

**ENROLLED**

**Senate Bill No. 469**

(BY SENATORS KESSLER (MR. PRESIDENT) AND HALL,  
BY REQUEST OF THE EXECUTIVE)

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[Passed February 10, 2012; in effect from passage.]

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AN ACT 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 adjust payment by  
81 the agency for the treatment of hospital acquired infections  
82 and related events consistent with the payment policies,  
83 operational guidelines and implementation timetable  
84 established by the Centers of Medicare and Medicaid  
85 Services. The agency shall protect employees and retired  
86 employees from any adjustment in payment for hospital  
87 acquired infections; and

88 (12) Initiating steps by the agency to reduce the number  
89 of employees and retired employees who experience avoid-  
90 able readmissions to a hospital for the same diagnosis related  
91 group illness within thirty days of being discharged by a

92 hospital in this state or another state consistent with the  
 93 payment policies, operational guidelines and implementation  
 94 timetable established by the Centers of Medicare and  
 95 Medicaid Services.

96 (e) The Director shall issue an annual progress report to  
 97 the Joint Committee on Government and Finance on the  
 98 implementation of any reforms initiated pursuant to this  
 99 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 as 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) The transfers required by subsection (b) of this section  
20 shall continue to be made until the Governor certifies to the  
21 Legislature that an independent actuarial study determined  
22 that the unfunded liability of the old fund, as defined in  
23 chapter twenty-three of this code, has been paid or provided  
24 for in its entirety. Thereafter, an annual amount of \$35  
25 million from annual collections of the tax imposed by this  
26 article and which were previously dedicated by this section  
27 for payment of the unfunded liability of the Workers Com-  
28 pensation Fund shall be dedicated for payment of the  
29 unfunded liability of the West Virginia Retiree Health  
30 Benefit Trust Fund and to provide funding for the Post-July  
31 1, 2010, Employee Trust Fund created by section five-b,  
32 article sixteen, chapter five of this code. The \$35 million  
33 transferred pursuant to this subsection shall be transferred  
34 in accordance with the following:

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

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

**CHAPTER 18. EDUCATION****ARTICLE 9A. PUBLIC SCHOOL SUPPORT****§18-9A-24. Foundation allowance for Public Employees Insurance Fund.**

1 (a) The allowance to the Public Employees Insurance  
2 Agency for school employees shall be made in accordance  
3 with the following: The number of individuals employed by  
4 county boards as professional educators pursuant to section  
5 four of this article, plus the number of individuals employed  
6 by county boards as service personnel pursuant to section  
7 five of this article, plus the number of individuals employed  
8 by county boards as professional student support personnel  
9 pursuant to section eight of this article, multiplied by the  
10 average premium rate for all county board of education  
11 employees established by the Public Employees Insurance  
12 Agency Finance Board. The average premium rate for all  
13 county board of education employees shall be incorporated  
14 into each financial plan developed by the Finance Board in  
15 accordance with section five, article sixteen, chapter five of  
16 this code. The premiums shall include any proportionate  
17 share of retirees subsidy established by the Finance Board  
18 and the difference, if any, between the previous year's actual  
19 premium costs and the previous year's appropriation, if the  
20 actual cost was greater than the appropriation. The amount  
21 of the allowance provided in this subsection shall be paid  
22 directly to the West Virginia Public Employees Insurance  
23 Agency. Each county board shall reflect its share of the  
24 payment as revenue on its financial statements to offset its  
25 expense for the employer annual required contribution, as  
26 defined in article sixteen-d, chapter five of this code.

27 (b) Notwithstanding any other provision of section six,  
28 article sixteen-d, chapter five of this code to the contrary,  
29 any amount of employer annual required contribution  
30 allocated and billed to county boards on or after July 1, 2012,  
31 and any amount of the employer annual required contribu-  
32 tion allocated and billed to the county boards prior to that  
33 date for employees who are employed as professional



34 employees within the limits authorized by section four of this  
35 article, employees who are employed as service personnel  
36 within the limits authorized by section five of this article,  
37 and employees who are employed as professional student  
38 support personnel within the limits authorized by section  
39 eight of this article, shall be charged to the state: *Provided*,  
40 That nothing in this subsection requires any specific level of  
41 funding by the Legislature in any particular year: *Provided*,  
42 *however*, That charging specified amounts to the state  
43 pursuant to this section is not to be construed as creating an  
44 employer employee relationship between the State of West  
45 Virginia and any employee under the employ of a county  
46 board or as creating a liability of the state.

47 (c) County boards are liable for the employer annual  
48 required contribution allocated and billed to the county  
49 boards on or after July 1, 2012, and any amount of the  
50 employer annual required contribution allocated and billed  
51 to the county boards prior to that date for individuals who  
52 are employed as professional employees above and beyond  
53 those authorized by section four of this article, individuals  
54 who are employed as service personnel above and beyond  
55 those authorized by section five of this article and individu-  
56 als who are employed as professional student support  
57 personnel above and beyond those authorized by section  
58 eight of this article. For each such employee, the county  
59 board shall forward to the Public Employees Insurance  
60 Agency an amount equal to the average premium rate  
61 established by the finance board in accordance with subsec-  
62 tion (a) of this section: *Provided*, That the county board shall  
63 pay the actual employer premium costs for any county board  
64 employee paid from special revenues, federal or state grants,  
65 or sources other than state general revenue or county funds.

66 (d) Prior to July 1, 1995, nothing in this article shall be  
67 construed to limit the ability of county boards to use funds  
68 appropriated to county boards pursuant to this article to pay  
69 employer premiums to the Public Employees Insurance  
70 Agency for employees whose positions are funded pursuant  
71 to this article. Funds appropriated to county boards pursuant

72 to this article shall not be used to pay employer premiums for  
73 employees of such boards whose positions are not, or will not  
74 be within twenty months, funded by funds appropriated  
75 pursuant to this article.

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

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2012.

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*Governor*