

ENGROSSED

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

Be it enacted by the Legislature of West Virginia:

That §5-16-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto two new sections, designated §5-16-5a and §5-16-5b; that said code be amended by adding thereto a new section, designated §5-16D-7; that §11-21-96 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.**

**§5-16-3. Composition of Public Employees Insurance Agency;
appointment, qualification, compensation and
duties of Director of Agency; employees; civil
service coverage.**

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

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

23 (c) The Director is responsible for the administration and
24 management of the Public Employees Insurance Agency as
25 provided in this article and in connection with his or her
26 responsibility may make all rules necessary to effectuate the
27 provisions of this article. Nothing in section four or five of
28 this article limits the Director's ability to manage on a day-
29 to-day basis the group insurance plans required or autho-
30 rized by this article, including, but not limited to, adminis-
31 trative contracting, studies, analyses and audits, eligibility
32 determinations, utilization management provisions and
33 incentives, provider negotiations, provider contracting and
34 payment, designation of covered and noncovered services,
35 offering of additional coverage options or cost containment
36 incentives, pursuit of coordination of benefits and
37 subrogation or any other actions which would serve to
38 implement the plan or plans designed by the Finance Board.
39 The Director is to function as a benefits management

40 professional and should avoid political involvement in
41 managing the affairs of the Public Employees Insurance
42 Agency.

43 (d) The Director should make every effort to evaluate and
44 administer programs to improve quality, improve health
45 status of members, develop innovative payment methodolo-
46 gies, manage health care delivery costs, evaluate effective
47 benefit designs, evaluate cost sharing and benefit based
48 programs, and adopt effective industry programs that can
49 manage the long-term effectiveness and costs for the pro-
50 grams at the Public Employees Insurance Agency to include,
51 but not be limited to:

52 (1) Increasing generic fill rates;

53 (2) Managing specialty pharmacy costs;

54 (3) Implementing and evaluating medical home models
55 and health care delivery;

56 (4) Coordinating with providers, private insurance
57 carriers and to the extent possible Medicare to encourage the
58 establishment of cost effective accountable care organiza-
59 tions;

60 (5) Exploring and developing advanced payment method-
61 ologies for care delivery such as case rates, capitation and

62 other potential risk-sharing models and partial risk-sharing
63 models for accountable care organizations and/or medical
64 homes;

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

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

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

74 (9) Implementing programs to encourage the use of the
75 most efficient and high-quality providers by employees and
76 retired employees;

77 (10) Identifying employees and retired employees who
78 have multiple chronic illnesses and initiating programs to
79 coordinate the care of these patients;

80 (11) Initiating steps by the agency to limit or eliminate
81 the payment by the agency for treating hospital acquired
82 infections and related events; and

83 (12) Initiating steps by the agency to limit or eliminate
84 the number of employees and retired employees who are re-

85 admitted to a hospital for the same diagnosis related group
86 illness within thirty days of being discharged by a hospital
87 in this state or another state.

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

§5-16-5a. Retiree premium subsidy from Retiree Health Benefit

Trust for hires prior to July 1, 2010.

1 The Finance Board may include in its financial plans a
2 subsidy from the Retiree Health Benefit Trust Fund created
3 by article sixteen-d of this chapter for the cost of coverage
4 under the major health care benefits plans, only for retired
5 employees who were hired before July 1, 2010.

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

1 There is hereby created a special revenue account in the
2 state treasury, designated the Post-July 1, 2010, Employee
3 Trust Fund, which shall be an interest-bearing account and
4 may be invested in accordance with the provisions of article
5 six, chapter twelve of this code, with the interest income a
6 proper credit to the fund. The fund shall consist of moneys

7 appropriated by the Legislature and moneys transferred
8 pursuant to section ninety-six, article twenty-one, chapter
9 eleven of this code. Expenditures from the fund shall be for
10 the purposes set forth by the Legislature in furtherance of an
11 incentive contingent on future legislative directives for
12 retirees who were hired on or after July 1, 2010, to be
13 received upon their retirement. Such incentive may be
14 determined by the Legislature in accordance with section
15 seven, article sixteen-d of this chapter.

ARTICLE 16D. RETIREMENT HEALTH BENEFIT TRUST FUND

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

1 (a) Pursuant to the authority contained in section one,
2 article one, chapter four of this code, the presiding officers
3 of each house of the Legislature may appoint a joint commit-
4 tee to be known at the Select Committee on Other Post-
5 Employment Benefits to study other post-employment
6 benefits, including the effects of the amendments to this code
7 relating to other post-employment benefits made during the
8 2012 regular session of the Legislature.

9 (b) The Select Committee on Other Post-Employment
10 Benefits in consultation with the Director of the Public
11 Employees Insurance Agency and the Finance Board of the

12 Public Employees Insurance Agency is also authorized to
13 study and propose to the Joint Committee on Government
14 and Finance an incentive for those retirees who were hired
15 on or after July 1, 2010. The committee shall consider the
16 funding available in the Post-July 1, 2010, Employee Trust
17 Fund created pursuant to section five-b, article sixteen of
18 this chapter.

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

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

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

8 (b) Notwithstanding any other provision of this code to
9 the contrary, beginning in January of 2006, \$45 million from
10 collections of the tax imposed by this article shall be depos-
11 ited each calendar year to the credit of the old fund created
12 in article two-c, chapter twenty-three of this code, in

13 accordance with the following schedule. Each calendar
14 month, except for July, August and September each year, \$5
15 million shall be transferred, on or before the twenty-eighth
16 day of the month, to the Workers' Compensation Debt
17 Reduction Fund created in article two-d, chapter twenty-
18 three of this code.

19 (c) ~~Expiration.~~ — The transfers required by subsection
20 (b) of this section shall continue to be made until the Gover-
21 nor certifies to the Legislature that an independent actuary
22 actuarial study determined that the unfunded liability of the
23 old fund, as defined in chapter twenty-three of this code, has
24 been paid or provided for in its entirety. No transfer pursu-
25 ant to this section shall be made thereafter. Thereafter, an
26 annual amount of \$35 million from annual collections of the
27 tax imposed by this article and which were previously
28 dedicated by this section for payment of the unfunded
29 liability of the Workers' Compensation Fund shall be
30 dedicated for payment of the unfunded liability of the West
31 Virginia Retiree Health Benefit Trust Fund and to provide
32 funding for the Post-July 1, 2010, Employee Trust Fund
33 created by section five-b, article sixteen, chapter five of this
34 code. The \$35 million transferred pursuant to this subsection
35 shall be transferred in accordance with the following:

36 (1) The annual amount of \$30 million shall be transferred
37 into the West Virginia Retiree Health Benefit Trust Fund, by
38 transferring \$5 million each month for the following months
39 of each year: October, November, December, January,
40 February and March, until the Governor certifies to the
41 Legislature that an independent actuarial study has deter-
42 mined that the unfunded liability of West Virginia Retiree
43 Health Benefit Trust Fund, as created in section two, article
44 sixteen-d, chapter five of this code, has been provided for in
45 its entirety or July 1, 2037, whichever date is later. No
46 transfer into the West Virginia Retiree Health Benefit Trust
47 Fund pursuant to this subdivision shall be made thereafter;
48 and

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

CHAPTER 18. EDUCATION

ARTICLE 9A. PUBLIC SCHOOL SUPPORT

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

1 ~~(a) Beginning the first day of July, one thousand nine~~
2 ~~hundred ninety-five, and every year thereafter, The allow-~~

3 ance to the Public Employees Insurance Agency for school
4 employees shall be made in accordance with the following:
5 The number of individuals employed by county boards ~~of~~
6 ~~education~~ as professional educators pursuant to section four
7 ~~or five-a~~ of this article, ~~whichever is less~~, plus the number of
8 individuals employed by county boards ~~of education~~ as
9 service personnel pursuant to section five ~~or five-a~~ of this
10 article, ~~whichever is less~~, plus the number of individuals
11 employed by county boards as professional student support
12 personnel pursuant to section eight of this article, multiplied
13 by the average premium rate for all county board of educa-
14 tion employees established by the Public Employees Insur-
15 ance Agency Finance Board. The average premium rate for
16 all county board of education employees shall be incorpo-
17 rated into each financial plan developed by the Finance
18 Board in accordance with section five, article sixteen,
19 chapter five of this code. ~~Such~~ The premiums shall include
20 any proportionate share of retirees subsidy established by
21 the Finance Board and the difference, if any, between the
22 previous year's actual premium costs and the previous year's
23 appropriation, if the actual cost was greater than the
24 appropriation. The amount of the allowance provided in this

25 subsection shall be paid directly to the West Virginia Public
26 Employees Insurance Agency. Each county board shall
27 reflect its share of the payment as revenue on its financial
28 statements to offset its expense for the employer annual
29 required contribution, as defined in article sixteen-d,
30 chapter five of this code.

31 (b) Notwithstanding any other provision of section six,
32 article sixteen-d, chapter five of this code to the contrary,
33 any amount of employer annual required contribution
34 allocated and billed to county boards on or after July 1, 2012,
35 and any amount of the employer annual required contribu-
36 tion allocated and billed to the county boards prior to that
37 date for employees who are employed as professional
38 employees within the limits authorized by section four of this
39 article, employees who are employed as service personnel
40 within the limits authorized by section five of this article,
41 and employees who are employed as professional student
42 support personnel within the limits authorized by section
43 eight of this article, shall be charged to the state: *Provided,*
44 That nothing in this subsection requires any specific level of
45 funding by the Legislature in any particular year: *Provided,*
46 however, That charging specified amounts to the state

47 pursuant to this section is not to be construed as creating an
48 employer employee relationship between the State of West
49 Virginia and any employee under the employ of a county
50 board or as creating a liability of the state.

51 (c) County boards of education shall be are responsible
52 liable for payments to the Public Employees Insurance
53 Agency the employer annual required contribution allocated
54 and billed to the county boards on or after July 1, 2012, and
55 any amount of the employer annual required contribution
56 allocated and billed to the county boards prior to that date
57 for individuals who are employed as professional employees
58 above and beyond those authorized by section four of this
59 article, or five-a, whichever is less, and individuals who are
60 employed as service personnel above and beyond those
61 authorized by section five and five-a whichever is less of this
62 article and individuals who are employed as professional
63 student support personnel above and beyond those autho-
64 rized by section eight of this article. For each such employee,
65 the county board ~~of education~~ shall forward to the Public
66 Employees Insurance Agency an amount equal to the average
67 premium rate established by the finance board in accordance
68 with subsection (a) of this section: *Provided, That the county*

69 board shall pay the actual employer premium costs for any
70 county board employee paid from special revenues, federal
71 or state grants, or sources other than state general revenue
72 or county funds.

73 (d) ~~(e)~~ Prior to July 1, 1995, nothing in this article shall
74 be construed to limit the ability of county boards of educa=
75 tion to use funds appropriated to county boards of education
76 pursuant to this article to pay employer premiums to the
77 Public Employees Insurance Agency for employees whose
78 positions are funded pursuant to this article. Funds appro=
79 priated to county boards of education pursuant to this article
80 shall not be used to pay employer premiums for employees of
81 such boards whose positions are not, or will not be within
82 twenty months, funded by funds appropriated pursuant to
83 this article.