
WEST VIRGINIA CODE CHAPTER 8
ARTICLE 13C

WV Legislature

§8-13C-1. Findings.

The Legislature finds that:

- (a) Imposing additional taxes creates an extra burden on the citizens of the state;
- (b) Imposing additional taxes can be detrimental to the economy of the state;
- (c) Imposing additional taxes is only proper under certain circumstances;
- (d) For many municipalities with severe unfunded liabilities of the police and fire pension funds, all available sources of local revenue have been exhausted. Property taxes are at the maximum allowed by the state Constitution and local business and occupation taxes and utility taxes are at the maximum rates allowed by state law. Other fees have reached the economic maximum and are causing relocation of business outside the municipal boundaries;
- (e) For many municipalities with severe unfunded police and fire pension fund liabilities, revenue from existing sources has become stagnant over the past few years with no expectation of significant future growth;
- (f) For many municipalities with severe unfunded police and fire pension fund liabilities, payments required under state law to fund fire and police pension funds are now close to equaling the city payrolls for police and fire protection and will rise to exceed those payrolls within a ten-year period;
- (g) For many municipalities with severe unfunded police and fire pension fund liabilities, payments required under state law to fund fire and police pension funds now constitute a large percentage of those municipalities' total budget and will rise to an even larger percentage of the available revenues in the next ten years. Payment and benefit levels are dictated to the municipalities by state law;
- (h) As the required pension payments rise, many of the municipalities with severe unfunded police and fire pension fund liabilities will find it impossible to maintain at minimum levels necessary and proper city services including, but not limited to, police and fire protection, street maintenance and repair and sanitary services;
- (i) For some of the municipalities with severe unfunded liabilities of the police and fire pension funds, the combination of the steeply rising pension obligations and the stagnant revenue sources raise the real possibility of municipal bankruptcy in the near and predictable future. If this happens, pensioners would either not receive the full benefits which they have been promised or pressure would be placed on the state to fund these programs;
- (j) For a municipality that has the most severe unfunded liability in its pension funds, paying off the unfunded liability in a timely manner would cause tremendous financial hardship and

the loss of many services that would otherwise be provided to the municipality's citizens;

(k) Only for a municipality that has the most severe unfunded liability in its pension funds would the imposition of the pension relief municipal occupational tax, the pension relief municipal sales and service tax, the pension relief municipal use tax or any combination of those taxes be an appropriate method of addressing the unfunded liability;

(l) Only for a municipality that does not impose or ceases to impose a business and occupation or privilege tax would the imposition of an alternative municipal sales and service tax and an alternative municipal use tax be appropriate;

(m) Only for a municipality that has the most severe unfunded liability in its pension funds would the closure of its existing pension and relief fund plan for policemen and firemen to those newly employed and the creation of a defined contribution plan for newly employed policemen and firemen be appropriate; and

(n) Only for a municipality that has the most severe unfunded liability in its pension funds, that closes its existing pension and relief fund plan for policemen and firemen to those newly employed and that creates a defined contribution plan for newly employed police officers and firefighters, would the issuance of bonds to address the unfunded liability of its existing pension and relief fund plan for policemen and firemen be appropriate.

(o) No amendment to this article enacted during the third extraordinary session of the Legislature held during calendar year 2005 may be interpreted or construed to allow a municipality to adopt by ordinance a sales or use tax, by whatever name called, that imposes either tax prior to July 1, 2008.

§8-13C-2. Definitions.

For the purposes of this article:

(a) "Alternative municipal sales and service tax" means the tax authorized to be imposed by subsection (b), section four of this article only if a municipality does not impose or ceases to impose the business and occupation or privilege tax authorized in section five, article thirteen of this chapter;

(b) "Alternative municipal use tax" means the tax authorized to be imposed by subsection (b), section five of this article only if a municipality does not impose or ceases to impose the business and occupation or privilege tax authorized in section five, article thirteen of this chapter;

(c) "Qualifying municipality" means any municipality, as defined in section two, article one of this chapter:

(1) In which the weighted average of the percentages to which its policemen's and firemen's pension and relief funds are fully funded is three percent or less on the date of adoption of the ordinance imposing the tax; and

(2) That has satisfied the requirements set forth in section eleven of this article;

(d) "Pension relief municipal occupational tax" means the tax authorized to be imposed by section three of this article and for which the use of the proceeds of the tax are restricted by section nine of this article;

(e) "Pension relief municipal sales and service tax" means the tax authorized to be imposed by subsection (a), section four of this article and for which the use of the proceeds of the tax are restricted by section nine of this article;

(f) "Pension relief municipal use tax" means the tax authorized to be imposed by subsection (a), section five of this article and for which the use of the proceeds of the tax are restricted by section nine of this article; and

(g) "Taxable employee" means any individual:

(1) Who holds employment with an employer with a place of business located within the qualifying municipality electing to impose the municipal payroll tax pursuant to this article; and

(2) Whose salaries, wages, commissions and other earned income that would be included in federal adjusted gross income for the year is more than \$10,000 per year.

§8-13C-3. Pension relief municipal occupational tax.

(a) Effective on and after July 1, 2005, each qualifying municipality, as defined in section two of this article, has the plenary power and authority to impose, by ordinance, a pension relief municipal occupational tax on taxable employees. Any pension relief municipal occupational tax imposed pursuant to this section shall meet the following requirements:

(1) The tax shall be imposed at a rate of one percent or less;

(2) The tax shall be imposed at a uniform rate; and

(3) The tax rate shall be applied only to salaries, wages, commissions and other earned income of taxable employees that would be included in federal adjusted gross income for the year. The tax rate may not be applied to other forms of income including, but not limited to, intangible income and net profit from a business.

(b) Each employer with a taxable employee, during each pay period, shall withhold from the taxable employee's salary the amount of the tax as computed by applying the appropriate tax rate to the taxable employee's salary during that pay period and remit the withholdings to the appropriate municipal taxing authority.

§8-13C-4. Municipal sales and service taxes.

(a) Pension relief municipal sales tax. -- On and after July 1, 2005, each qualifying municipality, as defined in section two of this article, has the plenary power and authority to impose, by ordinance, a pension relief municipal sales and service tax at a rate not to exceed one percent, subject to the provisions of this article: Provided, That: (1) The tax does not apply to any purchase of tangible personal property, custom software or the results of taxable services in a transaction completed within the corporate limits of the municipality before July 1, 2008, or before such later date specified in the ordinance of the municipality imposing the tax; and (2) the effective date of the tax, or of a change in the rate of the tax, shall be no earlier than the first day of a calendar quarter that at a minimum begins one hundred eighty days after notice of the tax, or of a change in the rate of tax, is provided to the Tax Commissioner as provided in section six of this article.

(b) Alternative municipal sales tax. -- On and after July 1, 2005, notwithstanding subsection (a) of this section, and in addition thereto in the case of a qualifying municipality, any municipality that does not impose, or ceases to impose, the business and occupation or privilege tax authorized by section five, article thirteen of this chapter has the plenary power and authority to impose, by ordinance, an alternative municipal sales and service tax at a rate not to exceed one percent, subject to the provisions of this article: Provided, That: (1) The tax does not apply to any purchase of tangible personal property, custom software or the results of taxable services in a transaction completed within the corporate limits of the municipality before July 1, 2008, or before such later date specified in the ordinance of the municipality imposing the tax; and (2) the effective date of the tax, or of a change in the rate of the tax, shall be no earlier than the first day of a calendar quarter that at a minimum begins one hundred eighty days after notice of the tax, or of a change in the rate of tax, is provided to the Tax Commissioner as provided in section six of this article.

(c) Uniformity of tax base. -- Any municipal sales and service tax imposed under the authority granted by this section is subject to the following:

(1) The base of a municipal sales and service tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the municipality, subject to the following:

(A) Except for the exemption provided in section nine-f, article fifteen, chapter eleven of this code, all exemptions and exceptions from consumers sales and service tax apply to a municipal sales and service tax imposed pursuant to this section; and

(B) Sales of gasoline and special fuel are not subject to a municipal sales and service tax imposed pursuant to this section;

(2) Any municipal sales and service tax imposed pursuant to this section applies solely to tangible personal property, custom software and services that are sourced to the

municipality. The sourcing rules set forth in article fifteen-b, chapter eleven of this code, including any amendments thereto, apply to municipal sales and use taxes levied pursuant to this article.

(d) Notification of Tax Commissioner. -- Any municipality that imposes a municipal sales and service tax pursuant to this section or changes the rate of a municipal sales and service tax imposed pursuant to this section shall notify the Tax Commissioner pursuant to section six of this article.

(e) State level administration required. -- Any municipality that imposes a municipal sales and service tax pursuant to this section may not administer or collect the tax, but shall use the services of the Tax Commissioner to administer, enforce and collect the tax.

(f) Tax in addition to state use tax. -- Any municipal sales and service tax imposed pursuant to this section shall be imposed in addition to the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the municipality and, except as exempted or excepted, all sales made and services rendered within the boundaries of the municipality shall remain subject to the tax levied by that article.

(g) Tax in addition to special district tax. -- Any municipal sales and service tax imposed pursuant to this section shall be imposed in addition to any tax imposed pursuant to section one, article eighteen, chapter seven of this code, sections six and seven, article thirteen of this chapter and section twelve, article thirty-eight of this chapter.

§8-13C-5. Municipal use tax.

(a) Pension relief municipal use tax. -- On and after July 1, 2005, each qualifying municipality, as defined in section two of this article, that imposes a pension relief municipal sales and service tax pursuant to this article shall impose, by ordinance, a pension relief municipal use tax at the same rate that is set for the pension relief municipal sales and service tax: Provided, That: (1) The tax does not apply to any use of tangible personal property, custom software or the results of taxable services in the corporate limits of the municipality where the first use occurs before July 1, 2008, or before such later date specified in the ordinance of the municipality imposing the tax; and (2) the effective date of the tax, or of a change in the rate of the tax, shall be no earlier than the first day of a calendar quarter that at a minimum begins one hundred eighty days after notice of the tax, or of a change in the rate of tax, is provided to the Tax Commissioner as provided in section six of this article.

(b) Alternative municipal use tax. -- On and after July 1, 2005, each municipality that imposes an alternative municipal sales and service tax pursuant to this article shall impose, by ordinance, an alternative municipal use tax at the same rate that is set for the alternative municipal sales and service tax: Provided, That: (1) The tax does not apply to any use of tangible personal property, custom software or the results of taxable services in the corporate limits of the municipality where the first use occurs before July 1, 2008, or before such later date specified in the ordinance of the municipality imposing the tax; and (2) the effective date of the tax, or of a change in the rate of the tax, shall be no earlier than the first day of a calendar quarter that at a minimum begins one hundred eighty days after notice of the tax, or of a change in the rate of tax, is provided to the Tax Commissioner as provided in section six of this article.

(c) Uniformity of tax base. -- The base of a municipal use tax imposed pursuant to this section shall be identical to the base of the use tax imposed pursuant to article fifteen-a, chapter eleven of this code on the use of tangible personal property, custom software and taxable services within the boundaries of the municipality, subject to the following:

(1) Except for the exemption provided in section nine-f, article fifteen, chapter eleven of this code, all exemptions and exceptions from the use tax apply to a municipal use tax imposed pursuant to this section; and

(2) Uses of gasoline and special fuel are not subject to a municipal use tax imposed pursuant to this section when the use is subject to the tax imposed by article fourteen-c, chapter eleven of this code.

(d) Notification to Tax Commissioner. -- Any municipality that imposes a municipal use tax pursuant to this section or changes the rate of a municipal use tax imposed pursuant to this section shall notify the Tax Commissioner pursuant to section six of this article.

(e) State level administration required. -- Any municipality that imposes a municipal use tax

pursuant to this section may not administer or collect the tax, but shall use the services of the Tax Commissioner to administer, enforce and collect the taxes.

(f) Tax in addition to state use tax. -- Any municipal use tax imposed pursuant to this section shall be imposed in addition to the use tax imposed pursuant to article fifteen-a, chapter eleven of this code on the use of tangible personal property, custom software or taxable services within the boundaries of the municipality and, except as exempted or excepted, all use of tangible personal property, custom software or taxable services within the boundaries of the municipality shall remain subject to the tax levied by said article.

(g) Tax in addition to special district tax. -- Any municipal use tax imposed pursuant to this section shall be imposed in addition to any tax imposed pursuant to section one, article eighteen, chapter seven of this code, sections six and seven, article thirteen of this chapter and section twelve, article thirty-eight of this chapter.

§8-13C-5a. Credit for sales tax paid to another municipality.

(a) Credit against municipal use tax. -- A person is entitled to a credit against a use tax imposed by a municipality pursuant to section five of this article on the use of a particular item of tangible personal property, custom software or service equal to the amount, if any, of sales tax lawfully paid to another municipality for the acquisition of that property or service: Provided, That the amount of credit allowed may not exceed the amount of use tax imposed on the use of the property or service in the municipality of use.

(b) Definitions. -- For purposes of this section:

(1) "Municipality" means a municipality, as defined in section two, article one of this chapter, or a comparable unit of local government in another state;

(2) "Sales tax" includes a sales tax or compensating use tax

lawfully imposed on the use of tangible personal property, custom software or a service by the municipality or county, as appropriate, in which the sale or use occurred; and

(3) "State" includes the fifty states of the United States and the District of Columbia but does not include any of the several territories organized by Congress.

(c) No credit is allowed under this section for payment of any sales or use taxes imposed by this state or any other state.

§8-13C-6. Notification to Tax Commissioner; responsibilities of Tax Commissioner; fee; special revenue account; application of state tax law.

(a) Notification to Tax Commissioner. -- Any municipality that imposes a municipal sales and service tax and a municipal use tax pursuant to this article or changes the rate of the taxes shall notify the Tax Commissioner at least one hundred eighty days before the effective date of the imposition of the taxes or the change in the rate of the taxes.

(b) State level administration of taxes. -- The Tax Commissioner is responsible for administering, collecting and enforcing any municipal sales and service tax and any municipal use tax imposed pursuant to this article in the same manner as the state consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code and the state use tax imposed pursuant to article fifteen-a of said chapter.

(c) Fee for services. -- The Tax Commissioner may retain from collections a fee not to exceed the lesser of the cost of the service provided or one percent of the amount of taxes imposed pursuant to this article that are collected by the Tax Commissioner during any fiscal year.

(d) Establishment of special revenue account. -- There is created in the state Treasury a special revenue revolving fund account known as the Tax Department Municipal Sales and Use Tax Operations Fund, which shall be an interest-bearing account. The fund shall consist of any future funds received from fees charged by the Tax Commissioner pursuant to this section and any funds appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal or state law; and any accrued interest or other return on the moneys in the fund. The balance remaining in the fund at the end of each fiscal year shall remain in the fund and not revert to the state General Revenue Fund.

(e) Application of state sales tax law. -- The state consumers sales and service tax law, set forth in article fifteen, chapter eleven of this code, and the amendments to that article and the rules of the Tax Commissioner relating to the laws shall apply to a municipal sales and service tax imposed pursuant to this article to the extent the rules and laws are applicable.

(f) Application of state use tax law. -- The state use tax law, set forth in article fifteen-a, chapter eleven of this code, and the amendments to that article and the rules of the Tax Commissioner relating to the laws shall apply to a municipal use tax imposed pursuant to this article to the extent the rules and laws are applicable.

(g) Definitions incorporated. -- Any term used in this article or in an ordinance adopted pursuant to this article that is defined in articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code, as amended, shall have the same meaning when used in this article or in an ordinance adopted pursuant to this article, unless the context in which the term is used clearly requires a different result.

(h) Automatic updating. -- Any amendments to articles nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of this code shall automatically apply to a sales or use tax imposed

pursuant to this article, to the extent applicable.

(i) Administrative procedures. -- Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of this code applies to the taxes imposed pursuant to this article, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.

(j) Criminal penalties. -- Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of this code applies to the taxes imposed pursuant to this article with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in extenso in this article.

§8-13C-7. Municipal sales and service tax and use tax fund; deposit and remittance of collections.

(a) There is created a special revenue account in the state Treasury designated the "municipal sales and service tax and use tax fund" which is an interest-bearing account and shall be invested in the manner described in section nine-c, article six, chapter twelve of this code with the interest and other return earned a proper credit to the fund. A separate subaccount within the fund shall be established for each municipality that imposes a municipal sales and service tax and use tax pursuant to this article.

(b) The Tax Commissioner shall deposit all the proceeds from a municipal sales and service tax and a municipal use tax collected for each municipality minus any fee for collecting, enforcing and administering taxes in the appropriate subaccount. All moneys collected and deposited in the fund shall be remitted at least quarterly by the state Treasurer to the treasurer of the appropriate municipality.

§8-13C-8. Printed catalogs.

Local tax rate changes made pursuant to sections four and five of this article apply to purchases from printed catalogs where the purchaser computed the tax based upon the local tax rate published in the catalog only on and after the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.

WV Legislature

§8-13C-9. Restriction on use of certain revenues.

(a) All proceeds from a pension relief municipal occupational tax, a pension relief municipal sales and service tax and a pension relief municipal use tax imposed pursuant to this article shall be used solely for one of the following purposes:

(1) Directly reducing the unfunded actuarial accrued liability of policemen's and firemen's pension and relief funds of the qualifying municipality imposing the tax; or

(2) Meeting the principal, interest and any reserve requirement obligations of any bonds issued pursuant to section fourteen of this article.

(b) For any qualifying municipality that chooses to apply the 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 directly to reducing the unfunded actuarial accrued liability of policemen's and firemen's pension and relief funds, the qualifying municipality loses its authority to impose those taxes after:

(1) The municipality fails to annually fund, at a minimum, all normal costs of the qualifying municipality's policemen's and firemen's pension and relief funds as determined by the consulting actuary as provided under section twenty-a, article twenty-two of this chapter; or

(2) The unfunded actuarial accrued liability of the qualifying municipality's policemen's and firemen's pension and relief funds is eliminated; or

(3) Sufficient moneys accrue from the proceeds of the pension relief municipal occupational tax, the pension relief municipal sales and service tax, the pension relief municipal use tax or any permitted combination of these taxes to eliminate the unfunded actuarial accrued liability of the qualifying municipality's policemen's and firemen's pension and relief funds.

(c) For any qualifying municipality that chooses to apply the 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 to the principal, interest and any reserve requirement and arbitrage rebate obligations on any bonds issued pursuant to section fourteen of this article, the qualifying municipality loses its authority to impose those taxes after:

(1) The principal, interest and any reserve requirement and arbitrage rebate obligations on the bonds issued pursuant to section fourteen of this article are met;

(2) Sufficient moneys accrue from the proceeds of the pension relief municipal occupational tax, the pension relief municipal sales and service tax, the pension relief municipal use tax or any permitted combination of these taxes to meet the principal, interest and any reserve requirement and arbitrage rebate obligations on the bonds issued pursuant to section fourteen of this article; and

(3) After retirement of bonds issued pursuant to section fourteen of this article, any unfunded actuarial accrued liability of the qualifying municipality's pension and relief funds for policemen and firemen is eliminated.

WV Legislature

§8-13C-10. Conflict; partial unconstitutionality.

(a) If a court of competent jurisdiction finds that the provisions of this article and the provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code conflict and cannot be harmonized, then the provisions of said articles shall control.

(b) If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article is for any reason held to be invalid, unlawful or unconstitutional, that decision does not affect the validity of the remaining portions of this article or any part thereof: Provided, That if this article is held to be unconstitutional under section thirty-nine, article VI of the Constitution of West Virginia this severability clause shall not apply.

§8-13C-11. Additional requirements for authority to impose certain taxes.

(a) The authority to impose the pension relief municipal occupational tax, the pension relief municipal sales and service tax and the pension relief municipal use tax, all provided in this article, is not effective until a municipality wishing to impose the taxes presents to the Joint Committee on Government and Finance a plan to remove the unfunded liabilities of its policemen's and firemen's pension funds and the necessary changes in West Virginia law have been enacted to allow for implementation of the municipal plan.

(b) Notwithstanding any other provision of this code to the contrary, no cost-of-living increases or other benefit increases, and no new benefits, may be granted to or received by any member or beneficiary of a policemen's and firemen's pension and relief funds of a municipality during any period that the municipality imposes a pension relief municipal occupational tax, a pension relief municipal sales and service tax, the pension relief municipal use tax or any combination thereof authorized under this chapter.

§8-13C-12. Limited authority to impose tax.

(a) Notwithstanding any other provision of this code to the contrary, no county, board, political subdivision or any other agency or entity other than a municipality may impose an alternative municipal sales and service tax, an alternative municipal use tax, a pension relief municipal occupational tax, a pension relief municipal sales and service tax, a pension relief municipal use tax or any combination of these taxes.

(b) No subsequent amendment to this code shall supersede the provisions of subsection (a) of this section unless the amendment specifically states that the provisions of said subsection are superseded.

§8-13C-13. Study.

[Repealed.]

WV Legislature

§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 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;

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