
WEST VIRGINIA CODE CHAPTER 12
ARTICLE 8

WV Legislature

§12-8-1. Short title.

This article shall be known and may be cited as the pension liability redemption act.

WV Legislature

§12-8-2. Declaration of policy; legislative findings; legislative intent.

The Legislature finds and declares that:

(a) The Legislature has established a number of pension systems, including the death, disability and retirement fund of the West Virginia State Police established in article two, chapter fifteen of this code; the Judges' Retirement System established in article nine, chapter fifty-one of this code; and the Teachers Retirement System established in article seven-a, chapter eighteen of this code, each of which is a trust for the benefit of the participating public employees.

(b) This article provides for the redemption of the unfunded actuarial accrued liability of each pension system through the issuance of bonds for the purpose of: (i) Providing for the safety and soundness of the pension systems; and (ii) realizing savings over the remaining term of the amortization schedules of the unfunded actuarial accrued liabilities and thereby achieve budgetary savings.

§12-8-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

- (1) "Bonds" means bonds, notes, refunding notes and bonds, or other obligations of the state issued by the Governor pursuant to this article.
- (2) "Consolidated Public Retirement Board" means the Board created to administer all public retirement plans in this state under article ten-d, chapter five of this code and any board or agency that succeeds to the powers and duties of the Consolidated Public Retirement Board.
- (3) "Costs" include, but are not limited to, amounts necessary to fund any capitalized interest funds and any reserve funds, any costs relating to the issuance and determination of the validity of the bonds, fees for obtaining bond insurance, credit enhancements or liquidity facilities, administrative costs, fees incurred pursuant to subsection (f), section five of this article and costs attributable to the agreements described in section six of this article.
- (4) "Death, Disability and Retirement Fund" means the Death, Disability and Retirement Fund of the West Virginia State Police created by article two, chapter fifteen of this code.
- (5) "Department of Administration" means the Department established pursuant to article one, chapter five-a of this code and any board or agency that succeeds to the powers and duties of the Department of Administration.
- (6) "Executive order" means an executive order issued by the Governor to authorize the issuance of bonds as provided in this article.
- (7) "Investment Management Board" means the Board established under article six, chapter twelve of this code, and any board or agency that succeeds to the powers and duties of the Investment Management Board.
- (8) "Judges' Retirement System" means the Judicial Retirement System created under article nine, chapter fifty-one of this code.
- (9) "Obligation holders" means any holder or owner of any bond, any trustee or other fiduciary for any holder, or any provider of a letter of credit, policy of bond insurance, surety, or other credit enhancement or liquidity facility or swap relating to any bond.
- (10) "Pension Liability Redemption Fund" means the special account in the State Treasury created pursuant to subsection (a), section eight of this article.
- (11) "Pension Liability Redemption Payments" means: (a) The principal of, premium, if any, and interest on any outstanding bonds issued pursuant to this article; and (b) any other amounts required to be paid pursuant to the terms of any outstanding bonds, any indenture authorized pursuant to this article and any other agreement entered into between the Governor and any obligation holder.

- (12) "Pension systems" means the Judges' Retirement System, the Death, Disability and Retirement Fund and the Teachers Retirement System.
- (13) "Refund" or "refunding" means the issuance and sale of bonds the proceeds of which are used or are to be used for the payment, defeasance or redemption of outstanding bonds upon or prior to maturity.
- (14) "Refunding bonds" means bonds issued for the payment, defeasance or redemption of outstanding bonds upon or prior to maturity.
- (15) "Teachers Retirement System" means the retirement system established in article seven-a, chapter eighteen of this code.
- (16) "Normal cost" means the value of benefits accruing for the current valuation year under the actuarial cost method.
- (17) "Actuarial cost method" means a mathematical process in which the cost of benefits projected to be paid after a period of active employment has ended is allocated over the period of active employment during which the benefits are earned.
- (18) "Unfunded actuarial accrued liability" means the aggregate of the unfunded actuarial accrued liabilities of the pension systems, with the unfunded actuarial accrued liability of each pension system being calculated in an actuarial valuation report provided by the Consolidated Public Retirement Board to the Department of Administration pursuant to section four of this article.
- (19) "West Virginia State Police Retirement System" means the retirement system established in article two-a, chapter fifteen of this code.
- (20) "West Virginia Public Employees Retirement System" means the retirement system established in article ten, chapter five of this code.
- (21) "West Virginia State Sponsored Pension Systems" means the pension systems as defined in subdivision twelve of this subsection, the West Virginia Public Employees Retirement System and the West Virginia State Police Retirement System.

§12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.

(a) The Governor may, as provided by this article, issue the bonds authorized in this section at a time or times as provided by a resolution adopted by the Legislature to fund all or a portion of the unfunded actuarial accrued liability, the bonds to be payable from and secured by moneys deposited in the Pension Liability Redemption Fund. Any bonds issued pursuant to this article, other than refunding bonds, shall be issued no later than five years after the date of adoption of the resolution of the Legislature authorizing the issuance of the bonds referred to in this section.

(b) The aggregate principal amount of bonds issued pursuant to the provisions of this article is limited to no more than the lesser of the following: (1) The principal amount necessary, after deduction of costs, underwriter's discount and original issue discount, if any, to fund not in excess of one hundred percent of the unfunded actuarial accrued liability of the Death, Disability and Retirement Fund of the West Virginia State Police established in article two, chapter fifteen of this code, one hundred percent of the unfunded actuarial accrued liability of the Judges' Retirement System established in article nine, chapter fifty-one of this code, and ninety-five percent of the unfunded actuarial accrued liability of the Teachers Retirement System established in article seven-a, chapter eighteen of this code, as certified by the Consolidated Public Retirement Board to the Department of Administration pursuant to subsection (e) of this section; or (2) \$5,500,000,000; but in no event shall the aggregate principal amount of bonds issued exceed the principal amount necessary, after deduction of costs, underwriter's discount and original issue discount, if any, to fund not in excess of the total unfunded actuarial accrued liability, as certified by the Consolidated Public Retirement Board to the Department of Administration pursuant to subsection (e) of this section.

(c) The costs of issuance, excluding fees for ratings, bond insurance, credit enhancements and liquidity facilities, plus underwriter's discount and any other costs associated with the issuance shall not exceed, in the aggregate, the sum of one percent of the aggregate principal amount of bonds issued.

(d) The limitation on the aggregate principal amount of bonds provided in this section shall not preclude the issuance of bonds from time to time or in one or more series.

(e) No later than ten days after receipt of a request from the Department of Administration, the Consolidated Public Retirement Board shall provide the Department of Administration with a certified statement of the amount of each pension system's unfunded actuarial accrued liability calculated in an actuarial valuation report that establishes the amount of the unfunded actuarial accrued liability as of a date specified by the Department of Administration, based upon each pension system's most recent actuarial valuation as completed by the Consolidated Public Retirement Board.

(f) No later than fifteen days after receipt of a request from the Governor, the Department of Administration shall provide the Governor with a certification of the maximum aggregate principal amount of bonds that may be issued at that time pursuant to subsection (b) of this

section.

WV Legislature

§12-8-5. Method of bond issuance; manner of sale of bonds; authority of Department of Administration.

(a) Upon the adoption of a resolution by the Legislature authorizing the issuance of the bonds in the amount and upon the terms specified in the resolution, the bonds shall be authorized by an executive order issued by the Governor. The executive order shall be received by the Secretary of State and filed in the State Register pursuant to section three, article two, chapter twenty-nine-a of this code. The Governor, either in the executive order authorizing the issuance of the bonds or by the execution and delivery by the Governor of a trust indenture or agreement authorized in the executive order, shall stipulate the form of the bonds, whether the bonds are to be issued in one or more series, the date or dates of issue, the time or times of maturity, the rate or rates of interest payable on the bonds, which may be at fixed rates or variable rates and which interest may be current interest or may accrue, the denomination or denominations in which the bonds are issued, the conversion or registration privileges applicable to some or all of the bonds, the sources and medium of payment and place or places of payment, the terms of redemption, any privileges of exchangeability or interchangeability applicable to the bonds, and the entitlement of obligation holders to priorities of payment or security in the amounts deposited in the pension liability redemption fund. Bonds shall be signed by the Governor and attested by the Secretary of State, by either manual or facsimile signatures.

(b) The bonds may be sold at public or private sale at a price or prices determined by the Governor. The Governor may enter into any agreements necessary or desirable to effectuate the purposes of this section, including agreements to sell bonds to any person and to comply with the laws of any jurisdiction relating thereto.

(c) The Governor, in the executive order authorizing the issuance of bonds or by the execution and delivery by the Governor of a trust indenture or agreement authorized in the executive order, may covenant as to the use and disposition of or pledge of funds made available for pension liability redemption payments or any reserve funds established pursuant to the executive order or established pursuant to any indenture authorized by the executive order. All costs may be paid by or upon the order of the Governor from amounts received from the proceeds of the bonds and from amounts received pursuant to section eight of this article.

(d) Bonds may be issued by the Governor upon resolution adopted by the Legislature authorizing the same.

(e) Neither the Governor, the Secretary of State, nor any other person executing or attesting the bonds or any agreement authorized in this article are personally liable with respect to payment of any pension liability redemption payments.

(f) Notwithstanding any other provision of this code, the Department of Administration, in the Department's discretion: (i) Shall select, employ and compensate one or more persons or firms to serve as bond counsel or cobond counsel who shall be responsible for the issuance

of a final approving opinion regarding the legality of the bonds issued pursuant to this article; (ii) may select, employ and compensate one or more persons or firms to serve as underwriter or counderwriter for any issuance of bonds pursuant to this article; and (iii) may select, employ and compensate one or more fiduciaries, financial advisors and experts, other legal counsel, placement agents, appraisers, actuaries and any other advisors, consultants and agents necessary to effectuate the purposes of this article. Notwithstanding the provisions of article three, chapter five of this code, bond counsel may represent the state in court, render advice and provide other legal services as may be requested by the Governor or the Department of Administration regarding any bond issuance pursuant to this article and all other matters relating to the bonds.

§12-8-6. Contracts with obligation holders; provisions of bonds and trust indentures and other agreements.

(a) The Governor may enter into contracts with obligation holders and the Governor shall comply fully with the terms and provisions of any contracts made with obligation holders.

(b) In addition and not in limitation to the other provisions of this section, in connection with any bonds issued pursuant to this article, the Governor may enter into: (i) commitments to purchase or sell bonds and bond purchase or sale agreements; (ii) agreements providing for credit enhancement or liquidity, including revolving credit agreements, agreements establishing lines of credit or letters of credit, insurance contracts, surety bonds and reimbursement agreements; (iii) agreements to manage interest rate exposure and the return on investments, including interest rate exchange agreements, interest rate cap, collar, corridor, ceiling and floor agreements, option, rate spread or similar exposure agreements, float agreements and forward agreements; (iv) stock exchange listing agreements; and (v) any other commitments, contracts or agreements approved by the Governor.

(c) The Governor may covenant as to the bonds to be issued and as to the issuance of the bonds, in escrow or otherwise, provide for the replacement of lost, destroyed or mutilated bonds, covenant against extending the time for the payment of bonds or interest on the bonds and covenant for the redemption of bonds and provide the terms and conditions of the redemption.

(d) Except as otherwise provided in any executive order or in this article, the terms of the executive order and of this article in effect on the date the bonds are issued constitute a contract between the state and obligation holders. Any representation, warranty or covenant made by the Governor in the executive order, any indenture of trust or trust agreement authorized by the executive order, any bond or any other contract entered into pursuant to this article with any obligation holder shall be a representation, warranty or covenant made by the state.

(e) The Governor may vest in the obligation holders, or any portion of them, the right to enforce the payment of the bonds or agreements authorized in this article or any covenants securing or relating to the bonds or the agreements. The Governor may prescribe the procedure, if any, by which the terms of any contract with obligation holders may be supplemented, amended or abrogated, prescribe which supplements or amendments will require the consent of obligation holders and the portion of obligation holders required to effect the consent and prescribe the manner in which the consent may be given.

§12-8-7. Proceeds from the sale of bonds.

(a) The proceeds from the sale of bonds, other than refunding bonds, issued pursuant to this article, after payment of any costs payable at time of issuance of the bonds, shall be paid to the Consolidated Public Retirement Board to fund the amount of the unfunded actuarial accrued liability for the pension systems provided for by the bonds.

(b) Prior to the time of issuance, when requested by the Department of Administration, the Investment Management Board shall prepare and submit to the Governor, the Speaker of the House of Delegates, the President of the Senate and the Department of Administration the short-term and long-term investment strategies that the Investment Management Board intends to follow for investment of the plan assets of the pension systems, as adjusted by the deposit of the proceeds of bonds issued pursuant to this article, which bond proceeds shall be invested pursuant to section six of article ten of the Constitution of West Virginia and otherwise as provided by law.

§12-8-8. Continuation of Pension Liability Redemption Fund; disbursements to pay pension liability redemption payments.

(a) There is hereby continued a special account in the State Treasury to be administered by the State Treasurer, which is designated and known as the "Pension Liability Redemption Fund," into which shall be deposited any and all amounts appropriated by the Legislature or funds from any other source whatsoever which are made available by law for the purpose of making pension liability redemption payments. All funds deposited to the credit of the Pension Liability Redemption Fund shall be held in a separate account and all money belonging to the Fund shall be deposited in the State Treasury to the credit of the Pension Liability Redemption Fund.

(b) On or before the first day of November of each year, the Department of Administration shall certify to the Governor and the State Treasurer and deliver to the Speaker of the House of Delegates and the President of the Senate a certification as to the amount of pension liability redemption payments to be appropriated for the next fiscal year in order to pay in full when due all pension liability redemption payments that will become due during the next fiscal year. The certification shall include the amount and due date of each pension liability redemption payment. All moneys appropriated by the Legislature in accordance with a certification made pursuant to this subsection shall be deposited into the Pension Liability Redemption Fund.

(c) The State Treasurer shall pay to the trustee under the trust indenture or agreement executed by the Governor all pension liability redemption payments as and when due. The payments shall be transferred by electronic funds transfer, unless some other manner of funds transfer is specified by the Governor. No payments shall be required for bonds that are defeased or bonds for which a deposit sufficient to provide for all payments on the bonds has been made.

§12-8-9. Refunding bonds.

Subject to the provisions of the outstanding bonds issued under this article and subject to the provisions of this article, the governor shall have the power to refund any outstanding bonds, whether the obligation refunded represents principal or interest, in whole or in part, at any time.

Refunding bonds shall mature at such time or times, which shall not exceed the longest original term of the bonds as issued, as the governor shall determine by executive order issued by the governor, which executive order shall be received by the secretary of state and filed in the state register pursuant to section three, article two, chapter twenty-nine-a of this code.

§12-8-10. State pledges and covenants.

(a) The State of West Virginia covenants and agrees with the obligation holders, and the indenture shall so state, that the bonds issued pursuant to this article are a direct and general obligation of the State of West Virginia; that the pension liability redemption payments will be included in each budget along with all other amounts for payment and discharge of the principal of and interest on state debt; that the full faith and credit of the state is hereby pledged to secure the payment of the principal of and interest on the bonds; and that annual state taxes shall be collected in an amount sufficient to pay the pension liability redemption payments as they become due and payable from the Pension Liability Redemption Fund.

(b) The state hereby pledges and covenants with the obligation holders, and the indenture shall so state, that the state will not limit or alter the rights, powers or duties vested in any state official, or that state official's successors or assigns, and the obligation holders in a way that will inhibit any state official, or that state official's successors or assigns, from carrying out the state official's rights, powers or duties under this article, nor limit or alter the rights, powers or duties of any state official, or that state official's successors or assigns, in any manner which would jeopardize the interest of any obligation holder, or inhibit or prevent performance or fulfillment by any state official, or that state official's successors or assigns, with respect to the terms of any agreement made with any obligation holder pursuant to section six of this article.

(c) The state hereby pledges and covenants with the obligation holders, and the indenture shall state, that, while any of the bonds are outstanding, any changes in unfunded actuarial accrued liability in any of the West Virginia state sponsored pension systems resulting from the actual experience for that system occurring during any fiscal year due to net differences between the expected and actual experience for that year will be fully amortized over no more than the ten consecutive fiscal years following the date the Consolidated Public Retirement Board certifies the net actuarial gain or loss to the Governor. The certification shall be made on or before the thirty-first day of January of each year. The net actuarial gain or loss for the fiscal year shall be determined from the actuarial valuation authorized by the Consolidated Public Retirement Board for each plan completed at as of the first day of the following fiscal year. Following the receipt of the certification of net actuarial gain or loss, the Governor shall submit the amount of the amortization payment or credit each year for the pension systems as part of the annual budget submission or in an executive message to the Legislature. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the West Virginia Public Employees Retirement System and West Virginia State Police Retirement System.

(d) The state hereby pledges and covenants with the obligation holders, and the indenture shall state, that, while any of the bonds are outstanding, if the unfunded actuarial accrued liability of any of the West Virginia state sponsored pension systems increases or decreases due to changes in actuarial assumptions adopted by the Consolidated Public Retirement

Board for completion of the annual actuarial valuation for any plan, the change shall be fully amortized over no more than the ten consecutive fiscal years following the date the Consolidated Public Retirement Board certifies the net change due to changes in assumptions to the Governor. The certification shall be made on or before the thirty-first day of January of each year. Following the receipt of the certification of change due to changes in actuarial assumptions, the Governor shall submit the amount of the amortization payment each year for the pension systems as part of the annual budget submission or in an executive message to the Legislature. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the Public Employees Retirement System and West Virginia State Police Retirement System.

(e) The state hereby pledges and covenants with the obligation holders, and the indenture shall state, that, while any of the bonds are outstanding (1) the state will not increase any existing benefits or create any new benefits for any retirees or beneficiaries currently receiving monthly benefit payments from any of the West Virginia state sponsored pension systems, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, in an amount that would exceed more than one percent of the accrued actuarial liability of the system as of the last day of the preceding fiscal year as determined in the annual actuarial valuation for each plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature; and (2) if any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under any of the West Virginia state sponsored pension systems, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in any of the West Virginia state sponsored pension systems as calculated in the annual actuarial valuation for each plan during any fiscal year, the additional unfunded actuarial accrued liability of that pension system will be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. Following the receipt of the certification of additional actuarial accrued liability, the Governor shall submit the amount of the amortization payment each year for the pension systems as part of the annual budget submission or in an executive message to the Legislature. The Consolidated Public Retirement Board shall include the six year amortization in the determination of the adequacy of the employer contribution percentage for the West Virginia Public Employees Retirement System and West Virginia State Police Retirement System.

(f) The state hereby pledges and covenants with the obligation holders, and the indenture shall state, that, while any of the bonds are outstanding that the computation of annuities or benefits for active members due to retirement, death or disability as provided for in the pension systems shall not be amended in any manner that increases any existing benefits or provides for new benefits.

(g) The state hereby pledges and covenants with the obligation holders, and the indenture

shall state, that, while any of the bonds are outstanding, the state will not increase any existing benefits or create any new benefits for active members due to retirement, death or disability of the West Virginia Public Employees Retirement System or the West Virginia State Police Retirement System unless the actuarial accrued liability of the plan is at least eighty-five percent funded as of the last day of the prior fiscal year as determined in the actuarial valuation for the plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature. Any additional unfunded actuarial accrued liability due to any improvement in active members benefits shall be fully amortized over not more than ten years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the West Virginia Public Employees Retirement System and West Virginia State Police Retirement System.

§12-8-11. Legal remedies of obligation holders.

Any obligation holder, except to the extent that the rights given by this article may be restricted by the executive order authorizing the issuance of the bonds or by the trust indenture or agreement authorized in such executive order, may by civil action, mandamus or other proceeding, protect and enforce any rights granted under the laws of this state, granted under this article, or granted by the executive order or by the trust indenture or agreement authorized in such executive order, and may enforce and compel the performance of all duties required by this article, by the executive order or by the trust indenture or agreement authorized in such executive order.

§12-8-12. Nature of bonds; legal investments.

(a) The bonds issued under the provisions of this article shall be and have all the qualities of negotiable instruments under the uniform commercial code of this state and shall not be invalid for any irregularity or defect in the proceedings for the issuance thereof and shall be incontestable in the hands of bona fide purchasers or holders thereof for value.

(b) Notwithstanding any other provision of this code, the bonds issued pursuant to this article are securities in which all public officers and bodies of this state, including the investment management board, all municipalities and other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, including domestic for life and domestic not for life insurance companies, all banks, trust companies, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations and investment companies, all administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever who are authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital, in their control or belonging to them.

§12-8-13. Exemption from taxation.

All bonds issued under the provisions of this article and the income therefrom shall be exempt from taxation by the state of West Virginia, or by any county, school district or municipality thereof, except inheritance, estate and transfer taxes.

WV Legislature

§12-8-14. Supersedure.

It is the intent of the Legislature that in the event of any conflict or inconsistency between the provisions of this article and any other law, to the extent of the conflict or inconsistency, the provisions of this article shall be enforced and the provisions of the other law shall be of no effect.

WV Legislature

§12-8-15. Operation of article.

Notwithstanding the effective date of this Act of the Legislature, this article shall not become operational and shall have no force and effect until the day the people ratify an amendment to the Constitution of this state authorizing pension obligation bonds.

WV Legislature

§12-8-16. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portions of this article and, to this end, the provisions of this article are hereby declared to be severable.

WV Legislature