
WEST VIRGINIA CODE CHAPTER 5
ARTICLE 16D

WV Legislature

§5-16D-1. Definitions.

As used in this article, the term:

(a) "Actuarial cost method" means a method for determining the actuarial present value of the obligations and administrative expenses of the fund and for developing an actuarially equivalent allocation of the value to time periods, usually in the form of a normal cost and a total other post-employment benefits liability. Acceptable actuarial methods are the aggregate, attained age, entry age, frozen attained age, frozen entry age, and projected unit credit methods.

(b) "Actuarially sound" means that calculated contributions to the fund are sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing for fund obligations as they accrue in the future and the cost of amortizing the unfunded total other post-employment benefits liability over a period of no more than 30 years.

(c) "Actuarial present value of total projected benefits" means the present value, at the valuation date, of the cost to finance benefits payable in the future, discounted to reflect the expected effects of the time value of money and the probability of payment.

(d) "Actuarial assumptions" means assumptions regarding the occurrence of future events affecting the fund such as mortality, withdrawal, disability, and retirement; changes in compensation and offered post-employment benefits; rates of investment earnings and other asset appreciation or depreciation; procedures used to determine the actuarial value of assets; and other relevant items.

(e) "Actuarial valuation" means the determination, as of a valuation date, of the normal cost, total other post-employment benefits liability, actuarial value of assets, and related actuarial present values for the fund.

(f) "Administrative expenses" means all expenses incurred in the operation of the fund, including all investment expenses.

(g) "Board" means the Public Employees Insurance Agency Finance Board created in §5-16-4 of this code.

(h) "Collective net other post-employment benefits liability" means for any actuarial valuation, the excess of the plan's total other post-employment benefits liability over the actuarial value of the assets of the fund under an actuarial cost method used by the fund for funding purposes.

(i) "Cost-sharing multiple employer plan" means a single plan with pooling (cost-sharing) arrangements for the participating employers. All risk, rewards, and costs, including benefit costs, are shared and not attributed individually to the employers. A single actuarial

valuation covers all plan members and the same contribution rate applies for each employer.

(j) "Covered health care expenses" means all actual health care expenses paid by the health plan on behalf of fund beneficiaries. Actual health care expenses include claims payments to providers and premiums paid to intermediary entities and health care providers by the health plan.

(k) "Employer" means any employer as defined by §5-16-2 of this code which has or will have retired employees in any Public Employees Insurance Agency health plan.

(l) "Fund" means the West Virginia Retiree Health Benefit Trust Fund established under this article.

(m) "Fund beneficiaries" means all persons receiving post-employment health care benefits through the health plan.

(n) "Health plan" means the health insurance plan or plans established under §5-16-1 et seq. of this code.

(o) "Minimum annual employer payment" means the annual amount paid by employers which, when combined with the retirees' contributions on their premiums that year, provide sufficient funds such that the annual finance plan of the finance board will cover all projected retiree covered health care expenses and related administrative costs for that year. The finance board shall develop the minimum annual employer payment as part of its financial plan each year as addressed in §5-16-5 of this code.

(p) "Normal cost" means that portion of the actuarial present value of the fund obligations and expenses which is allocated to a valuation year by the actuarial cost method used for the fund.

(q) "Obligations" means the administrative expenses of the fund and the cost of covered health care expenses incurred on behalf of fund beneficiaries.

(r) "Other post-employment benefits" or "retiree post-employment health care benefits" means those benefits as addressed by governmental accounting standards board statement no. 43 or any subsequent governmental standards board statement that may be applicable to the fund.

(s) "Plan for other post-employment benefits" means the fiscal funding plan for retiree post-employment health care benefits as it relates to governmental accounting standards board statement no. 43 or any subsequent governmental accounting standards board statements that may be applicable to the fund.

(t) "Proportionate share" means the portion of the collective net other post-employment benefits liability that is attributed to, and the responsibility of, a particular employer.

(u) "Retiree" means retired employee as defined by §5-16-2 of this code.

(v) "Retirement system" or "system" means the West Virginia Consolidated Public Retirement Board created and established by §5-10-1 et seq. of this code and includes any retirement systems or funds administered or overseen by the Consolidated Public Retirement Board.

(w) "Total other post-employment benefits liability" means that portion, as determined by a particular actuarial cost method, of the actuarial present value of fund obligations and administrative expenses which is not provided by future normal costs.

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

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

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

The fund shall be available without fiscal year limitations for covered health care expenses and administration costs. All contributions, appropriations, earnings, and reserves for the payment of obligations under this article shall be credited to the fund and are irrevocable.

The amounts remaining in the fund, if any, after covered health care expenses and administration costs have been paid shall be retained in the fund as a special reserve for adverse fluctuation. All assets of the fund shall be used solely for the payment of fund obligations and for no other purpose.

§5-16D-3. Operation of trust fund.

- (a) Responsibility for the rules and policies for the proper operation of the fund is vested in the board.
- (b) The board shall adopt actuarial assumptions as it deems necessary and prudent.
- (c) The board shall determine the contribution rates in an actuarially sound manner and each employer's proportionate share sufficient to maintain the fund in accordance with the state plan for other post-employment benefits.
- (d) The board may promulgate, in accordance with §29A-1-1 et seq. of this code, any rules it finds necessary to properly administer the fund. The board may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.
- (e) The Public Employees Insurance Agency shall furnish reports to the board at each of the board's regularly scheduled meetings. The reports shall contain the most recent information reasonably available to the Public Employees Insurance Agency reflecting the obligations of the fund, earnings on investments, and such other information as the board deems necessary and appropriate.
- (f) The Secretary of the Department of Administration, as chair of the board, shall cause to be employed within the Public Employees Insurance Agency such personnel as may be needed to carry out the provisions of this article. The pro rata share of the costs to the Public Employees Insurance Agency of operating the fund shall be part of the administrative costs of the fund and shall be reimbursed to the Public Employees Insurance Agency.
- (g) The Public Employees Insurance Agency, on the board's behalf, shall be responsible for the day-to-day operation of the fund and may employ or contract for the services of actuaries and other professionals as required to carry out the duties established by this article.
- (h) The board shall contract with the West Virginia Investment Management Board for any necessary services with respect to fund investments.
- (i) The Public Employees Insurance Agency, on the board's behalf, shall maintain all necessary records regarding the fund in accordance with generally accepted accounting principles.
- (j) The Public Employees Insurance Agency, on the board's behalf, shall collect all moneys due to the fund and shall pay current post-employment health care costs and any administrative expenses necessary and appropriate for the operation of the fund from the fund. The fund's assets shall be maintained and accounted for in state funds. The state funds shall be: (1) The Other Post-Employment Benefit Contribution Accumulation Fund; (2) the Other Post-Employment Benefit Investment Fund; and (3) the Other Post-Employment Benefit Expense Fund. These funds will be maintained by the Public Employees Insurance

Agency on the board's behalf.

(k) The Public Employees Insurance Agency, on the board's behalf, shall prepare an annual report of fund activities. The report shall include, but not be limited to, independently audited financial statements in accordance with generally accepted accounting principles. The financial statements must be independently audited in accordance with auditing standards generally accepted in the United States and the standards applicable to financial audits contained in government auditing standards as issued by the Comptroller General of the United States.

(l) Notwithstanding any other provision of law to the contrary, the Public Employees Insurance Agency shall be entitled to request and receive any information that it deems necessary and appropriate from any relevant retirement system in order that the provisions of this article may be carried out.

§5-16D-4. Actuary.

(a) The actuary employed or retained by the Public Employees Insurance Agency shall provide technical advice to the Public Employees Insurance Agency and to the board regarding the operation of the fund.

(b) Using the actuarial assumptions most recently adopted by the board, the actuary shall, on a biannual basis, or as frequently as the board or generally accepted accounting principles deems necessary, set actuarial valuations of normal cost, actuarial liability, actuarial value of assets, and related actuarial present values for the state plan for other post-employment benefits.

§5-16D-5. Operational control of trust fund.

(a) The Public Employees Insurance Agency shall have operational control over the fund. The obligations provided in this article and all related administrative expenses shall be paid from the fund. The Public Employees Insurance Agency may expend moneys from the fund for any purpose authorized by this article.

(b) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the fund shall be held in trust. The Public Employees Insurance Agency, on behalf of the board, shall have full power to invest and reinvest the fund's assets via the West Virginia Investment Management Board, subject to all of the terms, conditions, limitations, and restrictions imposed by article six, chapter twelve of this code. Subject to the terms, conditions, limitations and restrictions, and consistent with this article, the Public Employees Insurance Agency shall have full power to hold, purchase, sell, assign, transfer, and dispose of any securities and investments in which any of the moneys are invested, including the proceeds of any investments and other moneys belonging to the fund.

(c) Except as otherwise provided in this chapter, no member of the board or employee of the Public Employees Insurance Agency shall have any personal interest in the gains or profits from any investment made by the board or use the assets of the fund in any manner, except to make such payments as may be authorized by the board or by the Secretary of the Department of Administration as the chairman of the board in accordance with this article.

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

(a) The board shall annually set the minimum annual employer payment sufficient to maintain the fund in an actuarially sound manner in accordance with generally accepted accounting principles and the annual finance plan.

(b) The board shall annually allocate to the respective employers the employer's proportionate share of the collective net other post-employment liability as determined by the actuarial valuation in accordance with generally accepted accounting principles.

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

(d) The Public Employees Insurance Agency shall bill each employer for the minimum annual employer payment. The Public Employees Insurance Agency shall annually collect the minimum annual employer payment. Any employer's proportionate share of the collective net other post-employment amount not satisfied by the respective employer shall remain the liability of that employer until fully paid or otherwise amortized.

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

(a) Pursuant to the authority contained in section one, article one, chapter four of this code, the presiding officers of each house of the Legislature may appoint a joint committee to be known as the Select Committee on Other Post-Employment Benefits to study other post-employment benefits, including the effects of the amendments to this code relating to other post-employment benefits made during the 2012 regular session of the Legislature.

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