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Senate Bill No. 469

(By Senators Kessler (Mr. President) and Hall,
By Request of the Executive)

[Introduced January 31, 2012; referred to the Committee on
Finance.]

A BILL to amend and reenact §5-16-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §5-16-5a and §5-16-5b; to amend said code by adding thereto a new section, designated §5-16D-7; to amend and reenact §11-21-96 of said code; and to amend and reenact §18-9A-24 of said code, all relating to other post-employment benefits generally; directing the Director of the Public Employees Insurance Agency to evaluate and administer programs that ensure the long-term effectiveness of the agency; requiring the director to issue annual progress reports to the Legislature; prohibiting the Public Employees Insurance Agency Finance Board from including in the financial plans any subsidy from the Retiree Health Benefit Trust for the cost of coverage for retired employees who were hired on or after July

1 1, 2010; creating the Post-July 1, 2010 Employee Trust;
2 allowing appointment of a joint committee; directing a certain
3 amount of personal income tax into the West Virginia Retiree
4 Health Benefit Trust Fund until Governor certifies that trust
5 fund is fully funded or July 1, 2037, whichever date is later;
6 directing an amount of personal income tax into the Post-July
7 1, 2010 Employee Trust Fund; and specifying that portions of
8 the employer annual required contribution of county boards of
9 education shall be billed to and be a responsibility of the
10 state.

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

12 That §5-16-3 of the Code of West Virginia, 1931, as amended,
13 be amended and reenacted; that said code be amended by adding
14 thereto two new sections, designated §5-16-5a and §5-16-5b; that
15 said code be amended by adding thereto a new section, designated
16 §5-16D-7; that §11-21-96 of said code be amended and reenacted; and
17 that §18-9A-24 of said code be amended and reenacted, all to read
18 as follows:

19 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**
20 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;**
21 **MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**
22 **ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**
23 **§5-16-3. Composition of Public Employees Insurance Agency;**

1 **appointment, qualification, compensation and duties**
2 **of Director of Agency; employees; civil service**
3 **coverage.**

4 (a) The Public Employees Insurance Agency consists of the
5 Director, the Finance Board, the Advisory Board and any employees
6 who may be authorized by law. The Director shall be appointed by
7 the Governor, with the advice and consent of the Senate, and serves
8 at the will and pleasure of the Governor. The Director shall have
9 at least three years' experience in health or governmental health
10 benefit administration as his or her primary employment duty prior
11 to appointment as director. The Director shall receive actual
12 expenses incurred in the performance of official business. The
13 Director shall employ any administrative, technical and clerical
14 employees required for the proper administration of the programs
15 provided in this article. The Director shall perform the duties
16 that are required of him or her under the provisions of this
17 article and is the Chief Administrative Officer of the Public
18 Employees Insurance Agency. The Director may employ a deputy
19 director.

20 (b) Except for the Director, his or her personal secretary,
21 the Deputy Director and the Chief Financial Officer, all positions
22 in the agency shall be included in the classified service of the
23 civil service system pursuant to article six, chapter twenty-nine

1 of this code.

2 (c) The Director is responsible for the administration and
3 management of the Public Employees Insurance Agency as provided in
4 this article and in connection with his or her responsibility may
5 make all rules necessary to effectuate the provisions of this
6 article. Nothing in section four or five of this article limits the
7 Director's ability to manage on a day-to-day basis the group
8 insurance plans required or authorized by this article, including,
9 but not limited to, administrative contracting, studies, analyses
10 and audits, eligibility determinations, utilization management
11 provisions and incentives, provider negotiations, provider
12 contracting and payment, designation of covered and noncovered
13 services, offering of additional coverage options or cost
14 containment incentives, pursuit of coordination of benefits and
15 subrogation or any other actions which would serve to implement the
16 plan or plans designed by the Finance Board. The Director is to
17 function as a benefits management professional and should avoid
18 political involvement in managing the affairs of the Public
19 Employees Insurance Agency.

20 (d) The Director should make every effort to evaluate and
21 administer programs to improve quality, improve health status of
22 members, develop innovative payment methodologies, manage health
23 care delivery costs, evaluate effective benefit designs, evaluate

1 cost sharing and benefit based programs, and adopt effective
2 industry programs that can manage the long-term effectiveness and
3 costs for the programs at the Public Employees Insurance Agency to
4 include, but not be limited to:

5 (1) Increasing generic fill rates;

6 (2) Managing specialty pharmacy costs;

7 (3) Implementing and evaluating medical home models and health
8 care delivery;

9 (4) Coordinating with providers, private insurance carriers
10 and to the extent possible Medicare to encourage the establishment
11 of cost effective accountable care organizations;

12 (5) Exploring and developing advanced payment methodologies
13 for care delivery such as case rates, capitation and other
14 potential risk-sharing models and partial risk-sharing models for
15 accountable care organizations and/or medical homes;

16 (6) Adopting measures identified by the Centers for Medicare
17 and Medicaid Services to reduce cost and enhance quality;

18 (7) Evaluating the expenditures to reduce excessive use of
19 emergency room visits, imaging services and other drivers of the
20 agency's medical rate of inflation;

21 (8) Recommending cutting-edge benefit designs to the Finance
22 Board to drive behavior and control costs for the plans;

23 (9) Implementing programs to encourage the use of the most

1 efficient and high-quality providers by employees and retired
2 employees;

3 (10) Identifying employees and retired employees who have
4 multiple chronic illnesses and initiating programs to coordinate
5 the care of these patients;

6 (11) Initiating steps by the agency to limit or eliminate the
7 payment by the agency for treating hospital acquired infections and
8 related events; and

9 (12) Initiating steps by the agency to limit or eliminate the
10 number of employees and retired employees who are re-admitted to a
11 hospital for the same diagnosis related group illness within thirty
12 days of being discharged by a hospital in this state or another
13 state.

14 (e) The Director shall issue an annual progress report to the
15 Joint Committee on Government and Finance on the implementation of
16 any reforms initiated pursuant to this section and other
17 initiatives developed by the agency.

18 **§5-16-5a. Retiree premium subsidy from Retiree Health Benefit**
19 **Trust for hires prior to July 1, 2010.**

20 The Finance Board may include in its financial plans a subsidy
21 from the Retiree Health Benefit Trust Fund created by article
22 sixteen-d of this chapter for the cost of coverage under the major
23 health care benefits plans, only for retired employees who were

1 hired before July 1, 2010.

2 **§5-16-5b. Creation of trust for retirees hired on or after July 1,**
3 **2010.**

4 There is hereby created a special revenue account in the state
5 treasury, designated the Post-July 1, 2010, Employee Trust Fund,
6 which shall be an interest-bearing account and may be invested in
7 accordance with the provisions of article six, chapter twelve of
8 this code, with the interest income a proper credit to the fund.
9 The fund shall consist of moneys appropriated by the Legislature
10 and moneys transferred pursuant to section ninety-six, article
11 twenty-one, chapter eleven of this code. Expenditures from the
12 fund shall be for the purposes set forth by the Legislature in
13 furtherance of an incentive contingent on future legislative
14 directives for retirees who were hired on or after July 1, 2010, to
15 be received upon their retirement. Such incentive may be
16 determined by the Legislature in accordance with section seven,
17 article sixteen-d of this chapter.

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

19 **§5-16D-7. Select Committee on Other Post-Employment Benefits.**

20 (a) Pursuant to the authority contained in section one,
21 article one, chapter four of this code, the presiding officers of
22 each house of the Legislature may appoint a joint committee to be
23 known at the Select Committee on Other Post-Employment Benefits to

1 study other post-employment benefits, including the effects of the
2 amendments to this code relating to other post-employment benefits
3 made during the 2012 regular session of the Legislature.

4 (b) The Select Committee on Other Post-Employment Benefits in
5 consultation with the Director of the Public Employees Insurance
6 Agency and the Finance Board of the Public Employees Insurance
7 Agency is also authorized to study and propose to the Joint
8 Committee on Government and Finance an incentive for those retirees
9 who were hired on or after July 1, 2010. The committee shall
10 consider the funding available in the Post-July 1, 2010, Employee
11 Trust Fund created pursuant to section five-b, article sixteen of
12 this chapter.

13 **CHAPTER 11. TAXATION.**

14 **ARTICLE 21. PERSONAL INCOME TAX.**

15 **§11-21-96. Dedication of personal income tax proceeds.**

16 (a) There is hereby dedicated an annual amount of \$45 million
17 from annual collections of the tax imposed by this article for
18 payment of the unfunded liability of the current Workers'
19 Compensation Fund. No portion of this amount may be pledged for
20 payment of debt service on revenue bonds issued pursuant to article
21 two-d, chapter twenty-three of this code.

22 (b) Notwithstanding any other provision of this code to the
23 contrary, beginning in January of 2006, \$45 million from

1 collections of the tax imposed by this article shall be deposited
2 each calendar year to the credit of the old fund created in article
3 two-c, chapter twenty-three of this code, in accordance with the
4 following schedule. Each calendar month, except for July, August
5 and September each year, \$5 million shall be transferred, on or
6 before the twenty-eighth day of the month, to the Workers'
7 Compensation Debt Reduction Fund created in article two-d, chapter
8 twenty-three of this code.

9 (c) ~~Expiration.~~— The transfers required by subsection (b) of
10 this section shall continue to be made until the Governor certifies
11 to the Legislature that an independent ~~actuary~~ actuarial study
12 determined that the unfunded liability of the old fund, as defined
13 in chapter twenty-three of this code, has been paid or provided for
14 in its entirety. ~~No transfer pursuant to this section shall be made~~
15 thereafter. Thereafter, an annual amount of \$35 million from
16 annual collections of the tax imposed by this article and which
17 were previously dedicated by this section for payment of the
18 unfunded liability of the Workers Compensation Fund shall be
19 dedicated for payment of the unfunded liability of the West
20 Virginia Retiree Health Benefit Trust Fund and to provide funding
21 for the Post-July 1, 2010, Employee Trust Fund created by section
22 five-b, article sixteen, chapter five of this code. The \$35

1 million transferred pursuant to this subsection shall be
2 transferred in accordance with the following:

3 (1) The annual amount of \$30 million shall be transferred into
4 the West Virginia Retiree Health Benefit Trust Fund, by
5 transferring \$5 million each month for the following months of each
6 year: October, November, December, January, February and March,
7 until the Governor certifies to the Legislature that an independent
8 actuarial study has determined that the unfunded liability of West
9 Virginia Retiree Health Benefit Trust Fund, as created in section
10 two, article sixteen-d, chapter five of this code, has been
11 provided for in its entirety or July 1, 2037, whichever date is
12 later. No transfer into the West Virginia Retiree Health Benefit
13 Trust Fund pursuant to this subdivision shall be made thereafter;
14 and

15 (2) An annual amount of \$5 million shall be transferred into
16 the Post-July 1, 2010, Employee Trust Fund created by section five-
17 b, article sixteen, chapter five of this code in April of each
18 year.

19 **CHAPTER 18. EDUCATION**

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

21 **§18-9A-24. Foundation allowance for Public Employees Insurance**
22 **Fund.**

1 (a) ~~Beginning the first day of July, one thousand nine hundred~~
2 ~~ninety-five, and every year thereafter,~~ The allowance to the Public
3 Employees Insurance Agency for school employees shall be made in
4 accordance with the following: The number of individuals employed
5 by county boards ~~of education~~ as professional educators pursuant to
6 section four ~~or five-a~~ of this article, ~~whichever is less,~~ plus the
7 number of individuals employed by county boards ~~of education~~ as
8 service personnel pursuant to section five ~~or five-a~~ of this
9 article, ~~whichever is less,~~ plus the number of individuals employed
10 by county boards as professional student support personnel pursuant
11 to section eight of this article, multiplied by the average premium
12 rate for all county board of education employees established by the
13 Public Employees Insurance Agency Finance Board. The average
14 premium rate for all county board of education employees shall be
15 incorporated into each financial plan developed by the Finance
16 Board in accordance with section five, article sixteen, chapter
17 five of this code. ~~Such~~ The premiums shall include any
18 proportionate share of retirees subsidy established by the Finance
19 Board and the difference, if any, between the previous year's
20 actual premium costs and the previous year's appropriation, if the
21 actual cost was greater than the appropriation. The amount of the
22 allowance provided in this subsection shall be paid directly to the
23 West Virginia Public Employees Insurance Agency. Each county board

1 shall reflect its share of the payment as revenue on its financial
2 statements to offset its expense for the employer annual required
3 contribution, as defined in article sixteen-d, chapter five of this
4 code.

5 (b) Notwithstanding any other provision of section six,
6 article sixteen-d, chapter five of this code to the contrary, any
7 amount of employer annual required contribution allocated and
8 billed to county boards on or after July 1, 2012, and any amount of
9 the employer annual required contribution allocated and billed to
10 the county boards prior to that date for employees who are employed
11 as professional employees within the limits authorized by section
12 four of this article, employees who are employed as service
13 personnel within the limits authorized by section five of this
14 article, and employees who are employed as professional student
15 support personnel within the limits authorized by section eight of
16 this article, shall be charged to the state: *Provided, That*
17 nothing in this subsection requires any specific level of funding
18 by the Legislature in any particular year: *Provided, however, That*
19 charging specified amounts to the state pursuant to this section is
20 not to be construed as creating an employer employee relationship
21 between the State of West Virginia and any employee under the
22 employ of a county board or as creating a liability of the state.

1 (c) County boards ~~of education shall be~~ are responsible liable
2 for ~~payments to the Public Employees Insurance Agency the employer~~
3 annual required contribution allocated and billed to the county
4 boards on or after July 1, 2012, and any amount of the employer
5 annual required contribution allocated and billed to the county
6 boards prior to that date for individuals who are employed as
7 professional employees above and beyond those authorized by section
8 four of this article, ~~or five-a, whichever is less,~~ and individuals
9 who are employed as service personnel above and beyond those
10 authorized by section five ~~and five-a whichever is less~~ of this
11 article and individuals who are employed as professional student
12 support personnel above and beyond those authorized by section
13 eight of this article. For each such employee, the county board ~~of~~
14 ~~education~~ shall forward to the Public Employees Insurance Agency an
15 amount equal to the average premium rate established by the finance
16 board in accordance with subsection (a) of this section: *Provided,*
17 That the county board shall pay the actual employer premium costs
18 for any county board employee paid from special revenues, federal
19 or state grants, or sources other than state general revenue or
20 county funds.

21 (d) ~~(c)~~ Prior to July 1, 1995, nothing in this article shall
22 be construed to limit the ability of county boards ~~of education~~ to
23 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 address employee other post-employment benefits.)

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