# WEST VIRGINIA CODE CHAPTER 8 ARTICLE 33

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# PART I. COMMISSIONS AUTHORIZED; ORGANIZATION OF COMMISSIONS.

## §8-33-1. Municipal, county and municipal-county building commissions authorized; reference to county courts and county commissions.

Any municipality or county, or one or more municipalities and any county, or any two or more municipalities within any county or counties, or any combination thereof, may create and establish a municipal building commission, a county building commission, or a municipal-county building commission, as the case may be (hereinafter in this article referred to as commission or commissions). Such commissions shall be formed by an ordinance or order, as appropriate, by each governmental body establishing the same. The governing body of a county is hereinafter in this article referred to either as a county court or county commission.

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## §8-33-2. Commissions are public corporations.

Each commission, when created, shall be a public corporation and shall have perpetual existence.

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## §8-33-3. Authority vested in board; composition of board; appointment; qualifications and terms of members; vacancies; reimbursement of expenses.

All property, powers and duties and the management and control of each commission shall be vested in a board consisting of representatives appointed by the governmental body or bodies creating and establishing such commission. In the case of a municipal building commission or a county building commission such board shall consist of not less than three nor more than five members and in the case of a municipal-county building commission each participating municipality shall appoint two members and each participating county shall appoint three members. All members of any board shall be appointed for terms of five years. Prior to making the initial appointments to the board, the governmental body or bodies shall make such initial appointments so that approximately one fifth of the total number of members of the board shall be appointed for a term of one year, approximately one fifth of the total number of members of the board shall be appointed for a term of two years, approximately one fifth of the total number of members of the board shall be appointed for a term of three years, approximately one fifth of the total number of members of the board shall be appointed for a term of four years, and approximately one fifth of the total number of members of the board shall be appointed for a term of five years. As the term of each such initial appointee expires the successor to fill the vacancy created by such expired term shall be appointed for a term of five years.

The ordinance or order creating a building commission may provide for the manner of appointments to the membership of such commission by the governmental body creating such commission, which, in the case of a county, shall be the county commission or other tribunal in lieu thereof and, in the case of a municipality, shall be the governing body thereof.

If any member of any board die, resign or for any reason cease to be a member of the board, the governmental body which such member represented shall appoint another individual to fill the unexpired portion of the term of such member. No more than two thirds of the total number of members of the board of each commission shall be from the same political party and no member of any such board shall hold any office (other than the office of notary public) or employment under the United States of America, the State of West Virginia, any county or political subdivision thereof, or any political party. All members of any board shall be residents of the municipality or county for which appointed. No member of any board shall receive any compensation for his services as such, but each member shall be reimbursed by the commission for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the board.

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**§8-33-4. Powers.**

Each commission shall have plenary power and authority to:

(a) Sue and be sued;

(b) Contract and be contracted with;

(c) Adopt, use and alter a common seal;

(d) Make and adopt all necessary, appropriate and lawful bylaws and rules and regulations pertaining to its affairs;

(e) Elect such officers, appoint such committees and agents and employ and fix the compensation of such employees and contractors as may be necessary for the conduct of the affairs and operations of the commission;

(f) (1) Acquire, purchase, own and hold any property, real or personal, and (2) acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities, of any type or types for which the governmental body or bodies creating such commission are permitted by law to expend public funds (all hereinafter in this article referred to as facilities);

(g) Apply for, receive and use grants-in-aid, donations and contributions from any source or sources, including, but not limited to, the United States of America, or any department or agency thereof, and accept and use bequests, devises, gifts and donations from any source whatsoever;

(h) Sell, encumber or dispose of any property, real or personal;

(i) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor, 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, which it may deem necessary or advisable in connection with exercising powers as provided herein;

(j) Raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of §8-16-7, §8-16-10, §8-16-12 and §8-16-16 of this code, without regard to the extent provided in §8-33-5 of this code, to the limitations specified in §8-16-12 of this code, it being hereby expressly provided that for the purpose of the issuance and sale of revenue bonds, each commission is a "governing body" as that term is used in §8-16-1 *et seq*. of this code only;

(k) Subject to such reasonable limitations and conditions as the governmental body or all of the governmental bodies creating and establishing such building commission may prescribe

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by ordinance or by order, exercise the power of eminent domain in the manner provided in §54-1-1 *et seq*. of this code for business corporations, for the purposes set forth in subdivision (f) of this section, which purposes are hereby declared public purposes for which private property may be taken or damaged;

(l) Lease its property or any part thereof, for public purposes, to such persons and upon such terms as the commission deems proper, but when any municipality or county commission is a lessee under any such lease, such lease must contain a provision granting to such municipality or county commission the option to terminate such lease during any fiscal year covered thereby;

(m) Use the proceeds from the sale of pension funding revenue bonds issued pursuant to §8-33-4a of this code to pay the costs of a pension funding program as described in §8-33-4a(c) of this code;

(n) Use the proceeds of rentals for the use of real property owned or leased by the commission and any amounts received pursuant to §8-22-19(d)(2) of this code by the trustee for outstanding pension funding revenue bonds to, among other things, pay the principal, interest, any reserve requirement obligations and administrative expenses of any pension funding revenue bonds issued in connection with any lease by the commission to the municipality which created the commission; any amount received pursuant to §8-22-19(d)(2) of this code shall be used only to pay principal and interest of outstanding pension obligation bonds; and

(o) Do all things reasonable and necessary to carry out the foregoing powers.

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**§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 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

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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 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

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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.

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**§8-33-4b. Approval of municipal pension oversight board of certain pension funding revenue bonds; propose rules.**

(a) In addition to the requirements otherwise provided in this article, any issuance of pension funding revenue bonds by a building commission (1) for a Class III municipality or (2) for a Class I or Class II municipality with either a policemen's or firemen's pension and relief fund if the municipality only has one such pension and relief fund, or with both policemen's and firemen's pension and relief funds that are not funded at a funding ratio of 40 percent or greater based on the most recent actuarial valuation reports prepared by an actuary contracted with or employed by the municipal pensions oversight board for such funds, with appropriate adjustments for timing, experience and other factors, as applicable, shall, prior to such issuance, be approved by the municipal pension oversight board and provided to the Joint Committee on Government and Finance for prior review.

(b) The applicable building commission shall, at least 90 days prior to the proposed issuance date of the pension funding revenue bonds, provide the following to the municipal pension oversight board:

(1) A report setting forth a detailed summary of the then projected terms of the proposed bond issuance and projected impact on the unfunded pension liability of the applicable fund or funds; and

(2) A copy of the municipality's most recent actuarial valuation reports prepared by an actuary contracted with or employed by the oversight board relating to its policemen's and firemen's pension and relief funds.

(c) The municipal pension oversight board shall meet, review the information provided pursuant to subsection (b) of this section and provide its approval or rejection of the proposed issuance of pension funding revenue bonds within 60 days of receipt of the reports required in subsection (b) of this section. The municipal pension oversight board shall issue a written decision within 30 days of the meeting.

(d) Should the municipal pension oversight board approve the issuance of pension funding revenue bonds by a building commission, then it shall promptly provide a copy of its decision and the supporting documents, including a copy of the municipality's most recent actuarial valuation reports prepared by an actuary contracted with or employed by the oversight board relating to its policemen's and firemen's pension and relief funds, to the Joint Committee on Government and Finance.

(e) The municipal pensions oversight board shall propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code as necessary to implement the provisions of this section, and may initially promulgate emergency rules pursuant to §29A-3-15 of this code.

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# PART III. INDEBTEDNESS; SURPLUSES; EXEMPTION FROM TAXATION; FUNDS; PROPERTY.

## §8-33-5. Indebtedness of commission.

No Constitutional or statutory limitation with respect to the nature or amount of or rate of interest on indebtedness which may be incurred by municipalities, counties or other public or governmental bodies shall apply to the indebtedness of a commission. No indebtedness of any nature of a commission shall constitute an indebtedness of any municipality or county creating and establishing such commission or a charge against any property of said municipalities or counties. No indebtedness or obligation incurred by any commission shall give any right against any member of the governing body of any municipality or any member of the county commission of any county or any member of the board of any commission. The rights of creditors of any commission shall be solely against the commission as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

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## §8-33-6. Disposition of surplus of commission.

If a commission should realize a surplus over and above the amount required for the improvement, maintenance and operation of its facilities and for meeting all required payments on its obligations, it shall set aside such reserve for future improvements, maintenance, operations and contingencies as it shall deem proper and shall then apply the residue of such surplus, if any, to the payment of any recognized and established obligations not then due, and after all such recognized and established obligations have been paid and discharged in full, the commission shall, at the end of each fiscal year, set aside the reserve for future improvements, maintenance, operations and contingencies, as aforesaid, and then pay the residue of such surplus, if any, to the governmental bodies creating and establishing such commission in direct proportion to their financial contribution.

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## §8-33-7. Property, bonds and obligations of commissions exempt from taxation.

Each commission shall be exempt from the payment of any taxes or fees to the state or any subdivisions thereof or any municipalities or to any officer or employee of the state or of any subdivision thereof or of any municipality. The property of each commission shall be exempt from all municipal and county taxes. Bonds, notes, debentures and other evidences of indebtedness of each commission are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon, shall be exempt from taxation.

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## §8-33-8. Contributions to commissions; funds and accounts of commissions; reports; audits.

Contributions may be made to each commission from time to time by the governmental body or bodies creating and establishing it, and persons that shall desire to do so. All funds received by each commission shall be deposited in such banking institution or banking institutions as the board may direct and shall be withdrawn therefrom in such manner as the board may direct. Each commission shall keep strict account of all of its receipts and expenditures and shall each quarter make a quarterly report thereon to the municipalities, counties and persons which have made contributions to it, and such report shall contain an itemized account of its receipts and disbursements during the preceding quarter. Such report shall be made within sixty days after the termination of the quarter. Within sixty days after the end of each fiscal year, each commission shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding fiscal year and publish the same as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which the commission's facilities are located. The books, records and accounts of each commission shall be subject to audit and examination by the State Tax Commissioner and by other proper public official or body in the manner provided by law.

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## §8-33-9. Authority to convey or transfer property to commission.

Any municipality or county is hereby empowered and authorized to convey or transfer to a commission which it has created and established either alone or with another governmental body, property of any kind, heretofore acquired by said municipality or county, to carry out the purposes of said commission. When property is conveyed or transferred as aforesaid, the conveying or transferring municipality or county court and the board shall agree in writing at the time the conveyance or transfer is made as to the fair market value of such property. The members of the board appointed by any municipality or county court conveying or transferring property shall not participate in connection with, otherwise than to provide a quorum, or vote on, any motion or resolution by which the board agrees to the fair market value of the property so conveyed or transferred.

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## §8-33-10. Sale of property by commission.

In the event a majority of the governmental bodies contributing funds or property to a commission shall so direct in writing and if all indebtedness of said commission has been paid in full, the commission shall sell all or any part of its properties and assets so directed and distribute the proceeds thereof among the governmental bodies creating and establishing it in direct proportion to their contributions of funds or property to the commission.

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# PART IV. WORKERS' COMPENSATION; CONSTRUCTION.

## §8-33-11. Workers' compensation.

Each commission shall subscribe to the workers' compensation fund of this state and pay all necessary premiums thereto, to the end that all eligible employees of such commission shall be covered by workers' compensation.

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## §8-33-12. Liberal construction.

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate the purposes hereof. The provisions of this article are in addition to and not in derogation of any power granted to or vested in municipalities and county courts under any Constitutional, statutory or charter provisions which may now or hereafter be in effect.

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