ENROLLED

SENATE BILL NO. 3008

(By Senators Tomblin, President, and Sprosse, )

PASSED May 17, 2005

In Effect from Passage
AN ACT to amend and reenact §8-13C-1 and §8-13C-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §8-13C-14, all relating to the use of proceeds from a pension relief municipal occupational tax, a pension relief municipal sales and service tax and a pension relief municipal use tax; providing that amendments shall not be construed to allow certain taxes; providing circumstances under which a municipality loses authority to impose certain taxes; authorizing a qualifying municipality, subject to meeting certain requirements, to close its existing pension and relief fund plan for policemen and firemen to those hired after a future date; authorizing a qualifying municipality, subject to meeting certain requirements, to establish a defined contribution plan for policemen and firemen hired on and after the future date; authorizing a qualifying municipality, subject to meeting certain requirements, to issue revenue bonds for the purpose of eliminating the unfunded actuarial accrued liability of the existing pension and relief fund plan for
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policemen and firemen and to issue refunding bonds issued
to refund, in whole or in part, bonds issued for that purpose;
requiring that certain disability and health benefits be
provided; and providing for expiration of authority granted
by this enactment.

Be it enacted by the Legislature of West Virginia:

That §8-13C-1 and §8-13C-9 of the Code of West Virginia,
1931, as amended, be amended and reenacted; and that said code
be amended by adding thereto a new section, designated §8-13C-
14, all to read as follows:

ARTICLE 13C. MUNICIPAL TAX IN LIEU OF BUSINESS AND OCCUPA-
TION TAX; AND MUNICIPAL TAXES APPLICABLE TO
PENSION FUNDS; ADDITIONAL AUTHORITIES RE-
LATING TO PENSIONS AND BOND ISSUANCE.

§8-13C-1. Findings.

1 The Legislature finds that:

2 (a) Imposing additional taxes creates an extra burden on
3 the citizens of the state;

4 (b) Imposing additional taxes can be detrimental to the
5 economy of the state;

6 (c) Imposing additional taxes is only proper under
7 certain circumstances;

8 (d) For many municipalities with severe unfunded
9 liabilities of the police and fire pension funds, all available
10 sources of local revenue have been exhausted. Property
11 taxes are at the maximum allowed by the state Constitu-
12 tion and local business and occupation taxes and utility
13 taxes are at the maximum rates allowed by state law.
14 Other fees have reached the economic maximum and are
15 causing relocation of business outside the municipal
16 boundaries;

17 (e) For many municipalities with severe unfunded police
18 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 two thousand five 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 the first day of July, two thousand eight.

§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 combi-
nation 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.

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

(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 redeem-
able 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 reve-
ues 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
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 the thirty-first day of December, two thousand five.

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 subject 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the Day of May, 2005.

Governor
PRESENTED TO THE GOVERNOR

MAY 25 2005

Time 4:00