WEST VIRGINIA CODE: §8-33-4A

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

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

(b) Before any commission shall fund any pension funding program through the issuance of pension funding revenue bonds, the commission shall enact an ordinance or ordinances, which shall (1) set forth a brief and general description of the pension funding program; (2) set forth the estimated cost thereof; (3) order the funding of the pension funding program; (4) direct that pension funding revenue bonds be issued pursuant to this section, in such amount as may be found necessary to pay the cost of the pension funding program; (5) contain such provisions as the commission determines are necessary or desirable with regard to the establishment and setting aside of a debt service reserve fund if deemed beneficial to the commission and for the administration and disposition of the debt service reserve fund; (6) contain provisions establishing and setting aside a debt service contingency reserve fund with the municipality in an amount at least equal to 10 percent of the original principal amount of the pension funding revenue bonds from cash contributed by the municipality or from the proceeds of the pension funding revenue bonds, providing for the replenishment of any amounts drawn from the debt service contingency reserve fund in a reasonable time period, and for the administration and disposition of the debt service contingency reserve fund; and (7) contain such other provisions as may be necessary or proper in the premises. Before any such ordinance shall become effective, an abstract of the ordinance, determined by the commission to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code, and the publication area for such publication shall be the municipality which formed the commission. The notice to be published with the abstract of the ordinance shall specify a date, time and place for a public hearing, the date being not less than 10 days after the first publication of the abstract and notice and not prior to the last publication of the abstract and notice, at which time and place all parties and interests may appear before the commission and may be heard as to whether or not said ordinance shall be put into effect, and said notice shall also identify the office in which a certified copy of such ordinance shall be on file for review by interested persons during the office hours of the office. At the public hearing all objections and suggestions shall be heard, and the

www.LegisTure

commission shall take such action as it deems proper in the premises.

(c) (1) The cost of a pension funding program shall include the cost of providing funding of all of the unfunded liability of a policemen's or firemen's pension plan; the costs of issuance of pension funding revenue bonds issued to fund a pension funding program, the amount of any debt service reserve and debt service contingency reserve funds funded from the proceeds of pension funding revenue bonds; actuarial, financial advisory and legal expenses associated with the pension funding program and the issuance of the pension funding revenue bonds; expenses for estimates of cost and of revenues; expenses for actuarial studies; and such other expenses as may be necessary or incidental to the financing authorized pursuant to this section, the pension funding program and the performance of the actions required or permitted in connection with any thereof.

(2) Actuarial studies must be performed by a contracted actuary of the Municipal Pension Oversight Board as required by §8-22-20 of this code.

(d) Pension funding revenue bonds shall be in an amount at least equal to the applicable policemen's and/or firemen's pension and relief funds then unfunded liability based upon the most recent actuarial valuation reports prepared by an actuary contracted with or employed by the oversight board as required by §8-22-20 of this code for the applicable funds with appropriate adjustments for timing, experience and other factors. The pension funding revenue bonds shall bear interest at not more than 12 percent per annum, payable semiannually, or at shorter intervals, and the bonds allocable to a specific policemen's or firemen's pension and relief fund shall mature over a period of time not exceeding the then estimated amortization period for the municipality's unfunded actuarial accrued liability as set forth in the municipality's most recent actuarial valuation reports prepared by an actuary contracted with or employed by the oversight board relating to the applicable funds with appropriate adjustments for timing, experience and other factors, as may be determined by the ordinance or ordinances authorizing the issuance of such bonds. The annual principal and interest payments on pension funding revenue bonds shall, to the extent possible, provide for level debt service and be proportionate to the funding requirements for the applicable policemen's or firemen's pension and relief funds as shown on the municipality's most recent actuarial valuation report for the policemen's or firemen's pension and relief funds prepared by an actuary contracted with or employed by the oversight board with appropriate adjustments for timing, experience and other factors, as applicable. The bonds may be made redeemable before maturity, at the option of the commission issuing the bonds, to be exercised by the commission, at not more than the par value thereof, and at a premium of not more than five percent, under terms and conditions as may be fixed by the ordinance or ordinances authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. The ordinance or ordinances shall determine the form of the bonds, 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 the principal and interest thereof, which may be at any banking institution or trust company within or without the state and which is a vendor of the state. All such bonds shall be, shall have and are hereby declared to have all the qualities and incidents of negotiable

WV Legislature

instruments, under the Uniform Commercial Code of this state. The bonds shall be executed in the manner the commission may direct. The bonds shall be sold by the commission in a manner as may be determined to be in the best interest of the municipality which created the commission. Any surplus of the bond proceeds over and above the cost of the pension funding program shall be paid into the sinking fund established for the payment of such bonds.

(e) The bonds shall be secured by a trust indenture by and between the commission and a corporate trustee, which may be a trust company or banking institution having powers of a trust company within or without the state and which is a vendor of the state. The ordinance or ordinances authorizing the issuance of the pension funding revenue bonds, and fixing the details thereof, may provide that the trust indenture may contain provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, including security interests in any real property owned or leased by the commission regardless of whether such real property is being improved with the proceeds of such indebtedness, not in violation of law. The indenture may set forth the rights and remedies of the bondholders or the trustee, or both. The commission may provide by ordinance or ordinances or in the trust indenture for the payment of the proceeds of the sale of the bonds and the revenues received by the commission with respect to the pension funding program to a depository, as the commission may determine for the custody thereof, and for the method of distribution thereof, with such safeguards and restrictions as the commission may determine. The trust indenture shall provide for a subaccount of the debt service fund into which all premium tax allocations received by the trustee shall, upon receipt, be deposited into for use solely in paying principal and interest on any outstanding pension funding revenue bonds. All interest earnings on the subaccount shall be credited to the subaccount and used solely for the payment of principal and interest on any outstanding pension funding revenue bonds.

(f) Upon the payment in full of an issue of pension funding revenue bonds (other than with the proceeds of refunding bonds) and any final costs related thereto, any amounts remaining in any debt service reserve or contingency reserve funds shall be paid by the trustee of the bonds to the municipality which formed the commission. Any excess moneys held in the subaccount of the debt service fund into which premium tax allocations have been deposited shall be paid to the Municipal Pension Oversight Board. Any other excess moneys held by the trustee at that time shall be paid to the municipality.

(g) Notwithstanding any provision of this code to the contrary, if a municipality with a policemen’s or firemen’s pension and relief fund is using the alternative method of funding provided in §8-22-20(e) of this code, the municipality may only issue pension funding revenue bonds if, on the date of the issuance of the bonds, the fund is closed to participation by police officers or firefighters, as applicable, hired on or after the date of the issuance of the bonds.

WV Legislature