

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4756

BY DELEGATE STORCH

[Introduced February 15, 2022; Referred to the
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §8-12-24; to amend and reenact §8-22-19 and §8-22-20 of said code; to
3 amend and reenact §8-33-4 of said code; to amend said code by adding thereto two new
4 sections, designated §8-33-4a and §8-33-4b; and to amend and reenact §33-3-14d of said
5 code, all relating to authorizing Class I, Class II and Class III municipalities to create
6 pension funding programs to reduce the unfunded liability of policemen's pension and
7 relief funds and firemen's pension and relief funds; authorizing a municipality's allocable
8 portion of funds from the Municipal Pensions Security Fund created in §8-22-18b to be
9 paid to the trustee of an issue of pension funding revenue bonds to be used for the purpose
10 of paying debt service on such bonds until such bonds are paid in full; authorizing
11 municipal building commissions to use the proceeds from pension funding revenue bonds
12 to fund the costs of a municipality's pension funding program; authorizing a municipal
13 building commission to use rentals from real property owned or leased by such
14 commission to pay debt service and administrative expenses associated with outstanding
15 pension funding revenue bonds; authorizing a municipal building commission to issue
16 pension funding revenue bonds to fund a municipality's pension funding program;
17 requiring that each issuance of pension funding revenue bonds provide for a contingency
18 reserve fund in an amount equal to at least 10 percent of the original principal amount of
19 such bonds; requiring that an issue of pension funding revenue bonds be in a principal
20 amount at least equal to the then unfunded liability of such applicable policemen's or
21 firemen's pension and relief fund; providing for the use of excess moneys held by a bond
22 trustee upon the payment in full of pension funding revenue bonds; requiring the approval
23 of the Municipal Pension Oversight Board of the issuance of certain pension funding
24 revenue bonds and requiring the submission of information relating to such bonds to the
25 Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL CORPORATE POWERS OF MUNICIPALITIES

§8-12-24. Authorizing certain municipalities to create a pension funding program.

1 In addition to all other powers and duties conferred by law upon municipalities, Class I,
2 Class II and Class III cities are empowered and authorized to create pension funding programs
3 as defined in §8-33-4a of this code.

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN’S PENSION AND RELIEF FUND; FIREMEN’S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-19. Levy to maintain fund

1 (a)(1) In order for a municipal policemen’s or firemen’s pension and relief fund or the
2 trustee of an issue of pension funding revenue bonds issued by the building commission of a
3 municipality, as the case may be, to receive the allocable portion of moneys from the Municipal
4 Pensions Security Fund created in § 8-22-18b of this code, the governing body of the municipality
5 shall levy annually and in the manner provided by law for other municipal levies and include within
6 the maximum levy or levies permitted by law and, if necessary, in excess of any charter provision,
7 a tax at such rate as will, after crediting: (A) The amount of the contributions received during the
8 year from the members of the respective paid police department or paid fire department; and (B)
9 the allocable portion of the funds from the Municipal Pensions Security Fund created in §8-22-
10 18b of this code payable to such municipality’s municipal policemen’s and firemen’s pension and
11 relief funds, provide funds equal to the amount necessary to meet the minimum standards for
12 actuarial soundness as provided in § 8-22-20 of this code. The amount deposited in a municipal
13 policemen’s or firemen’s pension and relief fund shall be irrevocably contributed, accumulated,
14 and invested as fund assets as described in §8-22-21 and §8-22-22 of this code. The amount

15 deposited with the trustee of an issue of pension funding revenue bonds shall be used for the
16 purpose of paying debt service on such bonds. One 12th of each municipality's annual
17 contributions shall be deposited with the municipality's pension trust funds as fund assets on at
18 least a monthly basis and any revenues received from any source by a municipality which are
19 specifically collected for the purpose of allocation for deposit into the policemen's pension and
20 relief fund or firemen's pension and relief fund shall be so deposited within five days of receipt by
21 the municipality. A municipality may prepay its monthly required contributions in increments
22 greater than 1/12. Heretofore surplus reserves accumulated before the effective date of this
23 section shall be irrevocably contributed, aggregated, and invested as fund assets described in §8-
24 22-21 and §8-22-22 of this code. Any actuarial deficiency arising under this section and §8-22-20
25 of this code shall not be the obligation of the State of West Virginia.

26 (2) The levies authorized under the provisions of this section, or any part of them, may by
27 the governing body be laid in addition to all other municipal levies and, to that extent, beyond the
28 limit of levy imposed by the charter of the municipality; and the levies shall supersede and if
29 necessary exclude levies for other purposes, where other purposes have not already attained
30 priority, and within the limitations on taxes or tax levies imposed by the constitution and laws.

31 (b) The public corporations are authorized to take by gift, grant, devise, or bequest any
32 money or real or personal property on such terms as to the investment and expenditures thereof
33 as may be fixed by the grantor or determined by the trustees.

34 (c) In addition to all other sums provided for pensions in this section, it is the duty of every
35 municipality in which any fund or funds have been or shall be established to assess and collect
36 from each member of the paid police department or paid fire department or both each month, the
37 sum of seven percent of the actual salary or compensation of such member; and the amount so
38 collected shall become a regular part of the policemen's pension and relief fund, if collected from
39 a policeman, and of the firemen's pension and relief fund, if collected from a
40 fireman: *Provided*, That for members of the funds who are police officers or firefighters newly

41 hired on or after January 1, 2010, the municipality shall assess and collect nine and one-half
42 percent of the actual salary or compensation. Only those funds for which the board of trustees
43 has collected and paid the contributions as herein provided and meeting minimum standards for
44 actuarial soundness shall be eligible to receive moneys from the additional fire and casualty
45 insurance premium tax as provided in § 33-3-14d of this code: *Provided, however,* That the board
46 of trustees for each pension and relief fund may assess and collect from each member of the paid
47 police department or paid fire department or both each month not more than an additional two
48 and one-half percent of the actual salary or compensation of each member, but not to exceed
49 nine and one-half percent total contribution: *Provided further,* That if any board of trustees decides
50 to assess and collect any additional amount pursuant to this subdivision above the member
51 contribution required by this section, then that board of trustees may not reduce the additional
52 amount until the respective pension and relief fund no longer has any actuarial deficiency: *And*
53 *provided further,* That if any board of trustees decides to assess and collect any additional
54 amount, any board of trustees decision and any additional amount is not the liability of the State
55 of West Virginia. Member contributions shall be deposited in the pension and relief fund within
56 five days of being collected. In the event that a municipality's building commission has issued
57 pension funding revenue bonds, then the trustee for such bonds shall only be eligible to receive
58 money from the additional fire and casualty insurance premium tax in §33-3-14d of this code if
59 the board of trustees for the policemen's and firemen's pension and relief funds for which such
60 bonds have been issued has collected and paid the contributions as herein provided and is
61 meeting minimum standards for actuarial soundness.

62 (d)(1) For the fiscal year beginning on July 1, 2010, and subject to provisions of §8-22-
63 18b and §33-3-14d of this code and for each fiscal year thereafter, the Municipal Pensions
64 Oversight Board shall receive and retain the moneys allocated to the Municipal Pensions Security
65 Fund until such time as the treasurer of the municipality applies for the allocable portion and
66 certifies in writing to Municipal Pensions Oversight Board that:

67 (A) The municipality has irrevocably contributed the amount required under this section
68 and §8-22-20 of this code to the pension and relief fund for the required period; and

69 (B) The board of trustees of the pension and relief fund has made a report to the governing
70 body of the municipality and to the oversight board on the condition of its fund with respect to the
71 fiscal year.

72 (2) When the aforementioned application and certification are made, the allocable portion
73 of moneys from the Municipal Pensions Security Fund shall be paid to the corresponding
74 policemen's or firemen's pension and relief fund or, if pension funding revenue bonds have been
75 issued by such municipality's building commission and remain outstanding, to the trustee for such
76 pension funding revenue bonds. Payment to a municipal pension and relief fund or to the trustee
77 for pension funding revenue bonds, as applicable, shall be made by electronic funds transfer.

78 (e) The State Auditor and the oversight board have the power, and the duty as each
79 considers necessary, to perform or review audits on the pension and relief funds or to employ an
80 independent consulting actuary or accountant to determine the compliance of the aforementioned
81 certification with the requirements of this section and §8-22-20 of this code. The expense of the
82 audit or determination shall be paid from the Municipal Pensions Security Fund pursuant to
83 provisions of §8-22-18b of this code. If the allocable portion of the Municipal Pensions Security
84 Fund is not paid to the pension and relief fund or to the trustee for pension funding revenue bonds,
85 as applicable, within 18 months, the portion is forfeited by the pension and relief fund and is
86 allocable to other eligible municipal policemen's and firemen's pension and relief funds in
87 accordance with §33-3-14d of this code.

**§8-22-20. Actuary; actuarial valuation report; minimum standards for annual municipality
contributions to the fund; definitions; actuarial review and audit.**

1 (a) The West Virginia Municipal Pensions Oversight Board shall contract with or employ a
2 qualified actuary to annually prepare an actuarial valuation report on each pension and relief fund.
3 The selection of contract vendors to provide actuarial services, including the reviewing actuary as

4 provided in subsection (c) of this section, shall be by competitive bid process but is specifically
5 exempt from the purchasing provisions of article three, chapter five-a of this code. The expense
6 of the actuarial report shall be paid from moneys in the Municipal Pensions Security Fund. Uses
7 of the actuarial valuations from the qualified actuary shall include, but not be limited to,
8 determining a municipal policemen's or firemen's pension and relief fund's eligibility to receive
9 state money and to provide supplemental benefits.

10 (b) The actuarial valuation report provided pursuant to subsection (a) of this section shall
11 consist of, but is not limited to, the following disclosures: (1) The financial objective of the fund
12 and how the objective is to be attained; (2) the progress being made toward realization of the
13 financial objective; (3) recent changes in the nature of the fund, benefits provided or actuarial
14 assumptions or methods; (4) the frequency of actuarial valuation reports and the date of the most
15 recent actuarial valuation report; (5) the method used to value fund assets; (6) the extent to which
16 the qualified actuary relies on the data provided and whether the data was certified by the fund's
17 auditor or examined by the qualified actuary for reasonableness; (7) a description and explanation
18 of the actuarial assumptions and methods; (8) an evaluation of each plan using the alternative
19 funding method, to assess advantages of changing to other funding methods as provided in this
20 article; and (9) any other information required in §8-22-20a of this code or that the qualified
21 actuary feels is necessary or would be useful in fully and fairly disclosing the actuarial condition
22 of the fund.

23 (c)(1) Except as provided in subsections (e) and (f) of this section, beginning June 30,
24 1991, and thereafter, the financial objective of each municipality shall not be less than to
25 contribute to the fund annually an amount which, together with the contributions from the
26 members and the allocable portion of the Municipal Pensions and Protection Fund for municipal
27 pension and relief funds established under §33-3-14d of this code or a municipality's allocation
28 from the Municipal Pensions Security Fund created in §8-22-18b of this code and other income
29 sources as authorized by law will be sufficient to meet the normal cost of the fund and amortize

30 any actuarial deficiency over a period of not more than forty years beginning from July 1,
31 1991: *Provided*, That in the fiscal year ending June 30, 1991, the municipality may elect to make
32 its annual contribution to the fund using an alternative contribution in an amount not less than: (i)
33 One hundred seven percent of the amount contributed for the fiscal year ending June 30, 1990;
34 or (ii) an amount equal to the average of the contribution payments made in the five highest fiscal
35 years beginning with the fiscal year ending 1984, whichever is greater: *Provided, however*, That
36 contribution payments in subsequent fiscal years under this alternative contribution method may
37 not be less than 107 percent of the amount contributed in the prior fiscal year: *Provided*
38 *further*, That in order to avoid penalizing municipalities and to provide flexibility when making
39 contributions, municipalities using the alternative contribution method may exclude a one-time
40 additional contribution made in any one year in excess of the minimum required by this
41 section: *And provided further*, That the governing body of any municipality may elect to provide
42 an employer continuing contribution of one percent more than the municipality's required
43 minimum under the alternative contribution plan authorized in this subsection: *And provided*
44 *further*, That if any municipality decides to contribute an additional one percent, then that
45 municipality may not reduce the additional contribution until the respective pension and relief fund
46 no longer has any actuarial deficiency: *And provided further*, That any decision and any
47 contribution payment by the municipality is not the liability of the State of West Virginia: *And*
48 *provided further*, That if any municipality or any pension fund board of trustees makes a voluntary
49 election and thereafter fails to contribute the voluntarily increase as provided in this section and
50 in §8-22-19(c) of this code, then the board of trustees is not eligible to receive funds allocated
51 under §33-3-14d of this code: *And provided further*, That prior to using this alternative contribution
52 method the actuary of the fund shall certify in writing that the fund is projected to be solvent under
53 the alternative contribution method for the next consecutive 15-year period. For purposes of
54 determining this minimum financial objective: (i) The value of the fund's assets shall be
55 determined on the basis of any reasonable actuarial method of valuation which takes into account

56 fair market value; and (ii) all costs, deficiencies, rate of interest and other factors under the fund
57 shall be determined on the basis of actuarial assumptions and methods which, in aggregate, are
58 reasonable (taking into account the experience of the fund and reasonable expectations) and
59 which, in combination, offer the qualified actuary's best estimate of anticipated experience under
60 the fund: *And provided further*, That any municipality which elected the alternative funding method
61 under this section and which has an unfunded actuarial liability of not more than 25 percent of
62 fund assets, may, beginning September 1, 2003, elect to revert to the standard funding method,
63 which is to contribute to the fund annually an amount which is not less than an amount which,
64 together with the contributions from the members and the allocable portion of the Municipal
65 Pensions and Protection Fund for municipal pension and relief funds established under §33-3-
66 14d of this code and other income sources as authorized by law, will be sufficient to meet the
67 normal cost of the fund and amortize any actuarial deficiency over a period of not more than 40
68 years, beginning from July 1, 1991.

69 (2) No municipality may anticipate or use in any manner any state funds accruing to the
70 police or fireman's pension fund to offset the minimum required funding amount for any fiscal
71 year.

72 (3) Notwithstanding any other provision of this section or article to the contrary, each
73 municipality shall contribute annually to its policemen's pension and relief fund and its firemen's
74 pension and relief fund an amount which may not be less than the normal cost, as determined by
75 the annual actuarial valuation report required by this section: *Provided*, That in any fiscal year in
76 which the actuarial valuation report determines that a municipality's policemen's pension and
77 relief fund or firemen's pension and relief fund is funded at 125 percent or higher and the Municipal
78 Pensions Oversight Board's actuary provides an actuarial recommendation that the normal cost
79 does not need to be paid by the employer for that fiscal year, that municipality may elect to make
80 no contribution for that fiscal year. A municipality's election not to contribute the normal cost in
81 any year does not affect the payments required by §8-22-19 of this code by members to a pension

82 and relief fund and these payments are to continue as required by that section.

83 (4) The actuarial process, which includes the selection of methods and assumptions, shall
84 be reviewed by the qualified actuary no less than once every five years. Furthermore, the qualified
85 actuary shall provide a report to the oversight board with recommendations on any changes to
86 the actuarial process.

87 (5) The oversight board shall hire an independent reviewing actuary to perform an
88 actuarial audit of the work performed by the qualified actuary no less than once every seven years.

89 (d) For purposes of this section, the term “qualified actuary” means only an actuary who
90 is a member of the Society of Actuaries or the American Academy of Actuaries. The qualified
91 actuary shall be designated a fiduciary and shall discharge his or her duties with respect to a fund
92 solely in the interest of the members and members’ beneficiaries of that fund. In order for the
93 standards of this section to be met, the qualified actuary shall certify that the actuarial valuation
94 report is complete and accurate and that in his or her opinion the technique and assumptions
95 used are reasonable and meet the requirements of this section.

96 (e)(1) Beginning January 1, 2010, municipalities may choose the optional method of
97 financing municipal policemen’s or firemen’s pension and relief funds as outlined in this
98 subsection in lieu of the standard or alternative methods as provided in subdivision (1), subsection
99 (c) of this section.

100 (2) For those municipalities choosing the optional method of finance, the minimum
101 standard for annual municipality contributions to each policemen’s or firemen’s pension and relief
102 fund shall be an amount which, together with the contributions from the members and, if no
103 pension funding revenue bonds of a building commission of such municipality are outstanding,
104 the allocable portion of the Municipal Pensions and Protection Fund or Municipal Pensions
105 Security Fund created in §8-22-18b of this code, and other income sources as authorized by law,
106 will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a
107 period of not more than 40 years beginning January 1, 2010: *Provided*, That those municipalities

108 using the standard method of financing in 2009 shall continue to amortize their actuarial
109 deficiencies over a period of not more than 40 years beginning July 1, 1991. The required
110 contribution shall be determined each plan year as described above by the actuary retained by
111 the oversight board, based on an actuarial valuation reflecting actual demographic and investment
112 experience and consistent with the Actuarial Standards of Practice published by the Actuarial
113 Standards Board.

114 (3) A municipality choosing the optional method of financing a policemen's or firemen's
115 pension and relief fund as provided in this subsection shall close the fund to police officers or fire
116 fighters newly hired on or after January 1, 2010, and provide for those employees to be members
117 of the Municipal Police Officers and Firefighters Retirement System as established in §8-22A-1 *et*
118 *seq.*, of this code.

119 (f)(1) Beginning April 1, 2011, any municipality using the alternative method of financing
120 may choose a conservation method of financing its municipal policemen's and firemen's pension
121 and relief funds as outlined in this subsection, in lieu of the alternative method as provided in
122 subdivision (1), subsection (c), or the optional method as provided in subsection (e) of this section.

123 (2) For those municipalities choosing the conservation method of finance, until a plan is
124 funded at 100 percent a part of each plan member's employee contribution to the fund equal to
125 one and one-half percent of the employee's compensation, shall be deposited into and remain in
126 the trust and accumulate investment return. In addition, until a plan is funded at 100 percent and
127 all pension funding revenue bonds issued by a municipality's building commission are paid in full,
128 an actuarially determined portion of the premium tax allocation to each fund provided in
129 accordance with section fourteen-d, article three, and section seven, article twelve-c of chapter
130 thirty-three of this code shall also be deposited into and remain in the trust and accumulate
131 investment return. This variable percentage of premium tax allocation to be retained in each fund
132 shall be determined annually by the qualified actuary provided pursuant to subsection (a) of this
133 section to be an amount required, along with other assets of the fund as necessary to reach a

134 funded level of 100 percent in 35 years from the time of adoption of the conservation financing
135 method. The variable percentage shall be calculated using a prospective four-year rolling
136 average.

137 (3) Upon adoption of the conservation method of finance, the municipality shall close its
138 pension and relief funds to new members and shall place police officers and firefighters newly
139 hired after adoption of the conservation method into the Municipal Police Officers and Firefighters
140 Retirement System created in §8-22A-1 *et seq.*, of this code.

141 (4) Upon adoption of the conservation method of financing, the minimum standard for
142 annual municipality contributions to each policemen's or firemen's pension and relief fund shall
143 be an amount which, together with member contributions and premium tax proceeds not required
144 to be retained in the trust pursuant to this subsection, and other income sources as authorized by
145 law, is sufficient to meet the annual benefit and administrative expense payments from the funds
146 on a pay-as-you-go basis: *Provided*, That at the time the actuarial report required by this section
147 indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund,
148 the minimum annual required contribution of the municipality may not be less than an amount
149 which together with all member contributions and other income authorized by law, is sufficient to
150 pay normal cost.

151 (g) Beginning with the July 1, 2020, actuarial valuation, the existing actuarial deficiency,
152 prior to reflecting any new gains or losses as of July 1, 2020, such as those due to investment
153 experience, differences between actual and expected contributions, demographic experience,
154 and changes to actuarial assumptions, shall continue to be amortized as required by subsections
155 (c) and (e) of this section: *Provided*, That on July 1, 2020, and each successive annual valuation
156 date thereafter, the annual impacts on the funding deficiency due to: (i) New gains or losses on
157 assets and liabilities; and (ii) changes in actuarial assumptions, shall each be amortized over a
158 closed period of 15 years, thereby creating layers of amortization bases rather than amortizing
159 the entire actuarial deficiency over the same single and decreasing period: *Provided*,

160 *however*, That impacts on the funding deficiency due to plan changes shall be amortized over
 161 closed five year periods. The management of these amortization bases by the actuary should
 162 entail the consideration, at least every five years, of whether to implement strategies, such as the
 163 synchronization of certain amortization layers, to help avoid volatility to the sum of the
 164 amortization payments generally resulting from the expiration of charge and credit layers at
 165 different times. The required contribution shall be determined each plan year as described above
 166 by the actuary retained by the oversight board, based on an actuarial valuation reflecting actual
 167 demographic and investment experience and consistent with the Actuarial Standards of Practice
 168 published by the Actuarial Standards Board.

169 (h) Notwithstanding the foregoing until any pension funding revenue bonds issued by a
 170 municipality's building commission are paid in full, the allocable portion of money from the
 171 Municipal Pension Security Fund from the premium tax allocation for such municipality's
 172 policemen's and firemen's pension and relief funds, as applicable, shall be deposited pursuant to
 173 §8-22-19(d)(2) with the trustee for the pension funding revenue bonds and shall not be deposited
 174 into the applicable policemen's or firemen's pension and relief funds of such municipality.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 33 INTERGOVERNMENTAL RELATIONS – BUILDING COMMISSIONS.

§8-33-4. Powers.

- 1 Each commission shall have plenary power and authority to:
- 2 (a) Sue and be sued;
- 3 (b) Contract and be contracted with;
- 4 (c) Adopt, use and alter a common seal;
- 5 (d) Make and adopt all necessary, appropriate and lawful bylaws and rules and regulations
 6 pertaining to its affairs;
- 7 (e) Elect such officers, appoint such committees and agents and employ and fix the

8 compensation of such employees and contractors as may be necessary for the conduct of the
9 affairs and operations of the commission;

10 (f) (1) Acquire, purchase, own and hold any property, real or personal, and (2) acquire,
11 construct, equip, maintain and operate public buildings, structures, projects and appurtenant
12 facilities, of any type or types for which the governmental body or bodies creating such
13 commission are permitted by law to expend public funds (all hereinafter in this article referred to
14 as facilities);

15 (g) Apply for, receive and use grants-in-aid, donations and contributions from any source
16 or sources, including, but not limited to, the United States of America, or any department or
17 agency thereof, and accept and use bequests, devises, gifts and donations from any source
18 whatsoever;

19 (h) Sell, encumber or dispose of any property, real or personal;

20 (i) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and
21 provide for the rights of the holders thereof, incur any proper indebtedness and issue any
22 obligations and give any security therefor which it may deem necessary or advisable in connection
23 with exercising powers as provided herein;

24 (j) Raise funds by the issuance and sale of revenue bonds in the manner provided by the
25 applicable provisions of sections seven, 10, 12 and 16, article 16 of this chapter, without regard
26 to the extent provided in section five of this article, to the limitations specified in said section 12,
27 article 16, it being hereby expressly provided that for the purpose of the issuance and sale of
28 revenue bonds, each commission is a "governing body" as that term is used in said article 16
29 only;

30 (k) Subject to such reasonable limitations and conditions as the governmental body or all
31 of the governmental bodies creating and establishing such building commission may prescribe by
32 ordinance or by order, exercise the power of eminent domain in the manner provided in chapter
33 54 of this code for business corporations, for the purposes set forth in subdivision (f) of this

34 section, which purposes are hereby declared public purposes for which private property may be
35 taken or damaged;

36 (l) Lease its property or any part thereof, for public purposes, to such persons and upon
37 such terms as the commission deems proper, but when any municipality or county commission is
38 a lessee under any such lease, such lease must contain a provision granting to such municipality
39 or county commission the option to terminate such lease during any fiscal year covered thereby;

40 (m) Use the proceeds from the sale of pension funding revenue bonds issued pursuant
41 to section 4a of this article to pay the costs of a pension funding program as described in section
42 4a(c) of this article;

43 (n) Use the proceeds of rentals for the use of real property owned or leased by the
44 commission and any amounts received pursuant to §8-22-19(d)(2) by the trustee for outstanding
45 pension funding revenue bonds to, among other things, pay the principal, interest, any reserve
46 requirement obligations and administrative expenses of any pension funding revenue bonds
47 issued in connection with any lease by the commission to the municipality which created the
48 commission; and

49 (o) Do all things reasonable and necessary to carry out the foregoing powers.

§8-33-4a. Issuance of pension funding revenue bonds to fund a pension funding program.

1 (a) In addition to the powers set forth in section four of this article and subject to the
2 requirements set forth in this section and in §8-33-4b of this code, a commission formed by a
3 Class I, Class II or Class III city may issue pension funding revenue bonds to raise funds for the
4 funding of a pension funding program in the manner provided by this section. A “pension funding
5 program” means a program established by a municipality for reducing the unfunded actuarial
6 accrued liability of policemen’s and firemen’s pension and relief funds of the municipality with the
7 proceeds of pension funding revenue bonds issued pursuant to this section.

8 (b) Before any commission shall fund any pension funding program through the issuance
9 of pension funding revenue bonds, the commission shall enact an ordinance or ordinances, which

10 shall (1) set forth a brief and general description of the pension funding program; (2) set forth the
11 estimated cost thereof; (3) order the funding of the pension funding program; (4) direct that
12 pension funding revenue bonds be issued pursuant to this section, in such amount as may be
13 found necessary to pay the cost of the pension funding program; (5) contain such provisions as
14 the commission determines are necessary or desirable with regard to the establishment and
15 setting aside of a debt service reserve fund if deemed beneficial to the commission and for the
16 administration and disposition thereof, (6) contain provisions establishing and setting aside a debt
17 service contingency reserve fund with the municipality in an amount at least equal to 10 percent
18 of the original principal amount of such pension funding revenue bonds from cash contributed by
19 the municipality or from the proceeds of such pension funding revenue bonds and for the
20 administration and disposition thereof; and (7) contain such other provisions as may be necessary
21 or proper in the premises. Before any such ordinance shall become effective, an abstract of the
22 ordinance, determined by the commission to contain sufficient information as to give notice of the
23 contents of such ordinance, together with the following described notice, shall be published as a
24 Class II legal advertisement in compliance with the provisions of article three, chapter 59 of this
25 code, and the publication area for such publication shall be the municipality which formed the
26 commission. The notice to be published with said abstract of the ordinance shall specify a date,
27 time and place for a public hearing, the date being not less than 10 days after the first publication
28 of said abstract and notice and not prior to the last publication of said abstract and notice, at which
29 time and place all parties and interests may appear before the commission and may be heard as
30 to whether or not said ordinance shall be put into effect, and said notice shall also identify the
31 office in which a certified copy of such ordinance shall be on file for review by interested persons
32 during the office hours of such office. At such hearing all objections and suggestions shall be
33 heard and the commission shall take such action as it or they shall deem proper in the premises.

34 (c) The cost of a pension funding program shall include the cost of providing funding of all
35 of the unfunded liability of a policemen's or firemen's pension plan; the costs of issuance of

36 pension funding revenue bonds issued to fund a pension funding program, the amount of any
37 debt service reserve and contingency reserve funds funded from the proceeds of pension funding
38 revenue bonds; actuarial, financial advisory and legal expenses associated with the pension
39 funding program and the issuance of the pension funding revenue bonds; expenses for estimates
40 of cost and of revenues; expenses for actuarial studies; and such other expenses as may be
41 necessary or incident to the financing herein authorized, the pension funding program and the
42 performance of the things herein required or permitted in connection with any thereof.

43 (d) Such pension funding revenue bonds shall be in an amount at least equal to the
44 applicable policemen's and firemen's pension and relief funds then unfunded liability based upon
45 the most recent actuarial valuation reports for the applicable funds with appropriate adjustments
46 for timing, experience and other factors. Such pension funding revenue bonds shall bear interest
47 at not more than 12 percent per annum, payable semiannually, or at shorter intervals, and the
48 bonds allocable to a specific policemen's or firemen's relief fund shall mature over a period of
49 time not exceeding the then estimated amortization period for the municipality's unfunded
50 actuarial accrued liability as set forth in the municipality's most recent actuarial valuation reports
51 relating to the applicable funds with appropriate adjustments for timing, experience and other
52 factors, as may be determined by the ordinance or ordinances authorizing the issuance of such
53 bonds. The annual principal and interest payments on pension funding revenue bonds shall, to
54 the extent possible, provide for level debt service and be proportionate to the funding
55 requirements for the applicable policemen's or firemen's pension and relief funds as shown on
56 the municipality's most recent actuarial valuation report for such policemen's or firemen's pension
57 and relief funds with appropriate adjustments for timing, experience and other factors, as
58 applicable. Such bonds may be made redeemable before maturity, at the option of the
59 commission issuing the same, to be exercised by said commission, at not more than the par value
60 thereof, and at a premium of not more than five percent, under such terms and conditions as may
61 be fixed by the ordinance or ordinances authorizing the issuance of the bonds. The principal and

62 interest of the bonds may be made payable in any lawful medium. Such ordinance or ordinances
63 shall determine the form of the bonds, shall set forth any registration or conversion privileges, and
64 shall fix the denomination or denominations of such bonds, and the place or places of the payment
65 of the principal and interest thereof, which may be at any banking institution or trust company
66 within or without the state. All such bonds shall be, shall have and are hereby declared to have
67 all the qualities and incidents of negotiable instruments, under the Uniform Commercial Code of
68 this state. The bonds shall be executed in such manner as the commission may direct. The bonds
69 shall be sold by the commission in such manner as may be determined to be for the best interest
70 of the municipality which created such commission. Any surplus of the bond proceeds over and
71 above the cost of the pension funding program shall be paid into the sinking fund established for
72 the payment of such bonds.

73 (e) Such bonds shall be secured by a trust indenture by and between such commission
74 and a corporate trustee, which may be a trust company or banking institution having powers of a
75 trust company within or without the state. The ordinance or ordinances authorizing the issuance
76 of the pension funding revenue bonds, and fixing the details thereof, may provide that such trust
77 indenture may contain such provisions for protecting and enforcing the rights and remedies of
78 bondholders as may be reasonable and proper, not in violation of law. Such indenture may set
79 forth the rights and remedies of the bondholders or such trustee, or both. The commission may
80 provide by ordinance or ordinances or in such trust indenture for the payment of the proceeds of
81 the sale of the bonds and the revenues received by the commission with respect to the pension
82 funding program to such depository, as such commission may determine for the custody thereof,
83 and for the method of distribution thereof, with such safeguards and restrictions as such
84 commission may determine.

85 (f) Upon the payment in full of an issue of pension funding revenue bonds (other than with
86 the proceeds of refunding bonds) and any final costs related thereto, any amounts remaining in
87 any debt service reserve or contingency reserve funds shall be paid by the trustee of such bonds

88 to the municipality which formed the commission. Any other excess moneys held by the trustee
89 at that time shall either be paid to the municipality when such excess is attributable to contributions
90 made by the municipality or to the Municipal Pension Oversight Board when such excess is
91 attributable to amounts received by the trustee from allocations of the additional fire and casualty
92 insurance premium tax as provided in §33-3-14d of this code.

§8-33-4b. Approval of municipal pension oversight board of certain pension funding revenue bonds.

1 (a) In addition to the requirements otherwise provided in this article, any issuance of
2 pension funding revenue bonds by a building commission (1) for a Class III city or (2) for a Class
3 I or Class II city whose policemen's and firemen's pension and relief funds are not both funded at
4 a funding ratio of 40 percent or greater based on the most recent actuarial valuation reports for
5 such funds, with appropriate adjustments for timing, experience and other factors, as applicable,
6 shall, prior to such issuance, be approved by the Municipal Pension Oversight Board and provided
7 to the Joint Committee on Government and Finance for prior review.

8 (b) The applicable building commission shall, at least 60 days prior to the proposed
9 issuance date of the pension funding revenue bonds, provide the following to the Municipal
10 Pension Oversight Board:

11 (1) A report setting forth a detailed summary of the then projected terms of the proposed
12 bond issuance and projected impact on the unfunded pension liability of the applicable fund or
13 funds; and

14 (2) A copy of the municipality's most recent actuarial valuation reports relating to its
15 policemen's and firemen's pension and relief funds.

16 (c) The Municipal Pension Oversight Board shall meet, review the information provided
17 pursuant to subsection (b) of this section and provide its approval or rejection of the proposed
18 issuance of pension funding revenue bonds within 30 days of receipt.

19 (d) Should the Municipal Pension Oversight Board approve the issuance of pension

20 funding revenue bonds by a building commission, then it shall promptly provide a copy of its
21 decision and the supporting documents, including a copy of the municipality's most recent
22 actuarial valuation reports relating to its policemen's and firemen's pension and relief funds,
23 provided to it by such building commission to the Joint Committee on Government and Finance
24 which may meet and review such information within 30 days of receipt.

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: *Provided*, That on or after January 1, 2010, the commissioner
12 shall pay 10 percent of the amount collected to the Teachers Retirement System Reserve Fund
13 created in §18-7A-18 of this code, 25 percent of the amount collected to the Fire Protection Fund
14 created in section 33 of this article for allocation by the Treasurer to volunteer and part-volunteer
15 fire companies and departments and 65 percent of the amount collected to the Municipal
16 Pensions and Protection Fund: *Provided, however*, That upon notification by the Municipal

17 Pensions Oversight Board pursuant to the provisions of §8-22-18b this code, on or after January
18 1, 2010, or as soon thereafter as the Municipal Pensions Oversight Board is prepared to receive
19 the funds, 65 percent of the amount collected by the commissioner shall be deposited in the
20 Municipal Pensions Security Fund created in §8-22-18b of this code. The net proceeds of this tax
21 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 (b)(1) Before August 1 of each year, the treasurer of each municipality in which a municipal
24 policemen's or firemen's pension and relief fund is established shall report to the State Treasurer
25 the average monthly number of members who worked at least one hundred hours per month and
26 the average monthly number of retired members of municipal policemen's or firemen's pension
27 and relief fund or the Municipal Police Officers and Firefighters Retirement System during the
28 preceding fiscal year: *Provided*, That beginning in the year 2010 and continuing thereafter, the
29 report shall be made to the oversight board created in §8-22-18a of this code. These reports
30 received by the oversight board shall be provided annually to the State Treasurer by September
31 1.

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

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

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

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

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

69 preceding fiscal year. On and after July 1, 1997, from the growth in any moneys collected pursuant
70 to the tax imposed by this section and interest thereon there shall be allocated and authorized for
71 distribution to each municipal pension and relief fund, a pro rata share of the revenues allocated
72 to municipal policemen's and firemen's pension and relief funds based on the corresponding
73 municipality's average number of police officers and firefighters who worked at least 100 hours
74 per month and average monthly number of retired police officers and firefighters. For the purposes
75 of this subsection, the growth in moneys collected from the tax collected pursuant to this section
76 is determined by subtracting the amount of the tax collected during the fiscal year ending June
77 30, 1996, from the tax collected during the fiscal year for which the allocation is being made and
78 interest thereon. All moneys received by municipal pension and relief funds under this section
79 may be expended only for those purposes described in sections 16 through 28, inclusive, article
80 22, chapter eight of this code. Notwithstanding the foregoing provision of this subdivision (1), if a
81 municipality has outstanding pension funding revenue bonds and continues to pay the normal
82 cost of its policemen's and firemen's pension and relief funds, then the allocable share of
83 revenues to be allocated which would otherwise have been allocated to a municipal policemen's
84 or firemen's pension and relief fund shall instead be allocated to the trustee of any outstanding
85 pension funding revenue bonds.

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

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

95 department. If a municipality has outstanding pension funding revenue bonds and continues to
96 pay the normal cost of its policemen's and firemen's pension and relief funds, then the share that
97 would otherwise be payable to the municipality's firemen's pension and relief fund pursuant to
98 this subsection shall be paid to the trustee of such outstanding pension funding revenue bonds.

99 (d) The allocation and distribution of revenues provided in this section are subject to the
100 provisions of §8-22-20 of this code and sections eight-a and eight-b, article 15 of said chapter.

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

NOTE: The purpose of this bill is to authorize Class I, Class II and Class III municipalities to create pension funding programs to reduce the unfunded liability of a municipality's policemen's pension and relief funds and firemen's pension and relief funds which include the issuance of pension funding revenue bonds by building commissions established by such municipalities the proceeds of which are to be used to satisfy the then unfunded actuarial liability of such pension funds. An issuance of pension funding revenue bonds shall include the setting aside of funds equal to at least 10 percent of the original principal amount of such bonds in a contingency reserve fund. During the time period that pension funding revenue bonds are outstanding the applicable municipality's share of funds from the Municipal Pensions Security Fund created in §8-22-18b shall be paid to the trustee of the pension funding revenue bonds and used to pay debt service on such bonds.

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