

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3153

FISCAL
NOTE

By Delegates Jennings, Mallow, Hillenbrand, Warner, DeVault, Garcia, Dean, Sheedy,

Ferrell, Reynolds and Rowe

[Introduced January 30, 2023; Referred to the Committee on Fire Departments and
Emergency Medical Services then Finance]

1 A BILL to amend and reenact §29-3E-7 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §33-3-14d and §33-3-33 of said code; and to amend and reenact §33-12C-7
 3 of said code, all relating to distribution of certain taxes and surcharges to benefit volunteer
 4 and part-volunteer fire departments and emergency medical services providers; defining
 5 terms; providing method of allocation and distribution for proceeds of fireworks safety fee
 6 deposited in Fire Protection Fund; eliminating obsolete language; increasing surcharge on
 7 fire and casualty policies; providing method of allocation of policy surcharge; requiring the
 8 State Fire Marshal provide certain information to the State Treasurer; increasing tax on
 9 surplus lines policies; providing method of allocation of surplus lines policy tax; and
 10 clarifying requirements for distribution of funds in Fire Protection Fund.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3E. FIREWORKS SAFETY.

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

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

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

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

11 code for expenditure on veterans' programs.

12 (2) Twenty-five percent shall be deposited into a special account in the State Treasury,
13 designated the Fire Protection Fund ~~established in §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 of
19 the sale price and is collectible by the retailer who shall account to the state for all fees paid by a
20 purchaser. If the retailer fails to collect the fee or fails to account to the state for the fees paid by a
21 purchaser, then the retailer is liable for the payment of the fee to the state.

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

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

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

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

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES, AND TAXATION OF INSURERS.

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

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

9 (2) All moneys collected from this additional tax shall be received by the commissioner and
10 paid by him or her into a special account in the State Treasury, designated the Municipal Pensions
11 and Protection Fund, to be allocated as follows: *Provided*, That on or after January 1, 2010, the
12 ~~commissioner shall pay~~

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
26 provisions of this section, except for distribution from proceeds pursuant to §8-22-18a(d) of this
27 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 of~~
36 ~~this code. These reports received by the oversight board shall be provided~~ The reports received by
37 the 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~~ The Municipal Pensions Oversight Board
45 shall allocate and authorize for distribution the revenues in the Municipal Pensions Security Fund
46 which were collected during the preceding calendar year for the purposes set forth in this section.
47 In any year the actuarial report required by §8-22-20 of this code indicates no actuarial deficiency
48 in the municipal policemen's or firemen's pension and relief fund, no revenues may be allocated
49 from the ~~Municipal Pensions and Protection Fund~~ or the Municipal Pensions Security Fund to that
50 fund. The revenues from the Municipal Pensions and ~~Protection~~ Security Fund shall then be

51 allocated to all other pension and relief funds which have an actuarial deficiency. Pension funding
52 revenue bonds include bonds of a municipality's building commission the net proceeds of which
53 were used to fund either or both of a municipality's policemen's or firemen's pension and relief
54 fund or bonds issued to refinance such bonds.

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

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

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

76 (3) The Municipal Pensions Oversight Board shall allocate and distribute the growth in any

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

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

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

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

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

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

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

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

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

8 ~~(2) After June 30, 2005, through December 31, 2005, for the purpose of providing~~
 9 ~~additional revenue for volunteer fire departments, part-volunteer fire departments and to provide~~
 10 ~~additional revenue to the Public Employees Insurance Agency and municipal pension plans, there~~
 11 ~~is hereby authorized and imposed on and after July 1, 2005, on the policyholder of any fire~~
 12 ~~insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or~~

13 ~~by any risk retention group, a policy surcharge equal to one percent of the taxable premium for~~
14 ~~each such policy.~~

15 (a) For the purposes of this section:

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

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

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

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

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

39 to be collected under this section shall be remitted to the commissioner on a quarterly basis on or
 40 before the 25th day of the month succeeding the end of the quarter in which they are collected,
 41 except for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the
 42 succeeding year. All money from the policy surcharge shall be collected by the commissioner, who
 43 shall disburse 77.5 percent of the money received from the surcharge into the Fire Protection Fund
 44 for distribution as provided in subsection (f) of this section. The commissioner shall disburse 22.5
 45 percent of the money received from the surcharge into the Emergency Medical Services
 46 Equipment and Training Fund established in §16-4C-24 of this code for disbursement in
 47 accordance with the provisions of that section.

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

53 ~~(d)~~ (f) Fire Protection Fund allocation and distribution. —

54 ~~(1) All money from the policy surcharge shall be collected by the Commissioner who shall~~
 55 ~~disburse the money received from the surcharge into a special account in the state Treasury,~~
 56 ~~designated the Fire Protection Fund. The State Treasurer's Office shall distribute the net proceeds~~
 57 ~~of this portion of the tax~~ the portion of the policy surcharge deposited into the Fire Protection Fund
 58 pursuant to §33-3-33 of this code, the amount deposited into the Fire Protection Fund pursuant to
 59 §29-3E-7 of this code, the amount deposited into the Fire Protection Fund pursuant to §33-3-14d
 60 of this code, and the amount deposited into the Fire Protection Fund pursuant to §33-12C-7 of this
 61 code, and the interest thereon on a quarterly basis, after appropriation by the Legislature. shall be
 62 ~~distributed quarterly~~ The distributions shall occur on the first day of the months of January, April,
 63 July, and October to each eligible volunteer fire company or department, ~~on an equal share basis~~
 64 ~~by the state Treasurer. After June 30, 2005, the money received from the surcharge shall be~~

65 ~~distributed as specified in subdivisions (2) and (3) of as provided in this subsection.~~

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

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

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

79 ~~(4) (2) Before each distribution date to volunteer fire companies or departments, the State~~
80 ~~Fire Marshal shall report to the State Treasurer:~~

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

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

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

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

ARTICLE 12C. SURPLUS LINE.

§33-12C-7. Surplus lines tax.

1 (a) In addition to the full amount of gross premiums charged by the insurer for the
 2 insurance, every person licensed pursuant to §33-12C-8 of this code shall collect and pay to the
 3 commissioner a sum equal to ~~4.55~~ five percent of the gross premiums and gross fees charged,
 4 less any return premiums, for surplus lines insurance provided by the licensee pursuant to the
 5 license. Where the insurance covers properties, risks, or exposures located or to be performed
 6 both in and out of this state and this state is the insured's home state, the sum payable shall be
 7 computed on that portion of the gross premiums allocated to this state, plus an amount equal to
 8 the portion of the gross premiums allocated to other states or territories on the basis of the tax
 9 rates and fees applicable to properties, risks or exposures located or to be performed outside of
 10 this state, and less the amount of gross premiums allocated to this state and returned to the
 11 insured due to cancellation of policy: *Provided*, That the surcharge imposed by ~~section thirty three,~~
 12 ~~article three of this chapter~~ §33-3-33 of this code on surplus lines policies shall no longer be
 13 effective with respect to premium attributable to coverage under such policies for periods after
 14 June 30, 2011: *Provided, however*, That ~~12 per cent~~ 16 percent of taxes collected under this
 15 subsection with respect to premium attributable to coverage under such policies after June 30,
 16 2011, shall be disbursed into the Fire Protection Fund and distributed in accordance with
 17 ~~subsection (d), section thirty three, article three of this chapter~~ §33-3-33 of this code, four percent
 18 of taxes collected under this subsection shall be disbursed into the Emergency Medical Services
 19 Equipment and Training Fund established in §16-4C-24 of this code for disbursement in
 20 accordance with the provisions of that section, and ~~88 per cent~~ the remaining 80 percent of the
 21 taxes collected under this subsection shall be disbursed in accordance with subdivision (2),
 22 subsection (f) of this section. The tax on any portion of the premium unearned at termination of

23 insurance having been credited by the state to the licensee shall be returned to the policyholder
24 directly by the surplus lines licensee or through the producing broker, if any.

25 (b) The individual insurance producer may not:

26 (1) Pay directly or indirectly the tax or any portion thereof, either as an inducement to the
27 policyholder to purchase the insurance or for any other reason; or

28 (2) Rebate all or part of the tax or the surplus lines licensee's commission, either as an
29 inducement to the policyholder to purchase the insurance or for any reason.

30 (c) The surplus lines licensee may charge the prospective policyholder a fee for the cost of
31 underwriting, issuing, processing, inspecting, service, or auditing the policy for placement with the
32 surplus lines insurer if:

33 (1) The service is required by the surplus lines insurer;

34 (2) The service is actually provided by the individual insurance producer or the cost of the
35 service is actually incurred by the surplus lines licensee; and

36 (3) The provision or cost of the service is reasonable, documented, and verifiable.

37 (d) The surplus lines licensee shall make a clear and conspicuous written disclosure to the
38 policyholder of:

39 (1) The total amount of premium for the policy;

40 (2) Any fee charged;

41 (3) The total amount of any fee charged; and

42 (4) The total amount of tax on the premium and fee.

43 (e) The clear and conspicuous written disclosure required by subdivision (4) of this
44 subsection is subject to the record maintenance requirements of §33-12C-8 of this code.

45 (f)(1) This tax is imposed for the purpose of providing additional revenue for municipal
46 policemen's and firemen's pension and relief funds and additional revenue for volunteer and part-
47 volunteer fire companies and departments. This tax is required to be paid and remitted, on a
48 calendar year basis and in quarterly estimated installments due and payable on or before the 25th

49 day of the month succeeding the close of the quarter in which they accrued, except for the fourth
50 quarter, in respect of which taxes shall be due and payable and final computation of actual total
51 liability for the prior calendar year shall be made, less credit for the three quarterly estimated
52 payments prior made, and filed with the annual return to be made on or before March 1 of the
53 succeeding year. Provisions of this chapter relating to the levy, imposition, and collection of the
54 regular premium tax are applicable to the levy, imposition, and collection of this tax to the extent
55 that the provisions are not in conflict with this section.

56 (2) Except as provided in subsection (a) of this section, all taxes remitted to the
57 commissioner pursuant to subdivision (1) of this subsection shall be paid by him or her into a
58 special account in the State Treasury, designated Municipal Pensions and Protection Fund, or
59 pursuant to §8-22-18b of this code, the Municipal Pensions Security Fund, and after appropriation
60 by the Legislature, shall be distributed in accordance with ~~the provisions of subsection (c), section~~
61 ~~fourteen-d, article three of this chapter~~ §33-3-14d of this code. The surplus lines licensee shall
62 return to the policyholder the tax on any unearned portion of the premium returned to the
63 policyholder because of cancellation of policy.

64 (g) In determining the amount of gross premiums taxable in this state for a placement of
65 surplus lines insurance covering properties, risks, or exposures only partially located or to be
66 performed in this state, the tax due shall be computed on the portions of the premiums which are
67 attributable to properties, risks, or exposures located or to be performed in this state and which
68 relates to the kinds of insurance being placed as determined by reference to an appropriate
69 allocation table.

70 (1) If a policy covers more than one classification:

71 (A) For any portion of the coverage identified by a classification on the allocation schedule,
72 the tax shall be computed by using the allocation schedule for the corresponding portion of the
73 premium;

74 (B) For any portion of the coverage not identified by a classification on the allocation

75 schedule, the tax shall be computed by using an alternative equitable method of allocation for the
76 property or risk;

77 (C) For any portion of the coverage where the premium is indivisible, the tax shall be
78 computed by using the method of allocation which pertains to the classification describing the
79 predominant coverage.

80 (2) If the information provided by the surplus lines licensee is insufficient to substantiate the
81 method of allocation used by the surplus lines licensee, or if the commissioner determines that the
82 licensee's method is incorrect, the commissioner shall determine the equitable and appropriate
83 amount of tax due to this state as follows:

84 (A) By use of the allocation schedule where the risk is appropriately identified in the
85 schedule;

86 (B) Where the allocation schedule does not identify a classification appropriate to the
87 coverage, the commissioner may give significant weight to documented evidence of the
88 underwriting bases and other criteria used by the insurer. The commissioner may also consider
89 other available information to the extent sufficient and relevant, including the percentage of the
90 insured's physical assets in this state, the percentage of the insured's sales in this state, the
91 percentage of income or resources derived from this state, and the amount of premium tax paid to
92 another jurisdiction for the policy.

93 (h) The commissioner is authorized to participate in a clearinghouse established through
94 NIMA or in a similar allocation procedure for the purpose of collecting and disbursing to signatory
95 states any funds collected pursuant to this section that are allocable to properties, risks, or
96 exposures located or to be performed outside of this state: *Provided*, That ~~twelve per cent~~ 16
97 percent of any moneys received from a clearinghouse or through a similar allocation procedure is
98 are subject to the provisions of ~~subsection (d), section thirty-three, article three of this chapter §33-~~
99 3-33(d) of this code, four percent of such moneys are subject to the provisions of §16-4C-24 of this
100 code, and ~~88 per cent~~ 80 percent of such moneys is are subject to the provisions of subdivision (2),

101 subsection (f) of this section: *Provided, however,* That to the extent other states where portions of
102 the properties, risks, or exposures reside have failed to enter into NIMA or a similar allocation
103 procedure with this state, the net premium tax collected shall be retained by this state and shall be
104 disbursed and distributed in the same manner as moneys received through a clearinghouse or
105 similar allocation procedure.

106 (i) Collection of tax.

107 If the tax owed by a surplus lines licensee under this section has been collected and is not
108 paid within the time prescribed, the same shall be recoverable in a suit brought by the
109 commissioner against the surplus lines licensee. The commissioner may charge interest for any
110 unpaid tax, fee, financial assessment or penalty, or portion thereof: *Provided,* That interest may
111 not be charged on interest. Interest shall be calculated using the annual rates which are
112 established by the Tax Commissioner pursuant to §11-10-17a of this code and shall accrue daily.

NOTE: The purpose of this bill is to amend and reenact codes concerning the distribution of certain taxes and surcharges to benefit volunteer and part-volunteer fire departments and emergency medical services providers as well as certain funds from the 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.