

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3119**

By Delegates Crouse, Foster, Butler, Longanacre,  
Mazzocchi, Cannon, Shamblin, Lucas, Petitto, and  
Honaker

[Introduced January 27, 2023; Referred to the  
Committee on Pensions and Retirement then  
Finance]

1 A BILL to amend and reenact §8-15-8b 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 to authorizing an  
 3 expenditure of revenue from the Municipal Pension and Protection Fund and Fire  
 4 Protection Fund.

*Be it enacted by the Legislature of West Virginia:*

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL  
SERVICE FOR PAID FIRE DEPARTMENTS.**

**§8-15-8b. Authorized expenditures of revenues from the Municipal Pensions and  
Protection Fund and the Fire Protection Fund; deductions for unauthorized  
expenditures; record retention.**

1 (a) Money received from the state for volunteer and part-volunteer fire companies and  
 2 departments, pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code, may not be  
 3 commingled with moneys received from any other source, except money received as a grant from  
 4 the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code. Distributions  
 5 from the Municipal Pensions and Protection Fund and the Fire Protection Fund allocated to  
 6 volunteer and part-volunteer fire companies and departments may be expended only for the  
 7 following:

8 (1) Personal protective equipment, including protective head gear, bunker coats, pants,  
 9 boots, combination of bunker pants and boots, coats, and gloves;

10 (2) Equipment for compliance with the national fire protection standard or automotive fire  
 11 apparatus, NFPA-1901;

12 (3) Compliance with insurance service office recommendations relating to fire  
 13 departments;

14 (4) Rescue equipment, communications equipment, and ambulance equipment: *Provided,*

15 That no moneys received from the Municipal Pensions and Protection Fund or the Fire Protection  
16 Fund may be used for equipment for personal vehicles owned or operated by volunteer or part-  
17 volunteer fire company or department members;

18 (5) Capital improvements reasonably required for effective and efficient fire protection  
19 service and maintenance of the capital improvements;

20 (6) Retirement of debts, but only if the debts were incurred exclusively for the purchase of  
21 the goods and services allowed under this subsection;

22 (7) Payment of utility bills;

23 (8) Payment of the cost of immunizations, including any laboratory work incident to the  
24 immunizations, for firefighters against hepatitis-b and other blood-borne pathogens: *Provided,*  
25 That the vaccine shall be purchased through the state immunization program or from the lowest-  
26 cost vendor available: *Provided, however,* That volunteer and part-volunteer fire companies and  
27 departments shall seek to obtain no-cost administration of the vaccinations through local boards of  
28 health: *Provided further,* That in the event any volunteer or part-volunteer fire company or  
29 department is unable to obtain no-cost administration of the vaccinations through a local board of  
30 health, the company or department shall seek to obtain the lowest cost available for the  
31 administration of the vaccinations from a licensed health care provider;

32 (9) Any filing fee required to be paid to the Legislative Auditor's Office under §12-4-14 of  
33 this code relating to sworn statements of annual expenditures submitted by volunteer or part-  
34 volunteer fire companies or departments that receive state funds or grants;

35 (10) Property/casualty insurance premiums for protection and indemnification against loss  
36 or damage or liability;

37 (11) Operating expenses reasonably required in the normal course of providing effective  
38 and efficient fire protection service, which include, but are not limited to, gasoline, bank fees,  
39 postage, and accounting costs;

40 (12) Dues paid to national, state, and county associations;

41 (13) Workers' compensation premiums;

42 (14) Life insurance premiums to provide a benefit not to exceed \$20,000 for firefighters;

43 and

44 (15) Educational and training supplies and fire prevention promotional materials, not to  
45 exceed \$500 per year.

46 (b) If a volunteer or part-volunteer fire company or department spends any amount of  
47 money received from the Municipal Pensions and Protection Fund or the Fire Protection Fund for  
48 an item, service, or purpose not authorized by this section, that amount, when determined by an  
49 official audit, review, or investigation, shall be deducted from future distributions to the volunteer  
50 fire company or part-volunteer fire department.

51 (c) If a volunteer or part-volunteer fire company or department purchases goods or  
52 services authorized by this section, but then returns the goods or cancels the services for a refund,  
53 then any money refunded shall be deposited back into the same, dedicated bank account used for  
54 the deposit of distributions from the Municipal Pensions and Protection Fund and the Fire  
55 Protection Fund.

56 (d) Each volunteer or part-volunteer fire company and department shall retain, for five  
57 calendar years, all invoices, receipts, and payment records for the goods and services paid with  
58 money received from the state for volunteer and part-volunteer fire companies and departments,  
59 pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code and money received as a grant from  
60 the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

61 (e) Volunteer and part-volunteer fire companies and departments may also invest the  
62 received moneys, described in subsection (a) of this section, and collect interest thereon:  
63 *Provided*, That volunteer and part-volunteer fire companies and departments shall not commingle  
64 the received moneys with funds received from any other source, shall not use the invested money  
65 as collateral or security for any loan, and shall retain all resulting statements of accounts and  
66 earnings for a minimum of five years from the date of the statements; and

67           (16) Volunteer firefighter recruitment and retention.

## 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: *Provided*, That on or after January 1, 2010, the commissioner shall pay 10  
12 percent of the amount collected to the Teachers Retirement System Reserve Fund created in §18-  
13 7A-18 of this code, 25 percent of the amount collected to the Fire Protection Fund created in §33-  
14 3-33 of this code for allocation by the Treasurer to volunteer and part-volunteer fire companies and  
15 departments and 65 percent of the amount collected to the Municipal Pensions and Protection  
16 Fund: *Provided, however*, That upon notification by the Municipal Pensions Oversight Board  
17 pursuant to the provisions of §8-22-18b this code, on or after January 1, 2010, or as soon  
18 thereafter as the Municipal Pensions Oversight Board is prepared to receive the funds, 65 percent  
19 of the amount collected by the commissioner shall be deposited in the Municipal Pensions  
20 Security Fund created in §8-22-18b of this code. The net proceeds of this tax after appropriation

21 thereof by the Legislature is distributed in accordance with the provisions of this section, except for  
22 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 1.

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

47 firemen's pension and relief fund or bonds issued to refinance such bonds.

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

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

64 (c)(1) Each municipal pension and relief fund shall have allocated and authorized for  
65 distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's  
66 pension and relief funds based on the corresponding municipality's average monthly number of  
67 police officers and firefighters who worked at least one hundred hours per month during the  
68 preceding fiscal year. On and after July 1, 1997, from the growth in any moneys collected pursuant  
69 to the tax imposed by this section and interest thereon there shall be allocated and authorized for  
70 distribution to each municipal pension and relief fund, a pro rata share of the revenues allocated to  
71 municipal policemen's and firemen's pension and relief funds based on the corresponding  
72 municipality's average number of police officers and firefighters who worked at least 100 hours per

73 month and average monthly number of retired police officers and firefighters. For the purposes of  
74 this subsection, the growth in moneys collected from the tax collected pursuant to this section is  
75 determined by subtracting the amount of the tax collected during the fiscal year ending June 30,  
76 1996, from the tax collected during the fiscal year for which the allocation is being made and  
77 interest thereon. All moneys received by municipal pension and relief funds under this section may  
78 be expended only for those purposes described in sections 16 through 28a, inclusive, article 22,  
79 chapter eight of this code. Notwithstanding the foregoing provision of this subdivision, if a  
80 municipality has outstanding pension funding revenue bonds and continues to pay the normal cost  
81 of its policemen's and firemen's pension and relief funds, then the allocable share of revenues to  
82 be allocated which would otherwise have been allocated to a municipal policemen's or firemen's  
83 pension and relief fund shall instead be allocated to the trustee of any outstanding pension funding  
84 revenue bonds.

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

87 ~~(3)~~ (2) In addition to the share allocated and distributed in accordance with subdivision (1)  
88 of this subsection, each municipal fire department composed of full-time paid members and  
89 volunteers and part-volunteer fire companies and departments shall receive a share equal to the  
90 share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by  
91 an amount equal to the share multiplied by the ratio of the number of full-time paid fire department  
92 members who are also members of a municipal firemen's pension and relief fund or the Municipal  
93 Police Officers and Firefighters Retirement System to the total number of members of the fire  
94 department. If a municipality has outstanding pension funding revenue bonds and continues to  
95 pay the normal cost of its policemen's and firemen's pension and relief funds, then the share that  
96 would otherwise be payable to the municipality's firemen's pension and relief fund pursuant to this  
97 subsection shall be paid to the trustee of such outstanding pension funding revenue bonds.

98 (d) The allocation and distribution of revenues provided in this section are subject to the



99 provisions of §8-22-20 of this code and §8-15-8a and §8-15-8b of this code.

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

**§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; 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 (3) After December 31, 2005, for the purpose of providing additional revenue for volunteer  
16 fire departments and part-volunteer fire departments, there is hereby authorized and imposed on  
17 the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer,  
18 authorized or unauthorized, or by any risk retention group, a policy surcharge equal to fifty-five one  
19 hundredths of one percent of the taxable premium for each such policy.

20 (4) For purposes of this section, casualty insurance may not include insurance on the life of  
21 a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on  
22 a debtor to provide indemnity for payments becoming due on a specific loan or other credit  
23 transaction while the debtor is disabled as defined in the policy. The policy surcharge may not be  
24 subject to premium taxes, agent commissions or any other assessment against premiums.

25 (b) The policy surcharge shall be collected and remitted to the Commissioner by the  
26 insurer, or in the case of surplus lines coverage, by the surplus lines licensee, or if the policy is  
27 issued by a risk retention group, by the risk retention group. The amount required to be collected  
28 under this section shall be remitted to the Commissioner on a quarterly basis on or before the

29 twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except  
30 for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the  
31 succeeding year.

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

37 (d)(1) All money from the policy surcharge shall be collected by the Commissioner who  
38 shall disburse the money received from the surcharge into a special account in the state Treasury,  
39 designated the Fire Protection Fund. The net proceeds of this portion of the tax and the interest  
40 thereon, after appropriation by the Legislature, shall be distributed quarterly on the first day of the  
41 months of January, April, July and October to each volunteer fire company or department on an  
42 equal share basis by the state Treasurer. ~~After June 30, 2005, the money received from the~~  
43 ~~surcharge shall be distributed as specified in subdivisions (2) and (3) of this subsection.~~

44 ~~(2)(A) After June 30, 2005, through December 31, 2005, all money from the policy~~  
45 ~~surcharge shall be collected by the Commissioner who shall disburse one half of the money~~  
46 ~~received from the surcharge into the Fire Protection Fund for distribution as provided in~~  
47 ~~subdivision (1) of this subsection.~~

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

54 (3) (2) After December 31, 2005, all money from the policy surcharge shall be collected by

55 the Commissioner who shall disburse all of the money received from the surcharge into the Fire  
56 Protection Fund for distribution as provided in subdivision (1)(A) of this subsection.

57 (A) The Fire Protection Fund will be distributed as follows:

58 (i) All volunteer fire departments will be divided into four tiers to each have 25% of total  
59 number of volunteer fire departments in each tier. Tier one will be the highest 25% by call volume.  
60 Tier two will be the second highest 25% by call volume. Tier three will be the third highest 25% by  
61 call volume. Tier four will be the bottom 25% by call volume.

62 (ii) The net proceeds mentioned in subdivision (d)(1) of this section shall be distributed  
63 accordingly: 40% of net proceeds equally divided among tier one, 30% of net proceeds equally  
64 divided among tier two, 20% of net proceeds equally divided among tier three, 10% of net  
65 proceeds equally divided among tier four.

66 ~~(4)~~ (3) Before each distribution date to volunteer fire companies or departments, the state  
67 Fire Marshal shall report to the state Treasurer the names and addresses of all volunteer and part-  
68 volunteer fire companies and departments within the state which meet the eligibility requirements  
69 established in section eight-a, article fifteen, chapter eight of this code.

70 (e) The allocation, distribution and use of revenues provided in the Fire Protection Fund  
71 are subject to the provisions of sections eight-a and eight-b, article fifteen, chapter eight of this  
72 code.

NOTE: The purpose of this bill is to authorize an expenditure of revenue from the Municipal Pension and Protection Fund and Fire Protection Fund.

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