

WEST VIRGINIA LEGISLATURE
2022 SECOND EXTRAORDINARY SESSION

Introduced

Senate Bill 2011

BY SENATORS BALDWIN, CAPUTO, GEFFERT, LINDSAY,

ROMANO, STOLLINGS, AND WOELFEL

[Introduced April 25, 2022]

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; increasing certain policy surcharge; establishing effective date for
7 policy surcharge increase; requiring the State Fire Marshal provide certain information to
8 the State Treasurer; and clarifying the requirements for distribution of funds in the Fire
9 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
8 the 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.

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12 (2) Twenty-five percent shall be deposited into a special account in the State Treasury,
13 designated the Fire Protection Fund ~~established in §33-3-33 of this code~~ and shall be allocated
14 and distributed in accordance with that section to each volunteer fire company or department on
15 an equal share basis by the State Treasurer according to the requirements of §33-3-33 of this
16 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
19 of the sale price, and is collectible by the retailer who shall account to the state for all fees paid
20 by a purchaser. If the retailer fails to collect the fee or fails to account to the state for the fees paid
21 by a 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
29 §11-9-1 *et seq.* of this code applies to the fees imposed pursuant to this article, with like effect as
30 if that act were applicable only to the fees imposed by this article and were set forth in extenso in
31 this 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
10 and paid by him or her into a special account in the State Treasury, designated the Municipal
11 Pensions and Protection Fund, to be allocated as follows: ~~Provided, That on or after January 1,~~
12 ~~2010, the commissioner shall pay~~

13 (A) Ten percent of the amount collected ~~to~~ shall be deposited in the Teachers Retirement
14 System Reserve Fund created in §18-7A-18 of this code;

15 (B) Twenty-five percent of the amount collected ~~to~~ shall be deposited in the Fire Protection
16 Fund ~~created in section 33 of this article for allocation~~ distribution by the State Treasurer to
17 volunteer and part-volunteer fire companies and departments according to the requirements of
18 §33-3-33 of this code; and

19 ~~65% of the amount collected to the Municipal Pensions and Protection Fund: Provided,~~
20 ~~however, That upon notification by the Municipal Pensions Oversight Board pursuant to the~~
21 ~~provisions of §8-22-18b of this code, on or after January 1, 2010, or as soon thereafter as the~~
22 ~~Municipal Pensions Oversight Board is prepared to receive the funds,~~

23 (C) Sixty-five percent of the amount collected by the commissioner shall be deposited in
24 the Municipal Pensions Security Fund created in §8-22-18b of this code ~~the net proceeds of this~~
25 ~~tax after appropriation thereof by the Legislature is~~ to be distributed in accordance with the

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26 provisions of this section, except for distribution from proceeds pursuant to ~~§8-22-8a(d)~~ §8-22-
27 18a(d) of this code.

28 (b) Municipal Pensions Security Fund allocation and distribution —

29 (1) Before August 1 of each year, the treasurer of each municipality in which a municipal
30 policemen's or firemen's pension and relief fund is established shall report to the ~~State Treasurer~~
31 Municipal Pensions Oversight Board the average monthly number of members who worked at
32 least 100 hours per month and the average monthly number of retired members of municipal
33 policemen's or firemen's pension and relief fund or the Municipal Police Officers and Firefighters
34 Retirement System during the preceding fiscal year. ~~Provided, That beginning in the year 2010~~
35 ~~and continuing thereafter, the report shall be made to the oversight board created in §8-22-18a.~~
36 ~~These reports received by the oversight board shall be provided~~ The reports received by the
37 Municipal Pensions Oversight Board shall be provided annually to the State Treasurer by
38 September 1.

39 (2) ~~Before September 1 of each calendar year, the State Treasurer, or the Municipal~~
40 ~~Pensions Oversight Board once in operation, shall allocate and authorize for distribution the~~
41 ~~revenues in the Municipal Pensions and Protection Fund which were collected during the~~
42 ~~preceding calendar year for the purposes set forth in this section. Before September 1 of each~~
43 ~~calendar year, and after the Municipal Pensions Oversight Board has notified the Treasurer and~~
44 ~~commissioner pursuant to §8-22-18b of this code the Municipal Pensions Oversight Board shall~~
45 allocate and authorize for distribution the revenues in the Municipal Pensions Security Fund which
46 were collected during the preceding calendar year for the purposes set forth in this section. In any
47 year the actuarial report required by §8-22-20 of this code indicates no actuarial deficiency in the
48 municipal policemen's or firemen's pension and relief fund, no revenues may be allocated from
49 ~~the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund to that fund.~~
50 The revenues from the Municipal Pensions ~~and Protection~~ Security Fund shall then be allocated
51 to all other pension and relief funds which have an actuarial deficiency.

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

62 ~~(4) The moneys, and the interest earned thereon, in the Municipal Pensions and Protection~~
63 ~~Fund allocated to volunteer and part-volunteer fire companies and departments shall be allocated~~
64 ~~and distributed quarterly to the volunteer fire companies and departments. Before each~~
65 ~~distribution date, the State Fire Marshal shall report to the State Treasurer the names and~~
66 ~~addresses of all volunteer and part-volunteer fire companies and departments within the state~~
67 ~~which meet the eligibility requirements established in §8-15-8a of this code.~~

68 ~~(c) (1) Each municipal pension and relief fund shall have allocated and authorized for~~
69 ~~distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's~~
70 ~~pension and relief funds based on the corresponding municipality's average monthly number of~~
71 ~~police officers and firefighters who worked at least one hundred hours per month during the~~
72 ~~preceding fiscal year. On and after July 1, 1997, from~~

73 (3) The Municipal Pensions Oversight Board shall allocate and distribute the growth in any
74 moneys collected pursuant to a pro rata share of the tax imposed by this section and earnings
75 and interest thereon there shall be allocated and authorized for distribution to each municipal
76 policemen's or municipal firemen's pension and relief fund, a pro rata share of the revenues
77 allocated to municipal policemen's and firemen's pension and relief funds based on the

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78 corresponding municipality's average number of police officers and firefighters who worked at
79 least 100 hours per month during the preceding fiscal year and average monthly number of retired
80 police officers and firefighters during the preceding fiscal year. For the purposes of this
81 subsection, the ~~growth in moneys collected from~~ earnings the tax collected pursuant to this
82 section is determined by subtracting the amount of the tax collected during the fiscal year ending
83 June 30, 1996, from the tax collected during the fiscal year for which the allocation is being made
84 and interest thereon. All moneys received by municipal pension and relief funds under this section
85 may be expended only for those purposes described in §8-22-16 through ~~§8-22-28~~ §8-22-28a of
86 this code.

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

89 ~~(3) In addition to the share allocated and distributed in accordance with subdivision (1) of~~
90 ~~this subsection, each municipal fire department composed of full-time paid members and~~
91 ~~volunteers and part-volunteer fire companies and departments shall receive a share equal to the~~
92 ~~share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by~~
93 ~~an amount equal to the share multiplied by the ratio of the number of full-time paid fire department~~
94 ~~members who are also members of a municipal firemen's pension and relief fund or the Municipal~~
95 ~~Police Officers and Firefighters Retirement System to the total number of members of the fire~~
96 ~~department~~

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

99 ~~(e) Based upon the findings of an audit by the Treasurer, the Legislature hereby finds and~~
100 ~~declares that during the period of 1982 through April 27, 2012, allocations from the Municipal~~
101 ~~Pensions and Protection Fund were miscalculated and errors were made in amounts transferred,~~
102 ~~resulting in overpayments and underpayments to the relief and pension funds and to the Teachers~~
103 ~~Retirement System, and that the relief and pension funds and the Teachers Retirement System~~

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104 were not at fault for any of the overpayments and underpayments. The Legislature hereby further
105 finds and declares that any attempt by the Municipal Pension Oversight Board or other entity to
106 recover any of the overpayments would be unjust and create economic hardship for the entities
107 that received overpayments. No entity, including, without limitation, the Municipal Pension
108 Oversight Board, may seek to recover from a relief or pension fund, the Teachers Retirement
109 System or the state any overpayments received from the Municipal Pensions and Protection Fund
110 and the overpayments are not subject to recovery, offset or litigation. Pursuant to the audit by the
111 Treasurer, the amount of \$3,631,846.55 is determined owed to specific relief and pension funds
112 through the period of April 27, 2012. The Treasurer is hereby authorized to transfer the amount
113 of \$3,631,846.55 from the Unclaimed Property Trust Fund to the Municipal Pensions and
114 Protection Fund, which is hereby reopened for the sole purpose of the transfer and remittances
115 pursuant to this subsection, and to use the amount transferred to remit the amounts due to the
116 pension and relief funds. The payment of \$3,631,846.55 to the pension and relief funds is
117 complete satisfaction of any amounts due and no entity, including, without limitation, the Municipal
118 Pension Oversight Board and any pension or relief fund, may seek to recover any further amounts

119 (c) The Municipal Pensions Oversight Board shall annually review the investment
120 performance of each municipal policemen's or firemen's pension and relief fund. If a municipal
121 pension and relief fund's board fails for three consecutive years to comply with the investment
122 provisions established by §8-22-22a of this code, the oversight board may require the municipal
123 policemen's or firemen's pension and relief fund to invest with the Investment Management Board
124 to continue to receive its allocation of funds from the premium tax. If the municipal pension and
125 relief fund fails to move its investments to the Investment Management Fund within the 18-month
126 drawdown period provided in §8-22-19(e) of this code, the revenues shall be reallocated to all
127 other municipal policemen's or firemen's pension and relief funds that have drawn down 100
128 percent of 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,~~
5 ~~or 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,~~
13 ~~or 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
18 a 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
21 by 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.

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24 ~~(3)~~ (b) After ~~December 31, 2005,~~ December 31, 2022, for the purpose of providing
25 additional revenue for volunteer fire departments ~~and part-volunteer fire departments,~~ there is
26 hereby authorized and imposed on the policyholder of any fire insurance policy or casualty
27 insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group,
28 a policy surcharge equal to ~~0.055%~~ one percent of the taxable premium for each such policy. The
29 policy surcharge is separate from and in addition to the tax imposed by §33-3-14d of this code.

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

36 ~~(b)~~ (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 25th day of the month succeeding the end of the quarter in which they are
41 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
47 filing 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
49 all surcharge payments and penalties are remitted in full to the commissioner.

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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. The State Treasurer's Office shall distribute the net proceeds
54 of this portion of the tax the policy surcharge, the amount deposited into the Fire Protection Fund
55 pursuant to §29-3E-7 of this code, the amount deposited into the Fire Protection Fund pursuant
56 to §33-3-14d of this code, and the interest thereon on a quarterly basis, after appropriation by the
57 Legislature. shall be distributed quarterly The distributions shall occur on the first day of the
58 months of January, April, July, and October to each eligible volunteer fire company or department,
59 on an equal share basis by the state Treasurer. After June 30, 2005, the money received from
60 the surcharge shall be distributed as specified in subdivisions (2) and (3) of as provided in this
61 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~~
67 ~~state Treasury of the Public Employees Insurance Agency into which are deposited the~~
68 ~~proportionate shares made by agencies of this state of the Public Employees Insurance Agency~~
69 ~~costs of those agencies, until November 1, 2005. After the October 31, 2005, through December~~
70 ~~31, 2005, the remain portion shall be transferred to the special account in the state Treasury,~~
71 ~~known as the Municipal Pensions and Protection Fund.~~

72 ~~(3) After December 31, 2005, all money from the policy surcharge shall be collected by~~
73 ~~the 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

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76 Fire Marshal shall report to the State Treasurer:

77 (A) The names and addresses of all volunteer ~~and part-volunteer~~ fire companies and
78 departments within the state which ~~meet~~ met the eligibility requirements established in §8-15-8a
79 of this 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. This bill also increases certain policy surcharges to one percent.

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