WEST VIRGINIA LEGISLATURE

3RD Extraordinary Session, 2005

ENROLLED

SENATE BILL NO. 3008

(By Senators Tomblin, Mr. President, and Sprouse, By Request of the Executive)

PASSED May 17, 2005

In Effect from **Passage**

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 3008

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[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 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 OCCUPATION TAX; AND MUNICIPAL TAXES APPLICABLE TO PENSION FUNDS; ADDITIONAL AUTHORITIES RELATING TO PENSIONS AND BOND ISSUANCE.

§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 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 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.

§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 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 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.

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

Randy White
....
Chairman Senate Committee

D. Richard Browning
....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell E. Holmes
....
Clerk of the Senate

Gregory M. Gray
....
Clerk of the House of Delegates

Earl Ray Tomblin
....
President of the Senate

Robert S. Kiss
....
Speaker House of Delegates

The within is approved this the 26th

Day of May, 2005.

....
Governor

® GCIU 326-C

PRESENTED TO THE
GOVERNOR

MAY 25 2005

Time 4:0 [signature]