44 revenues in the Municipal Pensions and Protection Fund which were collected during the
45 preceding calendar year for the purposes set forth in this section. Before September 1 of each
46 calendar year ~~and after the Municipal Pensions Oversight Board has notified the Treasurer and~~
47 ~~commissioner pursuant to §8-22-18b of this code,~~ the Municipal Pensions Oversight Board shall
48 allocate and authorize for distribution the revenues in the Municipal Pensions Security Fund which
49 were collected during the preceding calendar year for the purposes set forth in this section. In any
50 year the actuarial report required by §8-22-20 of this code indicates that no actuarial deficiency
51 exists in the municipal policemen's or firemen's pension and relief fund and that no pension
52 funding revenue bonds of the building commission of such municipality remain outstanding, no

53 revenues may be allocated from the Municipal Pensions and Protection Fund or the Municipal
54 Pensions Security Fund to that fund. The revenues from the Municipal Pensions and Protection
55 Fund shall then be allocated to all other pension and relief funds which have an actuarial
56 deficiency. Pension funding revenue bonds include bonds of a municipality's building commission
57 the net proceeds of which were used to fund either or both of a municipality's policemen's or
58 firemen's pension and relief fund or bonds issued to refinance such bonds.

59 ~~(3) The Municipal Pensions Oversight Board shall annually review the investment~~
60 ~~performance of each municipal policemen's or firemen's pension and relief fund. If the municipal~~
61 ~~pension and relief fund's board fails for three consecutive years to comply with the investment~~
62 ~~provisions established §8-22-22a of this code, the oversight board may require the municipal~~
63 ~~policemen's or firemen's pension and relief fund to invest with the Investment Management Board~~
64 ~~to continue to receive its allocation of funds from the premium tax. If the municipal pension and~~
65 ~~relief fund fails to move its investments to the Investment Management Fund within the 18-month~~
66 ~~drawdown period, provided in §8-22-19(e) of this code, the revenues shall be reallocated to all~~
67 ~~other municipal policemen's or firemen's pension and relief funds that have drawn down one~~
68 ~~hundred percent of their allocations.~~

69 ~~(4) The moneys, and the interest earned thereon, in the Municipal Pensions and Protection~~
70 ~~Fund allocated to volunteer and part-volunteer fire companies and departments shall be allocated~~
71 ~~and distributed quarterly to the volunteer fire companies and departments. Before each~~
72 ~~distribution date, the State Fire Marshal shall report to the State Treasurer the names and~~
73 ~~addresses of all volunteer and part-volunteer fire companies and departments within the state~~
74 ~~which meet the eligibility requirements established in §8-15-8A of this code.~~

75 ~~(c)(1) Each municipal pension and relief fund shall have allocated and authorized for~~
76 ~~distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's~~
77 ~~pension and relief funds based on the corresponding municipality's average monthly number of~~
78 ~~police officers and firefighters who worked at least one hundred hours per month during the~~

79 preceding fiscal year. On and after July 1, 1997, from the growth in any moneys collected pursuant
80 to

81 (3) The Municipal Pensions Oversight Board shall allocate and distribute a pro rata share
82 of the tax imposed by this section and earnings and interest thereon there shall be allocated and
83 authorized for distribution to each municipal pension and relief fund, a pro rata share of the
84 revenues allocated to municipal policemen's and firemen's pension and relief funds based on the
85 corresponding municipality's average number of police officers and firefighters who worked at
86 least 100 hours per month and average monthly number of retired police officers and firefighters.
87 For the purposes of this subsection, the ~~growth in moneys collected from~~ earnings the tax
88 collected pursuant to this section is determined by subtracting the amount of the tax collected
89 during the fiscal year ending June 30, 1996, from the tax collected during the fiscal year for which
90 the allocation is being made and interest thereon. All moneys received by municipal pension and
91 relief funds under this section may be expended only for those purposes described in §§8-22-16
92 through 8-22-28a, inclusive, of this code. Notwithstanding the foregoing provision of this
93 subdivision, if a municipality has outstanding pension funding revenue bonds and continues to pay
94 the normal cost of its policemen's and firemen's pension and relief funds, then the allocable share
95 of revenues to be allocated which would otherwise have been allocated to a municipal policemen's
96 or firemen's pension and relief fund shall instead be allocated to the trustee of any outstanding
97 pension funding revenue bonds.

98 ~~(2) Each volunteer fire company or department shall receive an equal share of the~~
99 ~~revenues allocated for volunteer and part-volunteer fire companies and departments.~~

100 ~~(3) In addition to the share allocated and distributed in accordance with subdivision (1) of~~
101 ~~this subsection, each municipal fire department composed of full-time paid members and~~
102 ~~volunteers and part-volunteer fire companies and departments shall receive a share equal to the~~
103 ~~share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by~~
104 ~~an amount equal to the share multiplied by the ratio of the number of full-time paid fire department~~

105 ~~members who are also members of a municipal firemen's pension and relief fund or the Municipal~~
106 ~~Police Officers and Firefighters Retirement System to the total number of members of the fire~~
107 ~~department. If a municipality has outstanding pension funding revenue bonds and continues to pay~~
108 ~~the normal cost of its policemen's and firemen's pension and relief funds, then the share that~~
109 ~~would otherwise be payable to the municipality's firemen's pension and relief fund pursuant to this~~
110 ~~subsection shall be paid to the trustee of such outstanding pension funding revenue bonds.~~

111 ~~(d) (4) The allocation and distribution of revenues provided in this section are subject to the~~
112 ~~provisions of §8-22-20, of this code and §8-15-8a, and §8-15-8b of this code.~~

113 ~~(e) Based upon the findings of an audit by the Treasurer, the Legislature hereby finds and~~
114 ~~declares that during the period of 1982 through April 27, 2012, allocations from the Municipal~~
115 ~~Pensions and Protection Fund were miscalculated and errors were made in amounts transferred,~~
116 ~~resulting in overpayments and underpayments to the relief and pension funds and to the Teachers~~
117 ~~Retirement System, and that the relief and pension funds and the Teachers Retirement System~~
118 ~~were not at fault for any of the overpayments and underpayments. The Legislature hereby further~~
119 ~~finds and declares that any attempt by the Municipal Pension Oversight Board or other entity to~~
120 ~~recover any of the overpayments would be unjust and create economic hardship for the entities~~
121 ~~that received overpayments. No entity, including, without limitation, the Municipal Pension~~
122 ~~Oversight Board, may seek to recover from a relief or pension fund, the Teachers Retirement~~
123 ~~System or the state any overpayments received from the Municipal Pensions and Protection Fund~~
124 ~~and the overpayments are not subject to recovery, offset or litigation. Pursuant to the audit by the~~
125 ~~Treasurer, the amount of \$3,631,846.55 is determined owed to specific relief and pension funds~~
126 ~~through the period of April 27, 2012. The Treasurer is hereby authorized to transfer the amount of~~
127 ~~\$3,631,846.55 from the Unclaimed Property Trust Fund to the Municipal Pensions and Protection~~
128 ~~Fund, which is hereby reopened for the sole purpose of the transfer and remittances pursuant to~~
129 ~~this subsection, and to use the amount transferred to remit the amounts due to the pension and~~
130 ~~relief funds. The payment of \$3,631,846.55 to the pension and relief funds is complete satisfaction~~

131 of any amounts due and no entity, including, without limitation, the Municipal Pension Oversight
 132 Board and any pension or relief fund, may seek to recover any further amounts

133 (c) The Municipal Pensions Oversight Board shall annually review the investment
 134 performance of each municipal policemen's or firemen's pension and relief fund. If a municipal
 135 pension and relief fund's board fails for three consecutive years to comply with the investment
 136 provisions established by §8-22-22a of this code, the oversight board may require the municipal
 137 policemen's or firemen's pension and relief fund to invest with the Investment Management Board
 138 to continue to receive its allocation of funds from the premium tax. If the municipal pension and
 139 relief fund fails to move its investments to the Investment Management Fund within the 18-month
 140 drawdown period, provided in §8-22-19(e) of this code, the revenues shall be reallocated to all
 141 other municipal policemen's or firemen's pension and relief funds that have drawn down 100% of
 142 their allocations.

**§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part-
 volunteer fire departments; ~~Public Employees Insurance Agency and municipal
 pension plans; special fund created~~ Fire Protection Fund; allocation of proceeds;
 effective date.**

1 ~~(a)(1) For the purpose of providing additional revenue for volunteer fire departments, part-~~
 2 ~~volunteer fire departments and certain retired teachers and the teachers retirement reserve fund,~~
 3 ~~there is hereby authorized and imposed on and after July 1, 1992, on the policyholder of any fire~~
 4 ~~insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or~~
 5 ~~by any risk retention group, a policy surcharge equal to one percent of the taxable premium for~~
 6 ~~each such policy. After June 30, 2005, the surcharge shall be imposed as specified in subdivisions~~
 7 ~~(2) and (3) of this subsection.~~

8 ~~(2) After June 30, 2005, through December 31, 2005, for the purpose of providing~~
 9 ~~additional revenue for volunteer fire departments, part-volunteer fire departments and to provide~~
 10 ~~additional revenue to the Public Employees Insurance Agency and municipal pension plans, there~~

11 ~~is hereby authorized and imposed on and after July 1, 2005, on the policyholder of any fire~~
12 ~~insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or~~
13 ~~by any risk retention group, a policy surcharge equal to one percent of the taxable premium for~~
14 ~~each such policy.~~

15 (a) For the purposes of this section:

16 (1) "Full-time paid members" means the members of a fire department who are
17 compensated to provide services to the department on a full-time basis and are also members of a
18 municipal firemen's pension and relief fund or the Municipal Police Officers and Firefighters
19 Retirement System.

20 (2) The "policy surcharge" refers to the surcharge on certain insurance policies imposed by
21 subsection (b) of this section.

22 (3) "Volunteer fire departments" or "departments" includes volunteer and part-volunteer
23 fire departments and companies, as described in §18-15-1 et seq. of this code.

24 ~~(3) (b) After December 31, 2005, for~~ For the purpose of providing additional revenue for
25 volunteer fire departments ~~and part-volunteer fire departments~~, there is hereby authorized and
26 imposed on the policyholder of any fire insurance policy or casualty insurance policy issued by any
27 insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to fifty-
28 five one hundredths of one percent of the taxable premium for each such policy. The policy
29 surcharge is separate from and in addition to the tax imposed by §33-3-14d of this code.

30 ~~(4) (c)~~ (c) For purposes of this section, casualty insurance ~~may~~ does not include insurance on
31 the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or
32 insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other
33 credit transaction while the debtor is disabled as defined in the policy. The policy surcharge ~~may~~
34 ~~not be~~ is not subject to premium taxes, agent commissions, or any other assessment against
35 premiums.

36 ~~(b) (d)~~ (d) The policy surcharge imposed by this section shall be collected and remitted to the

37 Commissioner by the insurer, or in the case of surplus lines coverage, by the surplus lines
38 licensee, or if the policy is issued by a risk retention group, by the risk retention group. The amount
39 required to be collected under this section shall be remitted to the Commissioner on a quarterly
40 basis on or before the twenty-fifth day of the month succeeding the end of the quarter in which they
41 are collected, except for the fourth quarter for which the surcharge shall be remitted on or before
42 March 1 of the succeeding year. All money from the policy surcharge shall be collected by the
43 commissioner who shall disburse all of the money received from the surcharge into the Fire
44 Protection Fund for distribution as provided in subsection (f) of this section.

45 ~~(e)~~ (e) Any person failing or refusing to collect and remit to the commissioner any policy
46 surcharge and whose surcharge payments are not postmarked by the due dates for quarterly filing
47 is liable for a civil penalty of up to \$100 for each day of delinquency, to be assessed by the
48 Commissioner. The Commissioner may suspend the insurer, broker or risk retention group until all
49 surcharge payments and penalties are remitted in full to the Commissioner.

50 ~~(d)~~ (f) Fire Protection Fund allocation and distribution.--

51 ~~(1) All money from the policy surcharge shall be collected by the Commissioner who shall~~
52 ~~disburse the money received from the surcharge into a special account in the state Treasury,~~
53 ~~designated the Fire Protection Fund.~~

54 (1) The State Treasurer's Office shall distribute the net proceeds of this portion of the tax
55 the policy surcharge, the amount deposited into the Fire Protection Fund pursuant to §29-3E-7 of
56 this code, the amount deposited into the Fire Protection Fund pursuant to §33-3-14d of this code,
57 and the interest thereon on a quarterly basis, after appropriation by the Legislature. shall be
58 distributed quarterly. The distributions shall occur on the first day of the months of January, April,
59 July and October to each eligible volunteer fire company or department on an equal share basis by
60 the state Treasurer. After June 30, 2005, the money received from the surcharge shall be
61 distributed as specified in subdivisions (2) and (3) of as provided in this subsection.

62 (2)(A) ~~After June 30, 2005, through December 31, 2005, all money from the policy~~

63 ~~surcharge shall be collected by the Commissioner who shall disburse one half of the money~~
64 ~~received from the surcharge into the Fire Protection Fund for distribution as provided in~~
65 ~~subdivision (1) of this subsection.~~

66 ~~(B) The remaining portion of moneys collected shall be transferred into the fund in the state~~
67 ~~Treasury of the Public Employees Insurance Agency into which are deposited the proportionate~~
68 ~~shares made by agencies of this state of the Public Employees Insurance Agency costs of those~~
69 ~~agencies, until November 1, 2005. After the October 31, 2005, through December 31, 2005, the~~
70 ~~remain portion shall be transferred to the special account in the state Treasury, known as the~~
71 ~~Municipal Pensions and Protection Fund.~~

72 ~~(3) After December 31, 2005, all money from the policy surcharge shall be collected by the~~
73 ~~Commissioner who shall disburse all of the money received from the surcharge into the Fire~~
74 ~~Protection Fund for distribution as provided in subdivision (1) of this subsection~~

75 ~~(4) (2) Before each distribution date to volunteer fire companies or departments, the state~~
76 ~~Fire Marshal shall report to the state Treasurer: the~~

77 ~~(A) The names and addresses of all volunteer and part-volunteer fire companies and~~
78 ~~departments within the state which meet the eligibility requirements established in §8-15-8a of this~~
79 ~~code during the preceding quarter; and~~

80 ~~(B) The number of volunteer firefighters and the number of full-time paid members~~
81 ~~providing services to each volunteer and part-volunteer department during the preceding quarter.~~

82 ~~(3) Each eligible volunteer fire department shall receive an equal share of the amount of~~
83 ~~proceeds to be distributed each quarter: *Provided*, That each part-volunteer department's share~~
84 ~~will be reduced by a percentage amount equal to the percentage of the members of the fire~~
85 ~~department who are full-time paid members of the department, according to the report described~~
86 ~~in subdivision (2) of this subsection.~~

87 ~~(e) (g) The allocation, distribution, and use of revenues provided in the Fire Protection~~
88 ~~Fund are subject to the provisions of §8-15-8a and §8-15-8b of this code.~~

NOTE: The purpose of this bill is to clarify the requirements for allocation and distribution of Fire Protection Fund moneys. This bill was recommended for passage in the 2022 Regular Session by the Joint Committee for Volunteer Fire Departments and Emergency Medical Services.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.