

Senate Bill No. 566

(By Senators McCabe, Wells, Foster, Kessler (Acting President)
and Palumbo)

[Introduced February 21, 2011; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

A BILL to amend and reenact §5-16-5 of the Code of West Virginia,
1931, as amended; to amend and reenact §5-16D-1, §5-16D-2 and
§5-16D-6 of said code; to amend and reenact §11-10-5d of said
code; to amend and reenact §11-17-3 of said code; and to amend
and reenact §18-9A-24 of said code, all relating to other
post-employment benefits generally; prohibiting Public
Employees Insurance Agency Finance Board from including in the
financial plans any subsidy for the cost of coverage for
retired employees who were hired on or after July 1, 2010;
capping the amount the finance board may include in the
financial plans as subsidy for the cost of coverage for
retired employees who were hired before July 1, 2010, at \$150
million; defining "contractually required contribution";
authorizing the finance board to set minimum annual required
contribution below annual required contribution; specifying
that each participating government entity is required to remit

1 annual contractual obligation; authorizing the Tax
 2 Commissioner to disclose certain return information to the
 3 Public Employees Insurance Agency to determine total income
 4 for premium calculation; increasing the excise tax on
 5 cigarettes from 55 cents to \$1.55 per pack; dedicating a
 6 portion of the increased tax to the West Virginia Retiree
 7 Health Benefit Trust Fund for ten years; specifying that the
 8 trust fund is to keep all earnings during the ten-year period;
 9 specifying that the foundation allowance for Public Employees
 10 Insurance Fund shall be paid directly to the West Virginia
 11 Retiree Health Benefit Trust Fund and each county board shall
 12 reflect its share of the payment as revenue on its financial
 13 statements to offset the applicable portion of its annual
 14 contractually required contribution expense; and providing
 15 that any amount of annual contractually required contribution
 16 allocated to and billed county boards of education for certain
 17 employees is a liability of the state until fully paid.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §5-16-5 of the Code of West Virginia, 1931, as amended,
 20 be amended and reenacted; that §5-16D-1, §5-16D-2 and §5-16D-6 of
 21 said code be amended and reenacted; that §11-10-5d of said code be
 22 amended and reenacted; that §11-17-3 of said code be amended and
 23 reenacted; and that §18-9A-24 of said code be amended and
 24 reenacted, all to read as follows:

25 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**
 26 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD**

1 finance board pursuant to this section shall be submitted to and
2 reviewed by the actuary and may not be finally approved and
3 submitted to the Governor and to the Legislature without the
4 actuary's written professional opinion that the plan may be
5 reasonably expected to generate sufficient revenues to meet all
6 estimated program and administrative costs of the agency, including
7 incurred but unreported claims, for the fiscal year for which the
8 plan is proposed. The actuary's opinion on the financial plan for
9 each fiscal year shall allow for no more than thirty days of
10 accounts payable to be carried over into the next fiscal year. The
11 actuary's opinion for any fiscal year shall not include a
12 requirement for establishment of a reserve fund.

13 (c) All financial plans required by this section shall
14 establish:

15 (1) Maximum levels of reimbursement which the Public Employees
16 Insurance Agency makes to categories of health care providers;

17 (2) Any necessary cost-containment measures for implementation
18 by the director;

19 (3) The levels of premium costs to participating employers;
20 and

21 (4) The types and levels of cost to participating employees
22 and retired employees.

23 The financial plans may provide for different levels of costs
24 based on the insured's ability to pay. The finance board may
25 establish different levels of costs to retired employees based upon
26 length of employment with a participating employer, ability to pay

1 or other relevant factors. The financial plans may also include
2 optional alternative benefit plans with alternative types and
3 levels of cost. The finance board may develop policies which
4 encourage the use of West Virginia health care providers.

5 In addition, the finance board may allocate a portion of the
6 premium costs charged to participating employers to subsidize the
7 cost of coverage for participating retired employees, on such terms
8 as the finance board determines are equitable, ~~and~~ financially
9 responsible and consistent with the following:

10 The finance board may not include in the financial plans any
11 subsidy for the cost of coverage for retired employees who were
12 hired on or after July 1, 2010. The finance board may include in
13 the financial plans a subsidy for the cost of coverage for retired
14 employees who were hired before July 1, 2010 not to exceed \$150
15 million in the aggregate.

16 (d) (1) The finance board shall prepare an annual financial
17 plan for each fiscal year during which the finance board remains in
18 existence. The finance board chairman shall request the actuary to
19 estimate the total financial requirements of the Public Employees
20 Insurance Agency for the fiscal year.

21 (2) The finance board shall prepare a proposed financial plan
22 designed to generate revenues sufficient to meet all estimated
23 program and administrative costs of the Public Employees Insurance
24 Agency for the fiscal year. The proposed financial plan shall
25 allow for no more than thirty days of accounts payable to be
26 carried over into the next fiscal year. Before final adoption of

1 the proposed financial plan, the finance board shall request the
2 actuary to review the plan and to render a written professional
3 opinion stating whether the plan will generate sufficient revenues
4 to meet all estimated program and administrative costs of the
5 Public Employees Insurance Agency for the fiscal year. The
6 actuary's report shall explain the basis of its opinion. If the
7 actuary concludes that the proposed financial plan will not
8 generate sufficient revenues to meet all anticipated costs, then
9 the finance board shall make necessary modifications to the
10 proposed plan to ensure that all actuarially determined financial
11 requirements of the agency will be met.

12 (3) Upon obtaining the actuary's opinion, the finance board
13 shall conduct one or more public hearings in each congressional
14 district to receive public comment on the proposed financial plan,
15 shall review the comments and shall finalize and approve the
16 financial plan.

17 (4) Any financial plan shall be designed to allow thirty days
18 or less of accounts payable to be carried over into the next fiscal
19 year. For each fiscal year, the Governor shall provide his or her
20 estimate of total revenues to the finance board no later than
21 October 15, of the preceding fiscal year: *Provided, That, for the*
22 *prospective financial plans required by this section, the Governor*
23 *shall estimate the revenues available for each fiscal year of the*
24 *plans based on the estimated percentage of growth in general fund*
25 *revenues. The finance board shall submit its final, approved*
26 *financial plan, after obtaining the necessary actuary's opinion and*

1 conducting one or more public hearings in each congressional
2 district, to the Governor and to the Legislature no later than
3 January 1, preceding the fiscal year. The financial plan for a
4 fiscal year becomes effective and shall be implemented by the
5 director on July 1, of the fiscal year. In addition to each final,
6 approved financial plan required under this section, the finance
7 board shall also simultaneously submit financial statements based
8 on generally accepted accounting practices (GAAP) and the final,
9 approved plan restated on an accrual basis of accounting, which
10 shall include allowances for incurred but not reported claims:
11 *Provided, however,* That the financial statements and the
12 accrual-based financial plan restatement shall not affect the
13 approved financial plan.

14 (e) The provisions of chapter twenty-nine-a of this code shall
15 not apply to the preparation, approval and implementation of the
16 financial plans required by this section.

17 (f) By January 1, of each year the finance board shall submit
18 to the Governor and the Legislature a prospective financial plan,
19 for a period not to exceed five years, for the programs provided in
20 this article. Factors that the board shall consider include, but
21 are not limited to, the trends for the program and the industry;
22 the medical rate of inflation; utilization patterns; cost of
23 services; and specific information such as average age of employee
24 population, active to retiree ratios, the service delivery system
25 and health status of the population.

26 (g) The prospective financial plans shall be based on the

1 estimated revenues submitted in accordance with subdivision (4),
2 subsection (d) of this section and shall include an average of the
3 projected cost-sharing percentages of premiums and an average of
4 the projected deductibles and copays for the various programs.
5 Beginning in the plan year which commences on July 1, 2002, and in
6 each plan year thereafter, until and including the plan year which
7 commences on July 1, 2006, the prospective plans shall include
8 incremental adjustments toward the ultimate level required in this
9 subsection, in the aggregate cost-sharing percentages of premium
10 between employers and employees, including the amounts of any
11 subsidization of retired employee benefits. Effective in the plan
12 year commencing on July 1, 2006, and in each plan year thereafter,
13 the aggregate premium cost-sharing percentages between employers
14 and employees, including the amounts of any subsidization of
15 retired employee benefits, shall be at a level of eighty percent
16 for the employer and twenty percent for employees, except for the
17 employers provided in subsection (d), section eighteen of this
18 article whose premium cost-sharing percentages shall be governed by
19 that subsection. After the submission of the initial prospective
20 plan, the board may not increase costs to the participating
21 employers or change the average of the premiums, deductibles and
22 copays for employees, except in the event of a true emergency as
23 provided in this section: *Provided*, That if the board invokes the
24 emergency provisions, the cost shall be borne between the employers
25 and employees in proportion to the cost-sharing ratio for that plan
26 year: *Provided, however*, That for purposes of this section,

1 "emergency" means that the most recent projections demonstrate that
 2 plan expenses will exceed plan revenues by more than one percent in
 3 any plan year: *Provided further*, That the aggregate premium cost-
 4 sharing percentages between employers and employees, including the
 5 amounts of any subsidization of retired employee benefits, may be
 6 offset, in part, by a legislative appropriation for that purpose.

7 (h) The finance board shall meet on at least a quarterly basis
 8 to review implementation of its current financial plan in light of
 9 the actual experience of the Public Employees Insurance Agency.
 10 The board shall review actual costs incurred, any revised cost
 11 estimates provided by the actuary, expenditures and any other
 12 factors affecting the fiscal stability of the plan and may make any
 13 additional modifications to the plan necessary to ensure that the
 14 total financial requirements of the agency for the current fiscal
 15 year are met. The finance board may not increase the types and
 16 levels of cost to employees during its quarterly review except in
 17 the event of a true emergency.

18 (i) For any fiscal year in which legislative appropriations
 19 differ from the Governor's estimate of general and special revenues
 20 available to the agency, the finance board shall, within thirty
 21 days after passage of the budget bill, make any modifications to
 22 the plan necessary to ensure that the total financial requirements
 23 of the agency for the current fiscal year are met.

24 **ARTICLE 16D. RETIREMENT HEALTH BENEFIT TRUST FUND.**

25 **§5-16D-1. Definitions.**

26 As used in this article, the term:

1 (a) "Actuarial accrued liability" means that portion, as
2 determined by a particular actuarial cost method, of the actuarial
3 present value of fund obligations and administrative expenses which
4 is not provided by future normal costs.

5 (b) "Actuarial cost method" means a method for determining the
6 actuarial present value of the obligations and administrative
7 expenses of the fund and for developing an actuarially equivalent
8 allocation of the value to time periods, usually in the form of a
9 normal cost and an actuarial accrued liability. Acceptable
10 actuarial methods are the aggregate, attained age, entry age,
11 frozen attained age, frozen entry age and projected unit credit
12 methods.

13 (c) "Actuarially sound" means that calculated contributions
14 to the fund are sufficient to pay the full actuarial cost of the
15 fund. The full actuarial cost includes both the normal cost of
16 providing for fund obligations as they accrue in the future and the
17 cost of amortizing the unfunded actuarial accrued liability over a
18 period of no more than thirty years.

19 (d) "Actuarial present value of total projected benefits"
20 means the present value, at the valuation date, of the cost to
21 finance benefits payable in the future, discounted to reflect the
22 expected effects of the time value of money and the probability of
23 payment.

24 (e) "Actuarial assumptions" means assumptions regarding the
25 occurrence of future events affecting the fund such as mortality,
26 withdrawal, disability and retirement; changes in compensation and

1 offered post-employment benefits; rates of investment earnings and
2 other asset appreciation or depreciation; procedures used to
3 determine the actuarial value of assets; and other relevant items.

4 (f) "Actuarial valuation" means the determination, as of a
5 valuation date, of the normal cost, actuarial accrued liability,
6 actuarial value of assets and related actuarial present values for
7 the fund.

8 (g) "Administrative expenses" means all expenses incurred in
9 the operation of the fund, including all investment expenses.

10 (h) "Annual required contribution" means the amount employers
11 must contribute in a given year to fully fund the trust, as
12 determined by the actuarial valuation in accordance with
13 requirements of generally accepted accounting principles. This
14 amount shall represent a level of funding that if paid on an
15 ongoing basis is projected to cover the normal cost each year and
16 amortize any unfunded actuarial liabilities of the plan over a
17 period not to exceed thirty years.

18 (i) "Board" means the Public Employees Insurance Agency
19 Finance Board created in section four, article sixteen of this
20 chapter.

21 (j) "Contractually required contribution" means an amount
22 determined annually by the board to be billed to each employer,
23 which amount shall at least equal the minimum annual employer
24 payment and may be any amount up to, but may not exceed the
25 employer annual required contribution.

26 ~~(j)~~ (k) "Cost-sharing multiple employer plan" means a single

1 plan with pooling (cost-sharing) arrangements for the participating
2 employers. All risk, rewards, and costs, including benefit costs,
3 are shared and not attributed individually to the employers. A
4 single actuarial valuation covers all plan members and the same
5 contribution rate applies for each employer.

6 ~~(k)~~ (l) "Covered health care expenses" means all actual health
7 care expenses paid by the health plan on behalf of fund
8 beneficiaries. Actual health care expenses include claims payments
9 to providers and premiums paid to intermediary entities and health
10 care providers by the health plan.

11 ~~(l)~~ (m) "Employer" means any employer as defined by section
12 two, article sixteen of this chapter which has or will have retired
13 employees in any Public Employees Insurance Agency health plan.

14 ~~(m)~~ (n) "Employer annual required contribution" means the
15 portion of the annual required contribution which is the
16 responsibility of that particular employer.

17 ~~(n)~~ (o) "Fund" means the West Virginia Retiree Health Benefit
18 Trust Fund established under this article.

19 ~~(o)~~ (p) "Fund beneficiaries" means all persons receiving post-
20 employment health care benefits through the health plan.

21 ~~(p)~~ (q) "Health plan" means the health insurance plan or plans
22 established under article sixteen of this chapter.

23 ~~(q)~~ (r) "Minimum annual employer payment" means the annual
24 amount paid by employers which, when combined with the retirees'
25 contributions on their premiums that year, provide sufficient funds
26 such that the annual finance plan of the finance board will cover

1 all projected retiree covered health care expenses and related
2 administrative costs for that year. The finance board shall
3 develop the minimum annual employer payment as part of its
4 financial plan each year as addressed in section five, article
5 sixteen of this chapter.

6 ~~(r)~~ (s) "Normal cost" means that portion of the actuarial
7 present value of the fund obligations and expenses which is
8 allocated to a valuation year by the actuarial cost method used for
9 the fund.

10 ~~(s)~~ (t) "Obligations" means the administrative expenses of the
11 fund and the cost of covered health care expenses incurred on
12 behalf of fund beneficiaries.

13 ~~(t)~~ (u) "Other post-employment benefits" or "retiree post-
14 employment health care benefits" means those benefits as addressed
15 by governmental accounting standards board statement no. 43 or any
16 subsequent governmental standards board statement that may be
17 applicable to the fund.

18 ~~(u)~~ (v) "Plan for other post-employment benefits" means the
19 fiscal funding plan for retiree post-employment health care
20 benefits as it relates to governmental accounting standards board
21 statement no. 43 or any subsequent governmental accounting
22 standards board statements that may be applicable to the fund.

23 ~~(v)~~ (w) "Retiree" means retired employee as defined by section
24 two, article sixteen of this chapter.

25 ~~(w)~~ (x) "Retirement system" or "system" means the West
26 Virginia Consolidated Public Retirement Board created and

1 established by article ten of this chapter and includes any
2 retirement systems or funds administered or overseen by the
3 Consolidated Public Retirement Board.

4 ~~(x)~~ (y) "Unfunded actuarial accrued liability" means for any
5 actuarial valuation the excess of the actuarial accrued liability
6 over the actuarial value of the assets of the fund under an
7 actuarial cost method used by the fund for funding purposes.

8 **§5-16D-2. Creation of West Virginia Retiree Health Benefit Trust**
9 **Fund.**

10 The Legislature declares that certain dedicated revenues
11 should be preserved in trust for the purpose of funding other post-
12 employment benefits.

13 There is hereby created the West Virginia Retiree Health
14 Benefit Trust Fund for the purpose of providing for and
15 administering retiree post-employment health care benefits, and the
16 respective revenues and costs of those benefits as a cost-sharing
17 multiple employer plan.

18 The fund shall be available without fiscal year limitations
19 for covered health care expenses and administration costs. All
20 contributions, revenues received pursuant to section three, article
21 seventeen, chapter eleven of this code, appropriations, earnings,
22 and reserves for the payment of obligations under this article
23 shall be credited to the fund and are irrevocable.

24 The amounts remaining in the fund, if any, after covered
25 health care expenses and administration costs have been paid shall
26 be retained in the fund as a special reserve for adverse

1 fluctuation. All assets of the fund shall be used solely for the
2 payment of fund obligations and for no other purpose.

3 **§5-16D-6. Mandatory employer contributions.**

4 (a) The board shall annually set the total annual required
5 contribution sufficient to maintain the fund in an actuarially
6 sound manner in accordance with generally accepted accounting
7 principles.

8 (b) The board shall annually allocate to the respective
9 employers the employer's portion of the annual required
10 contribution, which allocated amount is the "employer annual
11 required contribution".

12 (c) The board may apportion the annual required contribution
13 into various components. These components may include the
14 amortized unfunded actuarial accrued liability, the total normal
15 cost, the contractually required contributions, the employer annual
16 required contribution and the lesser included minimum annual
17 employer payment. In the board's annual apportionment of the
18 annual required contribution, any amounts of the minimum annual
19 employer payment apportioned to reduce the amortized unfunded
20 actuarial accrued liability shall not be treated as premium by the
21 board in the finance plan but, rather, shall be treated as
22 contributions to prefund other post-employment benefits.

23 (d) Employers shall make annual contributions to the fund in,
24 at least, the amount of the minimum annual employer payment rates
25 established by the board.

26 (e) The Public Employees Insurance Agency shall bill each

1 employer for the ~~employer annual~~ contractually required
 2 contribution and the included minimum annual employer payment. The
 3 Public Employees Insurance Agency shall annually collect the
 4 contractually required contribution and the included minimum annual
 5 employer payment. The Public Employees Insurance Agency shall, in
 6 addition to the ~~minimum annual employer payment~~ contractually
 7 required contribution, collect any amounts the employer elects to
 8 pay toward the employer annual required contribution. Subject to
 9 section twenty-four, article nine-a, chapter eighteen of this code,
 10 any employer ~~annual~~ contractually required contribution amount not
 11 satisfied by the respective employer shall remain the liability of
 12 that employer until fully paid.

13 **CHAPTER 11. TAXATION.**

14 **ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**

15 **§11-10-5d. Confidentiality and disclosure of returns and return**
 16 **information.**

17 (a) *General rule.* -- Except when required in an official
 18 investigation by the Tax Commissioner into the amount of tax due
 19 under any article administered under this article or in any
 20 proceeding in which the Tax Commissioner is a party before a court
 21 of competent jurisdiction to collect or ascertain the amount of
 22 such tax and except as provided in subsections (d) through ~~(n)~~ (o),
 23 inclusive, of this section, it ~~shall be~~ is unlawful for any
 24 officer, employee or agent of this state or of any county,
 25 municipality or governmental subdivision to divulge or make known
 26 in any manner the tax return, or any part thereof, of any person or

1 disclose information concerning the personal affairs of any
2 individual or the business of any single firm or corporation, or
3 disclose the amount of income, or any particulars set forth or
4 disclosed in any report, declaration or return required to be filed
5 with the Tax Commissioner by any article of this chapter imposing
6 any tax administered under this article or by any rule or
7 regulation of the Tax Commissioner issued thereunder, or disclosed
8 in any audit or investigation conducted under this article. For
9 purposes of this article, tax returns and return information
10 obtained from the Tax Commissioner pursuant to an exchange of
11 information agreement or otherwise pursuant to the provisions of
12 subsections (d) through ~~(n)~~ (o), inclusive, of this section which
13 is in the possession of any officer, employee, agent or
14 representative of any local or municipal governmental entity or
15 other governmental subdivision is subject to the confidentiality
16 and disclosure restrictions set forth in this article: *Provided,*
17 That such officers, employees or agents may disclose the
18 information in an official investigation, by a local or municipal
19 governmental authority or agency charged with the duty and
20 responsibility to administer the tax laws of the jurisdiction, into
21 the amount of tax due under any lawful local or municipal tax
22 administered by that authority or agency, or in any proceeding in
23 which the local or municipal governmental subdivision, authority or
24 agency is a party before a court of competent jurisdiction to
25 collect or ascertain the amount of the tax. Unlawful disclosure of
26 the information by any officer, employee or agent of any local,

1 municipal or governmental subdivision is subject to the sanctions
2 set forth in this article.

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

4 (1) *Background file document.* -- The term "background file
5 document", with respect to a written determination, includes the
6 request for that written determination, any written material
7 submitted in support of the request and any communication (written
8 or otherwise) between the State Tax Department and any person
9 outside the State Tax Department in connection with the written
10 determination received before issuance of the written
11 determination.

12 (2) *Disclosure.* -- The term "disclosure" means making known to
13 any person in any manner whatsoever a return or return information.

14 (3) *Inspection.* -- The terms "inspection" and "inspected"
15 means any examination of a return or return information.

16 (4) *Return.* -- The term "return" means any tax or information
17 return or report, declaration of estimated tax, claim or petition
18 for refund or credit or petition for reassessment that is required
19 by, or provided for, or permitted under the provisions of this
20 article (or any article of this chapter administered under this
21 article) which is filed with the Tax Commissioner by, on behalf of,
22 or with respect to any person and any amendment or supplement
23 thereto, including supporting schedules, attachments or lists which
24 are supplemental to, or part of, the return so filed.

25 (5) *Return information.* -- The term "return information"
26 means:

1 (A) A taxpayer's identity; the nature, source or amount of his
2 or her income, payments, receipts, deductions, exemptions, credits,
3 assets, liabilities, net worth, tax liability, tax withheld,
4 deficiencies, over assessments or tax payments, whether the
5 taxpayer's return was, is being, or will be examined or subject to
6 other investigation or processing, or any other data received by,
7 recorded by, prepared by, furnished to or collected by the Tax
8 Commissioner with respect to a return or with respect to the
9 determination of the existence, or possible existence, of liability
10 (or the amount thereof) or by any person under the provisions of
11 this article (or any article of this chapter administered under
12 this article) for any tax, additions to tax, penalty, interest,
13 fine, forfeiture or other imposition or offense; and

14 (B) Any part of any written determination or any background
15 file document relating to such written determination. "Return
16 information" does not include, however, data in a form which cannot
17 be associated with or otherwise identify, directly or indirectly,
18 a particular taxpayer. Nothing in the preceding sentence, or in
19 any other provision of this code, shall be construed to require the
20 disclosure of standards used or to be used for the selection of
21 returns for examination or data used or to be used for determining
22 such standards.

23 (6) *Tax administration.* -- The term "tax administration"
24 means:

25 (A) The administration, management, conduct, direction and
26 supervision of the execution and application of the tax laws or

1 related statutes of this state and the development and formulation
2 of state and local tax policy relating to existing or propose date
3 and local tax laws and related statutes of this state; and

4 (B) Includes assessment, collection, enforcement, litigation,
5 publication and statistical gathering functions under the laws of
6 this state and of local governments.

7 (7) *Taxpayer identity.* -- The term "taxpayer identity" means
8 the name of a person with respect to whom a return is filed, his or
9 her mailing address, his or her taxpayer identifying number or a
10 combination thereof.

11 (8) *Taxpayer return information.* -- The term "taxpayer return
12 information" means return information as defined in subdivision (5)
13 of this subsection which is filed with, or furnished to, the Tax
14 Commissioner by or on behalf of the taxpayer to whom such return
15 information relates.

16 (9) *Written determination.* -- The term "written determination"
17 means a ruling, determination letter, technical advice memorandum
18 or letter or administrative decision issued by the Tax
19 Commissioner.

20 (c) *Criminal penalty.* -- Any officer, employee or agent (or
21 former officer, employee or agent) of this state or of any county,
22 municipality or governmental subdivision who violates this section
23 ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof,
24 shall be fined not more than \$1,000 or ~~imprisoned~~ confined in jail
25 for not more than one year, or both fined and confined, together
26 with costs of prosecution.

1 (d) *Disclosure to designee of taxpayer.* -- Any person
2 protected by the provisions of this article may, in writing, waive
3 the secrecy provisions of this section for such purpose and such
4 period as he or she shall therein state. The Tax Commissioner may,
5 subject to such requirements and conditions as he or she may
6 prescribe, thereupon release to designated recipients such
7 taxpayer's return or other particulars filed under the provisions
8 of the tax articles administered under the provisions of this
9 article, but only to the extent necessary to comply with a request
10 for information or assistance made by the taxpayer to such other
11 person. However, return information shall not be disclosed to such
12 person or persons if the Tax Commissioner determines that such
13 disclosure would seriously impair administration of this state's
14 tax laws.

15 (e) *Disclosure of returns and return information for use in*
16 *criminal investigations.* -

17 (1) *In general.* -- Except as provided in subdivision (3) of
18 this subsection, any return or return information with respect to
19 any specified taxable period or periods shall, pursuant to and upon
20 the grant of an ex parte order by a federal district court judge,
21 federal magistrate or circuit court judge of this state, under
22 subdivision (2) of this subsection, be open (but only to the extent
23 necessary as provided in such order) to inspection by, or
24 disclosure to, officers and employees of any federal agency, or of
25 any agency of this state, who personally and directly engaged in:

26 (A) Preparation for any judicial or administrative proceeding

1 pertaining to the enforcement of a specifically designated state or
2 federal criminal statute to which this state, the United States or
3 such agency is or may be a party;

4 (B) Any investigation which may result in such a proceeding;
5 or

6 (C) Any state or federal grand jury proceeding pertaining to
7 enforcement of such a criminal statute to which this state, the
8 United States or such agency is or may be a party. Such inspection
9 or disclosure shall be solely for the use of such officers and
10 employees in such preparation, investigation or grand jury
11 proceeding.

12 (2) *Application of order.* -- Any United States attorney, any
13 special prosecutor appointed under Section 593 of Title 28, United
14 States Code, or any attorney in charge of a United States justice
15 department criminal division organized crime strike force
16 established pursuant to Section 510 of Title 28, United States
17 Code, may authorize an application to a circuit court judge or
18 magistrate, as appropriate, for the order referred to in
19 subdivision (1) of this subsection. Any prosecuting attorney of
20 this state may authorize an application to a circuit court judge of
21 this state for the order referred to in said subdivision. Upon the
22 application, the judge or magistrate may grant such order if he or
23 she determines on the basis of the facts submitted by the applicant
24 that:

25 (A) There is reasonable cause to believe, based upon
26 information believed to be reliable, that a specific criminal act

1 has been committed;

2 (B) There is reasonable cause to believe that the return or
3 return information is or may be relevant to a matter relating to
4 the commission of such act; and

5 (C) The return or return information is sought exclusively for
6 use in a state or federal criminal investigation or proceeding
7 concerning such act and the information sought to be disclosed
8 cannot reasonably be obtained, under the circumstances, from
9 another source.

10 (3) The Tax Commissioner may not disclose any return or return
11 information under subdivision (1) of this subsection if he or she
12 determines and certifies to the court that the disclosure would
13 identify a confidential informant or seriously impair a civil or
14 criminal tax investigation.

15 (f) *Disclosure to person having a material interest.* -- The
16 Tax Commissioner may, pursuant to legislative regulations
17 promulgated by him or her, and upon such terms as he or she may
18 require, disclose a return or return information to a person having
19 a material interest therein: *Provided*, That such disclosure shall
20 only be made if the Tax Commissioner determines, in his or her
21 discretion, that the disclosure would not seriously impair
22 administration of this state's tax laws.

23 (g) *Statistical use.* -- This section shall not be construed to
24 prohibit the publication or release of statistics so classified as
25 to prevent the identification of particular returns and the items
26 thereof.

1 (h) *Disclosure of amount of outstanding lien.* -- If notice of
2 lien has been recorded pursuant to section twelve of this article,
3 the amount of the outstanding obligation secured by such lien may
4 be disclosed to any person who furnishes written evidence
5 satisfactory to the Tax Commissioner that such person has a right
6 in the property subject to the lien or intends to obtain a right in
7 such property.

8 (i) *Reciprocal exchange.* -- The Tax Commissioner may, pursuant
9 to written agreement, permit the proper officer of the United
10 States, or the District of Columbia or any other state, or any
11 political subdivision of this state, or his or her authorized
12 representative, who is charged by law with responsibility for
13 administration of a similar tax, to inspect reports, declarations
14 or returns filed with the Tax Commissioner or may furnish to such
15 officer or representative a copy of any document, provided any
16 other jurisdiction grants substantially similar privileges to the
17 Tax Commissioner or to the Attorney General of this state:
18 *Provided,* That pursuant to written agreement the Tax Commissioner
19 may provide to the assessor of any county, sheriff of any county,
20 or the mayor of any West Virginia municipality the federal employer
21 identification number of any business being carried on within the
22 jurisdiction of the requesting assessor, sheriff or mayor. The
23 disclosure shall be only for the purpose of, and only to the extent
24 necessary in, the administration of tax laws: *Provided,* That the
25 information may not be disclosed to the extent that the Tax
26 Commissioner determines that such disclosure would identify a

1 confidential informant or seriously impair any civil or criminal
2 tax investigation.

3 (j) *Exchange with municipalities.* -- The Tax Commissioner
4 shall, upon the written request of the mayor or governing body of
5 any West Virginia municipality, allow the duly authorized agent of
6 the municipality to inspect and make copies of the state business
7 and occupation tax return filed by taxpayers of the municipality
8 and any other state tax returns (including, but not limited to,
9 consumers sales and services tax return information and health care
10 provider tax return information) as may be reasonably requested by
11 the municipality. Such inspection or copying shall include
12 disclosure to the authorized agent of the municipality for tax
13 administration purposes of all available return information from
14 files of the tax department relating to taxpayers who transact
15 business within the municipality. The Tax Commissioner shall be
16 permitted to inspect or make copies of any tax return and any
17 return information or other information related thereto in the
18 possession of any municipality or its employees, officers, agents
19 or representatives that has been submitted to or filed with the
20 municipality by any person for any tax including, but not limited
21 to, the municipal business and occupation tax, public utility tax,
22 municipal license tax, tax on purchases of intoxicating liquors,
23 license tax on horse racing or dog racing and municipal amusement
24 tax.

25 (k) *Release of administrative decisions.* -- The Tax
26 Commissioner shall release to the public his or her administrative

1 decisions, or a summary thereof: *Provided*, That unless the
2 taxpayer appeals the administrative decision to circuit court or
3 waives in writing his or her rights to confidentiality, any
4 identifying characteristics or facts about the taxpayer shall be
5 omitted or modified to an extent so as to not disclose the name or
6 identity of the taxpayer.

7 (1) *Release of taxpayer information.* -- If the Tax
8 Commissioner believes that enforcement of the tax laws administered
9 under this article will be facilitated and enhanced thereby, he or
10 she shall disclose, upon request, the names and address of persons:

11 (A) Who have a current business registration certificate.

12 (B) Who are licensed employment agencies.

13 (C) Who are licensed collection agencies.

14 (D) Who are licensed to sell drug paraphernalia.

15 (E) Who are distributors of gasoline or special fuel.

16 (F) Who are contractors.

17 (G) Who are transient vendors.

18 (H) Who are authorized by law to issue a sales or use tax
19 exemption certificate.

20 (I) Who are required by law to collect sales or use taxes.

21 (J) Who are foreign vendors authorized to collect use tax.

22 (K) Whose business registration certificate has been suspended
23 or canceled or not renewed by the Tax Commissioner.

24 (L) Against whom a tax lien has been recorded under section
25 twelve of this article (including any particulars stated in the
26 recorded lien).

1 (M) Against whom criminal warrants have been issued for a
2 criminal violation of this state's tax laws.

3 (N) Who have been convicted of a criminal violation of this
4 state's tax laws.

5 (m) *Disclosure of return information to child support*
6 *enforcement division.* --

7 (1) *State return information.* -- The Tax Commissioner may,
8 upon written request, disclose to the child support enforcement
9 division created by article two, chapter forty-eight-a of this
10 code:

11 (A) Available return information from the master files of the
12 tax department relating to the Social Security account number,
13 address, filing status, amounts and nature of income and the number
14 of dependents reported on any return filed by, or with respect to,
15 any individual with respect to whom child support obligations are
16 sought to be enforced; and

17 (B) Available state return information reflected on any state
18 return filed by, or with respect to, any individual described in
19 paragraph (A) of this subdivision relating to the amount of the
20 individual's gross income, but only if such information is not
21 reasonably available from any other source.

22 (2) *Restrictions on disclosure.* -- The Tax Commissioner shall
23 disclose return information under subdivision (1) of this
24 subsection only for purposes of, and to the extent necessary in,
25 collecting child support obligations from and locating individuals
26 owing such obligations.

1 (n) *Disclosure of names and addresses for purposes of jury*
2 *selection.* -- The Tax Commissioner shall, at the written request of
3 a circuit court or the chief judge thereof, provide to the circuit
4 court within thirty calendar days a list of the names and addresses
5 of individuals residing in the county or counties comprising the
6 circuit who have filed a state personal income tax return for the
7 preceding tax year. The list provided shall set forth names and
8 addresses only. The request shall be limited to counties within
9 the jurisdiction of the requesting court.

10 The court, upon receiving the list or lists, shall direct the
11 jury commission of the appropriate county to merge the names and
12 addresses with other lists used in compiling a master list of
13 residents of the county from which prospective jurors are to be
14 chosen. Immediately after the master list is compiled, the jury
15 commission shall cause the list provided by the Tax Commissioner
16 and all copies thereof to be destroyed and shall certify to the
17 circuit court and to the Tax Commissioner that the lists have been
18 destroyed.

19 (o) Disclosure of return information to Public Employees
20 Insurance Agency. --

21 (1) The Tax Commissioner may, upon written request, disclose
22 to the Public Employees Insurance Agency created by article
23 sixteen, chapter five of this code all available return information
24 from the master files of the tax department relating to the Social
25 Security account number, address, filing status, amounts and nature
26 of income and the number of dependents reported on any return filed

1 by, or with respect to, any individual choosing family or spousal
 2 coverage through the Public Employees Insurance Agency.

3 (2) Restrictions on disclosure. -- The Tax Commissioner shall
 4 disclose return information under subdivision (1) of this
 5 subsection only for purposes of, and to the extent necessary in,
 6 establishing income for all family wage earners covered by the
 7 Public Employees Insurance Agency to determine total income sliding
 8 scale premiums.

9 **ARTICLE 17. CIGARETTE TAX ACT.**

10 **§11-17-3. Levy of tax; ratio; dedication of proceeds; funds.**

11 (a) ~~Tax on cigarettes. -- For the purpose of providing revenue~~
 12 ~~for the General Revenue Fund of the state,~~ An excise tax is hereby
 13 levied and imposed on sales of cigarettes at the rate of ~~fifty five~~
 14 ~~cents~~ \$1.55 on each twenty cigarettes or in like ratio on any part
 15 thereof. Only one sale of the same article shall be used in
 16 computing the amount of tax due under this subsection.

17 (b) *Tax on tobacco products other than cigarettes. --*
 18 Effective January 1,2002, an excise tax is hereby levied and
 19 imposed on the sale or use of, other than cigarettes, tobacco
 20 products at a rate equal to seven percent of the wholesale price of
 21 each article or item of tobacco product other than cigarettes sold
 22 by the wholesaler or subjobber dealer, whether or not sold at
 23 wholesale, or if not sold, then at the same rate upon the use by
 24 the wholesaler or dealer. Only one sale of the same article shall
 25 be used in computing the amount of tax due under this subsection.
 26 Revenues received from this tax shall be deposited into the General

1 Revenue Fund.

2 (c) Effective date. -- ~~The changes set forth herein to this~~
 3 ~~section and section four of this article shall become effective the~~
 4 ~~first day of May two thousand three.~~ The changes to this section
 5 enacted during the 2011 Legislative session shall be effective July
 6 1, 2011.

7 (d) Of the increase in revenues collected pursuant to this
 8 section, an amount of \$50 million per year for ten successive years
 9 shall be deposited in the West Virginia Retiree Health Benefit
 10 Trust Fund created in section two, article sixteen-d, chapter five
 11 of this code for the purpose of funding other post-employment
 12 benefits and must be held in trust and not expended during the ten-
 13 year period. The remaining proceeds collected pursuant to this
 14 section shall be deposited in the General Revenue Fund.

15 **CHAPTER 18. EDUCATION.**

16 **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

17 **§18-9A-24. Foundation allowance for public employees insurance**
 18 **fund.**

19 (a) ~~Beginning July 1, one thousand nine hundred ninety five,~~
 20 ~~and every year thereafter,~~ The allowance to the Public Employees
 21 Insurance Agency for school employees shall be made in accordance
 22 with the following: The number of individuals employed by county
 23 boards ~~of education~~ as professional educators pursuant to section
 24 four ~~or five-a~~ of this article, ~~whichever is less,~~ plus the number
 25 of individuals employed by county boards ~~of education~~ as service
 26 personnel pursuant to section five ~~or five-a~~ of this article,

1 ~~whichever is less,~~ plus the number of individuals employed by
2 county boards as professional student support personnel pursuant to
3 section eight of this article, multiplied by the average premium
4 rate for all ~~county board of education~~ employees established by the
5 Public Employees Insurance Agency Finance Board. The average
6 premium rate for all ~~county board of education~~ employees shall be
7 incorporated into each financial plan developed by the finance
8 board in accordance with section five, article sixteen, chapter
9 five of this code. ~~Such~~ The premiums shall include any
10 proportionate share of retirees subsidy established by the finance
11 board and the difference, if any, between the previous year's
12 actual premium costs and the previous year's appropriation, if the
13 actual cost was greater than the appropriation. The amount of the
14 allowance provided in this subsection shall be paid directly to the
15 West Virginia Retiree Health Benefit Trust Fund. Each county board
16 shall reflect its share of the payment as revenue on its financial
17 statements to offset the applicable portion of its annual
18 contractually required contribution expense.

19 (b) Notwithstanding any other provision of section six,
20 article sixteen-d, chapter five of this code to the contrary, any
21 amount of annual contractually required contribution allocated to
22 and billed county boards for employees who are employed as
23 professional employees within the limits authorized by section
24 four, article nine-a, chapter eighteen of this code, employees who
25 are employed as service personnel within the limits authorized by
26 section five, article nine-a, chapter eighteen of this code and

1 employees who are employed as professional student support
2 personnel within the limits authorized by section eight, article
3 nine-a, chapter eighteen of this code is a liability of the state
4 until fully paid: *Provided*, That nothing in this subsection
5 requires any specific level of funding by the Legislature in any
6 particular year.

7 ~~(b)~~ (c) County boards ~~of education shall be~~ are responsible
8 liable for ~~payments to the Public Employees Insurance Agency the~~
9 annual contractually required contribution for individuals who are
10 employed as professional employees above and beyond those
11 authorized by section four of this article, ~~or five-a, whichever is~~
12 ~~less and~~ individuals who are employed as service personnel above
13 and beyond those authorized by section five of this article and
14 individuals who are employed as professional student support
15 personnel above and beyond those authorized by section eight of
16 this article. ~~and five-a whichever is less~~ For each such
17 employee, the county board ~~of education~~ shall forward to the Public
18 Employees Insurance Agency an amount equal to the average premium
19 rate established by the finance board in accordance with subsection
20 (a) of this section: *Provided*, That the county board shall pay the
21 actual employer premium costs for any county board employee paid
22 from special revenues, federal or state grants, or sources other
23 than state general revenue or county funds.

24 ~~(c)~~ (d) Prior to July 1, 1995, nothing in this article shall
25 be construed to limit the ability of county boards ~~of education~~ to
26 use funds appropriated to county boards ~~of education~~ pursuant to

1 this article to pay employer premiums to the Public Employees
2 Insurance Agency for employees whose positions are funded pursuant
3 to this article. Funds appropriated to county boards ~~of education~~
4 pursuant to this article shall not be used to pay employer premiums
5 for employees of such boards whose positions are not, or will not
6 be within twenty months, funded by funds appropriated pursuant to
7 this article.

NOTE: The purpose of this bill is to deal with other post-employment benefits generally. It prohibits the Public Employees Insurance Agency finance board from including in the financial plans any subsidy for the cost of coverage for retired employees who were hired on or after July 1, 2010. It caps the amount the finance board may include in the financial plans as subsidy for the cost of coverage for retired employees who were hired before July 1, 2010 at \$150 million. The bill defines "contractually required contribution" and authorizes the finance board to set minimum annual required contribution below the annual required contribution. The bill specifies that each participating government entity is required to remit annual contractual obligation. It authorizes the Tax Commissioner to disclose certain return information to the Public Employees Insurance Agency to determine total income for premium calculation. The bill increases the excise tax on cigarettes from 55 cents to \$1.55 per pack and dedicates a portion of the increased tax to the West Virginia Retiree Health Benefit Trust Fund for ten years. The bill specifies that the trust fund is to keep all earnings during the ten-year period. It specifies that the foundation allowance for Public Employees Insurance Fund shall be paid directly to the West Virginia Retiree Health Benefit Trust Fund and each county board shall reflect its share of the payment as revenue on its financial statements to offset the applicable portion of its annual contractually required contribution expense. It provides that any amount of annual contractually required contribution allocated to and billed county boards of education for certain employees is a liability of the state until fully paid.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.