

ENGROSSED

## **Senate Bill No. 616**

(By Senators Prezioso, D. Facemire, Unger,  
Plymale, McCabe, Laird, Wells, Green, Chafin,  
Yost, Edgell, Stollings, Miller, Hall, Boley and Sypolt)

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[Originating in the Committee on Finance;  
reported March 2, 2011.]

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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; 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 \$160 million; escalating the funding; converting to a per member, per month equivalent; requiring the identification of a funding source; 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 annual contractual obligation; authorizing the Tax Commissioner to disclose certain return information to the Public Employees Insurance Agency to determine total income for premium calculation; specifying 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; and providing 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.

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

That §5-16-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5-16D-1, §5-16D-2 and §5-16D-6

of said code be amended and reenacted; that §11-10-5d of said code be amended and reenacted; and that §18-9A-24 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY  
OF THE GOVERNOR, SECRETARY OF STATE  
AND ATTORNEY GENERAL; BOARD  
OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE  
ACT.**

**§5-16-5. Purpose, powers and duties of the finance board; initial  
financial plan; financial plan for following year;  
and annual financial plans.**

- 1 (a) The purpose of the finance board created by this article
- 2 is to bring fiscal stability to the Public Employees Insurance
- 3 Agency through development of annual financial plans and
- 4 long-range plans designed to meet the agency's estimated
- 5 total financial requirements, taking into account all revenues
- 6 projected to be made available to the agency and apportion-
- 7 ing necessary costs equitably among participating employers,
- 8 employees and retired employees and providers of health
- 9 care services.

10 (b) The finance board shall retain the services of an  
11 impartial, professional actuary, with demonstrated experi-  
12 ence in analysis of large group health insurance plans, to  
13 estimate the total financial requirements of the Public  
14 Employees Insurance Agency for each fiscal year and to  
15 review and render written professional opinions as to  
16 financial plans proposed by the finance board. The actuary  
17 shall also assist in the development of alternative financing  
18 options and perform any other services requested by the  
19 finance board or the director. All reasonable fees and  
20 expenses for actuarial services shall be paid by the Public  
21 Employees Insurance Agency. Any financial plan or modifi-  
22 cations to a financial plan approved or proposed by the  
23 finance board pursuant to this section shall be submitted to  
24 and reviewed by the actuary and may not be finally approved  
25 and submitted to the Governor and to the Legislature  
26 without the actuary's written professional opinion that the  
27 plan may be reasonably expected to generate sufficient  
28 revenues to meet all estimated program and administrative  
29 costs of the agency, including incurred but unreported  
30 claims, for the fiscal year for which the plan is proposed. The  
31 actuary's opinion on the financial plan for each fiscal year

32 shall allow for no more than thirty days of accounts payable  
33 to be carried over into the next fiscal year. The actuary's  
34 opinion for any fiscal year shall not include a requirement  
35 for establishment of a reserve fund.

36 (c) All financial plans required by this section shall  
37 establish:

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

41 (2) Any necessary cost-containment measures for imple-  
42 mentation by the director;

43 (3) The levels of premium costs to participating employers;  
44 and

45 (4) The types and levels of cost to participating employees  
46 and retired employees.

47 The financial plans may provide for different levels of costs  
48 based on the insured's ability to pay. The finance board may  
49 establish different levels of costs to retired employees based  
50 upon length of employment with a participating employer,  
51 ability to pay or other relevant factors. The financial plans  
52 may also include optional alternative benefit plans with  
53 alternative types and levels of cost. The finance board may

54 develop policies which encourage the use of West Virginia  
55 health care providers.

56 In addition, the finance board may allocate a portion of the  
57 premium costs charged to participating employers to subsi-  
58 dize the cost of coverage for participating retired employees,  
59 on such terms as the finance board determines are equitable,  
60 ~~and~~ financially responsible and consistent with the follow-  
61 ing:

62 The finance board may not include in the financial plans  
63 any subsidy for the cost of coverage for retired employees  
64 who were hired on or after July 1, 2010. The finance board  
65 may include in the financial plans a subsidy for the cost of  
66 coverage for retired employees who were hired before July 1,  
67 2010, not to exceed \$160 million in the aggregate. This  
68 funding shall be escalated 1.2 percent per year for ten years  
69 and two percent per year for the next ten years. The finance  
70 board may convert this aggregate amount to a per member,  
71 per month equivalent.

72 (d)(1) The finance board shall prepare an annual financial  
73 plan for each fiscal year during which the finance board  
74 remains in existence. The finance board chairman shall  
75 request the actuary to estimate the total financial require-

76 ments of the Public Employees Insurance Agency for the  
77 fiscal year.

78 (2) The finance board shall prepare a proposed financial  
79 plan designed to generate revenues sufficient to meet all  
80 estimated program and administrative costs of the Public  
81 Employees Insurance Agency for the fiscal year. The pro-  
82 posed financial plan shall allow for no more than thirty days  
83 of accounts payable to be carried over into the next fiscal  
84 year. Before final adoption of the proposed financial plan,  
85 the finance board shall request the actuary to review the  
86 plan and to render a written professional opinion stating  
87 whether the plan will generate sufficient revenues to meet all  
88 estimated program and administrative costs of the Public  
89 Employees Insurance Agency for the fiscal year. The actu-  
90 ary's report shall explain the basis of its opinion. If the  
91 actuary concludes that the proposed financial plan will not  
92 generate sufficient revenues to meet all anticipated costs,  
93 then the finance board shall make necessary modifications  
94 to the proposed plan to ensure that all actuarially deter-  
95 mined financial requirements of the agency will be met.

96 (3) Upon obtaining the actuary's opinion, the finance board  
97 shall conduct one or more public hearings in each congres-

98 sional district to receive public comment on the proposed  
99 financial plan, shall review the comments and shall finalize  
100 and approve the financial plan.

101 (4) Any financial plan shall be designed to allow thirty  
102 days or less of accounts payable to be carried over into the  
103 next fiscal year. For each fiscal year, the Governor shall  
104 provide his or her estimate of total revenues to the finance  
105 board no later than October 15, of the preceding fiscal year:

106 *Provided, That,* for the prospective financial plans required  
107 by this section, the Governor shall estimate the revenues  
108 available for each fiscal year of the plans based on the  
109 estimated percentage of growth in general fund revenues.

110 The finance board shall submit its final, approved financial  
111 plan, after obtaining the necessary actuary's opinion and  
112 conducting one or more public hearings in each congressio-  
113 nal district, to the Governor and to the Legislature no later  
114 than January 1, preceding the fiscal year. The financial plan  
115 for a fiscal year becomes effective and shall be implemented  
116 by the director on July 1, of the fiscal year. In addition to  
117 each final, approved financial plan required under this  
118 section, the finance board shall also simultaneously submit  
119 financial statements based on generally accepted accounting

120 practices (GAAP) and the final, approved plan restated on an  
121 accrual basis of accounting, which shall include allowances  
122 for incurred but not reported claims: *Provided, however,*  
123 That the financial statements and the accrual-based finan-  
124 cial plan restatement shall not affect the approved financial  
125 plan.

126 (e) The provisions of chapter twenty-nine-a of this code  
127 shall not apply to the preparation, approval and implementa-  
128 tion of the financial plans required by this section.

129 (f) By January 1 of each year, the finance board shall  
130 submit to the Governor and the Legislature a prospective  
131 financial plan, for a period not to exceed five years, for the  
132 programs provided in this article. Factors that the board  
133 shall consider include, but are not limited to, the trends for  
134 the program and the industry; the medical rate of inflation;  
135 utilization patterns; cost of services; and specific information  
136 such as average age of employee population, active to retiree  
137 ratios, the service delivery system and health status of the  
138 population.

139 (g) The prospective financial plans shall be based on the  
140 estimated revenues submitted in accordance with subdivi-  
141 sion (4), subsection (d) of this section and shall include an

142 average of the projected cost-sharing percentages of premi-  
143 ums and an average of the projected deductibles and copays  
144 for the various programs. Beginning in the plan year which  
145 commences on July 1, 2002, and in each plan year thereafter,  
146 until and including the plan year which commences on July  
147 1, 2006, the prospective plans shall include incremental  
148 adjustments toward the ultimate level required in this  
149 subsection, in the aggregate cost-sharing percentages of  
150 premium between employers and employees, including the  
151 amounts of any subsidization of retired employee benefits.  
152 Effective in the plan year commencing on July 1, 2006, and  
153 in each plan year thereafter, the aggregate premium cost-  
154 sharing percentages between employers and employees,  
155 including the amounts of any subsidization of retired  
156 employee benefits, shall be at a level of eighty percent for the  
157 employer and twenty percent for employees, except for the  
158 employers provided in subsection (d), section eighteen of this  
159 article whose premium cost-sharing percentages shall be  
160 governed by that subsection. After the submission of the  
161 initial prospective plan, the board may not increase costs to  
162 the participating employers or change the average of the  
163 premiums, deductibles and copays for employees, except in

164 the event of a true emergency as provided in this section:  
165 *Provided*, That if the board invokes the emergency provi-  
166 sions, the cost shall be borne between the employers and  
167 employees in proportion to the cost-sharing ratio for that  
168 plan year: *Provided, however*, That for purposes of this  
169 section, “emergency” means that the most recent projections  
170 demonstrate that plan expenses will exceed plan revenues by  
171 more than one percent in any plan year: *Provided further*,  
172 That the aggregate premium cost-sharing percentages  
173 between employers and employees, including the amounts of  
174 any subsidization of retired employee benefits, may be offset,  
175 in part, by a legislative appropriation for that purpose.

176 (h) The finance board shall meet on at least a quarterly  
177 basis to review implementation of its current financial plan  
178 in light of the actual experience of the Public Employees  
179 Insurance Agency. The board shall review actual costs  
180 incurred, any revised cost estimates provided by the actuary,  
181 expenditures and any other factors affecting the fiscal  
182 stability of the plan and may make any additional modifica-  
183 tions to the plan necessary to ensure that the total financial  
184 requirements of the agency for the current fiscal year are  
185 met. The finance board may not increase the types and levels

186 of cost to employees during its quarterly review except in the  
187 event of a true emergency.

188 (i) For any fiscal year in which legislative appropriations  
189 differ from the Governor's estimate of general and special  
190 revenues available to the agency, the finance board shall,  
191 within thirty days after passage of the budget bill, make any  
192 modifications to the plan necessary to ensure that the total  
193 financial requirements of the agency for the current fiscal  
194 year are met.

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

**§5-16D-1. Definitions.**

1 As used in this article, the term:

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

6 (b) "Actuarial cost method" means a method for determin-  
7 ing the actuarial present value of the obligations and  
8 administrative expenses of the fund and for developing an  
9 actuarially equivalent allocation of the value to time periods,  
10 usually in the form of a normal cost and an actuarial accrued  
11 liability. Acceptable actuarial methods are the aggregate,

12 attained age, entry age, frozen attained age, frozen entry age  
13 and projected unit credit methods.

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

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

25 (e) “Actuarial assumptions” means assumptions regarding  
26 the occurrence of future events affecting the fund such as  
27 mortality, withdrawal, disability and retirement; changes in  
28 compensation and offered post-employment benefits; rates of  
29 investment earnings and other asset appreciation or depreci-  
30 ation; procedures used to determine the actuarial value of  
31 assets; and other relevant items.

32 (f) “Actuarial valuation” means the determination, as of a  
33 valuation date, of the normal cost, actuarial accrued liability,

34 actuarial value of assets and related actuarial present values  
35 for the fund.

36 (g) “Administrative expenses” means all expenses incurred  
37 in the operation of the fund, including all investment  
38 expenses.

39 (h) “Annual required contribution” means the amount  
40 employers must contribute in a given year to fully fund the  
41 trust, as determined by the actuarial valuation in accordance  
42 with requirements of generally accepted accounting princi-  
43 ples. This amount shall represent a level of funding that if  
44 paid on an ongoing basis is projected to cover the normal  
45 cost each year and amortize any unfunded actuarial liabili-  
46 ties of the plan over a period not to exceed thirty years.

47 (i) “Board” means the Public Employees Insurance Agency  
48 Finance Board created in section four, article sixteen of this  
49 chapter.

50 (j) “Contractually required contribution” means an amount  
51 determined annually by the board to be billed to each  
52 employer, which amount shall at least equal the minimum  
53 annual employer payment and may be any amount up to, but  
54 may not exceed, the employer annual required contribution.

55    ~~(j)~~ (k) “Cost-sharing multiple employer plan” means a  
56 single plan with pooling (cost-sharing) arrangements for the  
57 participating employers. All risk, rewards, and costs,  
58 including benefit costs, are shared and not attributed  
59 individually to the employers. A single actuarial valuation  
60 covers all plan members and the same contribution rate  
61 applies for each employer.

62    ~~(k)~~ (l) “Covered health care expenses” means all actual  
63 health care expenses paid by the health plan on behalf of  
64 fund beneficiaries. Actual health care expenses include  
65 claims payments to providers and premiums paid to interme-  
66 diary entities and health care providers by the health plan.

67    ~~(l)~~ (m) “Employer” means any employer as defined by  
68 section two, article sixteen of this chapter which has or will  
69 have retired employees in any Public Employees Insurance  
70 Agency health plan.

71    ~~(m)~~ (n) “Employer annual required contribution” means  
72 the portion of the annual required contribution which is the  
73 responsibility of that particular employer.

74    ~~(n)~~ (o) “Fund” means the West Virginia Retiree Health  
75 Benefit Trust Fund established under this article.

76    ~~(o)~~ (p) “Fund beneficiaries” means all persons receiving  
77 post-employment health care benefits through the health  
78 plan.

79    ~~(p)~~ (q) “Health plan” means the health insurance plan or  
80 plans established under article sixteen of this chapter.

81    ~~(q)~~ (r) “Minimum annual employer payment” means the  
82 annual amount paid by employers which, when combined  
83 with the retirees’ contributions on their premiums that year,  
84 provide sufficient funds such that the annual finance plan of  
85 the finance board will cover all projected retiree covered  
86 health care expenses and related administrative costs for  
87 that year. The finance board shall develop the minimum  
88 annual employer payment as part of its financial plan each  
89 year as addressed in section five, article sixteen of this  
90 chapter.

91    ~~(r)~~ (s) “Normal cost” means that portion of the actuarial  
92 present value of the fund obligations and expenses which is  
93 allocated to a valuation year by the actuarial cost method  
94 used for the fund.

95    ~~(s)~~ (t) “Obligations” means the administrative expenses of  
96 the fund and the cost of covered health care expenses  
97 incurred on behalf of fund beneficiaries.

98    ~~(t)~~ (u) “Other post-employment benefits” or “retiree post-  
99    employment health care benefits” means those benefits as  
100   addressed by governmental accounting standards board  
101   statement no. 43 or any subsequent governmental standards  
102   board statement that may be applicable to the fund.

103   ~~(tt)~~ (v) “Plan for other post-employment benefits” means  
104   the fiscal funding plan for retiree post-employment health  
105   care benefits as it relates to governmental accounting  
106   standards board statement no. 43 or any subsequent govern-  
107   mental accounting standards board statements that may be  
108   applicable to the fund.

109   ~~(vv)~~ (w) “Retiree” means retired employee as defined by  
110   section two, article sixteen of this chapter.

111   ~~(ww)~~ (x) “Retirement system” or “system” means the West  
112   Virginia Consolidated Public Retirement Board created and  
113   established by article ten of this chapter and includes any  
114   retirement systems or funds administered or overseen by the  
115   Consolidated Public Retirement Board.

116   ~~(xx)~~ (y) “Unfunded actuarial accrued liability” means for  
117   any actuarial valuation the excess of the actuarial accrued  
118   liability over the actuarial value of the assets of the fund

119 under an actuarial cost method used by the fund for funding  
120 purposes.

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

1 The Legislature declares that certain dedicated revenues  
2 should be preserved in trust for the purpose of funding other  
3 post-employment benefits.

4 There is hereby created the West Virginia Retiree Health  
5 Benefit Trust Fund for the purpose of providing for and  
6 administering retiree post-employment health care benefits,  
7 and the respective revenues and costs of those benefits as a  
8 cost-sharing multiple employer plan.

9 (a) The fund shall be available without fiscal year limita-  
10 tions for covered health care expenses and administration  
11 costs. All contributions, appropriations, earnings, and  
12 reserves for the payment of obligations under this article  
13 shall be credited to the fund and are irrevocable.

14 (b) The amounts remaining in the fund, if any, after  
15 covered health care expenses and administration costs have  
16 been paid shall be retained in the fund as a special reserve  
17 for adverse fluctuation. All assets of the fund shall be used

18 solely for the payment of fund obligations and for no other  
19 purpose.

20 (c) A designated source for deposit of no less than \$50  
21 million into the fund to be used for the purpose of funding  
22 other post-employment benefits shall be identified by July 1,  
23 2012.

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

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

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

9 (c) The board may apportion the annual required contribu-  
10 tion into various components. These components may include  
11 the amortized unfunded actuarial accrued liability, the total  
12 normal cost, the contractually required contributions, the  
13 employer annual required contribution and the lesser  
14 included minimum annual employer payment. In the board's  
15 annual apportionment of the annual required contribution,

16 any amounts of the minimum annual employer payment  
17 apportioned to reduce the amortized unfunded actuarial  
18 accrued liability shall not be treated as premium by the  
19 board in the finance plan but, rather, shall be treated as  
20 contributions to prefund other post-employment benefits.

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

24 (e) The Public Employees Insurance Agency shall bill each  
25 employer for the ~~employer annual~~ contractually required  
26 contribution and the included minimum annual employer  
27 payment. The Public Employees Insurance Agency shall  
28 annually collect the contractually required contribution and  
29 the included minimum annual employer payment. The Public  
30 Employees Insurance Agency shall, in addition to the  
31 ~~minimum annual employer payment~~ contractually required  
32 contribution, collect any amounts the employer elects to pay  
33 toward the employer annual required contribution. Subject  
34 to section twenty-four, article nine-a, chapter eighteen of  
35 this code, any employer ~~annual~~ contractually required  
36 contribution amount not satisfied by the respective employer  
37 shall remain the liability of that employer until fully paid.

**CHAPTER 11. TAXATION.****ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.****§11-10-5d. Confidentiality and disclosure of returns and return information.**

1 (a) *General rule.* — Except when required in an official  
2 investigation by the Tax Commissioner into the amount of  
3 tax due under any article administered under this article or  
4 in any proceeding in which the Tax Commissioner is a party  
5 before a court of competent jurisdiction to collect or ascer-  
6 tain the amount of such tax and except as provided in  
7 subsections (d) through ~~(n)~~ (o), inclusive, of this section, it  
8 ~~shall be~~ is unlawful for any officer, employee or agent of this  
9 state or of any county, municipality or governmental subdi-  
10 vision to divulge or make known in any manner the tax  
11 return, or any part thereof, of any person or disclose infor-  
12 mation concerning the personal affairs of any individual or  
13 the business of any single firm or corporation, or disclose the  
14 amount of income, or any particulars set forth or disclosed in  
15 any report, declaration or return required to be filed with the  
16 Tax Commissioner by any article of this chapter imposing

17 any tax administered under this article or by any rule or  
18 regulation of the Tax Commissioner issued thereunder, or  
19 disclosed in any audit or investigation conducted under this  
20 article. For purposes of this article, tax returns and return  
21 information obtained from the Tax Commissioner pursuant  
22 to an exchange of information agreement or otherwise  
23 pursuant to the provisions of subsections (d) through ~~(n)~~ (o),  
24 inclusive, of this section which is in the possession of any  
25 officer, employee, agent or representative of any local or  
26 municipal governmental entity or other governmental  
27 subdivision is subject to the confidentiality and disclosure  
28 restrictions set forth in this article: *Provided*, That such  
29 officers, employees or agents may disclose the information in  
30 an official investigation, by a local or municipal governmen-  
31 tal authority or agency charged with the duty and responsi-  
32 bility to administer the tax laws of the jurisdiction, into the  
33 amount of tax due under any lawful local or municipal tax  
34 administered by that authority or agency, or in any proceed-  
35 ing in which the local or municipal governmental subdivi-  
36 sion, authority or agency is a party before a court of compe-  
37 tent jurisdiction to collect or ascertain the amount of the tax.

38 Unlawful disclosure of the information by any officer,  
39 employee or agent of any local, municipal or governmental  
40 subdivision is subject to the sanctions set forth in this article.

41 (b) *Definitions.* — For purposes of this section:

42 (1) *Background file document.* — The term “background  
43 file document”, with respect to a written determination,  
44 includes the request for that written determination, any  
45 written material submitted in support of the request and any  
46 communication (written or otherwise) between the State Tax  
47 Department and any person outside the State Tax Depart-  
48 ment in connection with the written determination received  
49 before issuance of the written determination.

50 (2) *Disclosure.* — The term “disclosure” means making  
51 known to any person in any manner whatsoever a return or  
52 return information.

53 (3) *Inspection.* — The terms “inspection” and “inspected”  
54 means any examination of a return or return information.

55 (4) *Return.* — The term “return” means any tax or informa-  
56 tion return or report, declaration of estimated tax, claim or  
57 petition for refund or credit or petition for reassessment that  
58 is required by, or provided for, or permitted under the  
59 provisions of this article (or any article of this chapter

60 administered under this article) which is filed with the Tax  
61 Commissioner by, on behalf of, or with respect to any person  
62 and any amendment or supplement thereto, including  
63 supporting schedules, attachments or lists which are supple-  
64 mental to, or part of, the return so filed.

65 (5) *Return information.* — The term “return information”  
66 means:

67 (A) A taxpayer’s identity; the nature, source or amount of  
68 his or her income, payments, receipts, deductions, exemp-  
69 tions, credits, assets, liabilities, net worth, tax liability, tax  
70 withheld, deficiencies, over assessments or tax payments,  
71 whether the taxpayer’s return was, is being, or will be  
72 examined or subject to other investigation or processing, or  
73 any other data received by, recorded by, prepared by,  
74 furnished to or collected by the Tax Commissioner with  
75 respect to a return or with respect to the determination of  
76 the existence, or possible existence, of liability (or the  
77 amount thereof) or by any person under the provisions of this  
78 article (or any article of this chapter administered under this  
79 article) for any tax, additions to tax, penalty, interest, fine,  
80 forfeiture or other imposition or offense; and

81 (B) Any part of any written determination or any back-  
82 ground file document relating to such written determination.  
83 “Return information” does not include, however, data in a  
84 form which cannot be associated with or otherwise identify,  
85 directly or indirectly, a particular taxpayer. Nothing in the  
86 preceding sentence, or in any other provision of this code,  
87 shall be construed to require the disclosure of standards used  
88 or to be used for the selection of returns for examination or  
89 data used or to be used for determining such standards.

90 (6) *Tax administration.* — The term “tax administration”  
91 means:

92 (A) The administration, management, conduct, direction  
93 and supervision of the execution and application of the tax  
94 laws or related statutes of this state and the development and  
95 formulation of state and local tax policy relating to existing  
96 or propose date and local tax laws and related statutes of  
97 this state; and

98 (B) Includes assessment, collection, enforcement, litigation,  
99 publication and statistical gathering functions under the  
100 laws of this state and of local governments.

101 (7) *Taxpayer identity.* — The term “taxpayer identity”  
102 means the name of a person with respect to whom a return is

103 filed, his or her mailing address, his or her taxpayer identify-  
104 ing number or a combination thereof.

105 (8) *Taxpayer return information.* — The term “taxpayer  
106 return information” means return information as defined in  
107 subdivision (5) of this subsection which is filed with, or  
108 furnished to, the Tax Commissioner by or on behalf of the  
109 taxpayer to whom such return information relates.

110 (9) *Written determination.* — The term “written determi-  
111 nation” means a ruling, determination letter, technical  
112 advice memorandum or letter or administrative decision  
113 issued by the Tax Commissioner.

114 (c) *Criminal penalty.* — Any officer, employee or agent (or  
115 former officer, employee or agent) of this state or of any  
116 county, municipality or governmental subdivision who  
117 violates this section ~~shall be~~ is guilty of a misdemeanor and,  
118 upon conviction thereof, shall be fined not more than \$1,000  
119 or ~~imprisoned~~ confined in jail for not more than one year, or  
120 both fined and confined, together with costs of prosecution.

121 (d) *Disclosure to designee of taxpayer.* — Any person  
122 protected by the provisions of this article may, in writing,  
123 waive the secrecy provisions of this section for such purpose  
124 and such period as he or she shall therein state. The Tax

125 Commissioner may, subject to such requirements and  
126 conditions as he or she may prescribe, thereupon release to  
127 designated recipients such taxpayer's return or other  
128 particulars filed under the provisions of the tax articles  
129 administered under the provisions of this article, but only to  
130 the extent necessary to comply with a request for informa-  
131 tion or assistance made by the taxpayer to such other person.  
132 However, return information shall not be disclosed to such  
133 person or persons if the Tax Commissioner determines that  
134 such disclosure would seriously impair administration of this  
135 state's tax laws.

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

138 (1) *In general.* — Except as provided in subdivision (3) of  
139 this subsection, any return or return information with  
140 respect to any specified taxable period or periods shall,  
141 pursuant to and upon the grant of an ex parte order by a  
142 federal district court judge, federal magistrate or circuit  
143 court judge of this state, under subdivision (2) of this  
144 subsection, be open (but only to the extent necessary as  
145 provided in such order) to inspection by, or disclosure to,

146 officers and employees of any federal agency, or of any  
147 agency of this state, who personally and directly engaged in:

148 (A) Preparation for any judicial or administrative proceed-  
149 ing pertaining to the enforcement of a specifically designated  
150 state or federal criminal statute to which this state, the  
151 United States or such agency is or may be a party;

152 (B) Any investigation which may result in such a proceed-  
153 ing; or

154 (C) Any state or federal grand jury proceeding pertaining  
155 to enforcement of such a criminal statute to which this state,  
156 the United States or such agency is or may be a party. Such  
157 inspection or disclosure shall be solely for the use of such  
158 officers and employees in such preparation, investigation or  
159 grand jury proceeding.

160 (2) *Application of order.* — Any United States attorney,  
161 any special prosecutor appointed under Section 593 of Title  
162 28, United States Code, or any attorney in charge of a United  
163 States justice department criminal division organized crime  
164 strike force established pursuant to Section 510 of Title 28,  
165 United States Code, may authorize an application to a circuit  
166 court judge or magistrate, as appropriate, for the order  
167 referred to in subdivision (1) of this subsection. Any prose-

168 cutting attorney of this state may authorize an application to  
169 a circuit court judge of this state for the order referred to in  
170 said subdivision. Upon the application, the judge or magis-  
171 trate may grant such order if he or she determines on the  
172 basis of the facts submitted by the applicant that:

173 (A) There is reasonable cause to believe, based upon  
174 information believed to be reliable, that a specific criminal  
175 act has been committed;

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

179 (C) The return or return information is sought exclusively  
180 for use in a state or federal criminal investigation or pro-  
181 ceeding concerning such act and the information sought to  
182 be disclosed cannot reasonably be obtained, under the  
183 circumstances, from another source.

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

189 (f) *Disclosure to person having a material interest.* — The  
190 Tax Commissioner may, pursuant to legislative regulations  
191 promulgated by him or her, and upon such terms as he or she  
192 may require, disclose a return or return information to a  
193 person having a material interest therein: *Provided*, That  
194 such disclosure shall only be made if the Tax Commissioner  
195 determines, in his or her discretion, that the disclosure would  
196 not seriously impair administration of this state's tax laws.

197 (g) *Statistical use.* — This section shall not be construed to  
198 prohibit the publication or release of statistics so classified  
199 as to prevent the identification of particular returns and the  
200 items thereof.

201 (h) *Disclosure of amount of outstanding lien.* — If notice of  
202 lien has been recorded pursuant to section twelve of this  
203 article, the amount of the outstanding obligation secured by  
204 such lien may be disclosed to any person who furnishes  
205 written evidence satisfactory to the Tax Commissioner that  
206 such person has a right in the property subject to the lien or  
207 intends to obtain a right in such property.

208 (i) *Reciprocal exchange.* — The Tax Commissioner may,  
209 pursuant to written agreement, permit the proper officer of  
210 the United States, or the District of Columbia or any other

211 state, or any political subdivision of this state, or his or her  
212 authorized representative, who is charged by law with  
213 responsibility for administration of a similar tax, to inspect  
214 reports, declarations or returns filed with the Tax Commis-  
215 sioner or may furnish to such officer or representative a copy  
216 of any document, provided any other jurisdiction grants  
217 substantially similar privileges to the Tax Commissioner or  
218 to the Attorney General of this state: *Provided*, That pursu-  
219 ant to written agreement the Tax Commissioner may provide  
220 to the assessor of any county, sheriff of any county, or the  
221 mayor of any West Virginia municipality the federal em-  
222 ployer identification number of any business being carried  
223 on within the jurisdiction of the requesting assessor, sheriff  
224 or mayor. The disclosure shall be only for the purpose of, and  
225 only to the extent necessary in, the administration of tax  
226 laws: *Provided*, That the information may not be disclosed to  
227 the extent that the Tax Commissioner determines that such  
228 disclosure would identify a confidential informant or  
229 seriously impair any civil or criminal tax investigation.

230 (j) *Exchange with municipalities.* — The Tax Commissioner  
231 shall, upon the written request of the mayor or governing  
232 body of any West Virginia municipality, allow the duly

233 authorized agent of the municipality to inspect and make  
234 copies of the state business and occupation tax return filed  
235 by taxpayers of the municipality and any other state tax  
236 returns (including, but not limited to, consumers sales and  
237 services tax return information and health care provider tax  
238 return information) as may be reasonably requested by the  
239 municipality. Such inspection or copying shall include  
240 disclosure to the authorized agent of the municipality for tax  
241 administration purposes of all available return information  
242 from files of the tax department relating to taxpayers who  
243 transact business within the municipality. The Tax Commis-  
244 sioner shall be permitted to inspect or make copies of any tax  
245 return and any return information or other information  
246 related thereto in the possession of any municipality or its  
247 employees, officers, agents or representatives that has been  
248 submitted to or filed with the municipality by any person for  
249 any tax including, but not limited to, the municipal business  
250 and occupation tax, public utility tax, municipal license tax,  
251 tax on purchases of intoxicating liquors, license tax on horse  
252 racing or dog racing and municipal amusement tax.

253 (k) *Release of administrative decisions.* — The Tax Com-  
254 missioner shall release to the public his or her administrative

255 decisions, or a summary thereof: *Provided*, That unless the  
256 taxpayer appeals the administrative decision to circuit court  
257 or waives in writing his or her rights to confidentiality, any  
258 identifying characteristics or facts about the taxpayer shall  
259 be omitted or modified to an extent so as to not disclose the  
260 name or identity of the taxpayer.

261 (l) *Release of taxpayer information.* — If the Tax Commis-  
262 sioner believes that enforcement of the tax laws adminis-  
263 tered under this article will be facilitated and enhanced  
264 thereby, he or she shall disclose, upon request, the names and  
265 address of persons:

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

267 (B) Who are licensed employment agencies.

268 (C) Who are licensed collection agencies.

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

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

271 (F) Who are contractors.

272 (G) Who are transient vendors.

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

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

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

277 (K) Whose business registration certificate has been  
278 suspended or canceled or not renewed by the Tax Commis-  
279 sioner.

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

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

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

287 (m) *Disclosure of return information to child support*  
288 *enforcement division.* —

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

293 (A) Available return information from the master files of  
294 the tax department relating to the Social Security account  
295 number, address, filing status, amounts and nature of income  
296 and the number of dependents reported on any return filed  
297 by, or with respect to, any individual with respect to whom  
298 child support obligations are sought to be enforced; and

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

305 (2) *Restrictions on disclosure.* — The Tax Commissioner  
306 shall disclose return information under subdivision (1) of this  
307 subsection only for purposes of, and to the extent necessary  
308 in, collecting child support obligations from and locating  
309 individuals owing such obligations.

310 (n) *Disclosure of names and addresses for purposes of jury*  
311 *selection.* — The Tax Commissioner shall, at the written  
312 request of a circuit court or the chief judge thereof, provide  
313 to the circuit court within thirty calendar days a list of the  
314 names and addresses of individuals residing in the county or  
315 counties comprising the circuit who have filed a state  
316 personal income tax return for the preceding tax year. The  
317 list provided shall set forth names and addresses only. The  
318 request shall be limited to counties within the jurisdiction of  
319 the requesting court.

320 The court, upon receiving the list or lists, shall direct the  
321 jury commission of the appropriate county to merge the  
322 names and addresses with other lists used in compiling a  
323 master list of residents of the county from which prospective  
324 jurors are to be chosen. Immediately after the master list is  
325 compiled, the jury commission shall cause the list provided  
326 by the Tax Commissioner and all copies thereof to be  
327 destroyed and shall certify to the circuit court and to the Tax  
328 Commissioner that the lists have been destroyed.

329 (o) Disclosure of return information to Public Employees  
330 Insurance Agency. —

331 (1) The Tax Commissioner may, upon written request,  
332 disclose to the Public Employees Insurance Agency created  
333 by article sixteen, chapter five of this code all available  
334 return information from the master files of the tax depart-  
335 ment relating to the Social Security account number,  
336 address, filing status, amounts and nature of income and the  
337 number of dependents reported on any return filed by, or  
338 with respect to, any individual choosing family or spousal  
339 coverage through the Public Employees Insurance Agency.

340 (2) Restrictions on disclosure. — The Tax Commissioner  
341 shall disclose return information under subdivision (1) of this

342 subsection only for purposes of, and to the extent necessary  
 343 in, establishing income for all family wage earners covered  
 344 by the Public Employees Insurance Agency to determine  
 345 total income sliding scale premiums.

## CHAPTER 18. EDUCATION.

### ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

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

1 (a) ~~Beginning July 1, one thousand nine hundred ninety-~~  
 2 ~~five, and every year thereafter,~~ The allowance to the Public  
 3 Employees Insurance Agency for school employees shall be  
 4 made in accordance with the following: The number of  
 5 individuals employed by county boards ~~of education~~ as  
 6 professional educators pursuant to section four ~~or five-a~~ of  
 7 this article, ~~whichever is less,~~ plus the number of individuals  
 8 employed by county boards ~~of education~~ as service personnel  
 9 pursuant to section five ~~or five-a~~ of this article, ~~whichever is~~  
 10 ~~less,~~ plus the number of individuals employed by county  
 11 boards as professional student support personnel pursuant to  
 12 section eight of this article, multiplied by the average  
 13 premium rate for all ~~county board of education~~ employees  
 14 established by the Public Employees Insurance Agency

15 Finance Board. The average premium rate for all ~~county~~  
16 ~~board of education~~ employees shall be incorporated into each  
17 financial plan developed by the finance board in accordance  
18 with section five, article sixteen, chapter five of this code.  
19 ~~Such~~ The premiums shall include any proportionate share of  
20 retirees subsidy established by the finance board and the  
21 difference, if any, between the previous year's actual pre-  
22 mium costs and the previous year's appropriation, if the  
23 actual cost was greater than the appropriation. The amount  
24 of the allowance provided in this subsection shall be paid  
25 directly to the West Virginia Retiree Health Benefit Trust  
26 Fund. Each county board shall reflect its share of the  
27 payment as revenue on its financial statements to offset the  
28 applicable portion of its annual contractually required  
29 contribution expense.

30 (b) Notwithstanding any other provision of section six,  
31 article sixteen-d, chapter five of this code to the contrary,  
32 any amount of annual contractually required contribution  
33 allocated to and billed county boards for employees who are  
34 employed as professional employees within the limits  
35 authorized by section four of this article, employees who are  
36 employed as service personnel within the limits authorized

37 by section five of this article, and employees who are  
38 employed as professional student support personnel within  
39 the limits authorized by section eight of this article, is a  
40 liability of the state until fully paid: *Provided*, That nothing  
41 in this subsection requires any specific level of funding by  
42 the Legislature in any particular year.

43 ~~(b)~~ (c) County boards of education shall be are responsible  
44 liable for payments to the Public Employees Insurance  
45 Agency the annual contractually required contribution for  
46 individuals who are employed as professional employees  
47 above and beyond those authorized by section four of this  
48 article, or five-a, whichever is less and individuals who are  
49 employed as service personnel above and beyond those  
50 authorized by section five of this article and individuals who  
51 are employed as professional student support personnel  
52 above and beyond those authorized by section eight of this  
53 article, and five-a whichever is less For each such employee,  
54 the county board of education shall forward to the Public  
55 Employees Insurance Agency an amount equal to the average  
56 premium rate established by the finance board in accordance  
57 with subsection (a) of this section: *Provided*, That the county  
58 board shall pay the actual employer premium costs for any

59 county board employee paid from special revenues, federal  
60 or state grants, or sources other than state general revenue  
61 or county funds.

62 ~~(e)~~ (d) Prior to July 1, 1995, nothing in this article shall be  
63 construed to limit the ability of county boards ~~of education~~  
64 to use funds appropriated to county boards ~~of education~~  
65 pursuant to this article to pay employer premiums to the  
66 Public Employees Insurance Agency for employees whose  
67 positions are funded pursuant to this article. Funds appro-  
68 priated to county boards ~~of education~~ pursuant to this article  
69 shall not be used to pay employer premiums for employees of  
70 such boards whose positions are not, or will not be within  
71 twenty months, funded by funds appropriated pursuant to  
72 this article.