# WEST VIRGINIA CODE: §8-13C-14

**§8-13C-14. Authorization for closure of existing retirement plans, creation of defined contribution plans and issuance of bonds for certain qualifying municipalities.**

(a) Notwithstanding any other section of this code to the contrary and subject to subsection (b) of this section, any qualifying municipality, as that term is defined in section two of this article, has the following authority:

(1) To close its existing pension and relief fund plan for policemen and firemen provided in article twenty-two of this chapter for policemen and firemen hired on and after a future date to be set by the governing body of the municipality;

(2) To establish a defined contribution plan for police officers and firefighters hired on and after the future date set by the governing body of the municipality to close its existing pension and relief fund plan for policemen and firemen; and

(3) To issue revenue bonds for the purpose of eliminating the unfunded actuarial accrued liability of the existing pension and relief fund plan for policemen and firemen and to issue refunding bonds issued to refund, in whole or in part, bonds issued for such purpose.

(b) The authority granted in subsection (a) of this section is subject to the following:

(1) No qualifying municipality may close an existing pension and relief fund plan for policemen and firemen pursuant to subdivision (1), subsection (a) of this section unless:

(A) The qualifying municipality issues revenue bonds for the purpose of eliminating the unfunded actuarial accrued liability of the existing pension and relief fund plan for policemen and firemen; and

(B) The qualifying municipality establishes a defined contribution plan for police officers and firefighters pursuant to subdivision (2), subsection (a) of this section;

(2) No qualifying municipality may establish a defined contribution plan for police officers and firefighters pursuant to subdivision (2), subsection (a) of this section unless:

(A) The qualifying municipality closes its existing pension and relief fund plan for policemen and firemen pursuant to subdivision (1), subsection (a) of this section; and

(B) The qualifying municipality issues revenue bonds for the purpose of eliminating the unfunded actuarial accrued liability of the existing pension and relief fund plan for policemen and firemen;

(3) No qualifying municipality may issue bonds pursuant to subdivision (3), subsection (a) of

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this section unless:

(A) The qualifying municipality closes its existing pension and relief fund plan for policemen and firemen pursuant to subdivision (1), subsection (a) of this section; and

(B) The qualifying municipality establishes a defined contribution plan for police officers and firefighters pursuant to subdivision (2), subsection (a) of this section;

(4) No qualifying municipality may exercise any authority provided in subsection (a) of this section unless it obtains a determination of the unfunded actuarial accrued liability of its existing pension and relief fund plans for policemen and firemen from the state Treasurer;

(5) If the qualifying municipality elects to issue bonds pursuant to subdivision (3), subsection (a) of this section, the following applies:

(A) The proceeds of the revenue bonds shall be at least equal to the unfunded actuarial accrued liability as determined by the state Treasurer plus any reserve fund requirements and any costs, including accrued or capitalized interest, associated with issuing the bonds. All of the proceeds shall be applied to the payment of the unfunded actuarial accrued liability, the funding of reserve requirements and the payment of costs associated with the issuance of the bonds and may not be used for any other purpose;

(B) The proceeds of any refunding bonds shall be used to refund all or any portion of the revenue bonds authorized in this section, to fund any required reserve requirements for the refunding bonds and to pay costs of issuance associated with the refunding bonds and for no other purpose; and

(C) Notwithstanding any other provision of this code to the contrary, the proceeds of the bonds or refunding bonds shall be invested with the West Virginia Investment Management Board established under the provisions of article six, chapter twelve of this code.

(6) If the qualifying municipality elects to issue bonds pursuant to subdivision (3), subsection (a) of this section, the qualifying municipality shall impose a pension relief municipal occupational tax, a pension relief municipal sales and service tax, a pension relief municipal use tax or any permitted combination of these taxes at a rate projected to generate sufficient revenue to meet the principal, interest and any reserve requirement and arbitrage rebate obligations on the bonds, subject to the following:

(A) This requirement is void after the qualifying municipality loses its authority to impose those taxes pursuant to subsection (b) or (c), section nine of this article; and

(B) If the revenue generated by a pension relief municipal occupational tax, a pension relief municipal sales and service tax and a pension relief municipal use tax is insufficient to meet the principal, interest and any reserve requirement and arbitrage rebate obligations on the bonds, the qualifying municipality shall not issue the bonds;

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(7) If the qualifying municipality elects to issue bonds pursuant to subdivision (3), subsection (a) of this section, all proceeds from a pension relief municipal occupational tax, a pension relief municipal sales and service tax, a pension relief municipal use tax or any permitted combination of these taxes shall be dedicated solely to paying the principal, interest and any reserve requirement and arbitrage rebate obligations on the bonds;

(8) If the qualifying municipality elects to close an existing pension and relief fund plan for policemen and firemen pursuant to subdivision (1), subsection (a) of this section, all current and retired employees in the existing pension and relief fund plans for policemen and firemen shall remain in that plan and shall be paid all benefits of that plan in accordance with Part III, article twenty-two of this chapter;

(9) Any such revenue bonds or refunding bonds shall bear interest at not more than twelve percent per annum, payable semiannually, or at shorter intervals, and shall mature at such time or times, not exceeding thirty years, as may be determined by the ordinance authorizing the issuance of the bonds. The bonds may be made redeemable before maturity, at the option of the municipality at not more than the par value thereof, plus a premium of not more than five percent, under such terms and conditions as may be fixed by the ordinance authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. The ordinance shall determine the form of the bonds and shall set forth any registration or conversion privileges, and shall fix the denomination or denominations of such bonds, and the place or places of the payment of principal and interest thereof, which may be at any banking institution or trust company within or without the state. The bonds shall contain a statement on their face that the municipality shall not be obligated to pay the same, or the interest thereon, except from the special fund derived from revenues collected by the municipality from the imposition of a pension relief municipal occupational tax, a pension relief municipal sales and service tax, a pension relief municipal use tax or any permitted combination of these taxes and which the municipality may pledge as security for the bonds. All the bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments, under the Uniform Commercial Code of the state. The bonds shall be executed in such manner as the governing body of the municipality may direct. The bonds shall be sold by the municipality in such manner as may be determined to be for the best interest of the municipality. Any surplus of the bond proceeds over and above the cost of paying the unfunded liability, plus any amount required for reserves, capitalized interest and costs of issuance thereof or in the case of refunding bonds over and above the amount necessary to refund the existing bonds being refunded by such issue, plus any amount required for reserves, capitalized interest and costs of issuance thereof, shall be paid into the debt service fund for such bonds; and

(10) The defined contribution plan established by the municipality shall:

(A) Meet the federal qualification requirements of 26 U.S.C. §401 and related sections of the Internal Revenue Code as applicable to governmental plans;

(B) Set the amount of each employee's contribution and the amount of each employer's



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contribution;

(C) Require that the amount of annuity payments a retired member receives be based solely upon the balance in the member's annuity account at the date of retirement, the retirement option selected, or in the event of an annuity option being selected, the actuarial life expectancy of the member of any other factors that normally govern annuity payments;

(D) Include detailed provisions that require the prudent and safe handling of the retirement funds;

(E) Provide retirement options; and

(F) Include any other provision and authorize any policy that the qualifying municipality determines is necessary or incidental to the establishment and operation of the defined contribution plan. The other provisions may include, but are not limited to, the authorization to contract with one or more private pension, insurance, annuity, mutual fund or other qualified company or companies to administer the day-to-day operations of the plan and to provide investments.

(c) If a qualifying municipality elects to establish a defined contribution plan pursuant to subdivision (2), subsection (a) of this section, the qualifying municipality shall also establish, by ordinance, mechanisms to provide disability benefits and death benefits for eligible members.

(d) The authority granted to a qualifying municipality pursuant to subsection (a) of this section to close its existing pension and relief fund plan for police officers and firefighters, to establish a defined contribution plan for police officers and firefighters and to issue revenue bonds shall terminate on December 31, 2005.

(e) The right of any person to a benefit provided under a defined contribution plan established by a qualifying municipality pursuant to this section shall not be subjected to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever nor shall any assignment thereof be enforceable in any court with the exception that the benefits or contributions under the plan shall be subject to "qualified domestic relations orders" as that term is defined in 26 U.S.C. §414 with respect to governmental plans.

(f) The interest earned on any bonds issued under the authority granted in this section is exempt from any tax imposed under the provisions of this code.

(g) Bonds and refunding bonds issued pursuant to the authority provided by this section shall never constitute a direct and general obligation of the State of West Virginia and the full faith and credit of the state is not pledged to secure the payment of the principal and interest of such bonds. Bonds and refunding bonds issued under this section shall state on their face that the bonds or bonds do not constitute a debt of the State of West Virginia and

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that payment of the bonds, interest and charges thereon cannot become an obligation of the State of West Virginia.

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