WEST VIRGINIA CODE CHAPTER 5

WV Legislature

§5-1-1. Arrest or deportation of persons during war.

The Governor may cause to be apprehended and imprisoned, or may compel to depart from this state, all suspicious subjects, citizens, agents or emissaries of any foreign state or power at war with the United States.

WV Legislature

§5-1-2. Arrest of persons aiding enemy or insurgents.

He may also cause to be apprehended and imprisoned all who in time of war, insurrection or public danger shall willfully give aid, support or information to the enemy or insurgents, or who, he shall have just cause to believe, are conspiring or combining together to aid or support any hostile action against the United States or this state.

WV Legislature

§5-1-3. Power to send for persons and papers in such cases.

In order to obtain information in such cases, the Governor may send for the person and papers of anyone whom he shall believe to be subject to the last two sections.

WV Legislature

§5-1-4. Warrants of Governor under §§5-1-1 to 5-1-3.

Any warrant or order of the Governor, under the three preceding sections, may be directed to any sheriff or other officer, civil or military, and shall be executed according to the terms thereof by such officer, who shall have all the powers necessary for the purpose either in or out of his county.

WV Legislature

§5-1-5. Discharge from arrest; bond.

Any person so apprehended or imprisoned may, at the discretion of the Governor, be discharged upon giving bond with satisfactory security to leave the state and not return thereto for such period, to be stated in the bond, as the Governor may prescribe; or he may be discharged on such other terms or conditions, or without conditions, as to the Governor shall seem right and proper.

WV Legislature

§5-1-6

Repealed

Acts, 2019 Reg. Sess., Ch. 80.

WV Legislature

§5-1-7

Repealed

Acts, 2019 Reg. Sess., Ch. 80.

WV Legislature

§5-1-8

Repealed

Acts, 2019 Reg. Sess., Ch. 80.

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§5-1-9

Repealed

Acts, 2019 Reg. Sess., Ch. 80.

WV Legislature

§5-1-10

Repealed

Acts, 2019 Reg. Sess., Ch. 80.

WV Legislature

§5-1-11

Repealed

Acts, 2019 Reg. Sess., Ch. 80.

WV Legislature

§5-1-12

Repealed

Acts, 2019 Reg. Sess., Ch. 80.

WV Legislature

§5-1-13. Construction of §§5-1-7 to 5-1-13; severability; how cited.

The provisions of sections seven to thirteen of this article shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact such provisions, and if any provision thereof, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application, and to this end the provisions thereof are declared to be severable.

Sections seven to thirteen of this article may be cited as the "Uniform Criminal Extradition Act."

WV Legislature

§5-1-14. Rewards for arrest of criminals or in case of assault on or assassination of judge; employment of detectives.

The Governor may offer a reward for apprehending and securing any person convicted of an offense or charged therewith who shall have escaped from prison, or for apprehending and securing any person charged with an offense who, there is reason to fear, cannot be arrested in the common course of proceeding. And in case a judge of the Supreme Court of Appeals, of a circuit court, of a criminal court or an intermediate court, or of any court of record in this state, shall be assassinated, or his assassination attempted, or a felonious assault be committed upon him and the assassin or person making such assault shall not at once be apprehended and arrested, the Governor shall forthwith offer such a reward, not exceeding $10,000, as in his discretion will result in the arrest of such criminal. But no such reward shall be paid to any sheriff or other officer who may arrest such person by virtue of any process in his hands to be executed. And the Governor may employ any person to aid in the detection, arrest and prosecution of one accused with the assassination or attempted assassination or felonious assault upon a judge of the Supreme Court of Appeals, of a circuit court, of a criminal court, of an intermediate court, or of any other court of record in this state, and agree to pay, and pay, to such person or persons so employed, such sum or sums, not exceeding $10,000, as in the discretion of the Governor may seem to be reasonable. And the Governor may employ any person to aid in the detection of persons charged with or suspected of crime, such persons so employed in either case to be paid out of the contingent fund at the Governor's disposal.

WV Legislature

§5-1-15. Return of warrants issued by Governor.

Every officer to whom any order or warrant of the Governor is directed shall make return thereof to the Secretary of State, who shall preserve the same in his office.

WV Legislature

§5-1-16. Remission of fines and penalties; commutation of

Sentences; reprieves; paroles; pardons.

The Governor shall have power to remit fines and penalties, in such cases and under such regulations as now are or may be prescribed by law; to commute capital punishment, and, except where the prosecution was carried on by the House of Delegates, to grant reprieves, paroles and pardons, after conviction; but he shall record in the journal of executive proceedings and communicate to the Legislature, at its next session, the particulars of every case of fine or penalty remitted, of punishment commuted, and of reprieve, parole or pardon granted, with his reasons therefor. In any case wherein the Governor has power to grant a pardon, instead of granting the same unconditionally, he may, after sentence, grant it upon such conditions ashe may deem proper, with the assent of the person sentenced; and, for the purpose of carrying into effect such conditional pardon, the Governor may issue his warrant directed to any proper officer, who shall obey and execute it, instead of the sentence originally awarded. In any case in which the Governor shall exercise the power conferred on him by the Constitution to commute capital punishment, he may issue his order to the warden of the penitentiary, requiring him to receive and confine (and the warden shall receive and confine) in the penitentiary, according to such order, the person whose punishment is commuted. To carry into effect any commutation of punishment, the Governor may issue his warrant directed to any proper officer, who shall obey and execute the same.

WV Legislature

§5-1-16a. Expungement of criminal record upon full and unconditional pardon.

(a) Any person who has received a full and unconditional pardon from the Governor, pursuant to the provisions of section eleven, article VII of the Constitution of West Virginia and section sixteen of this article, may petition the circuit court in the county where the conviction was had to have the record of such conviction expunged. The petition shall be served upon the prosecuting attorney of the county where the petition was filed. Any person petitioning the court for an order of expungement shall publish a notice of the time and place that such petition will be made, which notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county where the petition is filed. The circuit court, upon verification of the act of pardon and after a hearing to determine that good cause exists, may enter an order directing that all public record of the petitioner's conviction be expunged. For the purposes of this section, "public record" or "record" does not include the records of the Governor, the Legislature or the Secretary of State that pertain to a grant of pardon. Such records that pertain to a grant of pardon are not subject to an order of expungement. The amendment to this section during the fourth extraordinary session of the Legislature in the year 2009 is not for the purpose of changing existing law, but is intended to clarify the intent of the Legislature as to existing law regarding expungement.

(b) The record expunged pursuant to the provisions of this section may not be considered in an application to any educational institution in this state or an application for any licensure required by any professional organization in this state.

(c) No person shall be eligible for expungement pursuant to this section until one year after having been pardoned.

(d) No person shall be eligible for expungement pursuant to this section until five years after the discharge of his or her sentence upon the conviction for which he or she was pardoned.

(e) No person shall be eligible for expungement of a record of conviction of first degree murder, as defined in section one, article two, chapter sixty-one of this code; treason, as defined in section one, article one of said chapter; kidnapping, as defined in section fourteen-a, article two of said chapter; or any felony defined in article eight-b of said chapter.

WV Legislature

§5-1-17. When Governor may remit fine or penalty.

The Governor may remit in whole or in part any fine or penalty assessed or imposed by a court of record, court-martial, or other authority, only in the following instances:

(a) When judgment has been rendered against any person for a contempt of court, other than for nonperformance of, or disobedience to, some order, decree or judgment; or when any fine or penalty is imposed by the sentence of a court-martial, the Governor may pardon the offense and remit the fine or penalty, either in whole or in part;

(b) When any fine has been imposed, if the same or any part thereof, when collected, would be payable to the state, and has not been so paid, the Governor may, on good cause shown by affidavit, or on the recommendation of the judge or a majority of the jury who tried the case, remit so much as is payable to the state and has not been so paid, or a less amount, either unconditionally, or upon such terms and conditions as may seem to him right and proper.

WV Legislature

§5-1-18. Payments from civil contingent fund.

Out of the sum annually appropriated as a civil contingent fund, there may be paid all expenses incurred in the execution of any law for which there is no special appropriation, and any other sums which the Governor may deem necessary or proper. No payment shall be made out of the civil contingent fund except on the requisition of the Governor directed to the Auditor.

WV Legislature

§5-1-19. Temporary loans.

The Governor may raise, from time to time, by temporary loans, not having over eighteen months to run, nor bearing a greater interest than 2¢ per $100 per day, so much as may be needed to supply the wants of the treasury: Provided, That the Governor may, on or before June 30, 1989, issue notes, revenue bonds, certificates or other evidences of indebtedness of the state as provided in this section to redeem previous liabilities for the ordinary expenses of the state. Such notes, revenue bonds, certificates or other evidences of indebtedness may not exceed in the aggregate the principal sum of $135 million and shall provide for repayment of principal and interest in full no later than June 30, 1992.

The issuance of such notes, revenue bonds, certificates or other evidences of indebtedness shall be authorized by an executive order, and such notes, revenue bonds, certificates or other evidences of indebtedness shall be payable in such medium of payment and at such place or places, within or without the state, and may have such other terms and conditions as the Governor determines. Such notes, revenue bonds, certificates or other evidences of indebtedness shall be signed by the Governor, under the great seal of the state, and attested by the Secretary of State. The Governor and Secretary of State may sign and attest such notes, revenue bonds, certificates or other evidences of indebtedness by facsimile signature. Such notes, revenue bonds, certificates or other evidences of indebtedness may be issued at such interest rate or rates as the Governor deems reasonable and necessary to serve the best interests of the state and to enhance their marketability. Such notes, revenue bonds, certificates or other evidences of indebtedness shall be sold in such manner and on such terms and conditions as the Governor may determine to be in the best interests of the state. Any revenue bonds issued hereunder shall be in registered form.

The Governor may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the executive order authorizing the issuance of such notes, revenue bonds, certificates or other evidences of indebtedness he may enter into valid and legally binding covenants with the holders of such notes, revenue bonds, certificates or other evidences of indebtedness as to the custody, safekeeping and disposition of the moneys within the "Fiscal Responsibility Fund" hereinafter created and as to any other matters or provisions which are deemed necessary or advisable by the Governor to serve the best interests of the state and to enhance the marketability of such notes, revenue bonds, certificates or other evidences of indebtedness. The Governor may contract for the provision of such professional and technical services as he may deem necessary or advisable in connection with the issuance of such notes, revenue bonds, certificates or other evidences of indebtedness, including without limitation accounting, actuarial, consulting, financial and legal services. The fees and expenses of such professionals and any and all other costs associated with the issuance of such notes, revenue bonds, certificates or other evidences of indebtedness shall be payable from the proceeds of such issuance.

Such notes, revenue bonds, certificates or other evidences of indebtedness shall be and constitute negotiable instruments under the Uniform Commercial Code of this state; shall, together with the interest thereon, be exempt from all taxation by the State of West Virginia,

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or by any county, school district, municipality or political subdivision thereof; and such notes, revenue bonds, certificates or other evidences of indebtedness shall not be deemed to be general obligations or debts of the state within the meaning of the Constitution of the State of West Virginia, and the credit or the taxing power of the state shall not be pledged therefor, but such notes, revenue bonds, certificates or other evidences of indebtedness shall be payable only from the revenue pledged therefor as provided in this section.

The proceeds of any indebtedness issued hereunder shall be paid into a special fund hereby created in the State Treasury named "The Fund for Redemption of Previous Liabilities". The Governor may make disbursements from this fund to pay the reasonable fees, expenses and costs associated with the issuance of the indebtedness authorized by this section, and such other disbursements as he deems necessary to redeem previous liabilities for the ordinary expenses of the state.

There is hereby created in the State Treasury a special fund named the "Fiscal Responsibility Fund" into which shall be paid on and after July 1, 1989, the amounts as and when specified in section thirty, article fifteen, chapter eleven of this code. All moneys deposited in said fund are pledged to the repayment of principal and interest on any notes, revenue bonds, certificates or other evidences of indebtedness issued pursuant to this section. A lien on the fund shall exist in favor of the holders of any notes, revenue bonds, certificates or other evidences of indebtedness issued under this section to the extent of such indebtedness. Any moneys not needed for repayment of principal and interest on and costs associated with the notes, revenue bonds, certificates or other evidences of indebtedness authorized by this section may be used to repay principal and interest on moneys previously transferred from the occupational pneumoconiosis fund pursuant to section eight-a, article four-b, chapter twenty-three of this code. Repayment to the occupational pneumoconiosis fund, if any, shall be made into the special account created in the State Treasury by said section eight-a. Any amounts remaining in the "Fiscal Responsibility Fund" after provisions for repayment of indebtedness issued pursuant to this section and not otherwise used for repayment of moneys previously transferred from the occupational pneumoconiosis fund shall be transferred to the General Revenue Fund of this state on or before August 1, 1992.

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§5-1-20. Reports to the Governor; form and contents; transmission to the Legislature; special reports.

(a) The secretaries of the executive department and the officers of all public institutions of the state shall make an annual report to the Governor as soon as possible after the close of each fiscal year, notwithstanding any other provision of law to the contrary.

(b) All state officers, boards, commissions, departments and institutions required by law to make reports to the Governor, the Legislature or any administrative board or state official shall cover fiscal year periods.

(c) Annual reports shall be submitted in typewritten form, any legible form produced by mechanical means, on electronic media, to be filed in the same manner as a printed annual report, or transmitted electronically via the Internet. Any annual report filed in an electronic format shall be considered as having satisfied the filing requirements.

(d) The Governor shall by executive order prescribe the general contents of the reports to be submitted to him or her. The form and format of the reports shall be as prescribed in this code.

(e) The Governor shall transmit, and may do so electronically, copies of the report to the Legislature and provide a copy of all such reports with the Division of Archives and History where the reports shall be kept as permanent records.

(f) All annual reports to the Legislature shall be submitted, and may do so electronically, to the Legislative Librarian.

(g) The Governor may at any time require information in writing, under oath, from any officer, board, department or commission of the executive department or the principal officer or manager of any state institution, upon any subject relating to the condition, management and expense of their respective offices or institutions.

WV Legislature

§5-1-21. Printing and distribution of biennial messages; distribution of legislative journals.

Of the biennial messages submitted to the Legislature by the Governor, and any documents which he may deem essential to accompany the same, he shall cause a sufficient number to be printed, before the beginning of the session, if practicable, to provide the Clerk of the Senate and the Clerk of the House of Delegates with at least four copies for each member of their respective houses of the Legislature, and so as to transmit one copy to the Governor of each of the other states, one to the Secretary of State of the United States, and three to the Librarian of Congress, whereof one shall be for the library and one for each house of Congress; the Governor may require such additional copies to be printed as he may deem necessary, which additional copies shall be distributed as he may direct. The Governor shall also transmit, to the Governor of each of the other states, to the Secretary of State of the United States and the Librarian of Congress, copies of the journal of the Senate and of the House of Delegates, in the number and for the use and disposition as herein provided for copies of the biennial messages.

WV Legislature

§5-1-22. Vacancies in offices filled by appointment of Governor; Senate action; bond requirements; filling vacancies in other appointive offices.

(a) In case of a vacancy, during the recess of the Senate, in any office, which vacancy the Governor is authorized to fill by and with the advice and consent of the Senate, the Governor shall, by appointment within ninety days, fill such vacancy until the next meeting of the Senate, when the Governor shall submit to the Senate a nomination to fill such vacancy and, upon confirmation of such nomination by the Senate, by a vote of a majority of all the members elected to the Senate, taken by yeas and nays, the person so nominated and confirmed shall hold said office during the remainder of the term for which his or her predecessor in office was appointed, and until his or her successor shall be appointed and qualified. No person whose nomination for office has been rejected by the Senate shall again be nominated for the same office during the session in which his or her nomination was so rejected, unless at the request of the Senate, nor shall the person be appointed to the same office during the recess of the Senate. No appointee who resigns from any such office prior to confirmation, or whose name has not been submitted for confirmation while the Senate is in session, shall be eligible, during the recess of the Senate, to hold any office the nomination for which must be confirmed by the Senate.

(b) Any person appointed to temporarily fill a vacancy shall possess the qualifications required by law for that vacant position, and may only remain in the vacated position for a maximum of ninety days.

(c) If an employee of a state agency is temporarily appointed to fill a vacancy, the employee may fill such vacancy without resigning from the position he or she ordinarily holds: Provided, that the employee's compensation shall be the greater of:

(1) The employee's regular salary in his or her usual position; or

(2) The salary for the office the employee temporarily fills.

(d) If a vacancy is temporarily filled by a person not otherwise employed by any agency of the State of West Virginia, then that person shall be compensated at a rate no greater than that of the salary for the office that person temporarily fills.

(e) The bond, if any, required by law to be given by any officer so temporarily appointed by the Governor, shall be in such penalty as is required by law of the incumbent of such office.

(f) Any vacancy in any other office filled by appointment, or in any office hereafter created to be filled by appointment, shall be filled by the same person, court or body authorized to make appointment to such office for the full term thereof.

WV Legislature

§5-1-23. Securing congressional appropriations when Legislature not in session; powers of designated state agency; transfers of appropriation items by Governor.

The Governor is hereby authorized and empowered to take whatever action not contrary to law that he may find proper and necessary to enable the state to receive the benefits of appropriations which may be made by the Congress of the United States while the Legislature is not in session. A department, institution or agency of the state government designated by Congress, in such event and with the approval of the Governor, shall have authority to do all acts not contrary to law which may be necessary for enforcement with the requirements and conditions for the receipt of such federal appropriations. The Governor shall have authority to order transfers within the items of appropriations for such department, institution or agency as may be necessary to effectuate the purpose of this section (and not contrary to law).

WV Legislature

§5-1-24. Appointment of assistant Attorney General to perform duties for Governor; compensation.

The Governor, if he deem such action necessary, may request the Attorney General to appoint an assistant Attorney General, who shall perform, under the supervision and direction of the Attorney General, such duties as may be required of him by the Governor. The Attorney General, in pursuance of such request, may select and appoint an assistant Attorney General, to serve during the will and pleasure of the Attorney General, and the salary of such assistant shall be paid out of any funds made available for that purpose by the Legislature to the office of the Governor.

WV Legislature

§5-1-25. Designation of daylight saving time as official time.

Daylight saving time shall be the statewide official time, commencing at two o'clock antemeridian on the second Sunday of March and terminating at two o'clock antemeridian on the first Sunday of November; this time shall apply to all public schools, institutions of higher learning, agencies, departments and political subdivisions of the state.

WV Legislature

§5-1-26. Fuel emergency; power of the Governor to declare an emergency; duties of the Governor with respect to such emergency; assistance of other state agencies and local law-enforcement agencies; injunctive relief; penalties; jurisdiction.

(a) The Legislature hereby finds and declares that the purposes of this section are to protect and promote the public peace, safety, economy, revenue, health and welfare and interest of the people of this state and, to do so, it is necessary to ensure free and competitive access to gasoline and special fuel for and to the users of gasoline or special fuel in this state during the time of any fuel emergency as declared by the Governor pursuant to the power and authority herein granted.

(b) As used herein or as used in any proclamation, order, rule or regulation issued by the Governor pursuant to this section, unless the context requires a different meaning, the terms or phrases "actual metered gallons," "distributor," "producer," "gallon," "gasoline," "importer," "person," "petroleum carrier," "purchase," "receive," "retail dealer," "sale," "special fuel," "supply tank," "tank wagon" and "user" shall have the same meanings ascribed to those terms or phrases in section two, article fourteen, chapter eleven of this code.

(c) When the public peace, safety, economy, revenue, health, welfare or interest of the people of this state is impaired or imperiled because of a shortage of gasoline or special fuel, and the Governor so finds, the Governor is hereby empowered and authorized and it shall be his duty to issue a proclamation declaring the existence of a fuel emergency in this state or any part thereof. Upon the issuance of such proclamation by the Governor, the Governor is hereby granted plenary power and authority to issue, amend, suspend or revoke orders, rules and regulations to:

(1) Allocate or distribute gasoline or special fuel to the extent permitted by any federal law relating to the allocation or distribution of gasoline or special fuel and rules and regulations promulgated thereunder or to the extent permitted by the appropriate federal agency.

(2) Control, restrict and regulate the sale by distributors, producers, importers and retail dealers of gasoline and special fuel to users by any appropriate means including, but not limited to, the establishment of quotas, rationing, specifications that certain users may purchase gasoline or special fuel only on certain days, and other conditions upon the purchase of gasoline or special fuel to the extent permitted by any federal law relating to the allocation or distribution of gasoline or special fuel and rules and regulations promulgated thereunder or to the extent permitted by the appropriate federal agency.

Any such order, rule or regulation shall have such statewide, regional, county or other area application, as the Governor shall specify therein. Whenever the nature and severity of a fuel emergency varies from area to area in the state, the Governor shall have plenary power and authority, within the limitations of subdivisions (1) and (2) above, to establish different allocation or distribution formulae, controls, restrictions and regulations for different areas of the state at different times.

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(d) Any orders, rules or regulations issued pursuant to this section shall be valid only during the period of any such fuel emergency and may be issued or promulgated without complying with the provisions of chapter twenty-nine-a of this code: Provided, That a copy of every such order, rule or regulation shall be filed in the office of the Secretary of State before the same is effective and the Secretary of State shall, within five days thereafter, forward a certified copy thereof to the clerk of the county court of each county and every such clerk shall forthwith admit such order, rule or regulation to record in the miscellaneous records of the county court kept in the office of each such clerk, but such filing in the office of the Secretary of State shall alone constitute constructive notice to any person affected by such order, rule or regulation: Provided, however, That the county court of each county shall, when the first such order, rule or regulation is admitted to record, forthwith cause to be published a notice to the effect that such order, rule or regulation is, and that all further orders, rules and regulations or record copies thereof shall be, available for inspection in the office of the county clerk of such county. Such notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such county. A copy of any such order, rule or regulation certified by the Secretary of State shall be admissible in any court in this state as proof of the contents thereof.

(e) The Governor is hereby granted plenary power and authority to enforce any order, rule or regulation issued pursuant to this section and, in so doing, may secure the assistance of any state agency, the Attorney General or his designate, the prosecuting attorneys of the several counties and any state or local law-enforcement agencies or officers. Such persons shall assist the Governor in enforcing the provisions of any such order, rule or regulation so issued and promulgated by the Governor when called upon to do so by the Governor. The Governor may petition any circuit court of this state for the issuance of a temporary restraining order or injunction or for any other remedy, as may be appropriate, to compel any person to comply with any such order, rule or regulation, and it shall be the duty of the Attorney General and the prosecuting attorneys of the various counties to assist and cooperate with the Governor in obtaining such relief. No injunction bond shall be required, and in the event of an appeal to the West Virginia Supreme Court of Appeals, the filing of such appeal shall not stay enforcement of the final judgment of the circuit court enforcing any such order, rule or regulation.

(f) Whenever it appears to the Governor that there exists a serious, direct and immediate threat to the health and safety of any persons in this state because of the failure or refusal of a producer or distributor to comply, in a timely manner, with an order, rule or regulation issued pursuant to the provisions of subsection (c) of this section, the Governor shall have the authority to distribute or cause to have distributed from the supplies of gasoline or special fuel owned, retained or possessed by such producer or distributor a sufficient amount of gasoline or special fuel as may be required to alleviate any such emergency. Such producer or distributor shall be compensated by the user, consumer or retail dealer receiving such gasoline or special fuel at the then existing average market value, either retail value or wholesale value, as the case may be: Provided, That there shall be deducted

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from such compensation the amount necessary to pay for the cost of distribution of such gasoline or special fuel: Provided, however, That the Governor shall be required to serve written notice of his intent to exercise the powers granted by this subsection to the parties involved: Provided further, That upon the issuance of such notice, the Governor shall cause to be initiated those legal proceedings relevant to the enforcement of any order, rule or regulation as required by and hereinbefore set out in subsection (e) of this section: And provided further, That such order, rule or regulation issued by the Governor shall not conflict with or be contrary to any federal law relating to the allocation or distribution of gasoline or special fuel and rules and regulations promulgated thereunder or to any power granted the Governor by any federal agency.

(g) Any producer or distributor violating any provision of any such order, rule or regulation of the Governor issued or promulgated pursuant to this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $25,000, or imprisoned in the county jail for not more than one year, or both fined and imprisoned. Any retail dealer violating any provision of any such order, rule or regulation of the Governor issued or promulgated pursuant to this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $25 nor more than $100. Each day or part thereof that any such violation shall take place, or continue to take place, shall be deemed to constitute a distinct and separate offense and shall be punishable accordingly.

(h) When the Governor determines that any such fuel emergency no longer exists, he shall issue a proclamation terminating all orders, rules or regulations issued pursuant to the provisions of this section.

(i) The provisions of this section shall expire on July 1, 1974.

WV Legislature

§5-1-27. Draping of state flag to honor the passing of law-enforcement officers.

When any law-enforcement officer employed by the state or any of its political subdivisions dies while on active duty or after being honorably discharged or honorably retired, upon the request of next of kin, the state shall honor the officer by providing a state flag, at no cost, for draping the coffin at the funeral service of the deceased officer. The superintendent of the West Virginia state police or his or her designee shall upon request provide the flag upon verifying the deceased's service.

WV Legislature

§5-1-28. Prerequisites for bond issuance and refunding.

(a) On and after February 1, 2005, bonds may not be issued or refunded by the State of West Virginia or any of its agencies, boards or commissions without the express written direction of the Governor, if:

(1) The ultimate user of the proceeds of the bonds is the State of West Virginia or any of its agencies, boards, commissions or departments; or

(2) The issuance or refunding of the bonds implicates the state's credit rating.

(b) Prior to any state agency, board or commission participating in any formal presentation to any nationally recognized rating agency, with respect to the proposed issuance or refunding of bonds where the ultimate user of the proceeds of the bonds is the State of West Virginia or any of its agencies, boards, commissions or departments, or the issuance or refunding of the bonds implicates the state's credit rating, the chair or director of the state agency, board or commission shall provide written notice to the Governor, the President of the Senate and the Speaker of the House of Delegates of the date, time and place of the formal presentation at least ten days in advance.

(c) All bond sale requirements established in this code shall apply unless contrary to the provisions of this section.

WV Legislature

§5-1-29. Reciprocity agreements to establish regulations, licensing requirements and taxes for small businesses in contiguous states and the District of Columbia doing business in West Virginia.

(a) The Governor is hereby authorized to enter into and renew reciprocity agreements with the governors and other appropriate state governmental agencies from states that share contiguous borders with this state, and the District of Columbia, to establish regulations, licensing requirements and taxation for small businesses headquartered in this state or contiguous states or the District of Columbia that conduct business in both. In the discretion of the Governor, the Attorney General or secretary of an executive branch department may be delegated and empowered in writing to negotiate and enter into such reciprocity agreements on behalf of the Governor.

(b) Notwithstanding the authority granted in subsection (a) of this section, any reciprocity agreement that impacts or affects taxation, either the receipt or payment thereof, may not be entered into unless and until such agreement is approved by the Legislature by act.

(c) For the purposes of this section, the term “small business” has the same meaning as prescribed under section seven-a, article thirteen-c, chapter eleven of this code.

WV Legislature

§5-1-30. Authority to direct payment of certain debt in emergency.

(a) The Legislature makes the following findings:

(1) Subdivision (12), subsection (d), section fifty-one, article VI of the Constitution of West Virginia authorizes the Legislature to enact laws as are necessary and proper to carry out the purposes of section fifty-one, article VI of the Constitution of West Virginia.

(2) One of the purposes of section fifty-one, article VI of the Constitution of West Virginia is to ensure the solvency and fiscal well-being of the State of West Virginia.

(3) Ensuring payment of the debt service on the notes and bonded indebtedness of the state and its agencies, boards and commissions is necessary and proper to ensure the solvency and fiscal well-being of the State of West Virginia.

(b) If, on June 30 of any year, no budget bill has been enacted and made effective for the next ensuing fiscal year, the Governor shall have plenary power and authority by executive order to direct the scheduled payment of the principal and interest due on bonds or notes of the state or its agencies, boards and commissions.

(c) Upon issuance by the Governor of an executive order pursuant to subsection (b) of this section, the State Auditor and State Treasurer shall take such actions as are necessary to ensure payment of the principal and interest due on the bonds or notes of the state, its agencies, boards and commissions as directed by the Governor.

(d) Any executive order issued pursuant to subsection (b) of this section shall continue in full force and effect until the effective date of the budget bill enacted for the fiscal year beginning July 1

WV Legislature

§5-1A-1. Legislative findings and purposes.

The Legislature finds and declares that section fifty-one, article six of the Constitution, known as the "modern budget amendment," authorizes the Legislature to prescribe by law the form and detail of the itemization and classification of the proposed appropriations of the budget bill submitted to it by the Governor, and that said section further authorizes the Legislature to enact such laws, not inconsistent with said section, as may be necessary and proper to carry out its provisions. The Legislature further finds and declares that said section makes the Legislature solely responsible for enacting all appropriations needed for the operation of state government, and that in carrying out such responsibility, the Legislature requires a continuous and timely flow of accurate information relative to the financial condition of the state, the needs and operations of the various agencies and departments of the state, and the amounts and purposes of all funds, including federal funds, being requested, received or expended by such agencies and departments from sources other than the revenues of the state.

Therefore, it is the purpose of this article to implement the aforementioned provisions of the Constitution, to enable the Legislature to carry out its Constitutional responsibility by prescribing the form and detail of the itemization and classification of the proposed appropriations of the budget bill submitted to the Legislature by the Governor, and in conjunction with certain sections of §5-1A-1 *et seq*. and §11B-2-1 *et seq*. of this code and §12-4-3 of this code, to ensure that the Legislature will be furnished the information needed to discharge such responsibility.

WV Legislature

§5-1A-2. Submission of budget bill; form prescribed by article.

Pursuant to section fifty-one, article six of the Constitution of West Virginia, the Governor shall deliver to the presiding officer of each house the budget and a bill for all the proposed appropriations of the budget. The proposed appropriations in such bill shall be clearly itemized and classified in the form and detail prescribed by this article.

WV Legislature

§5-1A-3. Proposed appropriations for legislative and judicial branches.

(a) The proposed appropriations in such bill for the legislative branch shall be itemized and classified by the Governor in the identical amounts, language, form and detail as certified by the presiding officer of each house and transmitted to the Governor.

(b) The proposed appropriations in such bill for the judicial branch shall be itemized and classified by the Governor in the identical amounts, language, form and detail as certified by the Auditor and transmitted to the Governor.

WV Legislature

§5-1A-4. Uniform itemization; definitions; sub classifications and sub items; separate line items for specific programs or purposes; separate account numbers for single spending units permitted.

(a) With the exception of the spending units or purposes mentioned in section five of this article, the proposed appropriations submitted by the Governor for the spending units of the executive department shall be itemized and classified according to the provisions of this section. The budget bill shall itemize appropriations separately for:

(1) "Personal services" which shall mean salaries, wages, and other compensation paid to full-time, part-time and temporary employees of the spending unit, but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit. Unless otherwise specified in the budget bill, appropriations for personal services shall include salaries of heads of spending units. Where a salary of a head of a spending unit, including a Constitutional officer, is separately stated, all other personal services for the spending unit shall be designated in the bill as "Other Personal Services."

(2) "Current expenses" which shall mean operating costs other than personal services, and shall not include equipment, repairs and alterations, buildings or lands.

(3) "Equipment" which shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.

(4) "Repairs and alterations" which shall mean repairs to structures and improvements to property which do not increase the capital asset.

(5) "Buildings" which shall include construction and alteration of structures and the improvement of lands and shall include shelter, support, storage, protection, or the improvement of a natural condition.

(6) "Lands" which shall mean the purchase of real property or interests in real property.

Nothing in this section shall prohibit the Governor from listing in the budget bill any sub classifications and sub items of proposed expenditure under any or all of the above uniform items: Provided, That a total proposed expenditure for each uniform item shall be stated, and such total shall include the proposed expenditure for each sub classification and sub item, if any, listed under such uniform item.

(b) Notwithstanding the uniform items set forth in subsection (a) of this section, when the Governor deems it necessary or convenient to establish separate line items for specific programs proposed to be undertaken or continued by a spending unit, or for specific purposes which do not fall within such uniform items, such separate line items may be included in the appropriations for the spending unit, and need not be itemized in accordance with the requirements of subsection (a). In such event, there shall be a separate line item for each such specific program or purpose. All other proposed appropriations for a spending

WV Legislature

unit or account shall be included within the uniform items prescribed in subsection (a): Provided, that there may be included in the itemization for any spending unit an item designated "unclassified," in an amount not exceeding one percent of the total amount of the proposed appropriations for such spending unit.

(c) Nothing in this section shall prohibit the Governor from submitting proposed appropriations for a single spending unit under more than one account number, provided that such appropriations are itemized and classified in accordance with the requirements of this article.

WV Legislature

§5-1A-5. Itemization of appropriations for state Division of Highways; state aid to schools.

(a) Proposed appropriations for the state Division of Highways shall be itemized separately for:

(1) "Debt service" which means the payment of principal and interest due on all state bonds issued for the benefit of the state road fund;

(2) "General operations" which includes all expenses of administration of the Division of Highways;

(3) "Federal Aid Construction -- Interstate Program";

(4) "Nonfederal Aid Construction";

(5) "Appalachian Program";

(6) "Other Federal Aid Programs";

(7) "Inventory Purchases";

(8) "Maintenance";

(9) "Claims."

Any specific purposes which do not fall within the items in the subsection may be itemized and designated separately by the Governor.

(b) Proposed appropriations for "State Aid to Schools" shall be itemized separately for each allowance set forth in section three, article nine-a, chapter eighteen of this code, for each allowance mentioned elsewhere in said article and chapter, and for any other purpose mentioned in said article and chapter for which an appropriation must be made from the General Revenue Fund.

WV Legislature

§5-1B-1.

Repealed.

Acts, 2005 Reg. Sess., Ch. 200.

WV Legislature

§5-1B-2.

Repealed.

Acts, 2005 Reg. Sess., Ch. 200.

WV Legislature

§5-1B-3.

Repealed.

Acts, 2005 Reg. Sess., Ch. 200.

WV Legislature

§5-1B-4.

Repealed.

Acts, 2005 Reg. Sess., Ch. 200.

WV Legislature

§5-1B-5.

Repealed.

Acts, 2005 Reg. Sess., Ch. 200.

WV Legislature

§5-1B-6.

Repealed.

Acts, 2005 Reg. Sess., Ch. 200.

WV Legislature

§5-1B-7.

Repealed.

Acts, 2005 Reg. Sess., Ch. 200.

WV Legislature

§5-1B-8.

Repealed.

Acts, 2005 Reg. Sess., Ch. 200.

WV Legislature

§5-1C-1.

Repealed.

Acts, 2003 Reg. Sess., Ch. 197.

WV Legislature

§5-1C-2.

Repealed.

Acts, 2003 Reg. Sess., Ch. 197.

WV Legislature

§5-1C-3.

Repealed.

Acts, 2003 Reg. Sess., Ch. 197.

WV Legislature

§5-1C-4.

Repealed.

Acts, 2003 Reg. Sess., Ch. 197.

WV Legislature

§5-1C-5.

Repealed.

Acts, 2003 Reg. Sess., Ch. 197.

WV Legislature

§5-1D-1. Findings and purposes.

The Legislature finds and declares that fiscal risk analysis and management is essential to finding practical solutions to the everyday problems of government and that the management goals and purposes of government would be furthered by the development of a consistent set of fiscal risk analysis and management principles. Therefore, it is the purpose of this article to create, as an integral part of the office of the Governor, the office of fiscal risk analysis and management, with the authority to advise and make recommendations to all state spending units on fiscal risk analysis and management functions and decisions with potential long term fiscal impact of an amount of at least $1 million: Provided, That the authority shall advise and make recommendations to the Public Employees Insurance Agency, the Consolidated Public Retirement Board, workers' compensation and the board of Risk and Insurance Management on fiscal risk analysis and management functions and decisions with potential long term fiscal impact of any increases of program costs in excess of five percent.

WV Legislature

§5-1D-2. Definitions.

As used in this article:

(a) "Chief risk officer" means the person appointed to the position created in section three of this article and who is vested with authority to assist state spending units in planning and coordinating fiscal risk analysis and management activities that serve the effectiveness and efficiency of the individual state spending units, state executive agencies and further the overall management goals and purposes of government.

(b) "Fiscal risk analysis and management" means issues that arise out of the day-to-day operations of state government that put at fiscal risk the people, property or other assets of the state, the overall operation of state government and its ability to carry and acceptance of fiscal risks on decisions with potential fiscal impact of an amount of at least $1 million: Provided, That the authority shall advise and make recommendations to the Public Employees Insurance Agency, the Consolidated Public Retirement Board, workers' compensation and the board of Risk and Insurance Management on fiscal risk analysis and management functions and decisions with potential long term fiscal impact of any increases of program costs in excess of five percent.

(c) "Fiscal impact" means any anticipated budgetary or other financial impact that may result from the proposed expenditure, decision, or undertaking.

WV Legislature

§5-1D-3. Creation of the office of fiscal risk analysis and management; appointment and qualifications of chief risk officer.

(a) There is hereby created the office of fiscal risk analysis and management within the office of the Governor. The office shall be administered by the chief risk officer who shall be appointed by the Governor with the advice and consent of the Senate and shall serve at the will and pleasure of the Governor. The chief risk officer shall have knowledge in the area of self-insured risk pools, advanced training in the area of fiscal risk management and an understanding of the special demands upon government with respect to budgetary constraints, the protection of public funds, and federal and state standards of accountability.

(b) The chief risk officer may employ the personnel necessary to carry out the work of the office and may approve reimbursement of costs incurred by employees to obtain education and training.

WV Legislature

§5-1D-4. Powers and duties of the office to all state spending units.

With respect to all state spending units, the office of fiscal risk analysis and management:

(1) Shall develop an organized approach to fiscal risk analysis and management;

(2) Shall provide, with the assistance of certain executive branch agencies, technical assistance to the administrators of the various state spending units in the design and implementation of fiscal risk analysis and management procedures and systems;

(3) Shall evaluate, with the assistance of certain executive branch agencies, the economic justification and suitability of acceptable fiscal risk levels, the management thereof, and related services and review and make recommendations on the need for acquisition of fiscal risk analysis, management consulting and actuarial services by the state spending units;

(4) Shall develop a mechanism for identifying those instances in which the sound application of fiscal risk analysis and management principles can assist agencies in reducing their exposure to or frequency of loss;

(5) Shall create new tools to assist agencies of government in fulfilling their duties, convene conferences and develop incentive packages to encourage the use of sound fiscal risk management principles;

(6) Shall engage in any other activities reasonably related to the findings and purposes set forth in section one of this article, as directed by the Governor; and

(7) Shall charge a fee to be assessed by the chief risk officer to the state spending units for evaluations performed and technical assistance provided under the provisions of this article.

WV Legislature

§5-1D-5. Powers and duties of the office to executive agencies.

With respect to executive agencies, the office of fiscal risk analysis and management:

(1) Shall develop a unified and integrated structure of fiscal risk management for all state executive agencies that must be completed by July 1, 2002;

(2) May establish, based on need and opportunity, priorities and time lines for addressing the fiscal risk analysis requirements of the various executive agencies of state government;

(3) Shall exercise such authority inherent to the chief executive of the state as the Governor may, by executive order, delegate, to overrule and supersede decisions made by the administrators of the various executive agencies of government with respect to fiscal risk analysis and management decisions and the acquisition of fiscal risk management services, including, but not limited to, management consulting contracts and contracts for actuarial and related services: Provided, That the provisions of this subdivision do not exempt the various executive agencies from complying with the provision of this code regarding audits and actuarial studies.

(4) Shall consult and work closely with staff of other executive agencies for advice and assistance in the formulation and implementation of administrative and operational plans and policies.

WV Legislature

§5-1D-6. Fees.

All fees collected by the office of fiscal risk analysis and management shall be deposited in a special account in the State Treasury to be known as the "Office of Fiscal Risk Analysis and Management Administration Fund." Expenditures from the fund shall be made by the chief risk officer for the purposes set forth in this article and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and used for other purposes by appropriation of the Legislature.

WV Legislature

§5-1D-7. Notice of request for proposals by state spending units required to make purchases through the state Purchasing Division.

Any state spending unit that is required to submit a request for proposal to the state Purchasing Division prior to purchasing goods or services shall notify the chief risk officer, in writing, of any proposed purchases of goods or services related to fiscal risk analysis and management, including, but not limited to, management consulting, actuarial or other contracts that involve the management or fiscal risk evaluation of the spending unit with potential fiscal impact of an amount of at least $1 million. The notice shall contain a brief description of the goods and services to be purchased. The state spending unit shall provide the notice to the chief risk officer ten days prior to its submission of its request for proposal to the state Purchasing Division.

WV Legislature

§5-1D-8. Notice of request for proposals by state spending units exempted from submitting purchases to the state Purchasing Division.

(a) Any state spending unit that is not required to submit a request for proposal to the state Purchasing Division prior to purchasing goods or services shall notify the chief risk officer, in writing, of any proposed purchase of goods or services related to fiscal risk analysis and management, including, but not limited to, management consulting, actuarial or other contracts that involved the management or fiscal risk evaluation of the spending unit with potential fiscal impact of an amount of at least $1 million. The notice shall contain a detailed description of the goods and services to be purchased. The state spending unit shall provide the notice to the chief risk officer a minimum of ten days prior to the time it requests bids on the provision of the goods or services.

(b) If the chief risk officer evaluates the suitability of the related services under the provisions of subsection (3), section four of this article and determines that the goods or services to be purchased or the price requested for the same are not suitable, he or she shall, within ten days of receiving the notice from the state spending unit, notify the state spending unit, in writing, of any recommendations he or she has regarding the proposed purchase of the goods or services. If the state spending unit receives a written notice from the chief risk officer within the time period required by this section, the state spending unit shall not put the goods or services out for bid less than fifteen days following receipt of the notice from the chief fiscal management officer.

WV Legislature

§5-1D-9. Annual report.

The chief risk officer shall report annually to the legislative Joint Committee on Government and Finance on the activities of his or her office.

WV Legislature

§5-1D-10. Exemptions.

Except for the provisions of section four of this article, the provisions of this article do not apply to the legislative or judicial branches of state government, unless either the legislative or the judicial branch shall request services from the Governor's office of fiscal risk analysis and management.

WV Legislature

§5-1D-11.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5-1E-1. Findings and purposes.

[Repealed.]

WV Legislature

§5-1E-2. Creation of the Office of Healthy Lifestyles.

[Repealed.]

WV Legislature

§5-1E-3. Powers and duties of the Office.

[Repealed.]

WV Legislature

§5-1E-4. Partnership to encourage healthy lifestyles by children and families.

[Repealed.]

WV Legislature

§5-1E-5. Creation of a Healthy Lifestyles Fund.

[Repealed.]

WV Legislature

§5-2-1. General duties.

The Secretary of State shall be the keeper of the seals of the state, keep a journal of executive proceedings, arrange and preserve all records and papers belonging to the executive department, be charged with the clerical duties of that department, and render to the Governor, in the dispatch of the executive business, such service as he may require.

WV Legislature

§5-2-2. Authority to administer oaths.

Where any oath may lawfully be taken within the state, it may be administered by the Secretary of State, unless otherwise provided by law.

WV Legislature

§5-2-3. Retention and preservation of records of the secretary of state; destruction of records.

(a) The Secretary of State shall provide for the storage and retention of those essential records, as defined in section four, article eight, chapter five-a of this code, filed in the office of the Secretary of State for the period specified by law or legislative rule. The Secretary of State shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code identifying the essential records and providing for the minimum retention period.

(b) Where a preservation duplicate, as defined in section three, article eight, chapter five-a of this code, is made of a record filed with the Secretary of State by photography, microphotography, digital imaging or other electronic means which accurately reproduces and preserves the record on microfilm, microfiche, optical disks or other unalterable electronic storage medium which complies with national standards or nationally accepted practice for permanent archival storage, the Secretary of State may provide for the destruction of the original paper copy when the following conditions are met:

(1) The preservation duplicate has been created, reviewed for quality, indexed in a reasonable manner as provided by the Secretary of State and determined to be accessible by means of the index;

(2) An additional archive copy of the preservation duplicate has been created and stored in a fireproof, secure storage location; and

(3) The original paper copy has been preserved for at least three months following the creation of the preservation duplicate.

(c) The original copies of the papers of the Governor, including executive orders, proclamations, appointments, pardons and other documents signed by the Governor, shall be retained permanently, regardless of whether a preservation duplicate has been created.

(d) The Secretary of State shall have authority to determine the retention period for nonessential records.

(e) The Secretary of State may, upon mutual agreement with the director of the division of archives and history, transfer to the division of archives and history those records of the Secretary of State as may be identified as having primarily historic value in order to make those records more available for purposes of research.

(f) Following the expiration of the required retention period, the destruction of confidential original records shall be conducted in a manner designed to protect the secrecy of those records.

(g) Nothing in this section shall be deemed to require the Secretary of State to destroy original records immediately upon the expiration of the retention period.

WV Legislature

§5-2-4. Accessible county records; required information.

(a) The Secretary of State shall maintain a website with certain county information. The website shall be updated annually.

(b) On or before January 31, 2018, the county officer information website shall be updated by the Secretary of State.

(c) The website shall contain the following minimum information regarding county officials:

(1) The official title and name of each county office holder;

(2) The contact information for each county office holder, including telephone number, facsimile number, office location and mailing address;

(3) The electronic mail address of each elected county office holder where available; and

(4) The website of each county commission, where available.

WV Legislature

§5-3-1. Written opinions and advice and other legal services; expenditures by state officers, boards and commissions for legal services prohibited.

The Attorney General shall give written opinions and advice upon questions of law, and shall prosecute and defend suits, actions, and other legal proceedings, and generally render and perform all other legal services, whenever required to do so, in writing, by the Governor, the Secretary of State, the Auditor, the state superintendent of free schools, the treasurer, the commissioner of agriculture, the board of public works, the Tax Commissioner, the state archivist and historian, the commissioner of banking, the Adjutant General, the director of the Division of Environmental Protection, the superintendent of public safety, the state commissioner of public institutions, the commissioner of the Division of Highways, the commissioner of the Bureau of Employment Programs, the Public Service Commission, or any other state officer, board or commission, or the head of any state educational, correctional, penal or eleemosynary institution; and it is unlawful from and after the time this section becomes effective for any of the public officers, commissions, or other persons above mentioned to expend any public funds of the State of West Virginia for the purpose of paying any person, firm, or corporation for the performance of any legal services: Provided, That nothing contained in this section impairs or affects any existing valid contracts of employment for the performance of legal services heretofore made.

It is also the duty of the Attorney General to render to the President of the Senate and/or the Speaker of the House of Delegates a written opinion or advice upon any questions submitted to the Attorney General by them or either of them whenever he or she is requested in writing so to do.

WV Legislature

§5-3-2. Act as counsel for state; duties and powers as to prosecuting attorneys; defense of National Guardsmen.

The Attorney General shall appear as counsel for the state in all causes pending in the Supreme Court of Appeals, or in any federal court, in which the state is interested; he shall appear in any cause in which the state is interested that is pending in any other court in the state, on the written request of the Governor, and when such appearance is entered he shall take charge of and have control of such cause; he shall defend all actions and proceedings against any state officer in his official capacity in any of the courts of this state or any of the federal courts when the state is not interested in such cause against such officer, but should the state be interested against such officer, he shall appear for the state; he shall institute and prosecute all civil actions and proceedings in favor of or for the use of the state which may be necessary in the execution of the official duties of any state officer, board or commission on the written request of such officer, board or commission; he shall, when requested by the prosecuting attorney of a county wherein a state institution of correction is located, provide attorneys for appointment as special prosecuting attorneys to assist the prosecuting attorney of said county in the prosecution of criminal proceedings when, in the opinion of the circuit judge of said county, or a justice of the West Virginia Supreme Court of Appeals, extraordinary circumstances exist at said institution which render the financial resources of the office of the prosecuting attorney inadequate to prosecute said cases; he may consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office, and may require a written report from them of the state and condition of the several causes, in which the state is a party, pending in the courts of their respective counties; he may require the several prosecuting attorneys to perform, within the respective counties in which they are elected, any of the legal duties required to be performed by the Attorney General which are not inconsistent with the duties of the prosecuting attorneys as the legal representatives of their respective counties; when the performance of any such duties by the prosecuting attorney conflicts with his duties as the legal representative of his county, or for any reason any prosecuting attorney is disqualified from performing such duties, the Attorney General may require the prosecuting attorney of any other county to perform such duties in any county other than that in which such prosecuting attorney is elected and for the performance of which duties outside of the county in which he is elected the prosecuting attorney shall be paid his actual traveling and other expenses out of the appropriation for contingent expenses for the department for which such services are rendered; the Attorney General shall keep in proper books, a register of all causes prosecuted or defended by him in behalf of the state or its officers and of the proceedings had in relation thereto, and deliver the same to his successor in office; and he shall preserve in his office all his official opinions and publish the same in his biennial report.

Upon request of any member of the West Virginia National Guard who has been named defendant in any civil action arising out of that guardsman's action while under orders from the Governor relating to National Guard assistance in disasters and civil disorders, the Attorney General shall appear as counsel for and represent such guardsman.

WVLegislature

§5-3-2a. Consent judgments in actions against an agency of government; notice of proposed consent judgment.

(a) It is hereby established as the policy of this state to consent to a proposed judgment in an action against an agency of government or its officers or employees only after or on condition that an opportunity is afforded persons (natural or corporate) who are not named as parties to the action to comment on the proposed judgment prior to its entry by the court.

(1) For the purposes of this section, "agency of government" means:

(A) A department, division, bureau, board, commission or other agency or instrumentality within the executive branch of state government which may sue or be sued; or

(B) A political subdivision of this state or any board, department, commission, district or special district, council or other agency or instrumentality thereof whose liability or potential liability arises from a claim which is covered by property or liability insurance provided by the state Board of Risk and Insurance Management of West Virginia pursuant to the provisions of article twelve, chapter twenty-nine of this code.

(2) For the purposes of this section, "action" means a civil proceeding initiated in a court of general jurisdiction and shall not mean a proceeding initiated in or before, or an appeal taken to, an administrative agency, board or commission and shall not mean an appeal taken to a court from such an administrative proceeding or appeal.

(3) For the purposes of this section, "judgment" means a judgment, order or decree of a court the entry of which would require or otherwise mandate:

(A) An expansion of, increase in, or addition to the services, duties or responsibilities of an agency of government;

(B) An increase in the expenditures of an agency of government above the level of expenditures approved or authorized before the entry of the proposed judgment;

(C) The employment or other hiring of, or the contracting with, personnel or other entities by an agency of government in addition to the personnel or other entities employed or otherwise hired by, or contracted with or by the agency of government; or

(D) Payment of a claim based upon tort or contract by an agency of government as defined in paragraph (B), subdivision (1) of this subsection.

(b) To effectuate this policy, each proposed judgment which is within the scope of paragraph (a) of this section shall be lodged with the court as early as feasible but at least sixty days before the judgment is entered by the court, and true copies of the proposed order shall be served upon the Attorney General of the state, the president of the West Virginia Senate and the speaker of the West Virginia House of Delegates. When an agency of government proposes to consent to a judgment, it shall file with the Secretary of State, for publication in

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the state register, a notice of the proposed order and include therein a request for comment on the proposed order. The notice shall fix a date, time and place for the receipt of written statements and documents bearing on the appropriateness, propriety or adequacy of the proposed consent order. At the time of filing the notice of its action, the agency of government shall also file with the Secretary of State a true copy of the proposed order. If alternative draft proposals are being considered, the full text of the additional draft proposals shall also be filed with the Secretary of State. The agency of government proposing to consent to the entry of judgment shall also file with the Secretary of State an estimate of the cost of implementing the proposed judgment as the cost relates to this state and to persons affected by the proposed judgment.

(c) Prior to entry of the judgment, or some earlier specified date, the Attorney General will receive and consider and file with the court any written comments, views or allegations relating to the proposed judgment.

(d) The Attorney General shall reserve the right (1) to withdraw or withhold his or her consent to the proposed judgment if the comments, views and allegations received concerning the proposed judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate or (2) to support or oppose an attempt by any person to intervene in the action. If action which could be taken by the Attorney General pursuant to the provisions of this subsection may be materially adverse to the interests of an agency of government or an officer or employee thereof whom the Attorney General has previously represented in the same or a substantially related matter, the Attorney General shall not proceed to act without the written consent of the agency of government or the affected officer or employee. In the absence of such consent, the Attorney General shall provide for an independent special assistant Attorney General to be retained to consider the comments, views and allegations received concerning the proposed judgment, and to pursue such action as may be deemed appropriate, in accordance with the provisions of this subsection.

(e) The Attorney General may establish procedures for implementing the policy established by this section. Where it is clear that the public interest in the policy hereby established is not compromised, the Attorney General may permit an exception to this policy in a specific case where extraordinary circumstances require a period shorter than sixty days or a procedure other than stated herein.

(f) Any agency of government which agrees to a consent judgment after June 30, 1995, shall thereafter file an annual report, on or before November 1, setting forth the status of the action, the fiscal impact of the consent judgment upon the resources of the state, and the manner in which any cost to the state is met or will be met by appropriations authorized in the state budget. Such report shall be filed with the president of the West Virginia Senate and the speaker of the West Virginia House of Delegates.

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§5-3-3. Assistants to Attorney General.

(a) The Attorney General may appoint such deputy or assistant attorneys general as may be necessary to properly perform the duties of his or her office. The total compensation of all such deputies or assistants shall be within the limits of the amounts appropriated by the Legislature for personal services. All deputy or assistant attorneys general so appointed shall serve at the will and pleasure of the Attorney General and shall perform such duties as the Attorney General may require of them.

(b) The Attorney General may appoint such special assistant attorneys general as may be necessary to properly perform the duties of his or her office: Provided, That if the appointment relates to a contingency fee legal arrangement or contract as defined in W. Va. Code §5-3-3a(a)(1), then the appointment must be in accordance with the procedures and compensation set forth in W.Va. Code §5-3-3a. All special assistant attorneys general appointed shall serve at the will and pleasure of the Attorney General and shall perform such duties as the Attorney General may require of them: Provided, That the appointment of a special assistant Attorney General under this section shall not be construed to alter, inhibit or expand the attorney-client relationship set forth in this article between the Attorney General and the state in the control or conduct of a cause of action.

(c) All laws or parts of laws inconsistent with the provisions hereof are hereby amended to be in harmony with the provisions of this section.

WV Legislature

§5-3-3a. Competitive bidding required for private attorneys, special assistant attorneys general.

(a) The following terms, wherever used or referred to in this section, have the following meanings:

(1) “Contingency fee legal arrangement or contract” means any legal fee arrangement that provides for a private attorney or special assistant Attorney General to be paid a percentage of any recovery associated with any claims brought by the private attorney or special assistant Attorney General on behalf of the state or to be paid through a court-approved award of attorney’s fees.

(2) "Deputy or assistant Attorney General" means an attorney employed by the state as a staff attorney in the Attorney General's office.

(3) "Private attorney" means any attorney who is neither an assistant Attorney General on the Attorney General's staff nor an employee of another state agency.

(4) “Special assistant Attorney General” means an attorney that has been retained or appointed by the Attorney General to assist in the legal representation of the state.

(5) "State" means the State of West Virginia, including state officers, departments, boards, commissions, divisions, bureaus, councils and units of organization, however designated, of the executive branch of state government and any of its agents.

(b) The state may not enter into any contingency fee legal arrangement or contract with a private attorney unless the Attorney General, or his or her designee, makes a written determination prior to entering into such a contract that the legal representation is both cost-effective and in the best interest of the public. Any written determination shall include specific findings for each of the following factors:

(1) Whether sufficient and appropriate legal and financial resources exist within the Attorney General’s office to handle the matter;

(2) The time and labor required; the novelty, complexity and difficulty of the questions involved; and the skill requisite to perform the attorney services properly;

(3) The geographic area where the attorney services are to be provided, as well as any potential costs associated with providing legal services in that geographic area; and

(4) The amount of experience desired for the particular kind of legal services to be provided and the need for a private attorney’s experience with similar issues or cases.

(c) If the Attorney General, or his or her designee, makes the written determination described in subsection (b) of this section, the Attorney General shall request proposals from private attorneys to represent the state accordingly on the basis of a fee arrangement as set

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forth in subsection (h) of this section, unless the Attorney General, or his or her designee, makes a written determination that one of the following factors applies:

(1) An emergency situation exists that requires time-sensitive legal services that cannot be adequately provided by the Office of Attorney General and for which insufficient time exists to complete the customary competitive bidding process;

(2) An appointment, or the continuation of an appointment, is necessary to avoid disruption in pending legal matters by allowing previously appointed outside counsel to continue providing legal representation; or

(3) The legal services are to be provided on a pro bono basis and, therefore, will not benefit from a competitive bidding process.

(d) Any requests for proposal shall be posted to the website of the Office of the Attorney General. The time period under which the proposal is open should be clearly stated.

(e) When soliciting proposals from private attorneys to represent the state on the basis of a fee arrangement as set forth in subsection (h) of this section, the Attorney General, or his or her designee, shall consider the following factors when determining the most competitive proposal for legal services and make a written determination as to the application of these factors, prior to entering into any contract for outside legal services:

(1) Whether the private attorneys possess the requisite skills and expertise needed to handle the legal matters in question;

(2) Whether the private attorneys possess requisite staffing and support to handle the scope of the litigation or matter;

(3) Whether the private attorneys or any members of the private attorneys' law firm have been subject to discipline by the West Virginia State Bar, or other entities, for unethical conduct;

(4) Whether the private attorneys have been peer rated and, if so, what peer ratings they have received, along with any other recognitions or awards for legal services;

(5) The estimated fees, costs and expenses of the private attorneys to perform the legal services requested;

(6) The willingness of the private attorneys to enter into alternative billing arrangements;

(7) Whether the private attorneys are in compliance with all applicable laws of the State of West Virginia;

(8) Any potential disqualifying conflicts of interest between the private attorneys and the state;

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(9) Any relevant input from the state entity client, if applicable, regarding the needed legal services; and

(10) Any such other relevant factors as may be identified by the Attorney General or his or her designee.

(f) If, after soliciting proposals for legal services, the Attorney General, or his or her designee, determines that the proposals received are insufficient based on an application of the factors set forth in subsection (e) of this section, additional proposals may be solicited pursuant to subsections (b), (c) and (e) of this section.

(g) The state shall not enter into a contingency fee legal arrangement or contract as defined herein for private attorney services unless the following requirements are met throughout the contract period and any extensions thereof:

(1) The Attorney General, or the deputy or assistant Attorney General involved in the case, shall retain management and supervisory authority over the private attorney;

(2) The Attorney General, or the deputy or assistant Attorney General with supervisory authority, is personally involved in overseeing the litigation;

(3) Decisions regarding settlement of the case are reserved exclusively to the discretion of the state or other client entity. An appropriate representative of the Attorney General's office shall attend settlement conferences whenever possible.

(h) The state may not enter into any fee arrangement that provides for the private attorney to receive an aggregate fee in excess of:

(1) Twenty-five percent of the first $10 million recovered; plus

(2) Twenty percent of any portion of the recovery between $10 million and $15 million; plus

(3) Fifteen percent of any portion of the recovery between $15 million and $20 million; plus

(4) Ten percent of any portion of the recovery between $20 million and $25 million; plus

(5) Five percent of any portion of the recovery exceeding $25 million.

In no event shall the aggregate fee for any legal matter exceed $50 million for any matters arising from a single event or occurrence, exclusive of reasonable costs and expenses, and irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery. Any legal fees shall not be based on penalties or fines awarded or any amounts attributable to penalties or fines.

To the extent that any private attorneys are to be paid through a court-approved award of attorney's fees, their appointment to represent the state is contingent upon the acceptance

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of the fee limitations set forth herein. To the extent that any award of attorney fees is subject to judicial discretion, the private attorneys appointed pursuant to this section may not accept an award of attorney fees greater than the fee limitations outlined in this subsection.

(i) The Attorney General shall develop a standard addendum to every contract for private attorney services that shall be used in all cases, describing in detail what is expected of both the contracted private attorney and the Attorney General's office, including, without limitation, the requirements listed in subsection (h) of this section.

(j) Subject to the provisions of subsection (l) of this section, the Attorney General's written determination to enter into any legal arrangement or contract with a private attorney shall be posted on the Attorney General's website for public inspection within ten business days after the selection of a private attorney and shall remain posted on the website for the duration of the contract for legal services, including any extensions or amendments thereto. Any and all written determinations made pursuant to subsection (b) or (c) of this section shall also be posted on the Attorney General's website for public inspection within ten business days after the issuance of the written determination. Any payment of fees as set forth in subsection (h) of this section shall be posted on the Attorney General's website within thirty calendar days after the payment of such fees to the private attorney and shall remain posted on the website for at least three hundred sixty-five calendar days thereafter.

(k) Any private attorney under contract to provide services to the state shall, from the inception of the contract until at least four years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such legal services. In conjunction with the Attorney General's office, the private attorney shall make all such records that are not covered by the attorney-client privilege or otherwise confidential in nature available for inspection and copying upon request in accordance with the West Virginia Freedom of Information Act, sections one through seven, inclusive, article one, chapter twenty-nine-b of this code. In addition, the private attorney shall maintain detailed contemporaneous time records for the attorneys, other professionals and paraprofessionals working on the matter for a period of at least four years and shall promptly provide these records to the Attorney General upon request.

(l) The Attorney General retains the right to temporarily waive the disclosure requirements set forth in subsection (j) of this section upon making a written determination that:

(1) A waiver is necessary to protect attorney-client or privileged information; or

(2) Immediate disclosure of the existence of an arrangement or contract with a private attorney, or any other sensitive information, could compromise the initiation, handling or conclusion of any investigation or case matter handled by the office of Attorney General.

Once any risks to the attorney-client privilege or confidential work product are no longer present, the office of Attorney General shall make any and all suspended disclosures as soon

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as possible and all subsequent disclosures in accordance with the time frame and manner set forth by subsection (j) of this section.

(m) Once a private attorney is appointed pursuant to this section, he or she may thereafter be designated as a special assistant Attorney General, and, upon such appointment, shall provide representation subject to the terms contained in subsection (g) of this section.

(n) If the Attorney General's office chooses to not be involved in a legal matter as a result of a conflict of interest, and thus cannot implement in good faith the provisions of this section as a result of the conflict, then the process set forth herein shall be implemented by the client state entity needing representation, with the assistance of the Department of Administration if necessary.

(o) Nothing in this section expands the authority of any state agency or state agent to enter into contracts nor shall it be deemed to change any existing law that authorizes a state agency or state agent to employ its own counsel or enter into contracts for legal services.

(p) The requirements and procedures established in this section are inapplicable to and shall not impair any contingency fee legal arrangement or contract awarded prior to the effective date of this section.

(q) The appointment of a special assistant Attorney General under this section shall not be construed to alter, inhibit or expand the attorney-client relationship set forth in this article between the Attorney General and the state in the control or conduct of a cause of action.

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§5-3-4. Annual report to Governor, President of the Senate and Speaker of the House.

(a) The Attorney General shall annually, on or before November 1, deliver to the Governor, President of the Senate and Speaker of the House a report detailing:

(1) The state and condition of the several causes, in which the state is a party, pending in courts mentioned in section two of this article.

(2) The use of any fee arrangements as provided in subsection (h), section three-a of this article with private attorneys in the preceding year. At a minimum, the report shall:

(A) Identify all new fee arrangements entered into during the year and all previously executed fee arrangements that remain current during any part of the year and for each contract describe:

(i) The name of the private attorney with whom the state has contracted, including the name of the attorney's law firm;

(ii) The nature and status of the legal matter;

(iii) The name of the parties to the legal matter;

(iv) The amount of the recovery; and

(v) The amount of any legal fees paid.

(B) Include copies of any written determinations made pursuant to section three-a of this article during the year.

(b) The Attorney General's annual report shall be posted on the Attorney General's website within thirty days of submitting the report to the Governor, President of the Senate and Speaker of the House and shall remain posted on the website for at least two years thereafter.

(c) Nothing in this section shall be considered to require the Attorney General to report or disclose any information protected by the attorney-client or other privilege.

WV Legislature

§5-3-5. Fees to be paid into State Treasury.

On the final determination of any cause in any of the courts mentioned in the second section of this article, in which the Attorney General appeared for the state, the clerk thereof shall certify to the Auditor the fee of the Attorney General which was taxed in the bill of costs against the defendant, and when such fee shall be collected it shall be paid into the state Treasury and placed to the credit of the state fund.

WV Legislature

§5-3-6. Attorney General's investigators authority to carry concealed weapon.

(a) The Attorney General may allow, consistent with the provisions of this section, an investigator to carry a concealed firearm while performing his or her official duties.

(b) An investigator employed by the Attorney General may carry a concealed firearm approved by the Attorney General solely for purposes of defense of self or others if the investigator has:

(1) Obtained the written authorization by the Attorney General;

(2) Been determined not to be prohibited from possessing a firearm under state or federal law;

(3) Obtained and maintains a concealed handgun license pursuant to §61-7-1 et seq. of this code; and

(4) Successfully completed a firearms training and certification program equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy. The investigator must thereafter successfully complete an annual firearms qualification counsel equivalent to that required of certified law-enforcement officers as established by legislative rule. The Attorney General may reimburse the investigator for the cost of the training and requalification.

(c) Neither the state, a political subdivision, an agency nor an employee of the state acting in an official capacity, may be held personally liable for an act of an investigator employed by the Attorney General if the act or omission was done in good faith while the investigator was performing official duties or responsibilities under the office of the Attorney General.

WV Legislature

§5-4-1. How constituted; powers and duties.

(a) The Governor, Secretary of State, Auditor, Superintendent of Free Schools, Treasurer, Attorney General, and Commissioner of Agriculture shall be and constitute a corporation under the style of "The Board of Public Works." The board shall have the powers and perform the duties prescribed for it by law.

(b) Board members shall vote in person at regular meetings: Provided, That a board member may send a designee to vote in his or her stead: Provided, however, That a designee may only vote on matters that appear on a properly posted agenda: Provided, further, That no more than three designees may vote at a meeting.

WV Legislature

§5-4-2. Secretary; records.

The Secretary of State shall act as secretary of the board, and shall keep a record of the official acts thereof, and shall discharge such other duties as may be by the board prescribed. The proceedings of each day shall be signed by the officer presiding on that day and shall at all times be open to inspection.

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§5-4-3.

Repealed.

Acts, 1969 Reg. Sess., Ch. 13.

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§5-4-4.

Repealed.

Acts, 1969 Reg. Sess., Ch. 13.

WV Legislature

§5-4-5.

Repealed.

Acts, 1969 Reg. Sess., Ch. 13.

WV Legislature

§5-4-6.

Repealed.

Acts, 1969 Reg. Sess., Ch. 13.

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§5-4-7.

Repealed.

Acts, 1969 Reg. Sess., Ch. 13.

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§5-4-8.

Repealed.

Acts, 1969 Reg. Sess., Ch. 13.

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§5-4-9.

Repealed.

Acts, 1969 Reg. Sess., Ch. 13.

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§5-4-10.

Repealed.

Acts, 1969 Reg. Sess., Ch. 13.

WV Legislature

§5-4-11.

Repealed.

Acts, 1969 Reg. Sess., Ch. 13.

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§5-4-12.

Repealed.

Acts, 1969 Reg. Sess., Ch. 13.

WV Legislature

§5-4-13.

Repealed.

Acts, 1969 Reg. Sess., Ch. 13.

WV Legislature

§5-5-1. Definitions.

For the purposes of this article:

(a) "Eligible employee" means:

(1) Any regular full-time employee of the state or any spending unit of the state who is eligible for membership in any state retirement system of the State of West Virginia or other retirement plan authorized by the state: Provided, That the mandatory salary increase required by this article does not apply to any employee of the state whose compensation is fixed by statute or by statutory schedule other than employees described in this section. Clerks, deputy clerks and magistrate assistants of magistrate courts are eligible for the incremental salary increases provided in this article with the increases to be allowable in addition to the maximum salaries and compensation for the employee offices under the magistrate court system statutes of article one, chapter fifty of this code. Members of the board of Parole are eligible for the incremental salary increases provided in this article with the increases to be allowable in addition to the salaries and compensation provided in section two-a, article seven, chapter six of this code. This article may not be construed to mandate an increase in the salary of any elected or appointed officer of the state;

(2) Any classified employee as defined in section two, article nine, chapter eighteen-b of this code who is an employee of a state institution of higher education, the Higher Education Policy Commission or the Council for Community and Technical College Education; or

(3) Any full-time faculty member as defined in section one, article eight, chapter eighteen-b of this code who is an employee of a state institution of higher education, the Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education.

(b) "Years of service" means full years of totaled service as an employee of the State of West Virginia. For full-time faculty as defined in this section, each nine or more months of contracted employment during a fiscal year equals one full year of service; and

(c) "Spending unit" means any state office, department, agency, board, commission, institution, bureau or other designated body authorized to hire employees.

WV Legislature

§5-5-2. Granting incremental salary increases based on years of service.

(a) Every eligible employee with three or more years of service shall receive an annual salary increase equal to $60 times the employee's years of service. In each fiscal year and on or before July 31, each eligible employee shall receive an annual increment increase of $60 for that fiscal year.

(b) Every employee becoming newly eligible as a result of meeting the three years of service minimum requirement on July 1, in any fiscal year is entitled to the annual salary increase equal to $60 times the employee's years of service, where he or she has not in a previous fiscal year received the benefit of an increment computation. Thereafter, the employee shall receive a single annual increment increase of $60 for each subsequent fiscal year.

(c) These incremental increases are in addition to any across-the-board, cost-of-living, or percentage salary increases which may be granted in any fiscal year by the Legislature.

(d) This section shall not be construed to prohibit other pay increases based on merit, seniority, promotion, or other reason, if funds are available for the other pay increases: Provided, That the executive head of each spending unit shall first grant the mandated increase in compensation in this section to all eligible employees prior to the consideration of any increases based on merit, seniority, promotion, or other reason.

WV Legislature

§5-5-3. Optional payment to employee in lump sum amount for accrued and unused leave at termination of employment; no withholding of any employee contribution deduction; exception.

Every eligible employee, as defined in section one of this article, at the time his or her active employment ends due to resignation, death, retirement or otherwise, may be paid in a lump sum amount, at his or her option, for accrued and unused annual leave at the employee's usual rate of pay at the time. The lump sum payment shall be made by the time of what would have been the employee's next regular payday had his or her employment continued. In determining the amount of leave entitlement, weekends, holidays or other periods of normal, noncountable time shall be excluded, and no deductions may be made for contributions toward retirement from lump sum payments for unused, accrued leave of any kind or character, since no period of service credit is granted in relation thereto; however, lump sum payment for unused, accrued leave of any kind or character may not be a part of final average salary computation; and where any deduction of employee contribution may have been made previously, a refund of the amount deducted shall be granted the former employee and made by the head of the respective former employer spending unit: Provided, That the superintendent of the West Virginia State Police shall make deductions for retirement contributions of members of the State Police Death, Disability and Retirement Fund created and continued in section twenty-six, article two, chapter fifteen of this code since retirement benefits are based on cumulative earnings rather than period of service.

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§5-5-4. Department of Health and Human Resources salary adjustment.

[Repealed]

WV Legislature

§5-5-4a. Department of Health and Human Resources facility employee classifications.

[Repealed.]

WV Legislature

§5-5-4b. Division of Corrections, Division of Juvenile Services, and Regional Jail Authority pay equity salary adjustment.

(a) The Legislature hereby finds that the Division of Corrections, Division of Juvenile Services and the West Virginia Regional Jail and Correctional Facility Authority have extreme difficulty with recruiting and retaining employees of all types.

(b) The Legislature hereby directs that a pay equity salary adjustment and increase be provided to all employees of the Division of Corrections, Division of Juvenile Services, and the West Virginia Regional Jail and Correctional Facility Authority, regardless of where the employee reports to work. This salary adjustment shall be for a total of $6,000 apportioned over a three-year period as follows:

(1) On July 1, 2018, applicable employees of the Division of Corrections, Division of Juvenile Services, and the West Virginia Regional Jail and Correctional Facility Authority shall be given an increase in annual pay of $2,000;

(2) On July 1, 2019, applicable employees of the Division of Corrections, Division of Juvenile Services, and the West Virginia Regional Jail and Correctional Facility Authority shall be given an increase in annual pay of $2,000; and

(3) On July 1, 2020, applicable employees of the Division of Corrections, Division of Juvenile Services, and the West Virginia Regional Jail and Correctional Facility Authority shall be given an increase in annual pay of $2,000.

(c) Funding for the pay rates for employees of the Division of Corrections and Division of Juvenile Services shall be provided from the general revenue appropriations to the Division of Corrections and Division of Juvenile Services, respectively.

(d) The salary adjustment for employees of the West Virginia Regional Jail Authority shall be funded from the special revenue fund established in §31-20-10 of this code, and shall not require additional general revenue appropriations from the Legislature.

(e) In the event any provision of this section conflicts with any rule, policy, or provision of this code, this section shall control. Due to the limits of funding, the implementation of the pay rates and employment requirements shall not be subject to the provisions of §6C-2-1 et seq. of this code. The provisions of this section are rehabilitative in nature and it is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.

(f) If, following this pay raise, the employee will make more than the maximum allowable by the Division of Personnel for the pay grade, this salary increase shall still take effect, and that employee shall make more than the pay grade maximum.

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§5-5-4c. Unemployment compensation board of review salary adjustment.

(a) The Legislature hereby directs that an across-the-board salary adjustment, in the amount of 15 percent over the salary levels in effect as of the effective date of this section, be provided to employees of the unemployment compensation board of review created pursuant to §21A-4-1 *et seq*. of this code who hold the positions of Chief Administrative Law Judge, Administrative Law Judge 1, or Administrative Law Judge 2.

(b) The purpose of this salary adjustment is to ensure that unemployment compensation hearings before board of review are conducted in a timely manner.

(c) The salary adjustment provided for under this section is separate and apart from, and shall be in addition to, any other salary adjustments approved during the 2026 regular session of the Legislature relative to the fiscal year 2027 budget.

(d) Due to the limits of funding, the implementation of the salary adjustment provided for under this section shall not be subject to the provisions of §6C-2-1 *et seq*. of this code. It is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.

(e) The provisions of this section shall be effective from passage.

WV Legislature

§5-5-5. Pay equity adjustment.

The Legislature hereby directs that a gender-based pay equity salary adjustment be provided to public employees as determined by the Secretary of the Department of Administration, based on recommendations of the equal pay commission, within the limitations provided by this section. This salary adjustment shall be provided from the funding appropriated to the Department of Administration, office of the secretary, for purposes of a "pay equity reserve" in the fiscal year 2002 and may not be construed to require additional appropriations from the Legislature. If any provision of this section conflicts with any rule, policy or provision of this code, the provisions of this section control. Because the provisions of this section are rehabilitative in nature, the results of the pay equity salary adjustments are not subject to the provisions of article two, chapter six-c of this code. Further, it is the specific intent of the Legislature that no private cause of action, either express or implied, is created by or otherwise arises from the enactment, provisions or implementation of this section.

WV Legislature

§5-5-6. Payment for unused sick leave.

(a) The Legislature declares that it is the purpose of this section to create a fund to reduce the unfunded liability that arises from the extended insurance coverage for eligible employees under section thirteen, article sixteen of this chapter, part of the West Virginia Public Employees Insurance Act.

(b) Every eligible employee, as defined in section one of this article, who is entitled upon retirement to credit his or her accrued annual and sick leave for extended insurance coverage as provided in section thirteen, article sixteen of this chapter and who has accumulated at least sixty-five days of unused sick leave may be paid, at his or her option, for unused sick leave in an amount of days as designated by the employee not to exceed the number of sick leave days that would reduce an employee's sick leave balance to less than fifty days: Provided, That any employee who applies for payment under this section may not be paid more than a total of $25,000, either at one time or over the course of multiple payments for unused sick leave.

(c) An employee who applies for payment under this section shall be paid at a rate equal to one quarter of his or her usual rate of daily pay during that calendar year.

(1) The "daily rate of pay" of an employee paid a monthly salary is calculated by multiplying the monthly salary by twelve and dividing that number by the number of workdays for that calendar year: Provided, That for any employee that falls under the provisions of subsection (d), section thirteen, article sixteen of this chapter, the highest monthly salary that the daily rate of pay shall be calculated by is $6,700. Any employee who falls under the provisions of said subsection and is paid more than $6,700 per month shall receive payment for unused sick leave at a rate equal to one quarter of the daily rate of pay of an employee paid a monthly salary of $6,700: Provided, however, That for any employee that falls under the provisions of subsection (e), section thirteen, article sixteen of this chapter, the highest monthly salary that the daily rate of pay shall be calculated by is $4,200. Any employee who falls under the provisions of said subsection and is paid more than $4,200 per month shall receive payment for unused sick leave at a rate equal to one quarter of the daily rate of pay of an employee paid a monthly salary of $4,200: Provided further, That any employee who falls under the provisions of subsection (g), section thirteen, article sixteen of this chapter is not eligible for payment under this section.

(2) As used in this section, "workday" does not include weekends.

(3) Any payment for unused sick leave may not be a part of final average salary computation.

(d) Payment for unused sick leave may be made upon application and after the Secretary of the Department of Administration verifies that the employee is eligible for payment under this section. Payments shall be made out of the fund established in subsection (g) of this section.

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(e) Any eligible employee opting to receive payment in exchange for unused sick leave must contract, in a form to be prescribed by the Department of Administration, agreeing to reimburse the fund for the amount exchanged plus twelve percent per annum if the employee elects to separate from employment within sixty months of the date of the exchange pursuant to subsection (b) of this section. The Department of Administration shall pursue collection of the obligation, either by itself, or by contracting with a collection agency. For purposes of this section, "separation" does not include separation from employment by death or retirement, but does refer to any other manner in which employment may be terminated.

(f) Payments shall be made in the order that eligible employees apply for the payments so long as funds are available. In the event the fund is insufficient to pay all employees who have applied for payment in a fiscal year, employees who do not receive payment are eligible for payment in the next fiscal year, are not required to reapply and shall receive payment in the order in which they first applied, unless the employee chooses to withdraw the application prior to the next fiscal year.

(g) The special revenue account within the state Treasury known as the state Employee Sick Leave Fund is continued. The fund shall consist of moneys appropriated by the Legislature, moneys deposited into the fund in accordance with administrative rules of the Department of Administration and any interest or other return to moneys in the fund. The fund shall be administrated by the Secretary of the Department of Administration.

(h) The secretary shall promulgate rules pursuant to article three, chapter twenty-nine-a of this code to implement the provisions of this section. The rules shall include, but not be limited to, provisions for the application process and a rule authorizing the secretary to obtain reimbursement, where available and appropriate, to the state Employee Sick Leave Fund from any spending unit for a pro rata share of payments made under the provisions of this section to any employee whose salary is paid, in whole or in part, from a funding source other than the General Revenue Fund. The rules may also include provisions to adjust, when necessary, the highest monthly salary by which the daily rate of pay is calculated.

(i) Each spending unit, as defined in section one of this article, shall verify to the secretary whether an employee is eligible for payment under this section, shall verify the funding source or sources of the employee's salary and shall verify the total number of unused sick leave days for all employees at least once per year. The secretary shall maintain sick leave records for all spending units. All sick leave days for which an employee is paid as provided in this section shall be deducted from the employee's sick leave balance by the secretary and the secretary shall verify to each spending unit the amount of days that have been deducted from an employee's sick leave balance. An employee shall not be permitted to reacquire any sick leave days for which he or she received payment under the provisions of this section.

(j) The provisions of this section are retroactive to December 1, 2008, to the extent that the provisions apply to those employees who have previously applied for payment for unused sick leave and have not been paid.

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§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally; frequency of meetings; continuation.

"The state office building commission of West Virginia", hereto created, shall continue in existence, but on and after the February 9, 1966, shall be known and designated as "The state building commission of West Virginia" and shall continue as a body corporate and as an agency of the State of West Virginia. On and after the date aforesaid, the commission shall consist of the Governor, Attorney General, State Treasurer and four additional members to be appointed by the Governor by and with the advice and consent of the Senate. The terms of office for said members to be appointed by the Governor shall be four years, except that the terms of office of the first four members so appointed by the Governor shall be for one, two, three and four years, respectively. No more than three of such members so appointed by the Governor shall be members of the same political party, nor shall any of said members be members or employees of the executive, legislative or judicial branches of government of West Virginia or any political subdivision thereof. The Governor shall be chairman of the commission. The Secretary of State shall be a member of the commission and serve as its secretary, but shall not have the right to vote upon matters before the commission. All members of the commission shall be citizens and residents of this state. The members of the commission shall be paid or reimbursed for their necessary expenses incurred under this article, but shall receive no compensation for their services as members or officers of the commission: Provided, That each member of the commission appointed by the Governor shall, in addition to such reimbursement for necessary expenses, receive an amount not to exceed the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or substantial portion thereof that he is engaged in the work of the commission. Such expenses and per diem shall be paid solely from funds provided under the authority of this article, and the commission shall not proceed to exercise or carry out any authority or power herein given it to bind said commission beyond the extent to which money has been provided under the authority of this article. On or before the fifteenth day of each month, the commission shall prepare and transmit to the President and Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Delegates a report covering the activities of the said commission for the preceding calendar month.

Pursuant to the provisions of article ten, chapter four of this code, the state Building Commission shall continue to exist until July 1, 2000.

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§5-6-2. Legislative findings; purpose of revision of article.

(a) The Legislature hereby finds that, with the concurrence of the Legislature, the commission heretofore authorized pursuant to resolution adopted on March 11, 1968, the issuance of "State Building Revenue Bonds, Series 1968," in the aggregate principal amount of $24,200,000; pursuant to resolution adopted October 14, 1968, the issuance of "State Building Revenue Bonds, Public Safety Series," in the aggregate principal amount of $2,500,000; and pursuant to resolution adopted on April 13, 1970, the issuance of "State Building Revenue Bonds, Science and Cultural Center Series," in the aggregate principal amount of $9 million.

(b) The Legislature hereby further finds that the said "State Building Revenue Bonds, Series 1968" were all sold and are now outstanding in the principal amount of $24,200,000; that the said "State Building Revenue Bonds, Public Safety Series" were all sold and are now outstanding in the principal amount of $2,500,000; and that said "State Building Revenue Bonds, Science and Cultural Center Series," in the principal amount of $1,500,000 were sold and are now outstanding.

(c) The Legislature hereby further finds that the proceeds from the issuance and sale of the aforesaid "State Building Revenue Bonds, Series 1968," the aforesaid "State Building Revenue Bonds, Public Safety Series" and the aforesaid "State Building Revenue Bonds, Science and Cultural Center Series" have been expended or obligated in and for construction of or in connection with projects undertaken pursuant to this article, which projects are owned and held in the name of the state or the commission.

(d) The Legislature hereby further finds that the acquisition and construction of the aforesaid projects have been in the best interests of the state by providing additional essential office space and other related structures which are needed for the use of the state, and the officers, departments, agencies and public corporations of the state, and the fulfillment of other public uses and purposes.

(e) The Legislature further finds and declares that the Supreme Court of Appeals of West Virginia has held that the former provisions of this article were unconstitutional to the extent that the same contemplated that the principal of and the interest on bonds issued by the commission would be paid solely from a fund to be created and maintained from general tax revenues of the state.

(f) The Legislature further finds and declares that the amendments made by this act to this article are intended (1) to modify the provisions of this article so as to cause the same to be in full compliance with the provisions of the Constitution of the State of West Virginia, which said court held were violated by the former provisions of this article, and to be in full compliance with said decision of the Supreme Court of Appeals of West Virginia, and (2) to accord statutory recognition to existing rights, legal and equitable, of the holders of bonds heretofore issued by the commission, afford security for the payment of the obligations evidenced thereby and provide a special fund for the payment of the obligations evidenced

WV Legislature

thereby.

WV Legislature

§5-6-3. Definitions.

The following terms, wherever used or referred to in this article, shall have the following meanings, unless a different meaning clearly appears from the context:

(1) "Commission" means the state building commission of West Virginia or, if said commission shall be abolished, any board or officer succeeding to the principal functions thereof, or to whom the powers given to said commission shall be given by law;

(2) "Bonds" means bonds issued by the commission pursuant to this article;

(3) "Project" means collectively the acquisition of land, the construction, equipping, maintaining and furnishing of a building or buildings, together with incidental approaches, structures and facilities, herein authorized to be constructed;

(4) "Cost of project" includes the cost of construction, the cost of equipping and furnishing same, the cost of all land, property, material and labor which are deemed essential thereto, the cost of improvements, financing charges, interest during construction, and all other expenses, including legal fees, trustees', engineers' and architects' fees which are necessarily or properly incidental to the project;

(5) "General tax revenues of the state" means revenues of the state derived from the exercise of the power of taxation and available for appropriation by the Legislature for general public purposes and shall not include revenues of the state, or of any officer, department or agency thereof, derived from taxes levied, collected and dedicated for a special purpose or purposes or derived from sources other than taxes such as profits, fees or charges; and

(6) "Rent" or "rental" includes all moneys received for the use of any part of a project either from the State of West Virginia or any officer, department or public corporation thereof, or from any instrumentality or political subdivision of the state, or directly or indirectly, from the United States of America or any officer, department, agency, instrumentality or public corporation thereof: Provided, That nothing in this article shall be taken to authorize the payment by or on behalf of the state of any rent in excess of the fair rental value of property used by or for such state officer or department or public corporation in the exercise of his or its statutory duties.

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§5-6-4. Powers of commission.

(a) The commission has the power:

(1) To sue and be sued, plead, and be impleaded;

(2) To have a seal and alter the same at pleasure;

(3) To contract to acquire and to acquire, in the name of the commission or of the state, by purchase, lease, lease-purchase or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those purposes;

(4) To acquire, hold and dispose of personal property for its corporate purposes;

(5) To make bylaws for the management and regulation of its affairs;

(6) With the consent of the Attorney General of the State of West Virginia, to use the facilities of his or her office, assistants and employees in all legal matters relating to or pertaining to the commission;

(7) To appoint officers, agents and employees and fix their compensation;

(8) To make contracts, and to execute all instruments necessary or convenient to effectuate the intent of, and to exercise the powers granted to it by this article;

(9) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the commission that its interests will be best served;

(10) To construct a building or buildings on real property, which it may acquire, or which may be owned by the State of West Virginia, in the city of Charleston, as convenient as may be to the capitol building, together with incidental approaches, structures and facilities, subject to the consent and approval of the city of Charleston in any case as may be necessary; and, in addition, to acquire or construct a warehouse, including office space in the warehouse in Kanawha County for the West Virginia Alcohol Beverage Control Commissioner, and equip and furnish the office space; and to acquire or construct, through lease, purchase, lease-purchase or bond financing, hospitals or other facilities, buildings, or additions or renovations to buildings as may be necessary for the safety and care of patients, inmates and guests at facilities under the jurisdiction of and supervision of the division of health and at institutions under the jurisdiction of the Division of Corrections or the regional jail and correctional facilities authority; and to formulate and program plans for the orderly and timely capital improvement of all of the hospitals and institutions and the state Capitol buildings; and to construct a building or buildings in Kanawha County to be used as a general headquarters by the division of public safety to accommodate that division’s executive staff, clerical offices, technical services, supply facilities and dormitory accommodations; and to develop, improve and expand state parks and recreational facilities

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to be operated by the Division of Natural Resources; and to establish one or more systems or complexes of buildings and projects under control of the commission; and, subject to prior agreements with holders of bonds previously issued, to change the systems, complexes of buildings and projects from time to time, in order to facilitate the issuance and sale of bonds of different series on a parity with each other or having such priorities between series as the commission may determine; and to acquire by purchase, eminent domain or otherwise all real property or interests in the real property necessary or convenient to accomplish the purposes of this subdivision. The rights and powers set forth in this subdivision shall not be construed as in derogation of any rights and powers now vested in the West Virginia Alcohol Beverage Control Commissioner, the Department of Health Facilities, the Division of Corrections, or the Division of Natural Resources;

(11) To maintain, construct, remove, and operate a project authorized under this article;

(12) To charge rentals for the use of all or any part of a project or buildings at any time financed, constructed, acquired or improved, in whole or in part, with the proceeds of sale of bonds issued pursuant to this article, subject to and in accordance with such agreements with bondholders as may be made as provided in this article: *Provided*, That on and after the effective date of the amendments to this section, to charge rentals for the use of all or any part of a project or buildings at any time financed, constructed, acquired, maintained or improved, in whole or in part, with the proceeds of sale of bonds issued pursuant to this article, subject to and in accordance with such agreements with bondholders as may be made as in this section provided, or with any funds available to the state building commission, including, but not limited to, all buildings and property owned by the State of West Virginia or by the state building commission, but no rentals shall be charged to the Governor, Attorney General, Secretary of State, State Auditor, State Treasurer, the Legislature and the members of the Legislature, the Supreme Court of Appeals, nor for their offices, agencies, official functions and duties;

(13) To issue negotiable bonds and to provide for the rights of the holders of the negotiable bonds;

(14) To accept and expend any gift, grant, or contribution of money to, or for the benefit of, the commission, from the State of West Virginia or any other source for any or all of the purposes specified in this article or for any one or more of such purposes as may be specified in connection with the gift, grant, or contribution;

(15) To enter on any lands and premises for the purpose of making surveys, soundings, and examinations;

(16) To invest in United States government obligations, on a short-term basis, any surplus funds which the commission may have on hand pending the completion of any project or projects;

(17) To issue revenue bonds in accordance with the applicable provisions of this article for

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the purposes set forth in §5-6-11a of this code; and

(18) To do all things necessary or convenient to carry out the powers given in this article.

(19) The power and authority granted to the state building commission pursuant to this section and §5-6-7, §5-6-8, and §5-6-11a of this code to initiate, acquire, construct, finance or develop projects; to issue revenue bonds; or to exercise the power of eminent domain with respect to any project, shall terminate on the effective date of this section: *Provided*, That nothing herein shall be construed to affect the validity of any act of the state building commission prior to the effective date of this section or to impair the rights of bondholders with respect to bonds or other evidence of indebtedness issued prior to the effective date of this section. Following the effective date of this section, the secretary of administration may exercise any power expressly granted pursuant to this article with respect to any project or facility previously constructed or acquired, any existing contractual obligations, and any outstanding bonded indebtedness. Refunding bonds for any outstanding bonded indebtedness are authorized, subject to the provisions of article two-e, chapter thirteen of this code. The West Virginia economic development authority provided for in §31-15-1 *et seq*. of this code is designated to act as the governing body whose authorizations and determinations are required for the purpose of refunding bonds.

(b) Notwithstanding any provision of this code to the contrary, the commission may not cause or permit to be caused the dedication or naming of any state building or public structure for a public official who is holding office at the time of the proposed dedication or naming.

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§5-6-4a. Review of real property contracts and agreements; master plan for office space.

(a) The Secretary of Administration shall provide to the Joint Committee on Government and Finance a copy of a contract or agreement for real property exceeding $1 million and a report setting forth a detailed summary of the terms of the contract or agreement, including the name of the owner of the property and the agent involved in the sale, at least thirty days prior to any sale, exchange, transfer, purchase, lease purchase, lease or rental of real property, any refundings of lease purchases, leases or rental agreements, any construction of new buildings and any other acquisition or lease of buildings, office space or grounds by any state agency, but excepting the transactions of the Higher Education Policy Commission, Council for Community and Technical College Education, state institutions of higher education and the Division of Highways for state road purposes pursuant to article two-a, chapter seventeen of this code: Provided, That a contract or agreement for the lease purchase, lease or rental of real property by any state agency, where the costs of real property acquisition and improvements are to be financed, in whole or in part, with bond proceeds, may contain a preliminary schedule of rents and leases for purposes of review by the committee.

(b) For renewals of contracts or agreements required to be reported by this section, the Secretary of Administration shall provide a report setting forth a detailed summary of the terms of the contract or agreement, including the name of the owner of the property.

(c) Within thirty days after receipt of the contract, agreement or report, the committee shall meet and review the contract, agreement or report.

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§5-6-5. Deposit and disbursement of funds of commission; security for deposits; audits.

Except as provided in sections five-a and eleven-a of this article, all moneys of the commission from whatever source derived shall be paid to the treasurer of the State of West Virginia who shall not commingle the moneys, but shall deposit them to a special revenue fund to be known as the "state building commission fund". The moneys in the account shall be impressed with and subject to the lien or liens on the moneys in favor of the bondholders provided in the proceedings for issuance of bonds pursuant to this article. The moneys in the account shall be paid out on check of the treasurer on requisition of the chairman of the commission, or of such other person as the commission may authorize to make the requisition. All deposits of the moneys shall, if required by the treasurer or the commission, be secured by obligations of the United States, of the State of West Virginia, or of the commission, of a market value equal at all times to the amount of the deposit, or letters of credit of the federal land banks, or federal home loan banks, or other letters of credit approved by the treasurer, and all banking institutions are authorized to give such security for the deposits. The Legislative Auditor and his or her legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing.

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§5-6-5a. Creation of asbestos account; purpose; funding; disbursements.

(a) There is hereby created in the state Treasury a separate special revenue account, which shall be an interest bearing account, to be known as the "asbestos account." The special revenue account shall consist of recoveries from litigation pertaining to asbestos, appropriations made by the Legislature, income from the investment of moneys held in the special revenue account and all other sums available for deposit to the special revenue account from any source, public or private and no expenditures for purposes of this section are authorized from collections except in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. No expenses incurred under this section shall be a charge against the General Funds of the state.

(b) Moneys in the special revenue account shall be appropriated to the state building commission and used exclusively, in accordance with appropriations by the Legislature, to pay costs, fees and expenses incurred, or to be incurred for the following purposes: (1) The investigation and pursuit of claims against manufacturers, suppliers and installers of asbestos or asbestos containing materials; (2) all services relating to the litigation involving the state and pertaining to asbestos or asbestos containing materials; (3) the location, treatment and abatement of asbestos or asbestos containing materials by the state; (4) the development of implementation, administration and management manuals pertaining to asbestos or asbestos containing materials and the treatment and/or abatement of asbestos or asbestos containing materials; (5) the design, implementation and management of all state buildings containing asbestos and asbestos containing materials for the proper treatment and/or abatement of asbestos conditions as they arise and as are needed; (6) all other related asbestos activities designed for the location, treatment and abatement of such asbestos or asbestos containing materials as are found in state buildings, including buildings under the control of the university of West Virginia board of trustees or the board of directors of the state college system, and as determined by the secretary of the Department of Administration; and (7) all costs incurred in the administration of the special revenue account.

(c) Any balance remaining in the special revenue account at the end of any state fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue account and shall be used solely in a manner consistent with this section: Provided, That over the three succeeding fiscal years after the effective date of this section, any appropriation made to the special revenue account from general revenue shall be repaid to the General Revenue Fund from moneys available in the special revenue account.

(d) Disbursements from the special revenue account shall be authorized by the secretary of the Department of Administration or his designee. Moneys in the special revenue account shall not be available for the payment of any personal injury claims, workers' compensation claims or other types of disability claims. Payment from the special revenue account may be made for any expense incurred by the Attorney General prior to the effective date of this section, including any expense incurred in prior fiscal years, if the expense is directly related

to the litigation of matters pertaining to asbestos and asbestos containing materials in which the state is involved.

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§5-6-6. City of Charleston may dedicate streets, property, etc., to commission.

Notwithstanding the provisions of any other law, the council of the city of Charleston is hereby authorized to dedicate to the commission for a project any street, real property, easements or rights in land or any combination of the foregoing owned by such city.

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§5-6-7. Contracts with commission to be secured by bond; competitive bids required for certain contracts.

The commission shall construct a project pursuant to a contract or contracts. Every such contract shall be secured by a bond meeting the requirements of section thirty-nine, article two, chapter thirty-eight of this code.

No contract or contracts for the construction, remodeling, renovation or repair of any building or buildings or any approaches, structures or facilities incidental thereto, or for the equipping and furnishing of any building or buildings, when the anticipated expenditure therefor will exceed the sum of $5,000, shall be entered into except upon the basis of competitive sealed bids: Provided, That effective with the effective date of the amendments to this section, no contract or contracts for the construction, remodeling, renovation or repair of any building or buildings or any approaches, structures or facilities incidental thereto, or for the equipping and furnishing of any building or buildings, when the anticipated expenditure therefor will exceed the sum of $10,000, shall be entered into except upon the basis of such bids. Such bids shall be obtained by public notice soliciting such bids published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which any such contract is to be performed. The publication shall be completed at least fourteen days prior to the final date for the submission of bids. The commission may in addition to such publication also solicit sealed bids by sending requests by mail to prospective bidders. The contract shall be awarded to the lowest responsible bidder, unless any and all bids are rejected, in which event new bids shall be sought by again publishing notice as aforesaid. Any bid, with the name of the bidder, shall be entered on a record and each record, with the successful bid indicated thereon, shall, after the award of any contract, be open to public inspection in the office of the secretary of the commission.

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§5-6-8. Commission empowered to issue state building revenue bonds after legislative authorization; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

(a) The commission is hereby empowered to raise the cost of a project, as defined in this article, by the issuance of state building revenue bonds of the state, the principal of and interest on which shall be payable solely from the special revenue fund provided in section five of this article for the payment. Subject to the proceedings pursuant to which any bonds outstanding were authorized and issued pursuant to this article, the commission shall pledge the moneys in the special revenue fund, except that part of the proceeds of sale of any bonds to be used to pay the cost of a project and for the payment of the principal of and interest on bonds issued pursuant to this article. The pledge shall apply equally and ratably to separate series of bonds or upon the priorities as the commission shall determine. The bonds shall be authorized by resolution of the commission. The resolution shall recite an estimate by the commission of the cost, and shall provide for the issuance of bonds in an amount sufficient, when sold as provided in this section, to produce the cost, less the amount of any funds, grant or grants, gift or gifts, contribution or contributions received, or in the opinion of the commission expected to be received, from the United States of America or from any other source. The acceptance by the commission of any and all funds, grants, gifts and contributions, whether in money or in land, labor or materials, is hereby expressly authorized. All bonds shall have and are hereby declared to have all the qualities of negotiable instruments. The bonds shall bear interest at not more than twelve percent per annum, payable semiannually, and shall mature in not more than forty years from their date or dates, and may be made redeemable at the option of the state, to be exercised by the commission, at the price and under the terms and conditions, all as the commission may fix prior to the issuance of the bonds. The commission shall determine the form of the bonds, including coupons, if any, to be attached to the bonds to evidence the right of interest payments. The bonds shall be signed by the chairman and secretary of the commission, under the great seal of the state, attested by the Secretary of State, and the coupons, if any, attached to the bonds shall bear the facsimile signature of the chairman of the commission. In case any of the officers whose signatures appear on the bonds or coupons issued as authorized by this section shall cease to be officers before the delivery of the bonds, the signatures are nevertheless valid and sufficient for all purposes the same as if they had remained in office until the delivery. The commission shall fix the denominations of the bonds, the principal and interest of which shall be payable at the Office of the Treasurer of the State of West Virginia, at the capitol of the state, or, at the option of the holder, at some bank or trust company within or without the State of West Virginia to be named in the bonds, in such medium as may be determined by the commission. The bonds and interest on the bonds are exempt from taxation by the State of West Virginia, or any county or municipality in the state. The commission may provide for the registration of the bonds in the name of the owners as to principal alone, and as to both principal and interest under the terms and conditions as the commission may determine, and shall sell the bonds in the manner as it may determine to be for the best interest of the state, taking into consideration the financial responsibility of the purchaser, and the terms and conditions of the purchase,

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and especially the availability of the proceeds of the bonds when required for payment of the cost of the project. The sale shall be made at a price not lower than a price which, computed upon standard tables of bond values, will show a net return of not more than thirteen percent per annum to the purchaser upon the amount paid for the bonds. The proceeds of the bonds shall be used solely for the payment of the cost of the project for which bonds were issued, and shall be deposited and checked out as provided by section five of this article, and under further restrictions, if any, as the commission may provide. If the proceeds of bonds issued for a project or a specific group of projects exceeds the cost of the project or projects, the surplus shall be paid into the fund provided for in section five of this article for payment of the principal and interest of the bonds. The fund may be used for the purchase of any of the outstanding bonds payable from the fund at the market price, but at not exceeding the price, if any, at which the bonds are in the same year redeemable, and all bonds redeemed or purchased shall be canceled immediately, and shall not again be issued. Prior to the preparation of definitive bonds, the commission may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Notwithstanding the provisions of sections nine and ten, article six, chapter twelve of this code, revenue bonds issued under the authority granted in this section are eligible as investments for the workers' compensation fund, teachers retirement fund, division of public safety, death, disability and retirement fund, West Virginia Public Employees Retirement System and as security for the deposit of all public funds. The revenue bonds may be issued without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions and things which are specified and required by this article, or by the Constitution of the State. For all projects authorized under the provisions of this article, other than projects to be leased by the commission to the regional jail and correctional facilities authority or projects authorized pursuant to section eleven-a of this article, the aggregate amount of all issues of bonds outstanding at one time shall not exceed $62,500,000, including the renegotiation, reissuance or refinancing of any bonds, and no project in connection with which bonds are to be issued shall be initiated by the commission unless and until the Legislature, through enactment of general law, approves the purpose, the amount of bonds to be issued and the total cost for the project, construction or acquisition.

For projects which are to be leased by the commission to the regional jail and correctional facilities authority, legislative approval pursuant to the provisions of this section shall not be required if the projects have otherwise been approved by the Legislature in accordance with the provisions of subsection (m), section five, article twenty, chapter thirty-one of this code, and the limitations on the amount of revenue bonds which may be issued by the commission and the project costs shall be governed by the terms of any concurrent resolution adopted pursuant to that subsection.

(b) Notwithstanding anything in this article to the contrary, the commission is authorized to issue bonds, or otherwise finance or refinance the following projects, including the costs of issuance and sale of the bonds or financing, all necessary financial and legal expenses and creation of debt service reserve funds, in an amount not to exceed $21 million:

(1) Any or all of the state office buildings and adjoining real property being lease-purchased in Beckley, Charleston, Clarksburg, Fairmont, Huntington and Parkersburg;

(2) A facility to be obtained or constructed by the commission and leased to the Division of Motor Vehicles; and

(3) Property and buildings needed for state spending units in an amount not to exceed $3 million.

(c) Notwithstanding any other provision of this section, the commission is authorized to issue bonds for the purposes set forth in section eleven-a of this article in the aggregate amount of $100 million, including the renegotiation, reissuance or refinancing of any bonds issued for that purpose. If the proceeds of bonds issued under this subsection exceeds the cost of the project or projects, the surplus shall be paid into the education, arts, sciences and tourism fund established in section eleven-a of this article.

(d) The commission shall acquire the property being lease-purchased in the city of Charleston, located at 601 Morris Street, through a loan from the consolidated fund. The loan shall be under the terms and conditions set forth in section nineteen, article six, chapter twelve of this code.

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§5-6-9. Trustee for holders of bonds; contents of trust agreement.

The commission may enter into an agreement or agreements with any trust company, or with any bank having the powers of a trust company, whether within or outside of the state, as trustee for the holders of bonds issued hereunder, setting forth therein such duties of the state and of the commission in respect of the acquisition, construction, improvement, maintenance, operation, repair and insurance of the project, the conservation and application of all moneys, the insurance of moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the bonds, as may be agreed upon with the original purchasers of such bonds, and including therein provisions restricting the individual right of action of bondholders as is customary in trust agreements respecting bonds and debentures of corporations, protecting and enforcing the rights and remedies of the trustee and the bondholders, and providing for approval by the original purchasers of the bonds of the appointment of consulting architects, and of the security given by those who contract to construct the building, and by any bank or trust company in which the proceeds of bonds or rentals shall be deposited, and for approval by the consulting architects of all contracts for construction. All expenses incurred in carrying out such agreement may be treated as a part of the cost of maintenance, operation and repairs of the project.

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§5-6-10. Trust existing in favor of existing bondholders.

The properties and interests in properties, real, personal and mixed, tangible and intangible, standing or held in the name of or for and in behalf of, or for the benefit of, the commission, or the State of West Virginia to the extent that the properties and interests in properties were acquired or improved by the expenditure of the proceeds of bonds previously issued by the commission, and the moneys, deposits, securities and choses in action and other rights held in the name of or for and in behalf of, or for the benefit of, the commission, other than moneys, deposits, securities, choses in action and other rights, or which are investments of: (1) Proceeds of bonds previously issued by the commission held for expenditure for completion of now existing projects of the commission; or (2) revenues of the commission from existing projects of the commission which, after provision for operation and maintenance expenses and coverage requirements not otherwise provided for, are in excess of sums required to pay the principal of and interest on the bonds of the commission previously issued, as and when due and payable; or (3) proceeds of bonds of the commission issued after the effective date of this section; or (4) revenues pledged for the repayment of bonds issued pursuant to section eleven-a of this article; or (5) revenues of the commission from projects acquired after the effective date of this section or constructed by the commission, are declared to be subject to and shall be held by the commission in trust for the satisfaction of the obligations evidenced by the bonds previously issued by the commission and the interest coupons on the bonds: Provided, That nothing in this article shall be taken to validate or to attempt to validate rights under any existing lease or other agreement entered into under the former provisions of this article between the commission and the State of West Virginia or any officer, department or agency of this state to the extent that the lease or agreement provides for payments from general tax revenues of the state. Until the satisfaction in full of the obligations evidenced by bonds previously issued by the commission, the commission shall hold, manage and operate the trust properties and interests in properties, moneys, deposits, securities and choses in action and other rights, separate from all other properties and interests in properties, moneys, deposits, securities and choses in action and other rights that may after the effective date of this section be held and owned by the commission. Upon the satisfaction of all of the obligations of the commission, all of the trust properties and interests in properties, moneys, deposits, securities and choses in action and other rights shall become and be free and clear of the trust.

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§5-6-11. Management and control of project.

The secretary of administration shall properly maintain, repair, operate, manage and control the project, fix the rates of rental, and establish bylaws and rules and regulations for the use and operation of the project, and may make and enter into all contracts or agreements necessary and incidental to the performance of its duties and the execution of its powers under this article.

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§5-6-11a. Special power of commission to transfer or expend bond proceeds for capital improvements at institutions of higher education, state parks and the Capitol Complex and to construct and lease a center for arts and sciences of West Virginia; limitations; state building commission authorized to issue revenue bonds; fund created; use of funds to pay for development of education, arts, sciences, and tourism projects.

(a) The Legislature finds and declares that in order to attract new business and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity and economic welfare of this state it is necessary to promote adequate higher education, arts, sciences, and tourism facilities, including infrastructure, for: (1) State-of-the-art educational opportunities for all citizens of this state; (2) tourism enhancements at state parks, the Capitol Complex or other tourism sites throughout the state; (3) hands-on arts and sciences training for the youth of West Virginia; and (4) programs using the performing arts as an educational tool. Therefore, in order to promote education, arts, sciences, and tourism, the Legislature finds that public financial support should be provided for constructing, equipping, improving, and maintaining capital improvement projects which promote education, arts, sciences, and tourism in this state.

(b) The State Building Commission shall, by resolution, in accordance with the provisions of this article, issue revenue bonds of the commission, from time to time, to pay for a portion of the cost of constructing, equipping, improving, or maintaining capital improvement projects under this section or to refund the bonds, at the discretion of the authority. The principal amount of the bonds issued under this section shall not exceed, in the aggregate, $100 million. Any revenue bonds issued on or after January 1, 1996, which are secured by lottery proceeds shall mature at a time or times not exceeding 25 years from their respective dates. The principal of, and the interest and redemption premium, if any, on the bonds shall be payable solely from the special fund provided in this section for the payment.

(c) There is hereby created in the State Treasury a special revenue fund named the Education, Arts, Sciences, and Tourism Debt Service Fund into which shall be deposited on and after July 1, 1996, the amounts specified in §29-22-18 of this code. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section. The commission may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the Education, Arts, Sciences, and Tourism Debt Service Fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this section shall be separate from all other bonds which may be or have been issued, from time to time, under the provisions of this article. The Education, Arts, Sciences, and Tourism Debt Service Fund shall be pledged solely for the repayment of bonds issued pursuant to this section. On or prior to May 1 of each year, commencing May 1, 1996, the commission shall certify to the State Lottery Director the principal and interest and

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coverage ratio requirements for the following fiscal year on any revenue bonds or refunding revenue bonds issued pursuant to this section, and for which moneys deposited in the Education, Arts, Sciences, and Tourism Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the commission has issued bonds authorized by this section, and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this section, any balance remaining in the Education, Arts, Sciences, and Tourism Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this section which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

(d) The commission shall expend $25 million of the bond proceeds for certified capital improvement projects at state institutions of higher education. For the purposes of certifying the projects which will receive funds from the bond proceeds, a committee shall be established and comprised of the Governor, or his or her designee, the secretary of the Department of Administration, the Secretary of the Department of Education and the Arts, the Chancellor of the University of West Virginia Board of Trustees, and the Chancellor of the Board of Directors of the State College System. The committee shall meet as often as necessary and take recommendations from any source whatever regarding the capital improvement projects at state institutions of higher education. The committee shall meet within 45 days of the effective date of this section. Prior to making its recommendations, the committee shall conduct at least two public hearings, one of which must be held outside of Kanawha County. Notice of the time, place, date, and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least 14 days prior to the date of the public hearing. On or before September 15, 1996, the committee shall certify to the commission a list of those capital improvement projects at state institutions of higher education which will receive funds from the proceeds of bonds issued pursuant to this section. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

(e) The commission shall expend up to $26 million from the proceeds of the bonds authorized by this section to pay a portion of the costs of projects certified under this subsection for development, maintenance, or promotion of arts and sciences or constructing and equipping a center for arts and sciences of West Virginia located on a site acquired for that purpose. Any proceeds expended to pay a portion of project costs to construct and equip a center for arts and sciences of West Virginia shall not exceed 40 percent of the total cost of the project and permanent endowments for operation and maintenance, and bond proceeds shall not be expended until 60 percent of the total cost has been committed from sources other than bond proceeds. For the purposes of certifying the projects which will receive funds from the bond proceeds under this subsection, a committee shall be established and composed of the Governor, or his or her designee, the Secretary of the Department of Administration, the Director of the Division of Natural Resources, the Director of the West Virginia Development

Office and a representative of the Capitol Building Commission, other than the Secretary of the Department of Administration, who shall be selected by the Capitol Building Commission. The Capitol Building Commission shall select its representative within 30 days of the effective date of this section. The committee shall meet as often as necessary and take recommendations from any source whatever regarding which projects should be certified. The committee shall meet within 45 days of the effective date of this section. Prior to making its determination, the committee shall conduct one public hearing on the projects to be certified under this subsection. Notice of the time, place, date, and purpose of the hearing shall be published in at least one newspaper in each congressional district at least 14 days prior to the date of the public hearing. The committee shall make its determination as to whether bond proceeds will be expended for the purposes set forth in this subsection and the amount to be expended for each project, on or before June 15, 1996. Thereafter, the decision may not be altered or amended other than by legislative enactment. The commission is authorized to acquire by purchase or lease real property to be used as the site for a center for arts and sciences of West Virginia; and notwithstanding the provisions of §5-6-7 of this code, enter into a long-term lease agreement with a nonprofit corporation organized under the laws of this state for operation and maintenance of the center. The nonprofit corporation shall, as consideration for any long-term lease agreement, complete the construction and equipping of the center and demonstrate to the satisfaction of the commission its financial ability to operate and maintain the center during the term of the lease agreement. The nonprofit corporation shall have at least six members on its board of directors which are appointed by the Governor with the advice and consent of the Senate. Of the six appointed members, three shall be selected from each congressional district: *Provided*, That none of the appointed members shall be a resident of Kanawha County. The members appointed by the Governor with the advice and consent of the Senate shall serve on the board for three-year staggered terms. Of the members first appointed by the Governor, one from each congressional district will serve a three-year term, one from each congressional district will serve a two-year term, and one from each congressional district shall serve a one-year term.

(f) The commission shall expend the balance of the bond proceeds for certified projects at state parks, the Capitol Complex, or other tourism sites. The committee established in subsection (e) of this section shall certify to the commission on or before September 15, 1996, a list of those capital improvement projects at state parks, the capitol complex, or other tourism sites which will receive funds from the proceeds of bonds issued pursuant to this section. The committee shall meet as often as necessary and take recommendations from any source whatever regarding the capital improvement projects at state parks, the capitol complex, or other tourism sites in this state. The committee shall meet within 45 days of the effective date of this section. Prior to making its recommendations, the committee shall conduct at least two public hearings on the projects to be certified under this subsection, one of which must be held outside of Kanawha County. Notice of the time, place, date, and purpose of the hearing shall be published in at least one newspaper in each congressional district at least 14 days prior to the date of the public hearing. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

§5-6-11b. Power of commission to transfer project funds to other certified projects for state parks.

(a) The state building commission shall transfer unexpended funds allocated to any certified state park project under subsection (f), section eleven-a of this article that has been completed to any other state park project that has been certified under that subsection where the state park project has not been completed and the commission determines that the project is experiencing cost overruns and needs additional funding. Prior to transferring the funds, in consultation with the Division of Natural Resources, the commission shall identify all certified state park projects that will be completed with unexpended funds allocated to them and, in consultation with the Division of Natural Resources, shall prioritize the projects that need additional funding to achieve the best possible allocation of the unexpended funds.

(b) The provisions of subsection (f), section eleven-a of this article requiring public hearing do not apply to transfers of funds under subsection (a) of this section.

(c) The commission shall report all details of any transfer made pursuant to this section to the Joint Committee on Government and Finance within ten days of the date of the transfer.

WV Legislature

§5-6-11c. Power of the state building commission to transfer project funds to other projects for state capitol improvements and renovations.

(a) The state building commission shall transfer unexpended funds allocated to the capitol complex bus access facility project certified under subsection (f), section eleven-a of this article to other projects for state capitol improvements and renovations.

(b) The provisions of subsection (f), section eleven-a of this article requiring public hearing do not apply to transfers of funds under subsection (a) of this section.

WV Legislature

§5-6-12. Article not authority to create state debt.

Nothing in this article contained shall be so construed or interpreted as to authorize or permit the incurring of state debt of any kind or nature as contemplated by the provisions of the Constitution of the State of West Virginia in relation to state debt.

WV Legislature

§5-6-13. Compliance with article and state Constitution only restrictions on construction and management of project.

It shall not be necessary to secure from any officer or board not named in this article any approval or consent, or any certificate or finding, or to hold an election, or to take any proceedings whatever, either for the construction of such project, or the improvement, maintenance, operation or repair thereof, or for the issuance of bonds hereunder, except such as are prescribed by this article or are required by the Constitution of the State.

WV Legislature

§5-6-14. Article to be liberally construed.

This article, being necessary for the health, welfare and convenience of the citizens of the state, should be liberally construed to effectuate the purposes thereof.

WV Legislature

§5-6-15. Severability.

If any provision or any part or clause of any provision of this article, or the application thereof to any person or circumstance, is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions, or other parts or other clauses of any provision, or applications of this article, and to this end the provisions of this article are declared to be severable.

WV Legislature

§5-6-16. Sloped roofs required.

Notwithstanding any other provision of this code to the contrary, after June 1, 1999, any new building, which includes a roof, designed, constructed and maintained with public funds of the state, a county or a municipality shall have a roof of sufficient slope so that water will not accumulate into a pool on any area of the roof, in accordance with the current state building code as it relates to roofs and roof structures.

WV Legislature

§5-6-17. Display of the national motto and POW-MIA flag.

(a) The Legislature finds and declares that the national motto of “In God We Trust,” is an important part of our country’s history and heritage. Additionally, the POW-MIA flag is a symbol of citizen concern for U.S. military personnel taken as prisoners of war (POW) or listed as missing in action (MIA). These patriotic displays enhance our national pride and awareness, both of the sacrifices made by service members and our heritage as Americans.

(b) The governing authority of any public property, public buildings and any building, designed, constructed and maintained with public funds from the state, a county or a municipality may prominently display on the property or building, the American national motto, "In God We Trust." Costs associated with the display of the motto may be paid with any private donations, gifts, grants and bequests received by the governing authority.

(c) The governing authority of any public property, public buildings and any building, designed, constructed and maintained with public funds from the state, a county or a municipality may prominently display on the property or building, the POW-MIA flag in the same manner as prescribed by this code for the required display of national and state flags. Costs associated with the display of the POW-MIA flag may be paid with any private donations, gifts, grants and bequests received by the governing authority.

(d) The Department of Administration shall develop guidelines for display of the motto and POW-MIA flag.

WV Legislature

§5-7-1. Declaration of policy.

In order to extend to employees of the state and its political subdivisions and of the instrumentalities of either, and to the dependents and survivors of such employees, the basic protection accorded to others by the old-age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the Legislature, subject to the limitation of this article, that such steps be taken as to provide such protection to employees of the state and local governments on as broad a basis as is permitted under applicable federal law.

WV Legislature

§5-7-2. Definitions.

For the purposes of this article:

(a) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that the term may not include that part of the remuneration which, even if it were paid for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act.

(b) The term "employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, or any instrumentality of either, for the employer, except service which in the absence of an agreement entered into under this article would constitute "employment" as defined in section two hundred nine of the Social Security Act.

(c) The term "employee" includes an officer of the state, or one of its political subdivisions or instrumentalities, or members of the State Legislature and part-time employees of the State Legislature.

(d) The term "state agency" means the State Auditor.

(e) The term "federal agency" means in each case a federal officer, department or agency as is charged on behalf of the federal government, by or under the applicable federal law, with the particular federal functions referred to in this article in connection with that term.

(f) The term "political subdivision" includes any county, municipal corporation or school district.

(g) The term "instrumentality", when referring to an instrumentality of a state or political subdivision, includes only a legal entity which is separate and distinct from the state or the subdivision and whose employees are not by virtue of their relation to the entity employees of the state or such subdivisions.

(h) The term "applicable federal law" refers to provisions of federal law, including federal regulations and requirements issued pursuant thereto, if and when enacted, as provided for extending the benefits of Title II of the Social Security Act to employees of states, political subdivisions and their instrumentalities.

(i) The term "Social Security Act" means the act of Congress approved August 14, 1935, chapter five hundred thirty-one, forty-nine statutes six hundred twenty, officially cited as the "Social Security Act", as the act has been and may, from time to time, be amended.

(j) The term "Federal Insurance Contributions Act" means subchapter A, chapter nine of the federal Internal Revenue Code as the code has been and may, from time to time, be amended.

WV Legislature

§5-7-3. Federal-state agreement; interstate agreements.

(a) The state agency, with the approval of the Governor, is hereby authorized upon enactment of applicable federal law, to enter on behalf of the state into an agreement with the federal agency, consistent with the terms and provisions of this article, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing, with respect to services specified in such agreement, which constitute "employment" as defined in section two of this article. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and federal agency shall agree upon, but, except as may be otherwise required by or under applicable federal law as to the services to be covered, such agreement shall provide in effect that:

(1) Benefits will be provided for employees whose services are covered by the agreement, and their dependents and survivors, on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act.

(2) The state will pay to the federal agency, at such time or times as may be prescribed by the applicable federal law or by regulation of the federal agency, contributions with respect to wages, as defined in section two of this article, equal to the sum of the taxes which would be imposed by sections one thousand four hundred and one thousand four hundred ten of the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act.

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but shall in no event cover any such services performed prior to January first, 1951.

(4) All services which constitute employment as defined in section two and are performed in the employ of the state by employees of the state, shall be covered by the agreement.

(5) All services which (a) constitute employment as defined in section two (b) are performed in the employ of a political subdivision or in the employ of an instrumentality of either the state or a political subdivision, and (c) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under section five, shall be covered by the agreement.

(b) The state agency is hereby authorized to enter on behalf of the state into an agreement, consistent to the extent practicable with the terms and provisions of this article, with the appropriate agency or agencies of any other state or states and with the federal agency, whereby the benefits of the federal old-age and survivors insurance system shall be extended to employees of any instrumentality jointly created by this state and such other state or states.

WV Legislature

§5-7-4. Contributions by state employees.

(a) Every employee of the state whose services are covered by an agreement entered into under section three shall be required to pay for the period of such coverage, into the contribution fund established by section six, contributions, with respect to wages, as defined in section two of this article, equal to the amount of tax which would be imposed by section one thousand four hundred of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service, or his entry upon such service, after the enactment of this article.

(b) The contribution imposed by this section shall be collected by the state by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(c) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

WV Legislature

§5-7-5. Plans for coverage of employees of political subdivisions and of state and local instrumentalities; payments by subdivisions or instrumentalities; contributions by such employees.

(a) Each political subdivision of the state and each instrumentality of the state or of a political subdivision is hereby authorized to submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable federal law, to employees of any such political subdivision or instrumentality. If not precluded by applicable federal law and under such conditions as the state agency may by regulation prescribe, two or more such political subdivisions or instrumentalities may, for the purposes of this article, form a joint coverage unit and as such submit for approval a joint plan if otherwise, because of the requirements of the agreement entered into pursuant to section three or because of the requirements imposed by or under applicable federal law, any subdivision or instrumentality included in such unit would be unable to submit an approvable plan. Each such plan or any amendment thereof shall be approved by the state agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless:

(1) It is in conformity with the requirements of the applicable federal law and with the agreement entered into under section three.

(2) It provides that all services which constitute employment as defined in section two and are performed in the employ of the political subdivision or instrumentality, or in the employ of any member of a joint coverage unit submitting the plan, by any employees thereof, shall be covered by the plan.

(3) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) and by subsection (d) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose.

(4) It provides for such methods of administration of the plan by the political subdivision or instrumentality or members of the joint coverage unit as are found by the state agency to be necessary for the proper and efficient administration of the plan.

(5) It provides that the political subdivision or instrumentality or members of the joint coverage unit will make such reports, in such form and containing such information, as the state agency may from time to time require, and comply with such provisions as the state agency or the federal agency may from time to time find necessary to assure the correctness and verification of such reports.

(6) It authorizes the state agency to terminate the plan in its entirety or, in the discretion of the state agency, as to any member of a joint coverage unit, if it finds that there has been a failure to comply substantially with any provisions contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by

WV Legislature

regulations of the state agency and be consistent with applicable federal law.

(b) The state agency shall not finally refuse to approve a plan submitted under subsection (a), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to each political subdivision or instrumentality affected thereby.

(c) (1) Each political subdivision or instrumentality as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages, as defined in section two of this article, at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under section three.

(2) Every political subdivision or instrumentality required to make payments under paragraph (1) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this article, to impose upon its employees, as to services which are covered by an approved plan, a contribution with respect to wages, as defined in section two of this article, not exceeding the amount of tax which would be imposed by section one thousand four hundred of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from the wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under paragraph (1) of subsection (c) may, with interest at the rate of six per centum per annum, be recovered by action in a court of competent jurisdiction against the political subdivision or instrumentality liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to such subdivision or instrumentality by any department or agency of the state.

WV Legislature

§5-7-6. Contribution fund; appropriations thereto.

(a) There is hereby established a special fund to be known as the contribution fund. The fund shall consist of and there shall be deposited in the fund: (1) All contributions, interest and penalties collected under sections four and five of this article; (2) all moneys appropriated to the fund under this article; (3) all moneys paid to the state pursuant to any agreement entered into under subsection (b), section three of this article; (4) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (5) interest earned upon any moneys in the fund; and (6) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of this article, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof consistent with the provisions of this article.

(b) The contribution fund shall be established and held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purpose of this article: Provided, That amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature: Provided, however, That any other withdrawals from the fund shall be made for, and solely for (1) payment of amounts required to be paid to the federal agency pursuant to an agreement entered into under section three; (2) payment of refunds provided for in subsection (c), section four of this article; and (3) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution fund the custodian of the fund shall pay to the federal agency such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section three of this article and applicable federal law.

(d) The treasurer of the state shall be ex officio treasurer and custodian of the contribution fund and shall administer the fund in accordance with the provisions of this article and the directions of the state agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(e) (1) There are hereby authorized to be appropriated annually to the contribution fund, in addition to the contributions collected and paid into the contribution fund under sections four and five, to be available for the purposes of subsections (b) and (c) of this section until expended, such additional sums as are found to be necessary in order to make the payments to the federal agency which the state is obligated to make pursuant to an agreement entered into under section three of this article.

WV Legislature

(2) The state agency shall submit to the Governor, at least ninety days in advance of the beginning of each regular session of the Legislature, an estimate of the amounts authorized to be appropriated to the contribution fund by paragraph (1) of this subsection for the next appropriation period.

WV Legislature

§5-7-7. Rules and regulations.

The state agency shall make and publish such rules and regulations, not inconsistent with the provisions of this article, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this article.

WV Legislature

§5-7-8. Studies and reports.

The state agency shall make studies concerning the problem of old-age and survivors insurance protection for employees of the state and local governments and their instrumentalities and concerning the operation of agreements made and plans approved under this article and shall submit a report to the Legislature at the beginning of each regular session, covering the administration and operation of this article during the preceding biennium, including such recommendations for amendments to this article as it considers proper.

WV Legislature

§5-7-9. Separability.

If any provision of this article, or the application thereof to any person or circumstance is held invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

WV Legislature

§5-7-10. Acts repealed.

All acts or parts of acts which are inconsistent with the provisions of this article are hereby repealed.

WV Legislature

§5-8-1.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-2.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-3.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-4.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-5.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-6.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-7.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-8.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-9.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-10.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-11.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-12.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-13.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-14.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-15.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-16.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-17.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-18.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-19.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-8-20.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5-9-1.

Repealed.

Acts, 1977 Reg. Sess., Ch. 85.

WV Legislature

§5-9-2.

Repealed.

Acts, 1977 Reg. Sess., Ch. 85.

WV Legislature

§5-9-3.

Repealed.

Acts, 1977 Reg. Sess., Ch. 85.

WV Legislature

§5-9-4.

Repealed.

Acts, 1977 Reg. Sess., Ch. 85.

WV Legislature

§5-9-5.

Repealed.

Acts, 1977 Reg. Sess., Ch. 85.

WV Legislature

§5-9-6.

Repealed.

Acts, 1977 Reg. Sess., Ch. 85.

WV Legislature

§5-10-1. Short title.

The short title by which this article may be referred to is "West Virginia Public Employees Retirement Act."

WV Legislature

§5-10-2. Definitions.

Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this article have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the members' deposit fund, together with regular interest on the contributions;

(2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member;

(3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a mortality table and regular interest adopted by the board of trustees from time to time: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, actuarial equivalent shall be computed using the mortality tables and interest rates required to comply with those requirements;

(4) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, rounding to the upper cent for any fraction of a cent;

(5) "Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other tables of experience, and regular interest, adopted by the board of trustees from time to time;

(6) "Beneficiary" means any person which shall include an irrevocable special needs trust, as that term is defined in this section, for the benefit of one individual beneficiary and which trust terminates upon the death of such individual with no further annuity benefits being payable, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(7) "Board of Trustees" or "board" means the Board of Trustees of the West Virginia Consolidated Public Retirement Board;

(8) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the employer or any participating employer in the system for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating public employer. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent full-time, permanent part-time, temporary full-time, temporary part-time, per diem or leased employee basis;

(9) "Compensation" means the remuneration paid a member by a participating public

WV Legislature

employer for personal services rendered by the member to the participating public employer. In the event a member's remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of the remuneration which is not paid in money: *Provided*, That members hired in a position for the first time on or after July 1, 2014, who receive nonmonetary remuneration shall not have nonmonetary remuneration included in compensation for retirement purposes and nonmonetary remuneration may not be used in calculating a member's final average salary. Any lump sum or other payments paid to members that do not constitute regular salary or wage payments are not considered compensation for the purpose of withholding contributions for the system or for the purpose of calculating a member's final average salary. These payments include, but are not limited to, attendance or performance bonuses, one-time flat fee or lump sum payments, payments paid as a result of excess budget, or employee recognition payments. The board shall have final power to decide whether the payments shall be considered compensation for purposes of this article;

(10) "Contributing service" means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article;

(11) "Credited service" means the sum of a member's prior service credit, military service credit, workers' compensation service credit, and contributing service credit standing to his or her credit as provided in this article;

(12) "Employee" means any person who serves regularly as an officer or employee, full-time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia National Guard whose compensation, in whole or in part, is paid by the federal government: *Provided*, That an employee of the Legislature whose term of employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between regular sessions in seven or more consecutive calendar years, as certified by the clerk of the house in which the employee served, is an employee, any provision to the contrary in this article notwithstanding, and is entitled to credited service in accordance with provisions of §5-10-14 of this code: *Provided, however*, That members of the legislative body of any political subdivision and commissioners of the West Virginia Claims Commission are employees receiving one year of service credit for each one-year term served and prorated service credit for any partial term served, anything contained in this article to the contrary notwithstanding: *Provided further*, That only a compensated board member of a participating public employer appointed to a board of a nonlegislative body for the first time on or after July 1, 2014, who normally is required to work 12 months per year and 1,040 hours of service per year is an employee. In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

WV Legislature

(13) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required;

(14) "Final average salary" means either of the following: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That the provisions of §5-10-22h of this code are not applicable to the amendments made to this subdivision during the 2011 regular session of the Legislature:

(A) The average of the highest annual compensation received by a member, including a member of the Legislature who participates in the retirement system in the year 1971 or thereafter, during any period of three consecutive years of credited service contained within the member's 15 years of credited service immediately preceding the date his or her employment with a participating public employer last terminated: *Provided*, That for persons who were first hired on or after July 1, 2015, any period of five consecutive years of contributing service contained within the member's 15 years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or

(B) If the member has less than five years of credited service, the average of the annual rate of compensation received by the member during his or her total years of credited service; and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation (the total of all compensation paid under §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this code), in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the State of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: *Provided*, That final average salary for any former member of the Legislature or for any member of the Legislature in the year 1971 who, in either event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on November 30 in any one or more of those three years and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either, notwithstanding the provisions of this subdivision preceding this proviso, $1,500 multiplied by eight, plus the highest other compensation the former member or member received in any one of the three years from any other participating public employer including the State of West Virginia; or (ii) final average salary determined in accordance with paragraph (A) or (B) of this subdivision, whichever computation produces the higher final average salary, and in determining the annual compensation under subparagraph (ii) of this paragraph, the legislative compensation of the former member shall be computed on the basis of $1,500

multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this paragraph or on the basis of $1,500 multiplied by eight, whichever computation as to the member produces the higher annual compensation;

(15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, codified at Title 26 of the United States Code;

(16) "Limited credited service" means service by employees of the West Virginia Educational Broadcasting Authority, in the employment of West Virginia University, during a period when the employee made contributions to another retirement system, as required by West Virginia University, and did not make contributions to the Public Employees Retirement System: *Provided*, That while limited credited service can be used for the formula set forth in §5-10-21(e) of this code, it may not be used to increase benefits calculated under §5-10-22 of this code;

(17) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board;

(18) "Member" means any person who has accumulated contributions standing to his or her credit in the members' deposit fund;

(19) "Participating public employer" means the State of West Virginia, any board, commission, department, institution, or spending unit, and includes any agency created by rule of the Supreme Court of Appeals having full-time employees, which for the purposes of this article is considered a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System;

(20) "Plan year" means the same as referenced in §5-10-42 of this code;

(21) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency participating in the Public Employees Retirement System before July 1, 1997, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the retirement system at their option after July 1, 1997: *Provided, however*, That the Regional Community Policing Institute which participated in the Public Employees Retirement System before July 1, 2000, is considered a political

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subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the Public Employees Retirement System after July 1, 2000;

(22) "Prior service" means service rendered prior to July 1, 1961, to the extent credited a member as provided in this article;

(23) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board of trustees adopts from time to time;

(24) "Required beginning date" means April 1 of the calendar year following the later of:

(A) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(B) The calendar year in which he or she retires or otherwise separates from covered employment.

(C) The applicable age is:

(i) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(ii) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(iii) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of § 401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time;

(25) "Retirant" means any member who commences an annuity payable by the retirement system;

(26) "Retirement" means a member’s withdrawal from the employ of a participating public employer and the commencement of an annuity by the retirement system;

(27) "Retirement system" or "system" means the West Virginia Public Employees Retirement System created and established by this article;

(28) "Retroactive service" means: (1) Service between July 1, 1961, and the date an employer decides to become a participating member of the Public Employees Retirement System; (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.12; and (3) service of any member of a legislative body or employees of the State Legislature whose term of employment is otherwise classified as temporary for which the employee is eligible, but for which the employee did not elect to participate at that time;

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(29) "Service" means personal service rendered to a participating public employer by an employee of a participating public employer;

(30) "Special needs trust" means a trust established pursuant to §44D-8B-13 of this code for an individual beneficiary with a disability and such special needs trust is or will become irrevocable by the time the retirant names the special needs trust as the beneficiary of retirant’s annuity benefits in place of the individual beneficiary and terminates upon the death of the individual beneficiary with no further annuity benefits being payable; and

(31) "State" means the state of West Virginia.

WV Legislature

§5-10-3. Retirement system created and established; body corporate.

The West Virginia Public Employees Retirement System is hereby created and established to provide for the orderly retirements of employees, of the state and the other participating public employers, who become superannuated because of age or total and permanent disability, and to provide certain survivor benefits. The retirement system shall constitute a body corporate. All business of the system shall be transacted in the name of West Virginia Public Employees Retirement System.

WV Legislature

§5-10-3a. Article to be liberally construed; supplements federal social security; federal qualification requirements.

(a) The provisions of this article shall be liberally construed so as to provide a general retirement system for the employees of the state herein made eligible for such retirement: Provided, That nothing in this article shall be construed as permitting any governmental unit, its officers or employees to substitute the retirement plan herein authorized for federal social security now in force in West Virginia.

(b) The purpose of this article is to provide a state pension plan which supp006Cements the federal social security pension plan now in force and heretofore authorized by law for members of this retirement system.

(c) The retirement system is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to such federal tax qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to it pursuant to section one, article ten-d of this chapter to assure compliance with this section.

WV Legislature

§5-10-4. Effective date of system.

The effective date of the West Virginia Public Employees Retirement System shall be July 1, 1961: Provided, however, That for any participating public employer which cannot make its contribution as provided by this article from its 1961-1962 current funds, the effective date as to such participating public employer shall be July 1, 1962.

WV Legislature

§5-10-5. Board of trustees created; powers and duties generally; composition.

The board of trustees of the West Virginia Public Employees Retirement System is hereby continued. The administration and management of the retirement system, the responsibility for making effective the provisions of this article, and the authority to make all rules and regulations therefor are hereby vested in the said board of trustees through June 30, 1991, and thereafter in the Consolidated Public Retirement Board created by article ten-d of this chapter and except as otherwise specifically provided in this article. The board shall consist of five trustees, as follows:

(a) The Auditor of the state, by virtue of his office;

(b) The treasurer of the state, by virtue of his office;

(c) The commissioner of finance and administration, by virtue of his office;

(d) A resident of the state, who is not a member, retirant or beneficiary of the retirement system, to be appointed by the Governor, by and with the advice and consent of the Senate;

(e) One member of the retirement system, who is an employee of a participating public employer other than the State of West Virginia, to be appointed by the Governor, by and with the advice and consent of the Senate.

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§5-10-6. Trustees' terms of office.

The first terms of office for the trustees provided for in subdivisions (d) and (e) of section five of this article shall expire June 30, 1965, June 30, 1964 and June 30, 1963, respectively, as the Governor shall designate at the time of the appointments. Thereafter, the terms of office for the said trustees shall be five years. Each trustee shall serve as trustee until his successor is appointed and has qualified. In order to make the preliminary arrangements for the operation of the retirement system as of its effective date, the Governor shall make the appointments provided for in section five hereof as soon as practicable after the passage of this article.

WV Legislature

§5-10-7. Vacancies on board.

In the event any trustee, provided for in subdivisions (d) and (e) of section five of this article leaves the employ of a participating public employer, or fails to attend three consecutive meetings of the board of trustees, unless in each case excused for cause by the remaining trustees attending such meeting or meetings, he shall be considered to have resigned from the board and the board shall, by resolution, declare his office of trustee vacated. If a vacancy occurs in the office of such trustee, the Governor shall, within thirty days from and after the date of the vacancy, fill the vacancy, by appointment, for the unexpired term.

WV Legislature

§5-10-8. Trustees' compensation and expenses.

The trustees shall serve as trustees without compensation for their service as such: Provided, That each trustee shall be reimbursed, upon approval of the board of trustees, for any necessary expenses incurred by him in carrying out his duties of trustee. No trustee shall suffer any loss of salary or wages on account of his service as trustee.

WV Legislature

§5-10-9. Chairman and vice chairman; executive secretary; employees; treasurer; legal advisor; actuary.

(a) The board of trustees shall elect from its own number a chairman and a vice chairman.

(b) The board of trustees shall appoint an executive secretary of the retirement system. The executive secretary shall be the chief administrative officer of the system; and shall not be a member of the board. He shall perform such duties as are required of him in this article and as the board shall from time to time delegate to him. The compensation of the executive secretary shall be fixed by the board subject to the approval of the Governor. He shall, with the approval of the board of trustees, employ such administrative, technical, and clerical employees as shall be required in the proper operation of the system.

(c) The State Treasurer shall be treasurer of the retirement system and the custodian of its funds. All bonds and other investments purchased according to the provisions of this article shall forthwith be deposited with the state Treasurer. It shall be his duty to collect the principal thereof and the interest and dividends thereon as the same become due and payable, and when so collected deposit same to the credit of the retirement system. All disbursements from the funds of the system shall be made by the state Treasurer only upon written certification duly authorized by a continuing or specific resolution adopted by the board of trustees. He shall furnish the board with a statement of the retirement system securities in his safekeeping as the board shall from time to time request.

(d) The Attorney General shall be the legal advisor to the board of trustees.

(e) The board of trustees shall appoint an actuary who shall be the technical advisor to the board regarding the operation of the retirement system on an actuarial basis.

WV Legislature

§5-10-10. Board meetings; quorum; vote; proceedings.

The board of trustees shall hold a meeting at least once each three months, and shall designate the time and place thereof. Three trustees shall constitute a quorum at any meeting of the board. Each trustee shall be entitled to one vote on each question before the board and at least three concurring votes shall be required for a decision by the board at any of its meetings. The board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the board shall be public.

WV Legislature

§5-10-11. Reports required of board.

The board of trustees shall submit to the Governor for transmittal to the Legislature, on or before December 1, in each year, a report showing the fiscal affairs and transactions of the retirement system for the preceding fiscal year. The said report shall contain, but shall not be limited to, a financial balance sheet, a statement of income and disbursements, an actuarial balance sheet prepared by means of the last actuarial valuation of the system, a detailed statement of investments acquired and disposed of during the said fiscal year, and such other data as shall be deemed necessary for a proper understanding of the condition of the system. The board shall annually furnish the members and the participating public employers with a summary of the results of the operations of the system.

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§5-10-12. Officer and employee bonds.

The State Treasurer shall give a separate and additional bond in such amount as shall from time to time be fixed by the board of trustees. The said bond shall be approved by the Attorney General and shall be conditioned for the faithful performance of his duties as custodian of the moneys, securities and other investments of the retirement system. The executive secretary, and the employees of the system designated by the board, shall furnish bonds in such form, and in such amounts, as the board shall from time to time determine. The costs of such bonds shall be paid from the expense fund and such bonds shall be filed in the same office as are the bonds of state officers.

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§5-10-13. Actuarial investigations and valuations; specification of actuarial assumptions.

(a) The board of trustees shall keep, or cause to be kept, such data as shall be necessary for the preparation of mortality, service and retirement tables and for the compilation of such other data as shall be required for an actuarial valuation of the assets and liabilities of the retirement system.

(b) Beginning in one thousand nine hundred sixty-six, and in each five-year period thereafter, the actuary shall make actuarial investigations into the experiences of the members, retirants and beneficiaries of the retirement system. Based upon such investigations, the board of trustees shall adopt for the system rates of mortality, withdrawal from service, superannuation retirement and disability retirement and salary scales for final average salary.

(c) Beginning in one thousand nine hundred sixty-two, and at least once in each three-year period thereafter, the actuary shall make an actuarial valuation of the assets and liabilities of the retirement system: Provided, That until the first actuarial investigations are made, the valuations shall be based upon decrement assumptions which are, in the opinion of the actuary, applicable to the members, retirants and beneficiaries of the system.

(d) Beginning in one thousand nine hundred sixty-two, the actuary shall annually compute the annuity reserve liabilities for annuities being paid retirants and beneficiaries.

(e) The board shall specify and adopt all actuarial assumptions for the system at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the terms of the system.

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§5-10-14. Service credit; retroactive provisions.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon rules adopted by the board of trustees and based upon the following:

(1) In no event may less than 10 days of service rendered by a member in any calendar month be credited as a month of service: *Provided*, That for employees of the State Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each 10 days employed in the interim between regular sessions, which interim days shall be cumulatively calculated so that any 10 days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit;

(2) Except for hourly employees, and those persons who first become members of the retirement system on or after July 1, 2015, 10 or more months of service credit earned in any calendar year shall be credited as a year of service: *Provided*, That no more than one year of service may be credited to any member for all service rendered by him or her in any calendar year and no days may be carried over by a member from one calendar year to another calendar year where the member has received a full-year credit for that year; and

(3) Service may be credited to a member who was employed by a political subdivision if his or her employment occurred within a period of 30 years immediately preceding the date the political subdivision became a participating public employer.

(b) The board of trustees shall grant service credit to any former and present member of the State Teachers Retirement System who has been a contributing member in the Public Employees Retirement System for more than three years, for service previously credited by the State Teachers Retirement System and shall require the transfer of the member's accumulated contributions to the system and shall also require a deposit, with reinstatement interest as set forth in the board's Rule, Refund, Reinstatement, Retroactive Service, Loan and Correction of Error Interest Factors, 162 C. S. R. 7, of any withdrawals of contributions any time prior to the member's retirement: *Provided*, That members of the State Teachers Retirement System who first became a member of the State Teachers Retirement System on or after July 1, 2022, may only transfer service credit to the Public Employees Retirement System if they first became a member of the Public Employees Retirement System on or after July 1, 2015. Repayment of withdrawals shall be as directed by the Board of Trustees.

(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or State Auditor, may receive prior service credit for time served in that capacity.

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(d) Active members who previously worked in Comprehensive Employment and Training Act (CETA) may receive service credit for time served in that capacity: *Provided*, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within 120 days following the termination of the member's CETA employment; (2) the board must receive evidence that establishes to a reasonable degree of certainty as determined by the board that the member previously worked in CETA; and (3) the member shall pay to the board an amount equal to the employer and employee contribution plus interest at the amount set by the board for the amount of service credit sought pursuant to this subsection: *Provided, however*, That the maximum service credit that may be obtained under the provisions of this subsection is two years: *Provided further*, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by March 31, 2003: *And provided further*, That the board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(e) (1) Employees of the State Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions shall receive service credit for the time served in that capacity in accordance with the following: For purposes of this section, the term "regular session" means day one through day 60 of a 60-day legislative session or day one through day 30 of a 30-day legislative session. Employees of the State Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions and who have been or are employed during regular sessions or during the interim time between regular sessions in seven consecutive calendar years, as certified by the clerk of the house in which the employee served, shall receive service credit of six months for all regular sessions served, as certified by the clerk of the house in which the employee served, or shall receive service credit of three months for each regular 30-day session served prior to 1971: *Provided*, That employees of the State Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions and who have been or are employed during the regular sessions in 13 consecutive calendar years as either temporary employees or full-time employees or a combination thereof, as certified by the clerk of the house in which the employee served, shall receive a service credit of 12 months for each regular session served, as certified by the clerk of the house in which the employee served: *Provided, however*, That the amendments made to this subsection during the 2002 regular session of the Legislature only apply to employees of the Legislature who are employed by the Legislature as either temporary employees or full-time employees as of January 1, 2002, or who become employed by the Legislature as temporary or full-time employees for the first time after January 1, 2002. Employees of the State Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature during the interim time between regular sessions shall receive service credit of

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one month for each 10 days served during the interim between regular sessions, which interim days shall be cumulatively calculated so that any 10 days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit: *Provided further*, That no more than one year of service may be credited to any temporary legislative employee for all service rendered by that employee in any calendar year and no days may be carried over by a temporary legislative employee from one calendar year to another calendar year where the member has received a full year credit for that year. Service credit awarded for legislative employment pursuant to this section shall be used for the purpose of calculating that member's retirement annuity, pursuant to §5-10-22 of this code, and determining eligibility as it relates to credited service, notwithstanding any other provision of this section. Certification of employment for a complete legislative session and for interim days shall be determined by the clerk of the house in which the employee served, based upon employment records. Service of 55 days of a regular session constitutes an absolute presumption of service for a complete legislative session and service of 27 days of a 30-day regular session occurring prior to 1971 constitutes an absolute presumption of service for a complete legislative session. Once a legislative employee has been employed during regular sessions for seven consecutive years or has become a full-time employee of the Legislature, that employee shall receive the service credit provided in this section for all regular and interim sessions and interim days worked by that employee, as certified by the clerk of the house in which the employee served, regardless of when the session or interim legislative employment occurred: *And provided further*, That regular session legislative employment for seven consecutive years may be served in either or both houses of the Legislature.

(2) For purposes of this section, employees of the Joint Committee on Government and Finance are entitled to the same benefits as employees of the House of Delegates or the Senate: *Provided*, That for joint committee employees whose terms of employment are otherwise classified as temporary, employment in preparation for regular sessions, certified by the legislative manager as required by the Legislature for its regular sessions, shall be considered the same as employment during regular sessions to meet service credit requirements for sessions served.

(f) Any employee may purchase retroactive service credit for periods of employment in which contributions were not deducted from the employee's pay. In the purchase of service credit for employment prior to 1989 in any department, including the Legislature, which operated from the General Revenue Fund and which was not expressly excluded from budget appropriations in which blanket appropriations were made for the state's share of public employees' retirement coverage in the years prior to 1989, the employee shall pay the employee's share. Other employees shall pay the state's share and the employee's share to purchase retroactive service credit. Where an employee purchases service credit for employment which occurred after 1988, that employee shall pay for the employee's share and the employer shall pay its share for the purchase of retroactive service credit: *Provided*, That no legislative employee and no current or former member of the Legislature may be required to pay any interest or penalty upon the purchase of retroactive service credit in accordance with the provisions of this section where the employee was not eligible to

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become a member during the years for which he or she is purchasing retroactive credit or had the employee attempted to contribute to the system during the years for which he or she is purchasing retroactive service credit and the contributions would have been refused by the board: *Provided, however*, That a current legislative employee purchasing retroactive credit under this section shall do so within 24 months of beginning contributions to the retirement system as a legislative employee or no later than December 31, 2016, whichever occurs later: *Provided further*, That once a legislative employee becomes a member of the retirement system, he or she may purchase retroactive service credit for any time he or she was employed by the Legislature and did not receive service credit. Any service credit purchased shall be credited as six months for each 60-day session worked, three months for each 30-day session worked or 12 months for each 60-day session for legislative employees who have been employed during regular sessions in 13 consecutive calendar years, as certified by the clerk of the house in which the employee served, and credit for interim employment as provided in this subsection: *And provided further*, That this legislative service credit shall also be used for months of service in order to meet the 60-month requirement for the payments of a temporary legislative employee member's retirement annuity: *And provided further*, That no legislative employee may be required to pay for any service credit beyond the actual time he or she worked regardless of the service credit which is credited to him or her pursuant to this section: *And provided further*, That any legislative employee may request a recalculation of his or her credited service to comply with the provisions of this section at any time.

(g) (1) Notwithstanding any provision to the contrary, the seven consecutive calendar years requirement and the 13 consecutive calendar years requirement and the service credit requirements set forth in this section shall be applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive and 13 consecutive calendar years referenced in this section: *Provided*, That the employee has not retired prior to the effective date of the amendments made to this section in the 2002 regular session of the Legislature.

(2) The requirement of seven consecutive years and the requirement of 13 consecutive years apply retroactively to all legislative employment prior to the effective date of the 2006 amendments to this section.

(h) The board of trustees shall grant service credit to any former or present member of the State Police Death, Disability and Retirement Fund who has been a contributing member of this system for more than three years for service previously credited by the State Police Death, Disability and Retirement Fund if the member transfers all of his or her contributions to the State Police Death, Disability and Retirement Fund to the system created in this article, including repayment of any amounts withdrawn any time from the State Police Death, Disability and Retirement Fund by the member seeking the transfer allowed in this subsection: *Provided*, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Public Employees

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Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement Fund, excluding contributions on lump sum payment for annual leave, plus interest at a rate determined by the board.

(i) The provisions of §5-10-22h of this code are not applicable to the amendments made to this section during the 2006 regular session.

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§5-10-15. Military service credit; qualified military service.

(a)(1) The Legislature recognizes the men and women of this state who have served in the armed forces of the United States during times of war, conflict and danger. It is the intent of this subsection to confer military service credit upon persons who are eligible at any time for public employees retirement benefits for any time served in active duty in the armed forces of the United States, regardless of whether the person was a public employee at the time of entering the military service.

(2) In addition to any benefit provided by federal law, any member of the retirement system who has previously served in or enters the active service of the armed forces of the United States, including active duty in the National Guard performed pursuant to Title 10 or Title 32 of the United States Code, shall receive credited service for the time spent in the armed forces of the United States, not to exceed five years, if the member:

(A) Has been honorably discharged from the armed forces; and

(B) Substantiates by appropriate documentation or evidence his or her active military service.

If a member of the retirement system enters the active service of the armed forces of the United States, the member's contributions to the retirement system are suspended during the period of the active service and until the member's return to the employ of a participating public employer, and any credit balance remaining in the member's deposit fund shall accumulate regular interest: *Provided*, That notwithstanding any provision in this article to the contrary, if an employee of a participating political subdivision serving on active duty in the military has accumulated credited service prior to the last entry into military service, in an amount that, added to the time in active military service while an employee equals nine or more years, and the member is unable to resume employment with a participating employer upon completion of duty due to death during or as a result of active service, all time spent in active military service, up to and including a total of five years, is considered to be credited service and death benefits are vested in the member: *Provided, however*, That the active service during the time the member is an employee must be as a result of an order or call to duty, and not as a result of volunteering for assignment or volunteering to extend the time in service beyond the time required by order or call.

(b) Subsection (a) of this section does not apply to any member who first becomes an employee of a participating public employer on or after July 1, 2015. This subsection does not apply to any member who first became an employee of a participating public employer before July 1, 2015.

(1) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase up to 60 months of military service credit for time served in active military duty prior to first becoming an employee of a participating public employer if all of the following conditions are met:

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(A) The member has completed at least 12 consecutive months of contributory service upon first becoming an employee of a participating public employer;

(B) The active military duty occurs prior to the date on which the member first becomes an employee of a participating public employer; and

(C) The employee pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system: *Provided*, That any employee who ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service.

(2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, but who does not remain employed and contributing to the retirement system for at least 12 consecutive months after his or her initial employment, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this subsection the first time he or she becomes an employee of a participating public employer and completes at least 12 consecutive months of contributing service. Such a member shall be considered to have met the requirement of paragraph (C), subdivision (1) of this subsection if he or she pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member the first time he or she becomes an employee of a participating public employer and completes at least 12 consecutive months of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(3) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, as an elected official, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this subsection after remaining employed for the first 12 consecutive months of his or her term and first becoming an employee, regardless of whether a salary is paid to the employee for each such month. An elected official who does not elect to begin participating in the retirement system upon first becoming an employee of a participating public employer as an elected official is not eligible to purchase military service credit pursuant to subdivision (1) of this subsection.

(4) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase military service credit for active military duty performed on or after the date he or she first becomes an employee of a participating public employer only if all of the following conditions are met: *Provided*, That the maximum military service credit such member may purchase shall take into account any military service credit purchased for active military duty pursuant to subdivision (1) of this subsection in addition to any military

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service credit purchased pursuant to this subdivision:

(A) The member was an employee of a participating public employer, terminated employment and experienced a break in contributing service in the retirement system of one or more months, performed active military service while not an employee of the participating public employer and not contributing to the retirement system, then again becomes an employee of a participating public employer and completes at least 12 consecutive months of contributory service;

(B) The member does not qualify for military service credit for such active military duty pursuant to subsection (d) of this section; and

(C) The member pays to the retirement system the actuarial reserve lump sum purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member after he or she again becomes an employee of a participating public employer immediately following the period of active military duty and break in service and completes at least 12 consecutive months of contributory service and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(5) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who otherwise meets the requirements of said paragraph, but who does not remain employed and contributing to the retirement system for at least 12 consecutive months when he or she first becomes an employee of a participating public employer after the period of active military duty and break in service, shall be considered to have met the requirement of paragraph (A), subdivision (4) of this subsection the first time he or she again becomes an employee of a participating public employer and completes at least 12 consecutive months of contributing service. Such a member shall be considered to have met the requirement of paragraph (C), subdivision (4) of this subsection if he or she pays to the retirement system the actuarial reserve lump sum purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member for the first time he or she again becomes an employee of a participating public employer and completes at least 12 consecutive months of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(6) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who becomes an employee of a participating public employer after such a period of active military duty and break in service as an elected official shall be considered to have met the requirement of paragraph (A), subdivision (4) of this subsection after remaining employed for the first 12 consecutive months of his or her term after again becoming an employee, regardless of whether a salary is paid to the employee for each such month. Such an individual must elect to begin participating in the retirement system immediately upon again becoming an employee of a participating public employer after the period of active military duty and break in service.

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(7) For purposes of this subsection, the following definitions apply:

(A) "Active military duty" means full-time active duty in the armed forces of the United States for a period of 30 or more consecutive calendar days. Active military duty does not include inactive duty of any kind.

(B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at 7.5 percent from the calculation month through the purchase month, compounded monthly: *Provided*, That if the employee elects to pay the full purchase amount on an installment or partial payment basis, the actuarial reserve purchase amount will include the lump sum payment plus additional interest accruing at 7.5 percent until the purchase amount is paid in full.

(C) "Armed forces of the United States" means the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard, the reserve components thereof, and the National Guard of the United States or the National Guard of a state or territory when members of the same are on full-time active duty pursuant to Title 10 or Title 32 of the United States Code.

(D) "Calculation month" means the month immediately following the month in which the member completes the 12 consecutive months of contributory service with a participating public employer required by this subsection, as applicable.

(E) "Purchase accrued benefit" means two percent times the purchase military service times the purchase average monthly salary.

(F) "Purchase age" means the age of the employee in years and completed months as of the first day of the calculation month.

(G) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of the calculation month based on the following actuarial assumptions: Interest rate of 7.5 percent; mortality of the 1971 group annuity mortality table, 50 percent blended male and female rates, applied on a unisex basis to all members; if purchase age is under age 62, a deferred annuity factor with payments commencing at age 62; and if purchase age is 62 or over, an immediate annuity factor with payments starting at the purchase age.

(H) "Purchase average monthly salary" means the average monthly salary of the member during the months two through 12 of the 12 consecutive month period required by this subsection of this section, as applicable.

(I) "Purchase military service" means the amount of military service being purchased by the employee in months up to the 60-month maximum, calculated in accordance with subdivision (9) of this subsection.

(J) "Purchase month" means the month in which the employee deposits the actuarial reserve lump sum purchase amount in full payment of the service credit being purchased or makes

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the final payment of the actuarial reserve purchase amount into the plan trust fund in full payment of the service credit being purchased.

(8) A member may purchase military service credit for a period of active military duty pursuant to this subsection only if the member received an honorable discharge for such period. Anything other than an honorable discharge, including, but not limited to, a general or under honorable conditions discharge, an entry-level separation discharge, an other than honorable conditions discharge or a dishonorable discharge, shall disqualify the member from receiving military service credit for the period of service.

(9) To calculate the amount of military service credit a member may purchase, the board shall add the total number of days in each period of a member's active military duty eligible to be purchased, divide the total by 30, and round up or down to the nearest integer (fractions of 0.5 shall be rounded up), in order to yield the total number of months of military service credit a member may purchase, subject to the 60-month maximum. A member may purchase all or part of the maximum amount of military service credit he or she is eligible for in one-month increments.

(10) To receive credit, a member must submit a request to purchase military service credit to the board, on such form or in such other manner as shall be required by the board, within the 12 consecutive month period required by this subsection, as applicable. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the member within the 48-month period required by this subsection, as applicable. A member purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment: *Provided*, That the board may accept partial, installment or other similar payments if the employee executes a contract with the board specifying the amount of military service to be purchased and the payments required: *Provided, however*, That any failure to pay the contract amount in accordance with this section shall be treated as an overpayment or excess contribution subject to §5-10-44 of this code and no military service shall be credited.

(11) The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(12) Military service credit purchased pursuant to this subsection may not be considered contributing service credit or contributory service for purposes of this article.

(13) If a member who has purchased military service credit pursuant to this subsection is eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid to the retirement system to purchase military service credit, together with regular interest on such amount.

(c) No period of military service may be used to obtain credit in more than one retirement system administered by the board and once used in any system, a period of military service

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may not be used again in any other system.

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may be amended from time to time. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code.

(e) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board has final power to determine the period. Notwithstanding the provisions of §5-10-3a of this code, the provisions of this section are not subject to liberal construction. The board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in §5-10D-1 of this code, may propose rules to administer this section for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

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§5-10-15a. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

(a) Any member accruing annual leave or sick leave days may, after June 27, 1988, elect to use the days at the time of retirement to acquire additional credited service in this retirement system. Except as provided in subsection (b) of this section, the accrued days shall be applied on the basis of two workdays credit granted for each one day of such accrued annual or sick leave days, with each month of retirement service credit to equal twenty workdays and with any remainder of ten workdays or more to constitute a full month of additional credit and any remainder of less than ten workdays to be dropped and not used, notwithstanding any provisions of the code to the contrary, including section twelve, article sixteen of this chapter. Such credited service shall be allowed and not deemed to controvert the requirement of no more than twelve months credited service in any year's period.

(b) For those persons who first become members of the retirement system on or after July 1, 2015, accrued annual or sick days may not be applied to acquire additional credited service.

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§5-10-15b. Credit for public employment in another state.

(a) Any member of the retirement system who has previously been employed in public employment in any other state of the United States is entitled to receive credited service for the time of public employment in that state, not to exceed five years, if the member substantiates by appropriate documentation or evidence his or her public employment in another state and makes contributions as required: Provided, That the member is not entitled to receive the credited service if the employee is vested or entitled to be vested in a retirement system of the state in which the employment credit was earned and the member is entitled to service credit in that retirement system for the employment period for which the applicant seeks credited service in West Virginia: Provided, however, That the service credit from the other state may not be used to meet West Virginia's eligibility requirements for retirement or vesting.

Members entitled to out-of-state service credit under the provisions of this section shall make additional contribution to the retirement system equal to the actuarial equivalent of the amount which would have been contributed, together with earnings thereon, by the member and the employer, had the member been covered during the period of the retroactive service credit.

(b) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board of Trustees has the final power to determine this period.

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§5-10-15c. Military service credit for members of the West Virginia National Guard.

(a)(1) The Legislature recognizes the men and women who have dedicated themselves to the defense and service of this state through their service in the West Virginia National Guard. It is the intent of this section to confer military service credit upon members of the Public Employees Retirement System for any time served in the West Virginia National Guard when they meet the requirements of this section.

(2) In addition to any benefit provided by federal law, any member of the retirement system who currently or previously has served in the West Virginia National Guard may purchase credited service for the time served in the West Virginia National Guard, not to exceed sixty months if the following conditions are met:

(A) The employee substantiates by appropriate documentation or evidence his or her service in the West Virginia National Guard;

(B) The employee has completed at least twelve consecutive months of contributory service to the retirement system on or after January 2015; and

(C) The employee pays to the retirement system the actuarial reserve purchase amount within forty-eight months after January 1, 2015, if he or she was employed with a participating public employer during all twelve months of the calendar year 2015 or the first date on which employer and employee contributions are received by the retirement system for the employee after January 2015 if he or she was not employed with a participating public employer during all twelve months of calendar year 2015 and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system: Provided, That any employee who ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service.

(3) Any member of the retirement system who serves, or has served, in the West Virginia National Guard may purchase one month of military service credit for every fifteen points earned toward a reserve component retirement during a qualifying year as computed in subdivision (7) of this subsection. For purposes of this section, points will be verified using the National Guard Current Annual Statement, Point Credit Summary or other equivalent document, along with any documentation of any periods of active service of the State of West Virginia as verified by the Adjutant General’s office. All documentation will be submitted to the retirement board by the employee.

(4) In no event, however, may a member purchase or receive a total of more than sixty months of military service credit under this section; section fifteen, article ten, chapter five of this code; or any other retirement system administered by the board.

(5) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board shall have final power to determine the period.

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(6) To receive credit, an employee must submit a request to purchase military service credit to the board, on such form or in such other manner as shall be required by the board, within the twelve consecutive month period required by this subsection or by December 31, 2016, whichever occurs later. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the employee within the forty-eight-month period required by this subsection, as applicable. An employee purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment: Provided, That the board may accept partial, installment or other similar payments if the employee executes a contract with the board specifying the amount of military service to be purchased and the payments required: Provided, however, That any failure to pay the contract amount in accordance with this section shall be treated as an overpayment or excess contribution subject to section forty-four of this article and no military service shall be credited.

(7) To calculate the amount of military service credit an employee may purchase, the board shall add the total number of points accrued in a qualifying year, divide the total by fifteen, and round up or down to the nearest integer (fractions of 0.5 and greater shall be rounded up), in order to yield the total number of months of military service credit an employee may purchase, subject to the sixty-month maximum. An employee may purchase in one-month increments all or part of the maximum amount of military service credit for which he or she is eligible.

(8) If a member who has purchased military service credit pursuant to this subsection is eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid to the retirement system to purchase military service credit, together with regular interest on the amount.

(9) Military service credit purchased pursuant to this subsection may not be considered contributing service credit or contributory service for purposes of this article.

(b)(1) Employees of participating public employers who continue concurrently in active service of the State of West Virginia with the West Virginia National Guard after the eligible period to purchase military service credit as set forth in subsection (a) or employees who join the West Virginia National Guard after participation in the retirement system has commenced may purchase military service credit earned after the service computed under subsection (a) up to the sixty-month maximum in every even calendar year following, if the following conditions are met:

(A) The employee substantiates by appropriate documentation or evidence his or her service in the West Virginia National Guard;

(B) The employee has completed at least twelve consecutive months of contributory service to the retirement system in the prior odd year; and

(C) The employee pays to the retirement system the actuarial reserve purchase amount

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within three months from the date of the cost letter provided by the board and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system: Provided, That any employee who ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service credit.

(2) Any member of the retirement system who serves or has served in the West Virginia National Guard may purchase one month of military service credit for every fifteen points earned toward a reserve component retirement during a qualifying year as computed in subdivision (6) of this subsection. For purposes of this section, points will be verified using the National Guard Current Annual Statement, Point Credit or other equivalent document, along with any documentation of any periods of active service of the State of West Virginia as verified by the Adjutant General's office. All documentation will be submitted to the retirement board by the employee.

(3) In no event, however, may a member purchase or receive a total of more than sixty months of military service credit under this section; section fifteen, article ten, chapter five of this code, or any other retirement system administered by the board.

(4) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board shall have final power to determine the period.

(5) To receive credit, an employee must submit a request to purchase military service credit to the board, on such form or in such other manner as shall be required by the board, within the first five months of each even calendar year following the years computed under subsection (a) of this section. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the employee within three months from the date of the cost letter provided by the board. An employee purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment.

(6) To calculate the amount of military service credit an employee may purchase, the board shall add the total number of points accrued in a qualifying year, divide the total by fifteen, and round up or down to the nearest integer (fractions of 0.5 and greater shall be rounded up), in order to yield the total number of months of military service credit an employee may purchase, subject to the sixty-month maximum. An employee may purchase in one month increments all or part of the maximum amount of military service credit for which he or she is eligible.

(7) If a member who has purchased military service credit pursuant to this subsection is eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid to the retirement system to purchase military service credit, together with regular interest on the amount.

(8) Military service credit purchased pursuant to this subsection may not be considered

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contributing service credit or contributory service for purposes of this article.

(c) For purposes of this section:

(1) “Active service of the State of West Virginia” means full-time state active duty in the West Virginia Army National Guard or the West Virginia Air National Guard when such duty is performed upon orders of the Adjutant General of the West Virginia National Guard or the Governor of West Virginia and which is funded entirely by the state.

(2) “Actuarial reserve purchase amount” means the purchase annuity rate multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at seven and one-half percent from the calculation month through the purchase month, compounded monthly: Provided, That if the employee elects to pay the full purchase amount on an installment or partial payment basis as permitted under subsection (a) of this section, the actuarial reserve purchase amount will include the lump sum payment plus additional interest accruing at seven and one-half percent until the purchase amount is paid in full.

(3) “Calculation month” means the month immediately following the month in which the employee completes the first twelve consecutive months of contributory service with a participating public employer on or after January 2015 for computations under subsection (a) of this section, or the month immediately following the month in which the employee completes twelve consecutive months of contributory service with a participating public employer in the preceding odd calendar year for computations under subsection (b) of this section.

(4) “Purchase accrued benefit” means two percent times the purchase military service times the purchase average monthly salary.

(5) “Purchase age” means the age of the employee in years and completed months as of the first day of the calculation month.

(6) “Purchase annuity rate” means the actuarial lump sum annuity factor calculated as of the calculation month based on the following actuarial assumptions:

(A) Interest rate of seven and one-half percent;

(B) Mortality of the 1971 group annuity mortality table, fifty percent blended male and female rates, applied on a unisex basis to all members; and

(C) If purchase age is under age sixty-two, a deferred annuity factor with payments commencing at age sixty-two; or

(D) If purchase age is sixty-two or over, an immediate annuity factor with payments starting at the purchase age.

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(7) “Purchase average monthly salary” means the average monthly salary of the employee during months two through twelve of the twelve consecutive month period required by the appropriate subsection.

(8) “Purchase military service” means the amount of military service being purchased by the employee in months up to the sixty-month maximum, calculated in accordance with subdivision (7) of subsection (a) and subdivision (6) of subsection (b) of this section.

(9) “Purchase month” means the month in which the employee deposits the actuarial reserve lump sum purchase amount in full payment of the service credit being purchased or makes the final payment of the actuarial reserve purchase amount into the plan trust fund in full payment of the service credit being purchased.

(10) “Qualifying year” means any year in which a member earns the minimum number of points required to receive credit for the year toward retired pay pursuant to Section 12732 of Title 10, United States Code.

(11) “Service in the West Virginia National Guard” means full-time active duty for annual training in the National Guard, Inactive Duty Training, Active Duty Operational Support, Active Duty Special Work, funeral honors, State Active Duty as a member of the West Virginia National Guard or any other similar periods of Title 32 service or active service of the State of West Virginia.

(12) “West Virginia National Guard” means the West Virginia Army National Guard and the West Virginia Air National Guard.

(d) The board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in section one, article ten-d of this chapter, may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to administer this section.

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§5-10-16. When and how political subdivision becomes participating public employer.

The state of West Virginia shall become a participating public employer effective July 1, 1961. Any other political subdivision may by a three-fifths vote of its governing body, or by a majority vote of its electors, elect to become a participating public employer and thereby include its employees in the membership of the retirement system. It shall be the duty of the clerk or secretary of each such political subdivision electing to become a participating public employer to certify the determination of the political subdivision to the board of trustees within ten days from and after the vote of the governing body or the canvass of votes upon such action.

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§5-10-17. Retirement system membership.

The membership of the retirement system consists of the following persons:

(a) All employees, as defined in §5-10-2 of this code, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the participating public employer on and after that date shall become members of the retirement system; and all persons who become employees of a participating public employer on or after that date shall thereupon become members of the system; except as provided in subdivisions (b), (c) and (d) of this section.

(b) The membership of the Public Employees Retirement System may not include any person who is an active contributing member of, or who has been retired by, any of the state teachers retirement systems, the Judges Retirement System, any retirement system of the West Virginia State Police, the Deputy Sheriff Retirement System, the Natural Resources Police Officer Retirement System or any municipal retirement system for either, or both, police or firefighter; and the Bureau of Employment Programs, by the Commissioner of the Bureau, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: *Provided,* That the exclusions of membership do not apply to any member of the State Legislature, the Clerk of the House of Delegates, the Clerk of the State Senate or to any member of the legislative body of any political subdivision provided he or she once becomes a contributing member of the retirement system: *Provided, however,* That any retired member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the Deputy Sheriff Retirement System, the Natural Resources Police Officer Retirement System and any retired member of any municipal retirement system for either, or both, police or firefighter may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for prior service as a municipal police officer or firefighter or as a member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the Deputy Sheriff Retirement System, or the Natural Resources Police Officer Retirement System: *Provided further,* That any retired member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the Deputy Sheriff Retirement System, the Natural Resources Police Officer Retirement System and any retired member of any municipal retirement system for either, or both, police or firefighters, who begins participation in the retirement system established in this article on or after July 1, 2005, may not receive a combined retirement benefit in excess of 105 percent of the member's highest annual salary earned while either a member of the retirement system established in this article or while a member of the other retirement system or systems from which he or she previously retired when adding the retirement benefit from the retirement system created in this article to the retirement benefit received by that member from the other retirement system or systems set forth herein from which he or she previously retired: *And provided further,* That the membership of the retirement system does not include any person who becomes employed by the Prestera Center for Mental Health Services, Valley Comprehensive Mental Health Center, Westbrook Health Services or Eastern Panhandle

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Mental Health Center on or after July 1,1997: *And provided further,* That membership of the retirement system does not include any person who becomes a member of the federal Railroad Retirement Act on or after July 1, 2000.

(c) Any member of the State Legislature, the Clerk of the House of Delegates, the Clerk of the State Senate, and any employee of the State Legislature whose employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between sessions in seven consecutive calendar years, as certified by the Clerk of the House in which the employee served, or any member of the legislative body of any other political subdivision shall become a member of the retirement system provided he or she notifies the retirement system in writing of his or her intention to be a member of the system and files a membership enrollment form as prescribed by the Board of Trustees, and each person, upon filing his or her written notice to participate in the retirement system, shall by that act authorize the Clerk of the House of Delegates or the Clerk of the State Senate or such person or legislative agency as the legislative body of any other political subdivision shall designate to deduct the member's contribution, as provided in §5-10-29(b) of this code, and after the deductions have been made from the member's compensation, the deductions shall be forwarded to the retirement system.

(d) Any employee, as defined in §5-10-2 of this code, who has concurrent employment in an additional job or jobs which would require the employee to be a member of the West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System, the Natural Resources Police Officer Retirement System or the West Virginia Emergency Medical Services Retirement System shall abide by the concurrent employment statutory provisions of said retirement system and shall participate in only one retirement system administered by the board.

(e) If question arises regarding the membership status of any employee, the Board of Trustees has the final power to decide the question.

(f) Any individual who is a leased employee is not eligible to participate in the system. For the purposes of this article, the term "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final authority to decide the question.

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§5-10-18. Termination of membership; reentry.

(a) When a member of the retirement system retires, withdraws his or her accumulated contributions, or dies, he or she ceases to be a member. When a member leaves the employ of a participating public employer for any reason other than retirement or death, and withdraws his or her accumulated contributions from the system, he or she ceases to be a member and forfeits service credited to him or her at that time. If he or she becomes reemployed by a participating public employer he or she shall be reinstated as a member of the retirement system and his or her credited service last forfeited by him or her shall be restored to his or her credit: Provided, That he or she must be reemployed for a period of one year or longer to have the service restored: Provided, however, That he or she returns to the members' deposit fund the amount, if any, he or she withdrew from the fund, together with reinstatement interest as set forth in the Board's Rule, Refund, Reinstatement, Retroactive Service, Loan And Employer Error Interest Factors, 162 C. S. R. 7, on the withdrawn amount from the date of withdrawal to the date of repayment, and that the repayment begins within two years of the return to employment and that the full amount is repaid within five years of the return to employment. Any failure to repay the full amount in accordance with this section shall be treated as an overpayment or excess contribution subject to section forty-four of this article.

(b) The Prestera Center for Mental Health Services, Valley Comprehensive Mental Health Center, Westbrook Health Services and Eastern Panhandle Mental Health Center, and their successors in interest, shall provide for their employees a pension plan in lieu of the Public Employees Retirement System during the existence of the named mental health centers and their successors in interest.

(c) The administrative bodies of the Prestera Center for Mental Health Services, Valley Comprehensive Mental Health Center, Westbrook Health Services and Eastern Panhandle Mental Health Center shall, on or before May 1, 1997, give written notice to each employee who is a member of the Public Employees Retirement System of the option to withdraw from or remain in the system. The notice shall include a copy of this section and a statement explaining the member's options regarding membership. The notice shall include a statement in plain language giving a full explanation and actuarial projection figures in support of the explanation regarding the individual member's current account balance, vested and nonvested, and his or her projected return upon remaining in the Public Employees Retirement System until retirement, disability or death, in comparison with the projected return upon withdrawing from the Public Employees Retirement System and joining a private pension plan provided by the Community Mental Health Center and remaining in the private pension plan until retirement, disability or death. The administrative bodies shall keep in their respective records a permanent record of each employee's signature confirming receipt of the notice.

(d) Effective March 1, 2003, and ending December 31, 2004, any member may purchase credited service previously forfeited by him or her and the credited service shall be restored to his or her credit: Provided, That he or she returns to the members' deposit fund the

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amount, if any, he or she withdrew from the fund, together with interest on the withdrawn amount from the date of withdrawal to the date of repayment at a rate to be determined by the board. The repayment under this section may be made by lump sum or repaid over a period of time not to exceed sixty months. Where the member elects to repay the required amount other than by lump sum, the member is required to pay interest at the rate determined by the board until all sums are fully repaid.

(e) Effective July 1,2005, and ending December 31, 2006, any emergency services personnel may purchase service credit for the time period beginning January 1, 1990, and ending December 31, 1995: Provided, That the person was employed as an emergency service person in this state for that time period: Provided, however, That any person obtaining service credit under this subsection is required to pay the employee's share and the employer's share upon his or her actual salary for the years in question plus interest at the assumed actuarial rate of return for the plan year being repurchased.

(f) Jobs for West Virginia's graduates and their successors in interest shall provide a pension plan in lieu of the Public Employees Retirement System for employees hired on or after July 1, 2005.

(g) Wetzel County Hospital and their successors in interest shall provide a pension plan in lieu of the Public Employees Retirement System for employees hired on or after July 1, 2005.

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§5-10-19. Employers to file information as to employees' service and reemployment of retirants.

(a) Each participating public employer shall file with the board of trustees, in such form as the board shall from time to time prescribe, a detailed statement of all service rendered to participating public employers by each of its employees and by any retirant who retired under section twenty-two-c of this article and who is working for the employer on a contract basis, as defined in section twenty-two-c of this article, and such other information as the board shall require in the operation of the retirement system: *Provided*, That for any retirants becoming reemployed by a participating public employer pursuant to the provisions of §5-10-48 of this code, the retirement board may also require of retirants and participating public employers such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service upon retirement has occurred.

(b) Prior to any retirant subsequently becoming employed on a permanent full-time, permanent part-time, per diem, leased employee, temporary full-time or temporary part-time basis by a participating public employer, the employer shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the employer shall notify the board, in writing, of the retirant's subsequent employment.

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§5-10-20. Voluntary retirement.

(a) Except as provided in subsection (b) of this section, any member who has attained or attains age sixty years and has five or more years of credited service in force, at least one year of which he or she was a contributing member of the retirement system, may retire upon his or her written application filed with the board of trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof the member desires to be retired: Provided, That on and after June 1, 1986, any person who becomes a new member of this retirement system shall, in qualifying for retirement hereunder, have five or more years of service, all of which years shall be actual, contributory ones. Upon retirement, the member shall receive an annuity provided for in section twenty-two of this article.

(b) Any person who first becomes a member of the retirement system on or after July 1, 2015, may retire upon written application as provided in subsection (a) of this section upon attaining the age of sixty-two with ten or more years of service, all of which must be actual, contributing years.

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§5-10-21. Deferred retirement and early retirement.

(a) Except as provided in section twenty-one-a of this article, any member who first becomes a member of the retirement system before July 1, 2015, and who has five or more years of credited service in force, of which at least three years are contributing service, and who leaves the employ of a participating public employer prior to his or her attaining age sixty years for any reason except his or her disability retirement or death, is entitled to an annuity computed according to section twenty-two of this article, as that section was in force as of the date of his or her separation from the employ of a participating public employer: Provided, That he or she does not withdraw his or her accumulated contributions from the members' deposit fund: Provided, however, That on and after July 1, 2002, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this section, have five or more years of service, all of which years shall be actual, contributory ones. His or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-two years.

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section and has ten or more years of credited service in force and who has attained age fifty-five as of the date of his or her separation, may, prior to the effective date of his or her retirement, but not thereafter, elect to receive the actuarial equivalent of his or her deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his or her date of separation and his or her attainment of age sixty-two years and payable throughout his or her life.

(c) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section and has twenty or more years of credited service in force may elect to receive the actuarial equivalent of his or her deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his or her fifty-fifth birthday and his or her attainment of age sixty-two years and payable throughout his or her life.

(d) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b of this article, and pursuant to rules promulgated by the board, and except for a person who first becomes a member of the retirement system on or after July 1, 2015, any member who has thirty or more years of credited service in force, at least three of which are contributing service, and who elects to take early retirement, which for the purposes of this subsection means retirement prior to age sixty, whether an active employee or a separated employee at the time of application, is entitled to the full computation of annuity according to section twenty-two of this article, as that section was in force as of the date of retirement application, but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty when he or she would have been entitled to full computation of benefit without any reduction.

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(e) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b of this article, and except for a person who first becomes a member of the retirement system on or after July 1, 2015, any member of the retirement system may retire with full pension rights, without reduction of benefits, if he or she is at least fifty-five years of age and the sum of his or her age plus years of contributing service and limited credited service, as defined in section two of this article, equals or exceeds eighty: Provided, That on and after July 1, 2011, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this subsection, have five or more years of service, all of which years shall be actual, contributory ones. The member's annuity shall begin the first day of the calendar month immediately following the calendar month in which his or her application for the annuity is filed with the board.

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§5-10-21a. Deferred retirement and early retirement for new members as of July 1, 2015.

(a) Any person who first becomes a member of the retirement system on or after July 1, 2015, who has ten or more years of contributing service and who leaves the employ of a participating public employer prior to attaining age sixty-two years for any reason except his or her disability or death, is entitled to an annuity computed according to section twenty-two of this article, as that section was in force as of the date of his or her separation from the employ of a participating public employer: Provided, That he or she does not withdraw his or her accumulated contributions from the members' deposit fund: Provided, however, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-four years.

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section and has twenty or more years of contributing service in force is entitled to an annuity computed as in subsection (a) of this section: Provided, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-three.

(c) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b of this article, and pursuant to rules promulgated by the board, any member who first becomes a member of the retirement system on or after July 1, 2015, has ten or more years of contributing service in force, is currently employed by a participating public employer and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age sixty but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: Provided, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty.

(d) Any member who first becomes a member of the retirement system on or after July 1, 2015, and has twenty or more years of contributing service in force, is currently employed by a participating public employer and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age fifty-seven but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: Provided, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of

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trustees on or after his or her attaining age fifty-seven.

(e) Any member who first becomes a member of the retirement system on or after July 1, 2015, and has thirty or more years of contributing service in force, and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age fifty-five but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: Provided, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age fifty-five.

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§5-10-22. Retirement annuity.

(a) Upon a member's retirement, as provided in this article, he or she shall receive a straight life annuity equal to one and five-tenths percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her credited service in force at the time of his or her retirement, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section twenty-seven-a of this article: Provided, That the final average salary used in this calculation does not include any lump sum payment for unused, accrued leave of any kind or character. The credited service used for this calculation may not include any period of limited credited service: Provided, however, That after March 1, 1970, all members retired and all members retiring shall receive a straight life annuity equal to two percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her credited service, exclusive of limited credited service in force at the time of his or her retirement, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section twenty-seven-a of this article. In either event, upon his or her retirement he or she has the right to elect an option provided in section twenty-four of this article. All annuity payments shall commence effective the first day of the month following the month in which a member retires or a member dies leaving a beneficiary entitled to benefits and shall continue to the end of the month in which the retirant or beneficiary dies, and the annuity payments may not be prorated for any portion of a month in which a member retires or retirant or beneficiary dies. Any member receiving an annuity based in part upon limited credited service is not eligible for the supplements provided in sections twenty-two-a through twenty-two-d, inclusive, of this article.

(b) The annuity of any member of the Legislature who participates in the retirement system as a member of the Legislature and who retires under this article or of any former member of the Legislature who has retired under this article (including any former member of the Legislature who has retired under this article and whose annuity was readjusted as of March 1, 1970, under the former provisions of this section) shall be increased from time to time during the period of his or her retirement when and if the legislative compensation paid under section two, article two-a, chapter four of this code, to a member of the Legislature shall be increased to the point where a higher annuity would be payable to the retirant if he or she were retiring as of the effective date of the latest increase in legislative compensation, but on the basis of his or her years of credited service to the date of his or her actual retirement.

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§5-10-22a. Supplemental benefits for certain annuitants.

As an additional supplement to other retirement allowances provided, each annuitant who on July 1, 1974, is receiving a retirement annuity less than $4,200 annually, and whose retirement allowance became effective during the respective dates indicated in this section shall receive, upon application, an increased amount, payable monthly, which is the product of his present retirement allowance multiplied by the percentage increase applicable, according to the effective date of retirement and according to the plan of retirement, as provided by the schedule below.

Effective Date of Percentage of

Retirement Allowance Increase

July 1, 1961 through June 30, 1962 .....24.00

July 1, 1962 through June 30, 1963 .....22.00

July 1, 1963 through June 30, 1964 .....20.00

July 1, 1964 through June 30, 1965 .....18.00

July 1, 1965 through June 30, 1966 .....16.00

July 1, 1966 through June 30, 1967 .....14.00

July 1, 1967 through June 30, 1968 .....12.00

July 1, 1968 through June 30, 1969 .....10.00

July 1, 1969 through June 30, 1970 .....8.00

July 1, 1970 through June 30, 1971 .....6.00

July 1, 1971 through June 30, 1972 .....4.00

July 1, 1972 through June 30, 1973 .....2.00

Any additional benefit conferred herein shall not be retroactive to the time of retirement but shall become effective July 1, 1974.

In no event, however, when the amount of an annuity is affected by this section, shall the total of the additional benefit herein provided and other retirement allowances provided elsewhere in this article exceed the sum of $4,200 annually.

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§5-10-22b. Supplemental benefits for certain annuitants.

Any annuitant who is receiving a retirement annuity of less than $7,500 annually shall receive, upon application, a supplemental benefit, prospectively, under this section from the public employees retirement fund: Provided, That the effective date of retirement for such annuitant was prior to July 1, 1979, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, "effective date of retirement" means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of $18 multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, together with any of the other provisions of this article, shall not exceed $7,500 annually.

Any annuitant receiving the supplemental benefit provided for herein for the annuity payment period just prior to July 1, 1985, or any annuitant made newly eligible for receipt of such supplemental benefit on such date, shall receive a nineteen percent increase in the amount of such supplemental benefit prior received or newly calculated, effective on and after July 1, 1985, and irrespective of the maximum total annuity proviso and limitation of $7,500 annually. In any fiscal year in which pay increases are granted by the Legislature to active public employees, there may also be given an increase in retirement benefits for retired public employees, if funding is available for this purpose.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

For the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which may be receivable as beneficiary of another, under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.

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§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

The Legislature hereby finds and declares that a compelling state interest exists in providing a temporary early retirement incentives program for encouraging the early, voluntary retirement of those public employees who were current, active contributing members of this retirement system on April 1, 1988, in the reduction of the number of such employees and in reduction of governmental costs therefor; that such program constitutes a public purpose; and that the special classifications and differentiations provided in respect of such program are reasonable and equitable ones for the accomplishment of such purpose and program as enacted in Enrolled Committee Substitute for H.B. No. 4672, regular session, 1988, and as clarified and supplemented herein, retroactive to such beginning date, aforesaid. The Legislature further finds that maintaining an actuarially sound retirement fund is a necessity and that the reemployment of persons who retire under this section in any manner, including reemployment on a contract basis, is contrary to the intent of the early retirement program and severely threatens the fiscal integrity of the retirement fund.

(a) For the purposes of this section: (1) "Contract" means any personal service agreement, not involving the sale of commodities, that cannot be performed within sixty days or that exceeds $2,500 in any twelve-month period. The term "contract" does not include any agreement obtained by a retirant through a bidding process and which is for the furnishing of any commodity to a government agency and that term does not include any person who retired under this section who works as a contract employee for the Legislature when such employment commences after December 31, 1999: Provided, That such employment may not exceed one hundred ten days; (2) "governmental entity" means the State of West Virginia; a Constitutional branch or office of the state government, or any subdivision thereof; a county, city or town in the state; a county board of education; a separate corporation or instrumentality established pursuant to a state statute; any other entity currently permitted to participate in any state public retirement system or the Public Employees Insurance Agency; or any officer or official of any entity listed above who is acting in his or her official capacity; (3) "part-time elected or appointed office" means any elected or appointed office that pays annual compensation of less than $2,500 or requires less than sixty days of service in any twelve-month period; (4) "substitute teacher" means a teacher, public school librarian, registered professional nurse employed by the county board of education or any other person employed for counseling or instructional purposes in a public school in this state who is temporarily fulfilling the duties of an existing real person employed in a specific position who is temporarily absent from that specified position.

(b) Beginning on April 1, 1988, and continuing through December 31, 1988 (or as extended by eligibility qualification requirement, as hereinafter specified), eligible members, being those active, contributing members actually and currently employed on such beginning date,

retiring pursuant to this section, and from any state, county or municipal position, covered under the two divisions of this retirement system (the state division and the public employer, nonstate division) including those so employed on said beginning date and leaving the system during the incentive period and who are eligible for taking deferred retirement (but not disability retirees) may elect to participate in this incentive program and may elect any one of the three following incentive options:

(1) Retirement incentive option one:

For the purpose of computing the member's annuity, the normal final average salary shall be computed and one-eighth thereof shall be added thereto in arriving at the true final average salary for use in actual computation of retirement benefit.

(2) Retirement incentive option two:

A member may elect a lump sum payment, in addition to his or her regular retirement annuity, equal to ten percent of his or her final average salary not to exceed $5,000, and in the case of a deferred retirement electing this option, such lump sum payment shall be receivable and deferred to the time of receipt of such deferred retirement annuity.

(3) Retirement incentive option three:

A person shall be credited with an additional two years of contributing service and an additional two years of age. The years credited under this option shall in no way add to a member's final average salary factor of computation.

Active, contributing members who desire to retire under this section but who are unable to retire by December 31, 1988, and make use of the incentive retirement program because an element of eligibility for retirement, such as age or other element, will not be met until a date after December 31, 1988, and before July 1, 1989, shall be permitted to postpone actual retirement until the date of fulfilling such element of eligibility and shall retire on such date, before the temporary retirement incentive program ends on June 30, 1989, with proper credit to be granted for such extended period: Provided, That they shall have made application for retirement, including choice of their respective option, and given notice to their respective employer by December 31, 1988, although postponing actual retirement, as aforesaid.

(c) Any member participating in this retirement incentive program is not eligible to accept further employment or accept, directly or indirectly, work on a contract basis from any governmental entity: Provided, That nothing in this section shall affect any contract entered into prior to the effective date of this section: Provided, however, That the executive director may approve, upon written request and for good cause shown, an exception allowing a retirant to perform work on a contract basis. The executive director shall report all approved exceptions to the board of trustees: Provided further, That a person may retire under this section and thereafter serve in an elective office: And provided further, That he or she shall

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not receive an incentive option under this section during the term of service in said office, but shall receive his or her annuity calculated on regular basis, as if originally taken not under this section but on such regular basis. At the end of such term and cessation of service in such office during which the member shall rejoin and reenter the retirement system and pay contributions therefor, such regular annuity shall be recalculated and an increased annuity due to such additional employment shall be granted and computed on regular basis and in similar manner as under section forty-eight of this article. In respect of an appointive office, as distinguished from an elective office, any person retiring under this section and thereafter serving in such appointive office shall not receive an incentive option under this section during the term of service in said office, but the same shall be suspended during such period: And provided further, That at the end of such term and cessation of service in such appointive office the incentive option provided for under this section shall be resumed: And provided further, That any person elected or appointed to office by the state or any of its political subdivisions who waives whatever salary, wage or per diem compensation he or she may be entitled to by virtue of service in such office and who does not receive any income therefrom except such reimbursement of out-of-pocket costs and expenses as may be permitted by the statutes governing such office shall continue to receive an incentive option under this section. Such service shall not be counted as contributed or credited service for purposes of computing retirement benefits.

If such elected or appointed office is a part-time elected or appointed office, a person electing retirement under this section may serve in such elected or appointed office without a loss of the benefits provided under this section.

Prior to the initiation or renewal of any contract entered into pursuant to the provisions of this section or the acceptance of any elective or appointive office by a person who has elected to retire under the early retirement provisions of this article, such person shall complete a disclosure and waiver statement executed under oath and acknowledged by a notary public. The board shall promulgate rules, pursuant to chapter twenty-nine-a, of this code regarding the form and contents of the disclosure and waiver statement. The disclosure and waiver statement shall be forwarded to the appropriate state public retirement system administrator who shall take action to ensure that the early retirement incentive benefits are reduced in accordance with the provisions of this section. The administrator shall then certify such action in writing to the appropriate governmental entity.

In any event, an eligible member may retire under this section and thereafter continue to receive his or her incentive annuity and be employed as a substitute teacher or as adjunct faculty.

Any such incentive retirants, under this section, may not thereafter receive such annuity and enter or reenter any governmental retirement system established or authorized to be established by the state, notwithstanding any provision of the code to the contrary, unless required by Constitutional provision or as hereby specifically permitted to those retiring and thereafter serving in elective office, as aforesaid.

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The additional annuity allowed for temporary early retirement under these options, in respect of state division retirants of this system, is intended to be paid from the retirement incentive account hereby created as a special account in the State Treasury and from the funds therein established with moneys required to be transferred by heads of spending units from the unused portion of salary and fringe benefits in their budgets accruing in respect of such positions vacated and subsequently canceled under this temporary early retirement program. Salary and fringe benefit moneys actually saved in a particular fiscal year shall constitute the fund source for payment of such additional annuity, the funds of the retirement system to be used for payment of the base annuity under the early retirement incentive program: Provided, That such additional annuity shall be paid from the unused portion of both salary and fringe benefits and with any remainder of any fringe benefit moneys, as such, to remain with the spending unit and any remainder of salary, as such, to be directed as additional funding to the Teachers Retirement System and as a part of the assets thereof. No such additional annuity shall be disallowed even though initial receipts may not be sufficient, with funds of the system to be applied for such purpose, as for the base annuity. With respect to public employer division retirants (nonstate division retirants of the system), such incentive annuity shall be paid from the nonstate division funds of the system.

(d) The executive secretary of the retirement system shall provide forms for applicants. Such forms shall include a detailed description of the incentive plan options.

The executive secretary of the retirement system shall file a report to the Legislature no later than February 15, 1989, and quarterly thereafter, detailing the number of retirees who have elected to accept early retirement incentive options, the dollar cost to date by option selected, and the projected annual cost through the year 2000.

(e) Within every spending unit, department, board, corporation, commission, or any other agency or entity wherein two or multiples of two members elect to retire either under the temporary early retirement incentives set forth above, or under regular, voluntary retirement, and countable on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled, with the second position being abolished upon the effective day of the member's retirement. The vacant position abolishment requirement shall not apply to elective positions or appointed public officers whose positions are established by state Constitutional or statutory provision. The retirant's employing entity shall decide as to which of the vacated positions made available through special early retirement or through regular, voluntary retirement are to be abolished and the head of such spending unit shall immediately notify the State Auditor, the Legislative Auditor, and the commissioner of the department of finance and administration of the decisions and shall then apply and/or transfer the remaining salary and fringe benefits as aforesaid: Provided, That this vacant position abolishment provision shall not apply to any county or municipal position except those under the authority of a county board of education, nor to any position or positions, whether designated by spending unit, department, agency, commission, entity or otherwise, which the Governor in respect of the executive branch, or the chief justice of the Supreme Court of Appeals in respect of the judicial branch, or the President of the Senate or Speaker

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of the House of Delegates, in respect of the legislative branch, may exempt or amend, under such abolishment provision, upon his or her respective recommendation that such exemption or amendment is necessary to provide for continuity of governmental operation or to preserve the health, welfare or safety of the people of West Virginia, and with the prior concurrence of the Joint Committee on Government and Finance in such recommendation, after the chairmen thereof shall cause such committee to meet.

(f) Special rule of eighty. –- Any active, contributing member of the retirement system as of April 1, 1988, who selects one of the incentive options in this section, may retire under the special early retirement provisions with full pension rights, without reduction of benefits if the sum of such member's age plus years of contributing service equals or exceeds eighty: Provided, That such person has at least twenty years of contributing service; up to two years of which may be military service, or prior service, or any combination thereof not exceeding an aggregate of two years.

(g) Termination of temporary retirement incentives program. -- The right to elect, choose, select or use any of the options, special rule of eighty, or other benefits set forth in this section shall terminate on June 30, 1989.

(h) The board shall promulgate rules and regulations in accordance with the provisions of article three, chapter twenty-nine of this code regarding the calculation of the amount of incentive option that may be forfeited pursuant to the provisions of subsection (b) of this section.

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§5-10-22d. Supplemental benefits for certain annuitants.

Beginning on January 1, 1991, as an additional supplement to other retirement allowances provided, any annuitant who is receiving a retirement annuity on the effective date of this section shall receive a supplemental benefit, prospectively, if the effective date of retirement for such annuitant was prior to January 1, 1981. Each such annuitant shall receive as his or her supplemental benefit an increased annual amount which is the product of the sum of $6 multiplied by his or her years of credited service. Nothing in this or any other section of this code shall be construed to require any appropriation of state General Revenue Funds for the payment of any benefit provided for in this section.

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§5-10-22e. Supplemental benefits for retirees effective July 1, 1994; calculation of benefits and conditions of payment.

(a) A supplement to retirement benefits provided shall be paid prospectively to all eligible annuitants who have been retired prior to December 31, 1992, which supplement shall become effective on July 1, 1994. The calculation of such supplement for each annuitant shall be based upon the number of full increments as set forth in subsections (b) through (k) of this section that the annuitant has maintained his or her retired status since the original date of the commencement of his or her retirement, and shall equal the sum of the applicable percentages credited for such increments as set forth in the applicable subsections of this section. Any such supplement shall be paid in pro rata monthly installments.

(b) The total amount of the supplement due to qualified annuitants who retired during the period commencing on April 1, 1988, and ending on December 31, 1992, shall be three percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974: Provided, That annuitants who retired during the period set forth in this subsection shall be required to elect between receiving the supplemental benefit provided in this section or any incentives provided in section twenty-two-c of this article or any other supplements provided in this article: Provided, however, That the Consolidated Public Retirement Board shall provide written notification to members eligible for the benefit provided in this subsection of the availability and terms of the benefit provided in this subsection and members electing to select this benefit in lieu of any other incentive the member has or is receiving shall submit an application for the benefit on the form prescribed by the board.

(c) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1985, and ending on March 31, 1988, shall be five percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplement provided in subsection (b) of this section.

(d) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1982, and ending on June 30, 1985, shall be five percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b) and (c) of this section.

(e) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1979, and ending on June 30, 1982, shall be sixteen percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c) and (d) of this section.

(f) The total amount of the supplement due to qualified annuitants who retired during the

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period commencing on July 1, 1976, and ending on June 30, 1979, shall be sixteen percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c), (d) and (e) of this section.

(g) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1973, and ending on June 30, 1976, shall be sixteen percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e) and (f) of this section.

(h) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1970, and ending on June 30, 1973, shall be twenty-four percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e), (f) and (g) of this section.

(i) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1967, and ending on June 30, 1970, shall be twenty-four percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e), (f), (g) and (h) of this section.

(j) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1964, and ending on June 30, 1967, shall be twenty-four percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e), (f), (g), (h) and (i) of this section.

(k) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1961, and ending on June 30, 1964, shall be twenty-four percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e), (f), (g), (h), (i) and (j) of this section.

(l) For each annuitant, a preliminary supplement shall be computed on the basis of the original annual benefit including any supplemental benefits provided on or before July 1, 1974, received by the original retiree as provided by subsections (b) through (k) of this section, inclusive. This preliminary supplement shall be calculated only on amounts up to, but not exceeding, the first $5,400 of the original annual retirement benefit paid including any supplement provided on or before July 1, 1974.

(m) Each annuitant shall receive as that annuitant's supplement under this section an amount equal to the preliminary supplement or a supplement as calculated in subsections (n) and (o) of this section as appropriate.

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(n) Each survivor beneficiary shall receive as that survivor beneficiary's supplement under this section an amount equal to that pro rata share of that survivor beneficiary's preliminary supplement, as defined above, as such survivor beneficiary's benefit, without regard to any supplements, constitutes as a pro rata share of the original benefit of the original retiree: Provided, That for any person who becomes a survivor beneficiary, after July 1, 1994, the benefit provided under this section shall be recomputed under the provisions of this subsection.

(o) Each disabled retiree shall receive as that disabled retiree's supplement under this section that pro rata share of that disabled retiree's preliminary supplement, as defined above, as such disabled retiree's current benefit, without regard to any supplements, constitutes as a pro rata share of that disabled retiree's original benefit: Provided, That any disabled retiree scheduled under the terms of the retirement system to have a benefit recomputed at some time subsequent to the effective date of this section will, at the time of that recomputation, also have the supplemental benefit recomputed under the terms of the preceding sentence.

(p) Any supplemental benefit computed under this section shall only be paid in lieu of, and not in addition to, the payment of any prior supplemental benefit amounts or incentives provided by law after July 1, 1994, which are currently being paid: Provided, That any annuitant receiving a supplemental benefit greater than that provided in this section shall continue to receive the current supplemental benefits.

(q) The supplement provided in this section shall be recalculated on a pro rata basis of the preliminary supplement whenever the original annuity amount is adjusted due to the death or disability of an annuitant or any other event.

WV Legislature

§5-10-22f. Minimum benefit for certain retirants; legislative declaration; state interest and public purpose.

The Legislature hereby finds and declares that an important state interest exists in providing a minimum retirement annuity for certain retirants (or their beneficiaries) who are credited with twenty or more years of credited service; that such program constitutes a public purpose; and that the exclusions of credited service while an elected public official or while a temporary legislative employee are reasonable and equitable exclusions for purposes of determining eligibility for such minimum benefits. For purposes of this section:

(1) "Elected public official" means any member of the Legislature or any member of the legislative body of any political subdivision; and

(2) "Temporary legislative employee" means any employee of the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof whose employment is classified as temporary and who is employed to perform services required by the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, as the case may be, for regular sessions, extraordinary sessions and/or interim meetings of the Legislature.

If the retirement annuity of a retirant (or, if applicable, his or her beneficiary) with at least twenty years of credited service as of the effective date of this section is less than $500 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for any such retired member (or if applicable, his or her beneficiary) shall be increased to $500 per month: Provided, That any year of credited service while an elected public official or a temporary legislative employee shall not be taken into account for purposes of this section.

The payment of any minimum benefit under this section shall be in lieu of, and not in addition to, the payments of any retirement benefit or supplemental benefit or incentives otherwise provided by law: Provided, That the minimum benefit provided herein shall be subject to any limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended, and section twenty-seven-a of this article.

Any minimum benefit conferred herein shall not be retroactive to the time of retirement and shall apply only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

WV Legislature

§5-10-22g. One-time supplement for certain annuitants effective July 1, 2001.

(a) A one-time supplement to retirement benefits shall be provided to retirees of this system who have: (i) Reached the specified age threshold; and (ii) have been in retirement status for the specified number of years, as follows:

(1) For retirees who, as of July 1, 2001, are at least sixty-five years of age and who have been an annuitant for at least five consecutive years, this one-time supplement shall equal five percent of his or her annuity benefit as of the effective date of this section;

(2) For retirees who, as of July 1, 2001, are at least seventy years of age and who have been an annuitant for at least five consecutive years, this one-time supplement shall equal ten percent of his or her annuity benefit as of the effective date of this section; and

(3) For any person who, as of July 1, 2001, is at least sixty-five years of age and who retired under the early retirement incentive provided in section twenty-two-c of this article, this one-time supplement shall equal three percent of his or her annuity benefit as of the effective date of this section and subdivisions (1) and (2) of this subsection do not apply.

(b) The one-time supplement provided for in this section applies only to members who have retired prior to or as of the effective date of this section or, if applicable, to beneficiaries receiving benefits under the retirement system prior to or as of the effective date of this section: Provided, That the supplement provided herein is subject to any applicable limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended.

WV Legislature

§5-10-22h. Limitations on benefit increases.

(a) The state shall not increase any existing benefits or create any new benefits for any retirees or beneficiaries currently receiving monthly benefit payments from the system, 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 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.

(b) If any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under the system, 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 the system as calculated in the annual actuarial valuation for the plan during any fiscal year, the additional unfunded actuarial accrued liability of that pension system shall 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. The Consolidated Public Retirement Board shall include the six year amortization in the determination of the adequacy of the employer contribution percentage for the system.

(c) The state will not increase any existing benefits or create any new benefits for active members due to retirement, death or disability of the 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 system.

WV Legislature

§5-10-22i. One-time supplement for certain annuitants effective July 1, 2006.

(a) A one-time supplement to retirement benefits of three percent, as determined by appropriation of the Legislature, shall be provided to all retirees that are age seventy or older and have been annuitants for at least five consecutive years as of July 1, 2006, and beneficiaries of deceased members who would have been at least seventy years of age or older and have been annuitants for at least five consecutive years as of July 1, 2006.

(b) The one-time supplement provided in this section applies only to members who have retired at least five years prior to July 1, 2006, or, if applicable, to beneficiaries of deceased members who have been receiving benefits under the retirement system at least five years prior to July 1, 2006: Provided, That the supplement provided herein is subject to any applicable limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended.

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§5-10-22j. One-time bonus payment for certain annuitants effective July 1, 2008.

(a) As an additional bonus payment to other retirement allowances provided, a one-time bonus payment to retirement benefits shall be paid to retirants of the system as provided in subsection (b) of this section. The one-time bonus payment shall equal $600 and shall be paid on July 25, 2008.

(b) The one-time bonus payment provided by this section applies to any retirant with at least twenty years of credited service who currently receives an annual retirement annuity of not more than $7,200. This bonus payment is subject to any applicable limitations under section 415 of the Internal Revenue Code of 1986, as amended.

(c) The one-time bonus payment provided by this section shall be payable pro rata to any beneficiaries of a qualifying retirant who currently receive an annuity or other benefit payable by the system.

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§5-10-22k. One-time bonus payment for certain annuitants effective July 1, 2011.

(a) As an additional bonus payment to other retirement allowances provided, a one-time bonus payment to retirement benefits shall be paid to retirants of the system as provided in subsection (b) of this section. The one-time bonus payment shall equal $1,200 and shall be paid on July 27, 2011.

(b) The one-time bonus payment provided by this section applies to any retirant with at least twenty years of credited service who currently receives an annual retirement annuity of not more than $7,200. This bonus payment is subject to any applicable limitations under section 415 of the Internal Revenue Code of 1986, as amended.

(c) The one-time bonus payment provided by this section shall be payable pro rata to any beneficiaries of a qualifying retirant who currently receive an annuity or other benefit payable by the system.

WV Legislature

§5-10-22l. Minimum benefit for certain retirants.

(a) For purposes of this section:

(1) "Elected public official" means any member of the Legislature or any member of the legislative body of any political subdivision; and

(2) "Temporary legislative employee" means any employee of the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, including the Joint Committee on Government and Finance, whose employment is classified as temporary and who is employed to perform services required by the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, as the case may be, for regular sessions, extraordinary sessions and/or interim meetings of the Legislature.

(b) If the retirement annuity of a retirant (or, if applicable, his or her beneficiary) with at least 25 years of credited service as of the effective date of this section is less than $750 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the retirant (or if applicable, his or her beneficiary) shall be increased to $750 per month: Provided, That any year of credited service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.

(c) Notwithstanding the provisions of subsection (b) of this section to the contrary, if the retirement annuity of a beneficiary of a retirant who chose option B – modified joint and survivor annuity as provided in §5-10-24 of this code, and who had at least 25 years of credited service as of the effective date of this section is less than $375 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the beneficiary shall be increased to $375 per month: Provided, That any year of credited service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.

(d) The payment of any minimum benefit under this section is in lieu of, and not in addition to, the payments of any retirement benefit or supplemental benefit or incentives otherwise provided by law: Provided, That the minimum benefit provided in this section is subject to any limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended, and §5-10-27a of this code.

(e) Any minimum benefit conferred in this section is not retroactive to the time of retirement and applies only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

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§5-10-22m. One-time bonus payment for certain annuitants.

(a) As an additional bonus payment to other retirement allowances provided, a one-time bonus payment to retirement benefits shall be paid to retirants of the system as provided in subsection (b) of this section. The one-time bonus payment shall equal $1,500 and shall be paid on or before December 31, 2023.

(b) The one-time bonus payment provided by this section applies to any retirant age 70 as of July 1, 2023, who has at least 20 years of total service as of July 1, 2023, and whose monthly annuity is less than $1,000. This bonus payment is subject to any applicable limitations under Section 415 of the Internal Revenue Code of 1986, as amended.

(c) The one-time bonus payment provided by this section shall be payable pro rata to any beneficiary of a qualifying retirant who currently receives an annuity or other benefit payable by the system.

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§5-10-22n. Minimum benefit for certain annuitants.

(a) For purposes of this section:

(1) "Elected public official" means any member of the Legislature or any member of the legislative body of any political subdivision; and

(2) "Temporary legislative employee" means any employee of the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, including the Joint Committee on Government and Finance, whose employment is classified as temporary and who is employed to perform services required by the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, as the case may be, for regular sessions, extraordinary sessions and/or interim meetings of the Legislature.

(b) If the retirement annuity of a retirant (or, if applicable, his or her beneficiary) at least 70 years of age as of July 1, 2023, with at least 25 years of total service as of July 1, 2023, is less than $1,000 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the retirant (or if applicable, his or her beneficiary) beginning on or before December 31, 2023, shall be increased to $1,000 per month: *Provided*, That any year of total service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary, if the retirement annuity of a beneficiary at least 70 years of age as of July 1, 2023, of a retirant who chose option B – 50 percent joint and survivor annuity as provided in §5-10-24 of this code and who had at least 25 years of total service is less than $500 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the beneficiary shall be increased to $500 per month beginning on or before December 31, 2023: *Provided*, That any year of total service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.

(d) The payment of any minimum benefit under this section is in lieu of, and not in addition to, the payments of any retirement benefit or supplemental benefit or incentives otherwise provided by law: *Provided*, That the minimum benefit provided in this section is subject to any limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended, and §5-10-27a of this code.

(e) Any minimum benefit conferred in this section is not retroactive to the time of retirement and applies only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

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§5-10-23. Terminal payment following retirement.

(a) This section provides for the payment of the balance in a retired member's account in the event that all claims to benefits payable to, or on behalf of, a member expire before his or her member account has been fully exhausted. The expiration of the rights to benefits would be on the occasion of either the death of the retired member drawing benefits under a straight life annuity, or the death of a survivor annuitant drawing benefits under any optional form of benefit selected by the retired member, whichever occurs later.

(b) In the event that all claims to benefits payable to, or on behalf of, a retired member expire, and the accumulated contributions exceed the accumulated net benefit payments paid to or on behalf of the retired member, the balance in the retired member's account shall be paid to the person or persons as the retired member has nominated by written designation duly executed and filed with the board of trustees. If there is no designated person or persons surviving the retired member following the expiration of claims, the excess of the accumulated contributions over the accumulated net benefit, if any, shall be paid to the retired member's estate.

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§5-10-24. Annuity options.

(a) Prior to the effective date of his or her retirement, but not thereafter except upon the death of a spouse, a member may elect to receive his or her annuity as a straight life annuity payable throughout his or her life, or he or she may elect to receive the actuarial equivalent, at the time, of his or her straight life annuity in a reduced annuity payable throughout his or her life, and nominate a beneficiary, in accordance with option A or B set forth below:

Option A - *Joint and survivor annuity*. — Upon the death of a retirant who elected option A, his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary, having an insurable interest in the retirant's life, whom the retirant nominated by written designation duly executed and filed with the board of trustees prior to the effective date of his or her retirement; or

Option B - *Modified joint and survivor annuity*. — Upon the death of a retirant who elected option B, one half of his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary, having an insurable interest in the retirant's life, whom the retirant nominated by written designation duly executed and filed with the board of trustees prior to the effective date of his or her retirement.

(b) Upon the death of a spouse, a retirant may elect any of the retirement options offered by the provisions of this section in an amount adjusted on a fair basis to be of equal actuarial value as the annuity prospectively in effect relative to the retirant at the time the new option is elected.

(c) Upon divorce, a retirant may elect to change any of the retirement benefit options offered by the provisions of this section to a life annuity in an amount adjusted on a fair basis to be of equal actuarial value of the annuity prospectively in effect relative to the retirant at the time the option is elected: *Provided*, That the retirant furnishes to the board satisfactory proof of entry of a final decree of divorce or annulment: *Provided, however*, That the retirant certifies under penalty of perjury that no qualified domestic relations order, final decree of divorce, or other court order that would restrict the election is in effect: *Provided further*, That no cause of action against the board may then arise or be maintained on the basis of having permitted the retirant to name a new spouse as annuitant for any of the survivorship retirement benefit options.

(d) Upon remarriage, a retirant may name the new spouse as an annuitant for any of the retirement benefit options offered by the provisions of this section: *Provided*, That the retirant shall furnish to the board proof of marriage: *Provided, however*, That the retirant certifies under penalty of perjury that no qualified domestic relations order, final decree of divorce or other court order that would restrict the designation is in effect: *Provided further*, That no cause of action against the board may then arise or be maintained on the basis of having permitted the retirant to name a new spouse as annuitant for any of the survivorship retirement benefit options. The value of the new survivorship annuity shall be the actuarial equivalent of the retirant's benefit prospectively in effect at the time the new annuity is

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elected.

(e) In the event a retirant has named a beneficiary pursuant to subsection (a) of this section, such retirant may change such beneficiary designation from the named beneficiary to an irrevocable special needs trust, as that term is defined in §5-10-2 of this code, if the irrevocable special needs trust is for the benefit of the same beneficiary. No further annuity payments shall be payable or paid from and after the later of the death of the retirant or the death of the beneficiary of the irrevocable special needs trust.

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§5-10-25. Disability retirement.

(a) Upon the application of a member of the retirement system, or his or her present or past employing authority, any member who is in the employ of a participating public employer or was in the employ of a participating public employer on a date which is twelve months or less from the date upon which the member became incapacitated, who has ten or more years of credited service of which three years is contributing service, and who becomes totally and permanently incapacitated for employment, by reason of a personal injury or disease, may be retired by the board if after a medical examination of the member made by or under the direction of a medical committee consisting of two physicians, one of whom shall be named by the board, and one by the member, the medical committee reports, in writing, to the board that the member is physically or mentally totally incapacitated for employment, that the incapacity will probably be permanent, and that the member should be retired. In the event the two above-mentioned examining physicians do not agree in their findings, then the board may, at its discretion, appoint a third physician to examine the member and, based upon the third physician's report in writing, the board may retire the member. A member who was not in the employ of a participating public employer on a date which is twelve months or less from the date upon which the member became incapacitated may receive disability retirement under the provisions of this subsection if, in the opinion of the medical committee, the incapacity occurred during the time that the member was employed by a participating public employer and the incapacity otherwise qualifies the member for retirement under this subsection.

(b) A member with less than ten years of credited service shall have the service requirement provided in subsection (a) above (including the requirement of three years contributing service) waived in the event: (1) The board finds his or her total and permanent disability to be the natural and proximate result of a personal injury or disease arising out of and in the course of his or her actual performance of duty in the employ of a participating public employer; and (2) he or she is receiving or has received workers' compensation benefits on account of the physical or mental disability.

(c) For any member retiring and any member retired, as of March 1, 1970, he or she shall receive a straight life annuity computed according to section twenty-two hereof and he or she shall have the right to elect an option provided in section twenty-four hereof: Provided, That his or her straight life annuity payable to his or her attainment of age sixty-five years may not be less than fifty percent of his or her final average salary; and his or her straight life annuity payable from and after his or her attainment of age sixty-five years may not be less than twenty percent of his or her final average salary: Provided, however, That his or her annuity shall be subject to section twenty-six hereof.

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§5-10-26. Reexamination of disability retirants; reemployment; adjustment of annuity for earnings.

(a) At least once each year during the first five years following the retirement of a member on account of disability, as provided in section twenty-five of this article, and at least once in each three-year period thereafter, the board may require a disability retirant, who has not attained age sixty years, to undergo a medical examination to be made by or under the direction of a physician designated by the board, or to submit a statement signed by the disability retirant's physician certifying continued disability, or both, and a copy of the disability retirants's annual statement of earnings. If the retirant refuses to submit to the medical examination or provide the certification or statement in any period, his or her disability annuity may be discontinued by the board until the retirant complies. If the refusal continues for one year, all the retirant's rights in and to the annuity may be revoked by the board. If, upon medical examination of a disability retirant, the physician reports to the board that the retirant is physically able and capable of resuming employment with a participating public employer, the retirant shall be returned to the employ of the participating public employer from whose employment he or she retired and his or her disability annuity shall terminate: Provided, That the board concurs in the physician's report.

(b) A disability retirant who is returned to the employ of a participating public employer shall again become a member of the retirement system and the retirant's credited service in force at the time of his or her retirement shall be restored.

(c) If a review of the disability retirant's annual statement of earnings or other financial information as required by the board determines that the disability retirant's earned income for the preceding year exceeds the substantial gainful activity amount as defined by the United States Social Security Administration, the disability retirant's annuity shall be terminated by the board, upon recommendation of the board's disability review committee, on the first day of the month following the board's action. Any person who wishes to reapply for disability retirement and whose disability retirement annuity has been terminated by the board may do so within ninety days of the effective date of termination by requesting an examination at the applicant's expense by an appropriate medical professional chosen by the board.

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§5-10-27. Preretirement death annuities.

(a) (1) Except as otherwise provided in this section, in the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty- one of this article, may at any time prior to the effective date of his or her retirement, by written declaration duly executed and filed with the board of trustees, in the same manner as if he or she were then retiring from the employ of a participating public employer, elect option A provided in section twenty-four of this article and nominate a beneficiary whom the board finds to have had an insurable interest in the life of the member. Prior to the effective date of his or her retirement, a member may revoke his or her election of option A and nomination of beneficiary and he or she may again prior to his or her retirement elect option A and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an option A election in force, his or her beneficiary, if living, shall immediately receive an annuity computed in the same manner in all respects as if the same member had retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty years, and elected the said option A. If at the time of his or her retirement a member has an option A election in force, his or her election of option A and nomination of beneficiary shall thereafter continue in force. As an alternative to annuity option A, a member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(2) In the event any member or former member, who first became a member of the Public Employees Retirement System after the effective date of amendments made to this section during the 2006 regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies without leaving a surviving spouse; but leaves surviving him or her a child who is financially dependent on the member by virtue of a permanent mental or physical disability upon evidence satisfactory to the board; and has named the disabled child as sole beneficiary, the disabled child shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her disabled child as beneficiary. A member or former member with ten or more years of credited service, who does not leave surviving him or her a spouse or a disabled child, may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(b)(1) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies; and leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death,

notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: Provided, That he or she executes a valid and notarized waiver on a form provided by the board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the board, the member or former member, may nominate a beneficiary who has an insurable interest in the member's or former member's life. As an alternative to annuity option A, the member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses in the event a waiver, as provided in this section, has been presented to and accepted by the board.

(2) Whenever any member or former member who first became a member of the retirement system after the effective date of the amendments to this section made during the 2006 regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article, dies and leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: Provided, That he or she executes a valid and notarized waiver on a form provided by the board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the board, the member or former member may: (1) Elect to have the preretirement death benefit paid in a lump sum amount, rather than annuity option A provided in section twenty-four of this article, as a return of accumulated contributions to any beneficiary or beneficiaries he or she chooses; or (2) may name his or her surviving child, who is financially dependent on the member by virtue of a permanent mental or physical disability, as his or her sole beneficiary to receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained the age of sixty or sixty-two as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her disabled child as beneficiary.

(c) In the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: (1) Dies without leaving surviving him or her a spouse; but (2) leaves surviving him or her an infant child or children; and (3) does not have a beneficiary nominated as provided in subsection (a) of this section, the infant child or children are entitled to an annuity to be calculated as follows: The annuity reserve shall be calculated as though the member had retired as of the date of his or her decease and elected a straight life annuity and the amount of the annuity reserve shall be paid in equal monthly

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installments to the member's infant child or children until the child or children attain age twenty-one or sooner marry or become emancipated; however, in no event shall any child or children receive more than $250 per month each. The annuity payments shall be computed as of the date of the death of the member and the amount of the annuity shall remain constant during the period of payment. The annual amount of the annuities payable by this section shall not exceed sixty percent of the deceased member's final average salary.

(d) In the event any member or former member does not have ten or more years of credited service, no preretirement death annuity may be authorized, owed or awarded under this section, except as provided in subdivision (4), subsection (a), section fifteen of this article as amended during the 2005 regular session of the Legislature.

(e) Any person qualified as a surviving dependent child under this section, who is the surviving dependent child of a law- enforcement officer who loses his or her life in the performance of duty, in addition to any other benefits due under this or other sections of this article is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career- technical education provider in this state or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of those institutions so long as the recipient makes application to the board on an approved form and under rules as provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may by appropriate rules define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section. Scholarship benefits awarded pursuant to this subsection are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.

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§5-10-27a. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations promulgated thereunder to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this retirement system shall be reduced, as compared to the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities or other annual benefit required by this section. For purposes of the 415 limitations, the "limitation year" shall be the calendar year. The 415 limitations are incorporated herein by reference, except to the extent the following provisions may modify the default provisions thereunder:

(a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code which become effective: (i) After a retirant's severance from employment with the employer; or (ii) after the annuity starting date in the case of a retirant who has already commenced receiving benefits, will apply with respect to a retirant's annual benefit in any limitation year. A retirant's annual benefit payable in any limitation year from this retirement system shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(b) For purposes of this section, the "annual benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise

satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(c) Adjustment for benefit forms not subject to Section 417(e)(3). -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity that decreases during the life of the member merely because of: (i) The death of the survivor annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 411(a)(9) of the Internal Revenue Code). The actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date.

(d) Adjustment for benefit forms subject to Section 417(e)(3). -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is other than a benefit form described in subsection (c) of this section. In this case, the actuarially equivalent straight life annuity shall be determined as follows: The actuarially equivalent straight life annuity is equal to the greatest of: (1) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate specified in this retirement system and the mortality table (or other tabular factor) specified in this retirement system for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and a half percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in

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Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) Benefits payable prior to age sixty-two. --

(1) Except as provided in subdivisions (2) and (3) of this subsection, if the member's retirement benefits become payable before age sixty-two, the 415 dollar limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the limitation (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to an annual benefit in the amount of the applicable dollar limitation of Section 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) beginning at age sixty-two.

(2) The limitation reduction provided in subdivision (1) of this subsection shall not apply if the member commencing retirement benefits before age sixty-two is a qualified participant. A qualified participant for this purpose is a participant in a defined benefit plan maintained by a state, or any political subdivision of a state, with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least fifteen years of service: (i) As a full-time employee of any police or fire department organized and operated by the state or political subdivision maintaining the defined benefit plan to provide police protection, firefighting services or emergency medical services for any area within the jurisdiction of such state or political subdivision; or (ii) as a member of the Armed Forces of the United States.

(3) The limitation reduction provided in subdivision (1) of this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age sixty-two or after age sixty-five (if the plan provides for such adjustment), no adjustment is made to reflect the probability of a member's death: (i) After the annuity starting date and before age sixty-two; or (ii) after age sixty-five and before the annuity starting date.

(f) Adjustment when member has less than ten years of participation. -- In the case of a member who has less than ten years of participation in the retirement system (within the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the 415 dollar limitation (as adjusted pursuant to Section 415(d) of the Internal Revenue Code and subsection (e) of this section) shall be reduced by multiplying the otherwise applicable limitation by a fraction, the numerator of which is the number of years of participation in the plan (or one, if greater), and the denominator of which is ten. This adjustment shall not be applicable to preretirement disability benefits or preretirement death benefits.

(g) The application of the provisions of this section shall not cause the maximum annual

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benefit provided to a member to be less than the member's accrued benefit as of December 31, 2008, (the end of the limitation year that is immediately prior to the effective date of the final regulations for this retirement system as defined in Treasury Regulation §1.415(a)-1(g)(2)), under provisions of the retirement system that were both adopted and in effect before April 5, 2007, provided that such provisions satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of the end of December 31, 2008, as described in Treasury Regulation §1.415(a)-1(g)(4). If additional benefits are accrued for a member under this retirement system after January 1, 2009, then the sum of the benefits described under the first sentence of this subsection and benefits accrued for a member after January 1, 2009, must satisfy the requirements of Section 415, taking into account all applicable requirements of the final 415 Treasury Regulations.

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§5-10-27b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this code. This provision applies to plan years beginning after December 31, 1986. Notwithstanding anything in this code to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section shall not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under § 401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement system which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not

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greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §5-10-2 of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §5-10-2 of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

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§5-10-27c. Direct rollovers.

(a) Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; and (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For distributions after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or (for taxable years beginning before January 1, 2007) to a qualified trust which is part of a defined contribution plan described in Section 401(a) or (for taxable years beginning after December 31, 2006) to a qualified trust or to an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable, or (for taxable years beginning after December 31, 2007) to a Roth IRA described in Section 408A of the Internal Revenue Code.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity. For distributions after December 1, 2001, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts

transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408A of the Internal Revenue Code: Provided, That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2007, "distributee" also includes a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code.

(4) "Direct rollover" means a payment by the retirement system to an eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other system administered by the retirement board.

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§5-10-27d. Rollovers and transfers to purchase service credit or

Repay withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after January 1, 2002. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive service credit, in whole or in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole or in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with policies, practices and procedures established by the board from time to time. For purposes of this article, the following definitions and limitations apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code: Provided, That no more than five years of "nonqualified service credit", as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a rollover or plan transfer) before the member has at least five years of participation in the retirement system.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(3) Any contribution (other than by means of a rollover or plan transfer) to purchase permissive service credit under any provision of this article must satisfy the special

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limitation rules described in Section 415(n) of the Internal Revenue Code and shall be automatically reduced, limited or required to be paid over multiple years if necessary to ensure such compliance. To the extent any such purchased permissive service credit is qualified military service within the meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the Internal Revenue Code shall be applied to such purchase as described in Section 414(u)(1)(B) of the Internal Revenue Code.

(4) For purposes of Section 415(b) of the Internal Revenue Code, the annual benefit attributable to any rollover contribution accepted pursuant to this section shall be determined in accordance with Treasury Regulation §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity payments attributable to any rollover contribution provided under the retirement system over the annual benefit so determined shall be taken into account when applying the accrued benefit limitations of Section 415(b) of the Internal Revenue Code and section twenty-seven-a of this article.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

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§5-10-28. Unified accounting; funds.

For financing and accounting purposes, the West Virginia Public Employees Retirement System shall consist of only one division, including, in combination, the participating state employees and participating public employees who are not state employees. Unified accounting of the retirement system transactions shall be maintained for all the assets of the system. The retirement system funds shall be: (1) The members deposit fund; (2) the employers accumulation fund; (3) the retirement reserve fund; (4) the income fund; and (5) the expense fund. All references in this code to the members deposit fund, the employers accumulation fund, the retirement reserve fund, the income fund and the expense fund mean the Public Employees Retirement Fund. Nothing contained in this section or any prior provision of law shall be interpreted to mean that any assets of the system, regardless of their origin or date of receipt, are to be in any manner segregated or insulated for the purposes of either paying benefits due or determining or establishing accounting or actuarial methodologies or functions utilized by the retirement system. The amendments to this section adopted during the third extraordinary session of the 1990 legislative session shall not be construed to limit the powers of the board relating to contributions to or benefits of the Public Employees Retirement System and any and all powers residing in the board previously administering the Public Employees Retirement System shall be preserved.

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§5-10-29. Members' deposit fund; members' contributions; forfeitures.

(a) The members' deposit fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensation of members, and from which refunds of accumulated contributions shall be paid and transfers made as provided in this section.

(b) The contributions of a member to the retirement system (including any member of the Legislature, except as otherwise provided in subsection (g) of this section) shall be a sum of not less than three and five-tenths percent of his or her annual compensation but not more than four and five-tenths percent of his or her annual compensation, as determined by the board of trustees: Provided, That for persons who first become members of the retirement system on or after July 1, 2015, the contributions to the system shall be six percent of his or her annual compensation beginning July 1, 2015. The said contributions shall be made notwithstanding that the minimum salary or wages provided by law for any member shall be thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of a member's compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by him or her to a participating public employer, except as to benefits provided by this article.

(c) The officer or officers responsible for making up the payrolls for payroll units of the state government and for each of the other participating public employers shall cause the contributions, provided in subsection (b) of this section, to be deducted from the compensations of each member in the employ of the participating public employer, on each and every payroll, for each and every payroll period, from the date the member enters the retirement system to the date his or her membership terminates. When deducted, each of said amounts shall be paid by the participating public employer to the retirement system; said payments to be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the board of trustees shall from time to time prescribe. When paid to the retirement system, each of said amounts shall be credited to the members' deposit fund account of the member from whose compensations said contributions were deducted.

(d) In addition to the contributions deducted from the compensations of a member, as heretofore provided, a member shall deposit in the members' deposit fund, by a single contribution or by an increased rate of contribution as approved by the board of trustees, the amounts he or she may have withdrawn therefrom and not repaid thereto, together with regular interest from the date of withdrawal to the date of repayment. In no case shall a member be given credit for service rendered prior to the date he or she withdrew his or her contributions or accumulated contributions, as the case may be, until he or she returns to the members' deposit fund all amounts due the said fund by him or her.

(e) Upon the retirement of a member, or if a survivor annuity becomes payable on account of his or her death, in either event his or her accumulated contributions standing to his or her

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credit in the members' deposit fund shall be transferred to the retirement reserve fund.

(f) In the event an employee's membership in the retirement system terminates and no annuity becomes or will become payable on his or her account, any accumulated contributions standing to his or her credit in the members' deposit fund, unclaimed by the said employee, or his or her legal representative, within three years from and after the date his or her membership terminated, shall be transferred to the income fund.

(g) Any member of the Legislature who is a member of the retirement system and with respect to whom the term "final average salary" includes a multiple of eight, pursuant to the provisions of subdivision (13), section two of this article, shall contribute to the retirement system on the basis of his or her legislative compensation the sum of $540 each year he or she participates in the retirement system as a member of the Legislature.

(h) Notwithstanding any other provisions of this article, forfeitures under the system shall not be applied to increase the benefits any member would otherwise receive under the system.

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§5-10-30. Refund of accumulated contributions.

(a) In the event a member leaves the employ of a participating public employer prior to the date the member becomes entitled to retire with an annuity payable by the retirement system, the member shall be paid, upon the member's written application filed with the board of trustees, the member's accumulated contributions, if the member's separation from the employ of a participating public employer occurs subsequent to a period of two years of contributing service. If the member's said separation from the employ of a participating public employer occurs prior to two years of contributing service, the member shall be paid the member's accumulated contributions less the total regular interest credited to the member's individual account.

(b) In the event a member dies and does not leave a beneficiary entitled to an annuity payable by the retirement system, the member's accumulated contributions at the time of the member's death shall be paid to such person or persons as he or she shall have nominated by written designation duly executed and filed with the board of trustees. If there be no such designated person or persons surviving the said member, the member's said accumulated contributions shall be paid to the member's estate.

(c) In the event a member dies and a refund of the member's contributions is due to be made to an infant child or children by reason of being the person or persons nominated by written designation duly executed and filed with the retirement system, and the amount of said refund is less than $1,000, then, and in said event, the board of trustees may make said refund, upon written application, to the closest relative or natural guardian for the use of said infant child or children. The board of trustees may, at its discretion, require that said relative or natural guardian post bond with the retirement system to insure that said money will be used for the benefit of said infant child or children. In any event, before said refund is made to said relative or natural guardian of the said infant or infants, said relative or natural guardian shall give the retirement system an indemnifying release of said sums so paid over.

(d) In the event a member leaves the employ of a participating public employer and is entitled to retire with an annuity payable by the retirement system, but will be subject to an annuity reduction at any time due to the 105 percent provision contained in §5-10-17(b) of this code, the member may be paid, upon the member's written application filed with the board of trustees, their accumulated contributions.

WV Legislature

§5-10-31. Employers Accumulation Fund; employers contributions.

(a) The Employers Accumulation Fund is hereby continued. It is the fund in which shall be accumulated the contributions made by the participating public employers to the retirement system, and from which transfers shall be made as provided in this section.

(b) Based upon the provisions of section thirteen of this article, the participating public employers' contributions to the retirement system, as determined by the Consolidated Public Retirement Board, shall be a percent of the members' total annual compensation related to benefits under this retirement system. In determining the amount, the board shall give consideration to setting the amount at a sum equal to an amount which, if paid annually by the participating public employers, will be sufficient to provide for the total normal cost of the benefits expected to become payable to all members and to amortize any unfunded liability found by application of the actuarial funding method chosen for that purpose by the Consolidated Public Retirement Board, over a period of years determined actuarially appropriate.

WV Legislature

§5-10-31a. Retroactive contributions to the retirement system for retroactive service credit granted; one year period for application.

Those public employers who are participating in the West Virginia Public Employees Retirement System and elected to participate after July 1, 1961, and those employers who are eligible but who have not elected to participate, may elect to cover their employees retroactive for the period of their prior employment by such employer to July 1, 1961, under the following terms and rules and regulations to be promulgated by the board of trustees of the retirement system:

(a) The participating employer, in order to provide the benefits set forth herein, shall pay an additional contribution to the retirement system as shall be the actuarial equivalent of the amount which would have been contributed, together with earnings thereon, by the employer had the employee who is to receive retroactive credit been covered during the period of the retroactive service credit. This contribution may be made by the employer either in one lump sum or, at the election of the employer, by level term payments over a period not in excess of fifteen years or by both lump sum payments and level term payments, as determined by the employer and the board of trustees under rules and regulations promulgated by the board;

(b) The additional service credit shall be applicable to employees working for the participating employer on the effective date of the change of date of participation;

(c) There shall be no increase in benefits and annuities paid to former members of the system who were retired prior to the effective date of this section;

(d) Employees entitled to such retroactive service credit under the provisions of this section shall make such additional contribution to the retirement system equal to the actuarial equivalent of the amount which would have been contributed, together with earnings thereon, by the employee had the employee been covered during the period of the retroactive service credit;

(e) Each employer and employee shall be required to pay into the retirement system in the manner hereinafter provided the amount necessary for the additional service credit provided by this section, based upon an actuarial study of each employer that elects to participate in the retirement system under this section and as determined by the board of trustees;

(f) The actuarial basis for determining the additional contributions shall be that currently in effect for the valuation of the retirement system on the effective date of the employer's election;

(g) Any new participating employer and any participating employer which is currently a participant and who began participating after July 1, 1961, who desires additional service credit must elect to provide such service credit within one year following the effective date of this section;

WV Legislature

(h) Any participating employer requesting additional service credit as provided by this section shall provide such employee data as may be requested from the board of trustees of the retirement system for the determination of the employer's contributions;

(i) The consulting actuary's fees for computing the additional contribution rates under this section shall be paid directly by the participating employer to the consulting actuary selected by the board of trustees of the retirement system; and

(j) For the purpose of reopening the effectiveness of the provisions of this section for a period of one year following the effective date of the amendment to this section, and for the purpose of granting, retroactively service credit to current employees of employers participating in the Public Employees Retirement System during such period, this section is hereby renewed and reestablished; but any such credited service granted hereunder shall be on the actuarially sound basis for determining required additional contributions, of both employer and employee, required in light of benefits that would be computed in respect of such later point in time and such subsequent final average salary amount.

WV Legislature

§5-10-32. Appropriations for state contributions to retirement system; contributions for members paid from special funds or by other employers.

(a) At least thirty days prior to each regular session of the Legislature, the board of trustees shall certify to the Governor the contributions, determined according to section thirty-one hereof, to be made by the state to the retirement system for the next following fiscal year; the said contributions to be based upon the state's total payroll for the preceding twelve calendar months. The amounts so ascertained shall be included in the appropriation bill to be submitted to the Legislature. In the event the state's contributions for the fiscal year are less than they would have been based upon the state's actual payroll for the fiscal year, the amount of the insufficiency shall be included in the appropriation bill for the next following fiscal year. The said contributions shall be paid to the retirement system quarterly and when paid shall be credited to the employers accumulation fund.

(b) In the case of any member whose compensation is paid out of moneys derived in whole or in part out of any special fund, or from any source other than the state, then contributions on behalf of such member in any year shall be paid out of such special fund or by such other source in proportion to that part of the member's compensation derived therefrom for that year. The governing body of each participating public employer is hereby authorized to make such contributions from funds of the participating public employer as shall be necessary to pay its proportionate share of contributions on account of each state employee whose compensation is paid by such participating public employer.

WV Legislature

§5-10-33. Contributions by other participating public employers; withholding state money to satisfy delinquencies.

(a) The board of trustees shall annually certify to each participating public employer, other than the state, the employer contribution rate, determined in section thirty-one hereof, for the public employer division. Each participating public employer shall pay to the state Treasurer, for credit to the retirement system, the contributions equal to the said contribution rate applied to each and every payroll of the participating public employer. The said payments shall be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the board shall from time to time prescribe. When paid, the said contributions shall be credited to the employers accumulation fund.

(b) If any participating public employer, other than the state, fails to make any payment due the retirement system for a period of sixty days after the payment is due, the participating public employer shall become delinquent, and such delinquency shall be certified to the State Auditor by the board of trustees. If any participating public employer becomes delinquent, as provided herein, the State Auditor is authorized and directed to withhold any money due such participating public employer by the state until such delinquency, together with regular interest thereon, from the date due, is satisfied. Such money so withheld by the State Auditor shall be paid to the retirement system.

WV Legislature

§5-10-34. Transfers to retirement reserve fund.

Upon the retirement of a member, or if an annuity becomes payable on account of the death of a member, the difference between the annuity reserve and the member's accumulated contributions standing to his credit in the members deposit fund at the time of his retirement or death, as the case may be, shall be transferred to the retirement reserve fund.

WV Legislature

§5-10-35. Retirement reserve fund created; transfers from fund on reemployment.

The retirement reserve fund is hereby created. It shall be the fund from which shall be paid all annuities payable as provided in this article. If a disability retirant returns to the employ of a participating public employer, his annuity reserve at that time shall be transferred from the retirement reserve fund to the members deposit fund and the employers accumulation fund in the same proportions as the annuity reserve was originally transferred to the retirement reserve fund. The amount so transferred to the members deposit fund shall be credited to his individual account therein.

WV Legislature

§5-10-36. Income fund.

The income fund is hereby created. It shall be the fund to which shall be credited all interest, dividends and other income from investments of the retirement system, all transfers from the members deposit fund by reason of lack of claimant or forfeiture of interest credits, and all other moneys received by the retirement system, the disposition of which is not specifically provided for in this article. The board of trustees may accept gifts and bequests and same shall be credited to the income fund. There shall be paid or transferred from the income fund all amounts required to credit regular interest to the members deposit fund, employers accumulation fund, and the retirement reserve fund, as provided in this article. Whenever the board determines that the balance in the income fund is more than sufficient to cover the current charges to the fund, the board may, by resolution, provide for contingency reserves, or for the transfer of such excess, or portions thereof, to cover the needs of the other funds of the retirement system.

WV Legislature

§5-10-37.

Repealed.

Acts, 1994 Reg. Sess., Ch. 133.

WV Legislature

§5-10-38. Investment of moneys; bonds of state departments and institutions to be offered first to board of public works.

All moneys of the retirement system not currently required for the payment of annuities or other benefits shall be invested by the board of public works in any securities or investments in which the sinking funds of the state may be legally invested, or in any securities or investments in which the deposits in savings banks and participation deposits in banks and trust companies may be legally invested, as provided by the general laws. The board of public works shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the moneys of the retirement system have been invested, as well as the proceeds of such investments. It shall be the duty of every state department or institution issuing any bonds to offer same in writing to the board of public works prior to advertising them for sale. The said board, within fifteen days from and after receipt of such offer, may accept or reject such offer in whole or in part. Available cash on deposit shall not exceed ten percent of the total assets of the system.

WV Legislature

§5-10-39. No trustee, etc., shall gain from investments of system.

Except as otherwise provided in this article, no trustee, no member of the board of public works, and no employee of the board of trustees shall have any interest, direct or indirect, in the gains or profits arising from any investment or reinvestment of retirement system moneys. No trustee, no member of the board of public works, and no employee of the board of trustees shall, directly or indirectly, for himself or as an agent or partner of others, in any manner use the same, except to make current and necessary payments as are authorized by the board of trustees. No trustee, no member of the board of public works, and no employee of the board of trustees shall become an endorser or surety or become in any manner an obligor for moneys loaned or borrowed by the retirement system. Nothing contained herein shall be construed to impair the rights of any member of the retirement system to benefits provided by the system.

WV Legislature

§5-10-40. Restricted use of retirement system moneys.

The moneys, investments and all other assets of the retirement system shall be used for the sole purpose of meeting the disbursements for annuities and other payments authorized by this article, and shall be used for no other purpose whatsoever.

WV Legislature

§5-10-41. Allowance of regular interest on balances in funds.

The board of trustees shall, at the end of each calendar year, allow and credit regular interest on the balance at the beginning of that calendar year in each member's individual account in the members deposit fund and on the mean balances in the employers accumulation fund and the retirement reserve fund. The interest so allowed and credited shall be charged to the income fund.

WV Legislature

§5-10-42. Fiscal or plan year of retirement system.

The fiscal or plan year of the retirement system shall coincide with the fiscal year of the state.

WV Legislature

§5-10-43. Pro rata reduction of annuities.

Any provision in this article to the contrary notwithstanding, if at the end of any fiscal year the total of the annuities paid from the retirement reserve fund during the said fiscal year is more than ten percent of the sum of the balances in the employers accumulation fund and the retirement reserve fund at the end of the said fiscal year, the said annuities payable in the next ensuing fiscal year shall be reduced, pro rata, so that the sum of the annuities so reduced shall not exceed ten percent of the sum of the said balances in the employers accumulation fund and the retirement reserve fund. The said pro rata reduction shall be applied to all annuities payable in the said ensuing fiscal year.

WV Legislature

§5-10-44. Correction of errors; underpayments; overpayments.

(a) *General rule*. — Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether an individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) *Underpayments to the retirement system*. — Any error resulting in an underpayment to the retirement system may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the retirement system will result in the retirement system paying a retirant an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the retirement system by an employer*. — When mistaken or excess employer contributions or other employer overpayments have been made to the retirement system, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.

(d) *Overpayments to the retirement system by an employee.* — When mistaken or excess employee contributions or overpayments have been made to the retirement system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be

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returned, offset or credited under any of the means used by the board for returning employee overpayments.

(e) *Overpayments from the retirement system*. — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) *Underpayments from the retirement system*. — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) *Eligibility errors*. — If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination and terminate participation in the retirement system. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the retirement system to such individual shall be returned to the retirement system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the retirement system, but was eligible to and required to be participating in the retirement system, the board shall as soon as practicable notify the individual and his or her employer of the determination and the individual and his or her employer shall prospectively commence participation in the retirement system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the retirement system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

WV Legislature

§5-10-45. Fraud; penalty.

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the retirement system in any attempt to defraud the system shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished accordingly.

WV Legislature

§5-10-46. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders.

The right of a person to any benefit provided for in this article shall not be subject to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court except that the benefits or contributions under this system shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code as applicable to governmental plans: Provided, That should a member be covered by a group insurance or prepayment plan participated in by a participating public employer, and should he or she be permitted to, and elect to, continue such coverage as a retirant, he or she may authorize the board of trustees to have deducted from his or her annuity the payments required of him or her to continue coverage under such group insurance or prepayment plan: Provided, however, That a participating public employer shall have the right of setoff for any claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary.

WV Legislature

§5-10-47. Benefits exempt from taxes.

The annuities and other benefits provided by this article, and the assets of the retirement system, are hereby exempt from state, county and municipal taxes.

WV Legislature

§5-10-48. Reemployment after retirement; options for holder of elected public office.

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual's ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities. The Legislature further finds and declares that it has the need for qualified employees and that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a limited per diem basis after they have retired is not only in the best interests of this state but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.

(b) For the purposes of this section: (1) "Regularly employed on a full-time basis" means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires 12 months per year service and at least 1,040 hours of service per year in that position; (2) "temporary full-time employment" or "temporary part-time employment" means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3) "former employee of the Legislature" means any person who has retired from employment with the Legislature and who has at least 10 years' contributing service with the Legislature; and (4) "reemployed by the Legislature" means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed 175 days per calendar year.

(c) Subject to the provisions of subsection (i) of this section, if a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to the additional employment, the annuity to be computed according to §5-10-22 of this code. If his or her reemployment is for a period less than one year, he or she may request in writing that the employee and employer retirement contributions submitted during reemployment be credited to the participating public employer pursuant to §5-10-44 of this code, and his or her previous annuity shall be reinstated effective the first day of the month following termination of reemployment and the board's receipt of written notice thereof. Subject to the provisions of subsection (i) of this

section, a retirant may accept legislative per diem, temporary full-time, or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of $25,000.

(d) Senior judges, justices, and magistrates. —

(1) Notwithstanding the provisions of subsection (c) of this section, a retired intermediate court judge, circuit court judge, or family court judge, or justice who is recalled and assigned to temporary service as a senior judge or justice by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §51-9-10 of this code while continuing to receive his or her annuity, subject to the provisions of subsection (i) of this section.

(2) Notwithstanding the provisions of subsection (c) of this section, a retired magistrate who is recalled and assigned to temporary service as a senior magistrate by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §50-1-6a of this code while continuing to receive his or her annuity, subject to the provisions of subsection (i) of this section.

(e) Subject to the provisions of subsection (i) of this section, if a member retires and is then subsequently elected to a public office, or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding subsection (c) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding public office, or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the salary he or she may be entitled to as an office holder, or as a per diem reemployed former employee of the Legislature; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be elected or reappointed to the same position unless and until a continuous 12-month period has passed since his or her retirement from the position: *Provided*, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least 60 days after the employee has retired: *Provided, however*, That the limitation on compensation provided by subsection (c) of this section does not apply to the reemployed former employee: *Provided further*, That in no event may reemployment by the Legislature of a per diem employee exceed 175 days per calendar year.

(f) Subject to the provisions of subsection (i) of this section, a member who is participating in the system simultaneously as both a regular, full-time employee of a participating public

WV Legislature

employer, and as an elected or appointed member of the legislative body of the state or any political subdivision, may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: *Provided*, That the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

(g) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House of Delegates, and the Clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of 70 and one-half years: *Provided*, That the member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of this code: *Provided, however*, That the member elects to stop actively contributing to the system while receiving the in-service distributions.

(h) The Legislature hereby finds and declares that a severe shortage of child protective services workers and adult protective services workers exists throughout the state, and therefore, a compelling state interest exists in expanding the use of retired employees to serve this critical need. Notwithstanding any provision of subsection (c) of this section to the contrary, a person receiving retirement benefits or who is eligible to receive retirement benefits pursuant to the provisions of this chapter, may accept employment as a child protective services worker or an adult protective services worker on a full-time or part-time basis without having payment of his or her retirement annuity suspended and without reentering the retirement system as a contributing member. This subsection is only applicable if the retired employee meets the minimum qualifications of the position, has been retired for at least 60 days, and is hired to fill an existing child protective services or adult protective services vacancy. The retired employee may continue to work under this subsection only as long as that position remains vacant. The vacant position shall be posted until it is filled by a regularly employed person meeting the minimum qualifications to serve as a child protective service worker or an adult protective service worker. The provisions of this subsection shall expire July 1, 2025.

(i) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating public employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or his or her participating public employer fails to comply with §5-10-19 in a manner satisfactory to the board, then the member’s retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of §5-10-44 to recover such annuity payments so that an in-service distribution is not deemed to have been made.

WV Legislature

(j) The Legislature hereby finds and declares that a severe shortage of attorneys to represent children in child welfare matters exists throughout the state, and therefore, a compelling state interest exists in expanding the use of retired employees to serve as child protection commissioners or circuit court law clerks. Notwithstanding any provision of subsection (c) of this section to the contrary, a licensed attorney receiving retirement benefits or who is eligible to receive retirement benefits pursuant to the provisions of this chapter, may accept employment from the Supreme Court of Appeals as a child protection commissioner or circuit court law clerk on a full-time or part-time basis without having payment of his or her retirement annuity suspended and without reentering the retirement system as a contributing member. This subsection is only applicable if the retired employee meets the minimum qualifications of the position and has been retired for at least 60 days. The retired employee may continue to work under this subsection only as long as that position remains vacant. The vacant position shall be posted until it is filled by a regularly employed person meeting the minimum qualifications to serve as a child protection commissioner or circuit court law clerk.

WV Legislature

§5-10-49. Removal from office.

Any member of the retirement system who has been removed from office or his office shall have been vacated for official misconduct, incompetence, neglect of duty, gross immorality, malfeasance, or misfeasance shall immediately have his membership in the retirement system terminated permanently by the board of trustees and shall never become eligible for an annuity; however, any such member so terminated by virtue of this section shall be entitled to a refund of his contributions with regular interest as provided in section thirty hereof.

WV Legislature

§5-10-50. Severability.

If any part of this article is declared unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this article, or the article in its entirety.

WV Legislature

§5-10-51. Withdrawal.

The police department and/or fire department of any municipality of this state, which municipality is a participating employer as defined in section two (5)) hereof, may withdraw its firemen and/or policemen from the West Virginia Public Employees Retirement System provided the following conditions are met:

(1) City council, by appropriate ordinance, permits all of its policemen of its police department and/or all of its firemen of its fire department to withdraw from the system.

(2) Each member of its police department and/or fire department so withdrawing from the retirement system must execute a release of all claims against the West Virginia Public Employees Retirement System.

(3) Before any such withdrawal shall be effective, the consulting actuary to the retirement system shall compute all past, present and future liabilities and the municipality shall pay the retirement system for all such liabilities before any withdrawal shall be effective; after an effective withdrawal, pursuant to the terms hereof, if additional liabilities of a municipality are discovered, the board of trustees shall certify such sums due the retirement system and the municipality shall thereafter forthwith pay said sum due the system.

(4) Compliance with rules and regulations as the board of trustees may from time to time promulgate supplementing the above conditions.

WV Legislature

§5-10-52. Specific provisions relating to certain members of the Legislature and certain service by members of the Legislature.

The provisions of this article specifying that a legislator may be a member of the retirement system and at the same time also a member of another state or political subdivision retirement program and may receive credit in the retirement system from two or more public employments simultaneously and authorizing automatic increases in the annuities of retired legislators based upon increases in compensation paid to members of the Legislature shall not be applicable to any member of the Legislature who first becomes a member of the retirement system as a member of the Legislature during the year one thousand nine hundred seventy-one, or any year thereafter, nor shall such provisions be applicable to the computation of service, credited service or benefits for any period of service as a member of the Legislature for the year one thousand nine hundred seventy-one, or any year thereafter.

WV Legislature

§5-10-52a. Specific provisions relating to certain staff members participating in the Public Employees Retirement System employed by Hopemont Hospital, Jackie Withrow Hospital, John Manchin Sr. Health Care Center, and Lakin State Hospital.

Notwithstanding any provision of this code to the contrary, any staff member participating in the Public Employees Retirement System employed by Hopemont Hospital, Jackie Withrow Hospital, John Manchin Sr. Health Care Center, or Lakin State Hospital on October 31, 2025, who will be 55 years within one calendar year of that date and who, but for not having yet attained the age of 60 if participating in Tier 1 of the Public Employees Retirement System, or the age of 62 if participating in Tier 2 of the Public Employees Retirement System, would be eligible for retirement under the provisions of this article, shall be permitted to begin drawing his or her retirement benefit as though he or she had attained that age: *Provided*, That Tier 1 employees with unused sick leave standing to their credit on October 31, 2025, who begin receiving a retirement benefit annuity pursuant to this section, shall be permitted to use unused sick leave toward additional retirement service: *Provided, further*, That nothing in this section may be construed to otherwise alter any other provision of this article relating to the members described in this section: *Provided, further*, That employees described in this section shall begin commencement of retirement annuity benefits the first day of the month following the effective date of this section or upon attaining the age of 55, whichever occurs last: *Provided, however*, That for purposes of coverage in retirement by the Public Employees Insurance Agency, the individuals described in this section shall be considered to have retired directly from a participating public employer upon receiving their retirement benefit annuity.

WV Legislature

§5-10-53. Joint study of state retirement systems; report to Joint Committee on Government and Finance by specified date of study conclusions.

In light of the determination to repeal the Public Employees Retirement System II (PERS II) before its proposed date of initial operation, a study shall be undertaken through the cooperative efforts of the board of the Public Employees Retirement System, the board of the Teachers Retirement System and the legislative commission on pensions and retirement toward determining the best method by which to address the fiscal problems of the Teachers Retirement System together with any combining of retirement systems of the state that might be indicated, with report to be made to the Joint Committee on Government and Finance of the Legislature by June 30, 1989.

WV Legislature

§5-10-54. Termination of benefits; procedure.

Whenever the board determines that (1) any person has knowingly made any false statement or falsified or permitted to be falsified any record or records of the retirement system in an attempt to defraud the system, or (2) any person who resumes employment with a governmental entity or accepts, directly or indirectly, work on a contract basis from a governmental entity, except as provided for under this article, the board shall terminate any benefit that person has received, is receiving and is entitled to receive under the early retirement provisions of this article. Further, if any person taking early retirement under this article desires to revoke his or her early retirement incentive, he or she shall be allowed to do so if he or she is entitled to regular retirement pursuant to this article: Provided, That such revocation shall be retroactive to the date of last employment and any incentive annuity, under any incentive option, already received by the retiree be repaid to the retirement system. Any person who revokes his or her early retirement incentive shall be thereafter carried upon the records of the retirement system as a regular retiree and shall not be entitled to any enhanced benefit by reason of the early retirement options contained in this article: Provided, however, That any person who chose to retire under the early retirement provisions of this article who would not have been and is not eligible for regular retirement but for the early retirement incentive options must reapply for admission to a retirement system and repay all pension benefits plus regular interest which would have been earned by the fund in the period during which the annuity payments were paid to him or her since the date his or her employment ceased.

Any termination of benefits may be appealed pursuant to the state administrative procedures act in chapter twenty-nine-a of this code. The board shall promulgate rules and regulations regarding the procedure for termination of benefits and the repayment of any benefit in accordance with the provisions of article three, chapter twenty-nine-a of this code.

WV Legislature

§5-10-55. Benefits not to be forfeited if system terminates.

If the retirement system is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of such termination or discontinuance, to the extent then funded, are not forfeited.

WV Legislature

§5-10A-1. Findings and declarations.

The Legislature finds and declares that every retirement plan instituted and created under the laws of this state has from the inception thereof contemplated and each now contemplates that the service rendered by any participating public officer or employee shall at all times be honorable. The Legislature further finds and declares that honorable service is a condition to receiving any pension, annuity, disability payment or any other benefit under a retirement plan.

WV Legislature

§5-10A-2. Definitions.

As used in this article:

(a) "Retirement plan" or "plan" means the Public Employees Retirement Act pursuant to article ten of this chapter; each municipal employees retirement plan pursuant to article twenty-two, chapter eight of this code; each policemen's and firemen's pension and relief fund pursuant to article twenty-two, chapter eight of this code; the West Virginia Municipal Police Officers and Firefighters Retirement System pursuant to article twenty-two-a, chapter eight of this code; the West Virginia State Police Death, Disability and Retirement Fund pursuant to article two, chapter fifteen of this code; the West Virginia State Police Retirement System pursuant to article two-a, chapter fifteen of this code; the State Teachers Retirement System pursuant to article seven-a, chapter eighteen of this code; the Teachers' Defined Contribution Retirement System pursuant to article seven-b, chapter eighteen of this code; the Deputy Sheriff Retirement System pursuant to article fourteen-d, chapter seven of this code; the higher education retirement plan and supplemental retirement plans pursuant to section four-a, article twenty-three, chapter eighteen of this code; the Judges' Retirement System pursuant to article nine, chapter fifty-one of this code; the West Virginia Emergency Medical Services Retirement System pursuant to article five-v, chapter sixteen of this code; and any other plan established pursuant to this code for the payment of pension, annuity, disability or other benefits to any person by reason of his or her service as an officer or employee of this state or of any political subdivision, agency or instrumentality thereof, whenever the plan is supported, in whole or in part, by public funds.

(b) "Beneficiary" means any person eligible for or receiving benefits on account of the service for a public employer by a participant or former participant in a retirement plan.

(c) "Benefits" means pension, annuity, disability or any other benefits granted pursuant to a retirement plan.

(d) "Conviction" means a conviction on or after the effective date of this article in any federal or state court of record whether following a plea of guilty, not guilty or nolo contendere and whether or not the person convicted was serving as an officer or employee of a public employer at the time of the conviction.

(e) "Former participant" means any person who is no longer eligible to receive any benefit under a retirement plan because full distribution has occurred.

(f) "Less than honorable service" means:

(1) Impeachment and conviction of a participant or former participant under the provisions of section nine, article four of the Constitution of West Virginia, except for a misdemeanor;

(2) Conviction of a participant or former participant of a felony for conduct related to his or her office or employment which he or she committed while holding the office or during the

WV Legislature

employment; or

(3) Conduct of a participant or former participant which constitutes all of the elements of a crime described in either subdivision (1) or (2) of this subsection but for which the participant or former participant was not convicted because: (i) Having been indicted or having been charged in an information for the crime, he or she made a plea bargaining agreement pursuant to which he or she pleaded guilty to or nolo contendere to a lesser crime: Provided, That the lesser crime is a felony containing all the elements described in subdivision (1) or (2) of this subsection; or (ii) having been indicted or having been charged in an information for the crime, he or she was granted immunity from prosecution for the crime.

(g) "Participant" means any person eligible for or receiving any benefit under a retirement plan on account of his or her service as an officer or employee for a public employer.

(h) "Public employer" means the State of West Virginia and any political subdivision, agency or instrumentality thereof for which there is established a retirement plan.

(i) "Supervisory board" or "board" means the Consolidated Public Retirement Board; the board of trustees of any municipal retirement fund; the board of trustees of any policemen's or firemen's retirement plan; the governing board of any supplemental retirement plan instituted pursuant to authority granted by the previous provisions of section four-a, article twenty-three, chapter eighteen of this code; and any other board, commission or public body having the duty to supervise and operate any retirement plan.

WV Legislature

§5-10A-3. Notice of intention to terminate benefits; waiver; failure to reply.

(a) Whenever a supervisory board, upon receipt of a verified complaint or otherwise, has reasonable cause to believe that a participant or former participant rendered less than honorable service as defined in section two of this article, it shall notify the affected participant, former participant or beneficiary that it believes that the participant or former participant rendered less than honorable service and that the participant, former participant or beneficiary is thereby ineligible to receive benefits. A supervisory board may not issue a notice:

(1) If more than two years have elapsed since the judgment of conviction upon which the notice is based became final; or

(2) In cases described in subdivision (3), subsection (f), section two of this article, if more than two years have elapsed since, as the case may be: The plea bargaining agreement or the grant of immunity; or

(3) With respect to conduct which occurred prior to the effective date of this article.

(b) The notice shall contain a concise statement of the reasons why the board believes that the participant or former participant rendered less than honorable service and shall be made either by personal service or by certified mail, return receipt requested, to the address which the participant, former participant or beneficiary maintains for purposes of corresponding with the board. If notice is made by certified mail, service shall be considered complete upon mailing and a completed receipt constitutes proof of the receipt of the notice. The notice shall inform the participant, former participant or beneficiary that he or she has the right to demand that the board seek a determination in circuit court of his or her eligibility for benefits and membership in the retirement plan by notifying the board of the demand within forty days. The notice shall also inform the participant, former participant or beneficiary that the board will terminate the benefits in accordance with section four of this article and refund the participant's or former participant's contributions with interest, less benefits previously paid as provided in section six of this article if the participant, former participant or beneficiary either waives the right to demand that the board take the matter before the circuit court or fails to respond to the board's notice within forty days after service.

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§5-10A-4. Determination by circuit court of ineligibility; jurisdiction; appeal.

(a) If a participant, former participant or beneficiary informs the supervisory board within forty days after service of the notice as provided in section three of this article that he or she demands that the board seek a determination in circuit court, the board shall immediately file a petition in the circuit court in the county in which the board is located or in which the participant, former participant or beneficiary resides seeking that the court determine that the participant or former participant rendered less than honorable service as defined in section two of this article and that the affected participant, former participant or beneficiary is thereby ineligible to receive benefits. The circuit courts have jurisdiction to make the determinations.

(b) Upon the filing of a petition by a supervisory board, the circuit court shall give to the affected parties notice and an opportunity to be heard consistent with the demands of due process and necessary for a fair determination of the matter. Upon completion of its hearings the court shall make such findings of fact and conclusions of law as are appropriate. Except in the case of exigent circumstances, the court shall make its determination within sixty days of the filing of the petition by the board.

(c) A determination of the circuit court shall be a final order which may be appealed to the Supreme Court of Appeals in the same manner as decisions in other civil actions.

WV Legislature

§5-10A-5. Termination of benefits.

(a) The board shall terminate a participant's, former participant's or beneficiary's membership in any and all plans in which he or she is or has been a member and shall not thereafter pay any benefits to the participant, former participant or his or her beneficiaries if an affected participant, former participant or beneficiary either waives the right to demand that the board seek a determination of eligibility in circuit court as set forth in section three of this article or fails to respond to the notice within forty days after service thereof as set forth in said section or if a circuit court has determined that the participant or former participant rendered less than honorable service in accordance with section four of this article: Provided, That this article does not authorize the termination of benefits received by a beneficiary that are received as a result of the beneficiary's own membership in a plan or the beneficiary's status as a beneficiary of a member other than the participant or former participant.

(b) If the participant or former participant is deceased and there are two or more beneficiaries at least one of whom has given the board timely notice that he or she wishes to exercise the right to demand that the board seek a determination of eligibility in circuit court, the board shall take the action as provided in this section with respect to all the beneficiaries only upon a determination by the court that the participant or former participant has rendered less than honorable service.

WV Legislature

§5-10A-6. Refund of contributions.

The supervisory board shall refund to a participant or beneficiary terminated from benefits by section five of this article the contributions of the participant in the same manner and with the same interest as provided to those participants or beneficiaries otherwise eligible to withdraw the participant's contributions under the retirement plan, less the amount of any benefits which the participant or his or her beneficiaries have previously received: Provided, That a member of the Teachers' Defined Contribution Retirement System whose benefits have been terminated pursuant to section five of this article shall be refunded only his or her employee contributions and the earnings on those contributions; and any vested employer contributions shall remain in the Teachers' Defined Contribution Retirement System and be used to offset future employer contributions for each contributing employer: Provided, however, That any former member of the Teachers' Defined Contribution Retirement System who affirmatively elected to transfer to the State Teachers' Retirement System pursuant to article seven-d, chapter eighteen of this code and whose benefits have been terminated pursuant to section five of this article shall be refunded only his or her employee contributions and the earnings on those contributions; and any vested employer contributions from the Teachers' Defined Contribution Retirement System shall remain in the State Teachers Retirement System to be used to offset future employer contributions for each contributing employer.

WV Legislature

§5-10A-7. Eligibility for new participation upon rehabilitation.

Nothing in this article prohibits a participant or former participant made ineligible for benefits by virtue of conviction of a crime under this article and who has paid the full penalty imposed by law for the crime from accepting a position as an officer or employee of the same or different public employer and joining a retirement plan as a new member; but the new member and his or her beneficiaries shall remain forever ineligible for any benefits arising from the new member's former participation in a retirement plan.

WV Legislature

§5-10A-8. Setoff; unpaid benefits subject to execution, freezing of account upon finding of probable cause.

(a) The State of West Virginia or any of its political subdivisions shall have the right of setoff against any unpaid benefits which have accrued or may thereafter accrue under the plan, including any contributions by the participant or former participant for any claim caused by less than honorable service by the participant or former participant.

(b) Notwithstanding any provision of this article to the contrary, upon being notified by an agency of the State of West Virginia or any of its political subdivisions that an employee has been charged by criminal complaint, indictment or information with an offense which constitutes less than honorable service and larceny of funds or property from a state agency or political subdivision, the retirement board shall withhold payment or refunding of any participant's or former participant's contributions until it receives an order from a court of competent jurisdiction reflecting that the charge has been dismissed, reflecting that the participant or former participant is found not guilty, ordering the release of all or part of the funds or directing restitution to the state or political subdivision.

(c) Notwithstanding any provision of the law to the contrary, any unpaid benefits which have accrued or may thereafter accrue are subject to execution, garnishment, attachment or any other legal process for collection of a judgment for the recovery of loss or damages incurred by the state or its political subdivision caused by the participant's or former participant's less than honorable service.

WV Legislature

§5-10A-9. Rules of construction.

If any provision of this article is determined to deprive a person of any property right which is vested and is indefeasible as of the effective date of this article, the provisions of this article shall nonetheless be effective as to any benefits or a part of any benefit under a retirement plan which shall be deemed to vest on or after the effective date of this article; and the right to receive any benefit under a retirement plan, which right shall vest on or after the effective date of this article, is hereby conditioned upon the full compliance and observance of the provisions hereof and the rendering of honorable service throughout the service in public employment or public office in respect of which such benefit is payable.

WV Legislature

§5-10A-10. Severability.

If any section, subsection, subdivision, provision, clause or phrase of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article are declared to be severable. The Legislature hereby declares that it would have enacted the remaining sections, subsections, subdivisions, provisions, clauses and phrases of this article even if it had known that any sections, subsections, subdivisions, provisions, clauses and phrases thereof would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that the application thereof to any person or circumstance would be held to be unconstitutional or invalid.

WV Legislature

§5-10A-11. Notification from prosecuting attorneys.

The prosecuting attorneys of the counties of this state shall, within sixty days of a conviction or a plea agreement meeting the definition of less than honorable service, report the conviction or plea agreement to the executive director of the board, including with the report the indictment, plea agreement and any order finding the defendant guilty.

WV Legislature

§5-10B-1. Legislative purpose.

The legislative purpose of this enactment is to enable employees of the state, its agencies, counties, municipalities and political subdivisions of such governmental bodies to participate in voluntary deferred compensation plans authorized by the United States Internal Revenue Code as interpreted by the Internal Revenue Service, thereby permitting such employees to obtain the advantages inherent in such plans relative to the income tax treatment of the contributions and disbursements made pursuant to such voluntary income deferment plans. It is further the purpose of this enactment to authorize the establishment of separate plans for the state and its agencies and for counties, municipalities and political subdivisions within the state and to authorize county, municipal and political subdivision employees to participate in the state deferred compensation plan if their employer does not have a plan.

WV Legislature

§5-10B-2. Definitions.

Unless the context in which used clearly indicates a different meaning, as used in this article:

(a) "Board" means the Consolidated Public Retirement Board provided for in §5-10-1 *et seq*.

(b) "Deferred compensation" means the income and earnings on that income an employee may legally defer for personal income tax purposes pursuant to the Internal Revenue Code until distribution.

(c) "Deferred compensation plan" or "plan" means a trust whereby the state employer or a public employer agrees with an employee for the voluntary reduction in employee compensation for the payment of benefits by the state employer or the public employer to the employee at a later date pursuant to this article and the federal laws and regulations relating to eligible state deferred compensation plans as described in Section 457 of the Internal Revenue Code.

(d) "Deferred compensation trust fund" or "trust" means the fund in which deferred amounts and investment income of participating employees are held.

(e) "Eligible employer" means counties, municipalities or political subdivisions of those governmental bodies which meet the definition of "state" as described in Internal Revenue Code Section 457 (e)(1), but which do not meet the definition of "state employer" as used in this article.

(f) "Employee" means any person, whether appointed, elected or under contract, providing services for the state employer or public employer for which compensation is paid.

(g) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(h) "Investment product" means any fixed or variable rate annuity, life insurance contract, savings account, certificate of deposit, money market account, bond, mutual fund or any other form of investment not prohibited under the Internal Revenue Code and authorized by the state employer or the public employer for the purpose of receiving funds under a plan.

(i) "State employer" means the State of West Virginia, which includes every state board, commission, agency and instrumentality.

(j) "Temporary employee" means a state employee who entered into a written agreement with his or her employer, prior to his or her first day of employment, specifying that his or her term of employment would be for two years or less in duration.

(k) "Treasurer" means the state Treasurer.

WV Legislature

(l) “Vendor” means a private entity that sells investment products or provides goods and services.

WV Legislature

§5-10B-3. Powers; contracts; meetings.

(a) Notwithstanding any provision of this code to the contrary, including, without limitation, this chapter and chapter five-a of this code, the state employer and a public employer have the power necessary or appropriate to carry out the provisions and objectives of this article and to operate the trust, including, without limitation, entering into contracts and executing and delivering instruments; engaging consultants, Auditors, counsel, managers, advisors, trustees or any other contractors or professionals; and charging and collecting administrative fees.

(b) The state employer or any public employer may, by contract, agree with any of its employees to defer and hold in trust any portion of that employee's compensation and may subsequently purchase or acquire from vendors licensed to do business in the State of West Virginia investment products for the purpose of carrying out the objectives of the deferred compensation plan as described in this article.

(c) Employees are authorized to attend meetings called by the state employer or public employer for the purpose of explaining a plan during regular working hours.

WV Legislature

§5-10B-3a. Automatic enrollment.

(a) Every state employee commencing work on and after July 1, 2007, shall have a minimum of $10 per pay period of his or her salary deferred to the state deferred compensation plan unless the state employee provides written notice declining to participate in accordance with the Treasurer's guidelines: *Provided*, That temporary employees and employees of the Higher Education Policy Commission, the Council for Community and Technical College Education, and the state's public institutions of higher education are exempt from the requirement in this section.

(b) At any time, a state employee may change the amount that he or she defers each pay period to the state deferred compensation plan or cease participating in the plan. An employee declining participation in the state deferred compensation plan may elect to participate at a later time.

(c) A political subdivision may establish an automatic enrollment program in a deferred compensation plan pursuant to this article. A political subdivision employee may elect to not participate in the deferred compensation plan at any time and to change the contribution amount.

WV Legislature

§5-10B-4. Responsibility for implementing plans -- Payroll reductions -- Billing and administration.

(a) The responsibility for implementing the deferred compensation plan for employees of the state employer shall be delegated to the board of trustees through June 30, 2006. On July 1, 2006, the Treasurer shall manage any deferred compensation plan for state employees. Any and all records, moneys, contracts, property and other matters involving deferred compensation plans for state employees shall transfer on July 1, 2006, to the Treasurer.

(b) The responsibility for implementing the deferred compensation plan for employees of a public employer is delegated to the county commission of a county, the governing body of a municipality, as that term is defined in section two, article one, chapter eight of this code, and, in the case of any other political subdivision, the board, commission or other similar body responsible for determining the policy of such political subdivision. A county commission or a governing body of another public employer may request the Treasurer authorize its employees to participate in the state plan instead of implementing its own plan.

(c) If the governing body has adopted more than one plan, an employee electing to participate shall also elect the plan or plans in which he or she desires to participate. When a public employer has not implemented a plan, its employees may participate in the state plan.

(d) Payroll reductions shall be remitted as specified by the state employer or public employer for deposit in the trust, in each instance, by the appropriate payroll officer. The board of trustees, the Treasurer or appropriately designated local officer, board or committee of deferred compensation plan may contract with one or more vendors to provide consolidated billing and all or any other goods and services needed for a plan.

(e) Plans shall operate without cost to or contribution from the state employer or public employer except for the incidental expense of administering the payroll salary reductions and the remittance thereof.

(f) The state employer and the public employers may charge fees on plan contributions, total assets, total return or other selected method as necessary to provide for the administrative expenses of a plan.

WV Legislature

§5-10B-5. Investment of funds.

Notwithstanding any other provision of law to the contrary, the board, or the Treasurer beginning July 1, 2006, as well as the appropriate local officer, board or committee, designated as responsible for implementing a deferred compensation plan, is hereby authorized to invest compensation held pursuant to a deferred compensation plan in investment products.

WV Legislature

§5-10B-6. Program supplemental.

The deferred compensation plan or plans established pursuant to this article shall exist and serve in addition to other retirement, pension or benefit systems established by the state employer and any public employer. The deferred compensation plan or plans established by this article shall not supersede, make inoperative or reduce any benefits provided by the consolidated retirement system or programs established by the state employer or any public employer, or any other retirement, pension or benefit program established by law for the benefit of employees.

WV Legislature

§5-10B-7. Other benefits unaffected by deferred compensation plan.

Notwithstanding any other provision of law to the contrary, any compensation deferred under this article shall be considered part of an employee's compensation for purposes of any other employee retirement, pension or benefit program. No deferral of compensation under any deferred compensation plan shall effect a reduction of any retirement, pension or other benefit program provided by law.

WV Legislature

§5-10B-8. Federal and state income tax.

Notwithstanding any other provision of this article or any other provision of law to the contrary, any compensation deferred under any deferred compensation plan shall not be subject to any federal, state or municipal income tax nor shall any amount of compensation deferred be included for the purposes of computation of any such income tax withheld on behalf of any employee.

WV Legislature

§5-10B-9. Liabilities of State of West Virginia or political subdivisions.

The state employer and the public employers shall not incur any liability for losses suffered or change in value of an investment product. The financial liability of the state employer or public employer under any deferred compensation plan shall be limited in each instance to amounts paid over to the trust but not invested.

WV Legislature

§5-10B-10. Deferred compensation plan funds held in trust.

(a) Notwithstanding anything herein to the contrary, as of January 1, 1998, all assets and income of all deferred compensation plans created or administered pursuant to this article shall be held in trust for the exclusive benefit of participants and their beneficiaries.

(b) The West Virginia Deferred Compensation Trust Fund is created within the accounts held by the Treasurer or with one or more financial institutions, vendors or any other entities selected by the Treasurer for the purpose of managing and investing the trust. A public employer managing a trust shall create a trust fund and select one or more financial institutions, vendors or other entities to hold the trust.

(c) The corpus, assets and earnings of the trust do not constitute public funds of the state or public employer and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the state employer or a public employer in connection with a plan does not create or constitute a debt, but is solely an obligation of the trust.

WV Legislature

§5-10B-10a. Matching contribution program.

(a) For a period commencing July 1, 2007, and continuing through September 30, 2012, the Treasurer is authorized to establish and operate a savings incentive program pursuant to section 401(a) of the Internal Revenue Code of 1986, as amended, in which a state employee participating in the deferred compensation plan authorized in this article may receive certain matching contributions pursuant to this section. The Treasurer shall establish matching program guidelines in accordance with this article.

(b) To qualify for participation in the matching program, a state employee shall have contributed to his or her deferred compensation account not less than $10 every pay period during a fiscal year.

(c) (1) Subject to the limitations provided by subdivision (2) of this subsection and subsections (e) and (f) of this section, the Treasurer shall allocate and credit a matching sum of up to twenty-five percent of the contributions a qualified state employee made to his or her deferred compensation account during a fiscal year for a period of up to five fiscal years, which contributions shall be at least $10 in every pay period during the fiscal year and which matching contributions for any employee shall not exceed $100 in any one fiscal year and $400 total over the life of the matching program.

(2) The Treasurer shall set the amount of funds a qualified state employee may receive as a match in accordance with this section in an amount not to exceed the amount of funds authorized by the Legislature for this purpose.

(d) The matching contribution shall be remitted annually by the Treasurer from the West Virginia Deferred Compensation Matching Fund, which is hereby created, to the employee's account in the West Virginia Deferred Compensation Trust Fund no later than September 30, each year for the prior fiscal year.

(e) The Treasurer shall not obligate, authorize or pay any match for which funds are not available in the West Virginia Deferred Compensation Matching Fund.

(f) Operation of the matching program is contingent upon funding made available by the West Virginia Legislature and may be changed or discontinued at any time for a time certain or indefinitely, as determined by the Legislature or the Treasurer. The maximum amount of funds that may be expended from the Deferred Compensation Matching Fund in any one fiscal year is $1 million.

(g) On or before June 1, 2008, the unclaimed property administrator shall transfer the amount of $1 million from the Unclaimed Property Trust Fund to the Deferred Compensation Matching Fund for operation of the matching program.

(h) Moneys in the Deferred Compensation Matching Fund may be invested, in whole or in part, with the West Virginia Board of Treasury Investments or any other entity the Treasurer

WV Legislature

selects and all earnings shall accrue to and be retained by the fund.

(i) The State of West Virginia, the Treasurer and his or her employees, agents and representatives shall not be liable for any losses incurred by the Deferred Compensation Matching Fund.

(j) Any moneys remaining in the Deferred Compensation Matching Fund at the termination of the matching program shall be transferred to the General Revenue Fund of the state no later than December 31, 2012.

(k) Any public employer may elect to operate its own matching program.

WV Legislature

§5-10B-11. Deferred Compensation Administrative Account.

The Deferred Compensation Administrative Account is created in the accounts of the Treasurer for the purposes of implementing, operating and maintaining the trust and plan. The account shall receive all fees charged and collected by the Treasurer under this article.

WV Legislature

§5-10B-12. Confidential information exempt from disclosure.

All information contained in the records maintained pursuant to this article that would tend to disclose the identity of a participating employee, including, without limitation, social security number, account number, address, telephone number, e-mail address, amounts invested, selected investments, returns and medical or disability information, are confidential and exempt from disclosure under the provisions of article one, chapter twenty-nine-b of this code. Employees and persons authorized by employees are permitted access to their own information.

WV Legislature

§5-10B-12a. Disclosure of information to the Treasurer for operation of the plan.

For purposes of this article, any person or entity with information pertaining to an employee participating in the state plan shall disclose to the Treasurer any payroll related information the Treasurer determines he or she needs for the operation of the state deferred compensation plan. Disclosure of the information shall begin upon enactment of this section on a schedule and under arrangements required by the Treasurer. Information disclosed pursuant to this section shall be used by the Treasurer only for the operation of the state plan. The Treasurer shall treat the information obtained as confidential and shall not disclose the information except to a vendor providing goods or services for the plan, who shall also treat the information as confidential, or as required by law.

WV Legislature

§5-10B-13. Moneys not subject to legal process; qualified domestic relations orders.

No account, benefit or right, created pursuant to this article, accrued or accruing, is subject to execution, garnishment, attachment, sale to satisfy a judgment or order, the operation of bankruptcy or insolvency laws, or other process of law and shall be unassignable, except that accounts, benefits and contributions under the plan are subject to "qualified domestic relations orders" as that term is defined in Internal Revenue Code §414(p).

WV Legislature

§5-10B-14. Roth accounts.

The Treasurer or any public employer may authorize Roth accounts within the plan in accordance with the Internal Revenue Code, including, without limitation, conversions, deferrals, rollovers and transfers.

WV Legislature

§5-10C-1. Legislative purpose.

The legislative purpose of this enactment is to enable this state, its agencies and political subdivisions, and political subdivisions of counties and municipalities to pick-up and pay the contributions which their employees are by law required to make to the respective retirement system in which the public employee is a member.

WV Legislature

§5-10C-2. Construction and effect of article.

This article shall apply to all retirement plans for employees sponsored by any public employer in this state. This article shall, on and after July 1, 1986, be read in pari materia and harmonized with the provisions of this code creating any retirement system for public employees.

WV Legislature

§5-10C-3. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts credited to a member's individual account in the member's deposit fund and includes both contributions deducted from the compensation of a member and contributions of a member picked up and paid by the member's participating public employer, plus applicable interest thereon.

(2) "Board of trustees" means, as appropriate: The Consolidated Public Retirement Board created in article ten-d of this chapter; the Higher Education Policy Commission; the West Virginia Council for Community and Technical College Education; the institutional governing boards responsible for the higher education retirement plan and supplemental retirement plan; or the boards of trustees of the firemen's and policemen's pension and relief funds created in §8-22-1 *et seq*. of this code.

(3) "Employee" means any person, whether appointed, elected or under contract, providing services for a public employer for which compensation is paid and who is a member of the applicable retirement system.

(4) "Member" means any person who has accumulated contributions standing to his or her credit in a retirement system.

(5) "Member contributions" means, as appropriate: The contributions required by §5-10-29 of this code from employees who are members of the West Virginia Public Employees Retirement System; the contributions required by §15-2-26 of this code from employees who are members of the West Virginia State Police Death, Disability and Retirement Fund; the contributions required by §7-14D-7 of this code from employees who are members of the Deputy Sheriff Retirement System; the contributions required by §18-7A-14 of this code from employees who are members of the State Teachers Retirement System; the contributions authorized or required by §18-7A-14a of said chapter or by §18-23-4a of said chapter from employees who are members of the West Virginia higher education retirement plan and supplemental retirement plan; the contributions required by §51-9-4 of this code from employees who are members of the Judges' Retirement System; the contributions required by §8-22-19 of this code from employees who are members of municipal firemen's and policemen's pension and relief funds; the contributions required by §8-22A-8 of this code from employees who are members of the Municipal Police Officers and Firefighters Retirement System; the contributions required by §18-7B-9 of this code from employees who are members of the Teachers' Defined Contribution Retirement System; the contributions required by §15-2A-5 of this code from the employees who are members of the West Virginia State Police Retirement System; the contributions required by §16-5V-8 of this code from employees who are members of the West Virginia Emergency Medical Services Retirement System; or the contributions required by §20-18-8 of this code from employees who are members of the West Virginia Natural Resources Police Officers Retirement System.

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(6) "Participating public employer" means the State of West Virginia, any board, commission, department, institution or spending unit and includes any agency with full-time employees, created by rule of the Supreme Court of Appeals, which for the purpose of this article shall be considered a department of state government and county boards of education with respect to teachers and nonteachers employed by them; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the Deputy Sheriff Retirement System; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Emergency Medical Services Retirement System; any political subdivision in this state which is subject to the provisions of articles twenty-two and twenty-two-a, chapter eight of this code; and any public charter school established pursuant to §18-5G-1 *et seq*. of this code which has elected to participate in, and cover its employees under, either the State Teachers Retirement System or the Teachers' Defined Contribution Retirement System.

(7) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns, any agency or organization established by or approved by the Department of Human Services for the provision of community or mental health services and which is supported in part by state, county or municipal funds.

(8) "Retirement system" means, as appropriate: The West Virginia Public Employees Retirement System created in §5-10-1 *et seq*. of this code; the West Virginia State Police Death, Disability and Retirement Fund created in §15-2-26 through §15-2-39a of this code, inclusive; the West Virginia Deputy Sheriff Retirement System created in §7-14D-1 *et seq*. of this code; the state Teachers Retirement System created in §18-7A-1 *et seq*. of this code; the West Virginia higher education retirement plan and supplemental retirement plan created in §18-7A-14a of this code and §18-23-4a of this code; the Judges' Retirement System created in §51-9-1 *et seq*. of this code; the firemen's or policemen's pension and relief funds created in §8-22-16 of this code; the Municipal Police Officers and Firefighters Retirement System created in §8-22A-4 of this code; the Teachers' Defined Contribution Retirement System created in article seven-b, chapter eighteen of this code; the West Virginia State Police Retirement System created in article two-a, chapter fifteen of this code; the West Virginia Emergency Medical Services Retirement System created in §16-5V-1 *et seq*. of this code; or the West Virginia Natural Resources Police Officers Retirement System created in article eighteen, chapter twenty of this code.

(9) "Teacher" and "nonteacher" have the meanings ascribed to the terms "teacher member" and "nonteaching member" in §18-7A-3 of this code.

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§5-10C-4. Pick-up of members' contributions by participating public employers.

(a) The State of West Virginia for its public employees and county boards of education for its teachers and nonteachers shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are a member for all compensation earned by its member employees after June 30, 1986. Any political subdivision that is a participating public employer in the West Virginia Public Employees Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are members for all compensation earned by its member employees after January 1, 1995. Public employers participating in the Emergency Medical Services Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the system in which they are members for all compensation earned by its member employees beginning January 1, 2008. Public employers participating in the Municipal Police Officers and Firefighters Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the system in which they are members for all compensation earned by its member employees beginning January 1, 2010. Counties shall pick-up and pay the contributions which the employees are required by law to make to the Deputy Sheriff Retirement System in which they are members for all compensation earned by its member employees after June 30, 1998. Any election made by a political subdivision to pick-up and pay employee contributions prior to January 1, 1995, remains in effect and is not altered or amended by the amendments made to this section during the regular legislative session, 1995. Unless a different commencement date for pick-up is specifically stated in this section, all participating public employers under this article, with respect to retirement systems subject to this article, shall pick-up and pay the contributions which their employees are required by law to make to the retirement system in which they are a member from and after the commencement of the required employee contributions.

(b) When the participating public employer picks up and pays the contributions of its member employees, the contributions, although designated by statute as employee contributions, shall be treated as employer contributions in determining the tax treatment thereof under article twenty-one, chapter eleven of this code and the federal Internal Revenue Code of 1986, as amended, and the contributions shall not be included in the gross income of the employee in determining his or her tax treatment under those provisions until they are distributed or made available to the employee or his or her beneficiary. The participating public employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee, by effecting an equal cash reduction in the gross salary of the employee, or by an off-set against future salary increases, or by a combination of reduction in gross salary and off-set against future salary increases. In no event shall any employee of a participating public employer have the right to opt out of pick-up or to elect to receive the picked-up and contributed amounts directly instead of having them paid by the participating public employer into the retirement system pursuant to this article.

(c) When employee contributions are picked up and paid by the participating public

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employer, they shall be treated by the board of trustees in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions are picked up by the participating public employer.

(d) The amount of employee contributions picked up by the participating public employer shall be paid to the retirement system in the manner and form and in the frequency required by the board of trustees and shall be accompanied by supporting data that the board of trustees may prescribe. When paid to the retirement system, each of these amounts shall be credited to the deposit fund account of the member for whom the contribution was picked up and paid by the participating public employer.

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§5-10C-5. Savings clause.

In enacting this article, it is the intent of the Legislature that the retirement plan created pursuant to this article and those created pursuant to §5-10-1 *et seq.*; §7-14D-1 *et seq.*; §8-22A-1 *et seq.*; §15-2-1 *et seq.*; §18-7A-1 *et seq.*; §51-9-1 *et seq.*; §18-23-4a; §8-22-16; §18-7B-1 *et seq.*; §15-2A-1 *et seq.*; §16-5V-1 *et seq.*; and §20-18-1 *et seq*. of this code qualify under Section 401 of the Internal Revenue Code of 1986, as amended, and that the member contributions picked up by the participating public employer qualify under Subsection (h), Section 414 of the Internal Revenue Code of 1986, as amended. If the United States Internal Revenue Service does not approve of certain sections or phraseology of certain sections of this article as being in compliance with the statutes or regulations governing the Internal Revenue Service, the respective boards of trustees, in the adoption of the deferred compensation plan, shall adopt the terminology with respect to those sections that comply with the statutes or regulations governing the Internal Revenue Service.

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§5-10D-1. Consolidated Public Retirement Board continued; members; vacancies; investment of plan funds.

(a) The Consolidated Public Retirement Board is continued to administer all public retirement plans in this state. It shall administer the Public Employees Retirement System established in §5-10-1 *et seq.* of this code; the Teachers Retirement System established in §18-7A-1 *et seq.* of this code; the Teachers' Defined Contribution Retirement System created by §18-7B-1 *et seq.* of this code; the West Virginia State Police Death, Disability, and Retirement Fund created by §15-2-1 *et seq.* of this code; the West Virginia State Police Retirement System created by §15-2A-1 *et seq.* of this code; the Deputy Sheriff Death, Disability, and Retirement Fund created by §7-14D-1 *et seq.* of this code; the Judges' Retirement System created under §51-9-1 *et seq.* of this code; the Emergency Medical Services Retirement System established in §16-5V-1 *et seq.* of this code; and the Municipal Police Officers and Firefighters Retirement System established in §8-22A-1 *et seq.* of this code, and the West Virginia Division of Natural Resources Retirement System created by §20-18-1 *et seq.* of this code.

(b) The membership of the Consolidated Public Retirement Board consists of:

(1) The Governor or his or her designee;

(2) The State Treasurer or his or her designee;

(3) The State Auditor or his or her designee;

(4) The Secretary of the Department of Administration or his or her designee;

(5) Four residents of the state, who are not members, retirants, or beneficiaries of any of the public retirement systems, to be appointed by the Governor, with the advice and consent of the Senate; and

(6) A member, annuitant, or retirant of the Public Employees Retirement System who is or was a state employee; a member, annuitant, or retirant of the Public Employees Retirement System who is not or was not a state employee; a member, annuitant, or retirant of the Teachers Retirement System; a member, annuitant, or retirant of the West Virginia State Police Death, Disability, and Retirement Fund; a member, annuitant, or retirant of the West Virginia State Police Retirement System; a member, annuitant, or retirant of the Deputy Sheriff Death, Disability, and Retirement Fund; a member, annuitant, or retirant of the Teachers' Defined Contribution Retirement System; a member, annuitant, or retirant of the Emergency Medical Services Retirement System; one person who is a member, annuitant, or retirant of a municipal policemen's or firemen's pension and relief fund or the West Virginia Municipal Police Officers and Firefighters Retirement System, and beginning as soon as practicable after January 1, 2022, one person who is a member, annuitant or retirant of the West Virginia Division of Natural Resources Police Officer Retirement System, all to be appointed by the Governor, with the advice and consent of the Senate. The Governor shall

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choose the member representing the municipal policemen's or firemen's pension and relief fund or the West Virginia Municipal Police Officers and Firefighters Retirement System from two names submitted by the state's largest organization of professional police officers and two names submitted by the state's largest organization of professional firefighters. Representation of the municipal police officers and firefighters shall alternate after each term on the board between persons having police officer and firefighter affiliation so that each professional group is represented on the board every other term.

All appointees to the board shall have recognized competence or significant experience in pension management or administration, actuarial analysis, institutional management, or accounting. Those members appointed prior to January 1, 2010, shall be considered to have met these qualifications. One trustee shall be an attorney experienced in finance and pension matters and one trustee shall be a certified public accountant. Each member of the board must complete annual fiduciary training and timely complete any conflict of interest forms required to serve as a trustee.

(c) The appointed members of the board shall serve five-year terms. A member appointed pursuant to subdivision (6), subsection (b) of this section ceases to be a member of the board if he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed membership, the Governor, within 60 days, shall fill the vacancy by appointment for the unexpired term. No more than seven appointees may be of the same political party.

(d) The Consolidated Public Retirement Board has all the powers, duties, responsibilities, and liabilities of the Public Employees Retirement System established pursuant to §5-10-1 *et seq.* of this code; the Teachers' Retirement System established pursuant to §18-7A-1 *et seq.* of this code; the Teachers' Defined Contribution Retirement System established pursuant to §18-7B-1 *et seq.* of this code; the West Virginia State Police Death, Disability, and Retirement Fund created pursuant to §15-2-1 *et seq.* of this code; the West Virginia State Police Retirement System created by §15-2A-1 *et seq.* of this code; the Deputy Sheriff Death, Disability, and Retirement Fund created pursuant to §7-14D-1 *et seq.* of this code; the Judges' Retirement System created pursuant to §51-9-1 *et seq.* of this code; the Emergency Medical Services Retirement System established in §16-5V-1 *et seq.* of this code; the Municipal Police Officers and Firefighters Retirement System created pursuant to §8-22A-1 *et seq.* of this code, and the West Virginia Division of Natural Resources Police Officers Retirement System created and established pursuant to article §20-18-1 *et seq.* of this code and their appropriate governing boards.

(e) The Consolidated Public Retirement Board may propose rules for legislative approval, in accordance with §29A-3-1 *et seq.* of this code, necessary to effectuate its powers, duties, and responsibilities: *Provided*, That the board may adopt any or all of the rules, previously promulgated, of a retirement system which it administers.

(f)(1) The Consolidated Public Retirement Board shall continue to transfer all funds received for the benefit of the retirement systems, including, but not limited to, all employer and employee contributions, to the West Virginia Investment Management Board: *Provided*, That

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the employer and employee contributions of the Teachers' Defined Contribution Retirement System, established in §18-7B-3 of this code, and voluntary deferred compensation funds invested by the West Virginia Consolidated Public Retirement Board pursuant to §5-10B-5 of this code may not be transferred to the West Virginia Investment Management Board.

(2) The board may recover from a participating employer that fails to pay any amount due a retirement system in a timely manner the contribution due and an additional amount not to exceed interest or other earnings lost as a result of the untimely payment, or a reasonable minimum fee, whichever is greater, as provided by legislative rule promulgated pursuant to the provisions of §29A-3-1 *et seq.* of this code. Any amounts recovered shall be administered in the same manner in which the amount due is required to be administered.

(g) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the public retirement plans set forth in subsection (a) of this section shall be held in trust. The Consolidated Public Retirement Board is a trustee for all public retirement plans, except with regard to the investment of funds: *Provided*, That the Consolidated Public Retirement Board is a trustee with regard to the investments of the Teachers' Defined Contribution Retirement System and any other assets of the public retirement plans administered by the Consolidated Public Retirement Board as set forth in subsection (a) of this section for which no trustee has been expressly designated in this code.

(h) The board may employ the West Virginia Investment Management Board to provide investment management consulting services for the investment of funds in the Teachers' Defined Contribution Retirement System.

WV Legislature

§5-10D-2. Chairman and vice chairman; executive director; employees; legal advisor; actuary.

(a) The board shall elect from its own number a chairman and vice chairman.

(b) The board shall appoint an executive director of the retirement systems. The executive director shall be the chief administrative officer of all the systems and he or she shall not be a member of the board. He or she shall perform such duties as are required of him or her in this article and as the board from time to time delegates to him or her. The compensation of the executive director shall be fixed by the board subject to the approval of the Governor. The executive director shall, with the approval of the board of trustees, employ any administrative, technical and clerical employees required in the proper operation of the systems.

(c) Notwithstanding the provisions of section two, article three of this chapter, the board shall employ and be represented by an attorney licensed to practice law in the State of West Virginia who is not an active member of any of the retirement systems administered by the board.

(d) An actuary, employed by the state or the board pursuant to section four of this article, shall be the actuarial consultant to the board.

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§5-10D-3. Board meetings; quorum; vote; proceedings; compensation.

(a) The board shall hold a meeting at least once each three months, and shall designate the time and place of the meeting. Seven voting trustees constitute a quorum at any meeting of the board. Each member is entitled to one vote on each question before the board. The board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the board shall be public.

(b) The members shall serve as members without compensation for their services as such: Provided, That each member shall be reimbursed, upon approval of the board, for any necessary expenses actually incurred by him or her in carrying out his or her duties. No public employee member may suffer any loss of salary or wages on account of his or her service as trustee.

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§5-10D-4. Employment of an actuary; duties; compensation.

(a) The board is hereby empowered and authorized to employ a state retirement actuary or actuarial firm with such qualifications as the board may prescribe or to utilize an actuary already in the employ of the state. The actuary or actuarial firm shall perform the following duties for the board:

(1) Analyze each item of state retirement legislation as to cost, actuarial soundness and adherence to sound pension policy;

(2) Prepare an actuarial note to be attached to each item of state retirement legislation prior to its formal introduction. Such actuarial note shall briefly summarize the proposed legislation and set forth its anticipated fiscal and actuarial impact on the affected state retirement system or systems; and

(3) Such other duties as the board or the board of trustees of the state public retirement system may assign.

(b) The state retirement actuary or actuarial firm, if one is employed by the board, shall be compensated in an amount to be fixed by the board. He or she shall receive, in addition, the necessary expenses incident to the performance of his or her duties. In the event that the board utilizes an actuary already employed by the state to perform duties for the board, the board shall reimburse the department or agency which actually employs the actuary for expenses, including the pro rata portion of salary that the actuary actually expends in the performance of duties for the board.

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§5-10D-5.

Repealed.

Acts, 2000 Reg. Sess., Ch. 54.

WV Legislature

§5-10D-6. Voluntary deductions by the Consolidated Public Retirement Board from monthly benefits to retirees to pay association dues.

(a) Any recipient of monthly retirement benefits from any public retirement plan in this state may authorize that a deduction from his or her monthly benefits be made for the payment of membership dues or fees to a retiree association. The deductions shall be authorized on a form provided by the Consolidated Public Retirement Board and shall include: (1) The identity and social security number of the retiree; (2) the amount and frequency of the deduction; (3) the identity and address of the association to which the dues or fees shall be paid; and (4) the signature of the retiree.

(b) Any retiree association authorized by recipients of monthly benefits from any public retirement plan in this state to receive dues or fees from deductions from retirants' monthly benefits may notify the board of its monthly dues on a form provided by the board: Provided, That no increase in dues or fees will be deducted from any retirant's monthly benefit until the retirant has completed an authorization form containing the information in subsection (a) and submitted this authorization to the board. The increased monthly retiree association dues or fees will be deducted commencing the month following the receipt of the authorization form to the board.

(c) Upon execution of the authorization and its receipt by the

Consolidated Public Retirement Board, the deduction shall be made in the manner specified on the form and remitted to the designated association on the tenth day of each month: Provided, That the deduction may not be made more frequently than monthly.

(d) Deduction authorizations may be revoked at any time at least thirty days prior to the date on which the deduction is regularly made and on a form to be provided by the Consolidated Public Retirement Board.

(e) Notwithstanding the provisions of section twenty-one, article eight, chapter five-a of this code to the contrary, a retiree association representing only West Virginia public retirees may request the board to mail voluntary membership applications and dues deduction cards to any eligible retirees of any West Virginia public retirement plan administered by the board: Provided, That the retiree association shall pay all costs associated with these mailings, including, but not limited to, copying, mailing, postage, record-keeping and auditing: Provided, however, That the board may contract with a third-party to provide mailing services that agrees to maintain the confidentiality of the names, addresses and other personally identifiable information of the retirants.

(f) The board is not liable to any retirant, beneficiary or other annuitant for any action undertaken pursuant to this section. Any retiree association agrees, by requesting the board to deduct dues or fees or to provide mailings for it, to be responsible for any errors or omissions by the board in conducting these activities pursuant to this section.

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(g) If any retiree association fails to timely pay to the board all costs required by this section, the board is authorized to thereafter refuse to provide the services in subsection (e).

(h) The provisions of this section shall expire July 1, 2022.

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§5-10D-6a. Voluntary election by eligible retired public safety officers to have amounts from eligible retirement plan distributed to pay for qualified health insurance premiums.

(a) Any eligible retired public safety officer who is a participant or member under any eligible retirement plan administered by the board may voluntarily elect to have amounts from an eligible retirement plan distributed to the eligible retired public safety officer in order to pay for his or her qualified health insurance premiums directly to his or her insurance provider. Alternatively, any eligible retired public safety officer who is a participant or member under any eligible retirement plan administered by the board may voluntarily elect to have amounts from an eligible retirement plan deducted and paid by the board directly to the West Virginia Public Employees Insurance Agency in order to pay for qualified health insurance premiums owed by the eligible retired public safety officer. Such election shall be made in writing, in a form and manner authorized by the board, and shall be consistent with the provisions of §402(l)(6) of the Internal Revenue Code as it may be amended from time to time. Said election shall be effective for all tax years of the eligible retired public safety officer after the election is made, unless and until otherwise terminated by the eligible retired public safety officer in writing and in a form and manner authorized by the board: *Provided*, That any election currently on file with the board and in effect shall be deemed effective for all tax years after the election was made until terminated by the eligible retired public safety officer in writing and in a form and manner authorized by the board.

(b) The definitions of the following terms contained in §402(l)(4) of the Internal Revenue Code, as it may be amended from time to time, shall apply for purposes of this section:

(1)"Eligible retirement plan";

(2)"Eligible retired public safety officer";

(3)"Public safety officer"; and

(4)"Qualified health insurance premiums".

(c) The amount which a participant or member may elect to have distributed pursuant to subsection (a) of this section shall not exceed $3,000 per taxable year of the participant or member (or such other limitation amount as is specified in §402(l)(2) of the Internal Revenue Code, as it may be amended or as the limitation may be adjusted from time to time) and any amounts so elected to be distributed shall be paid by the board or the eligible retired public safety officer directly to the provider in payment of the qualified health insurance premiums. "Qualified health insurance premiums" includes premiums for certain accident or health insurance plans and certain long-term care insurance contracts.

(d) For purposes of this section, all eligible retirement plans administered by the board shall be treated as a single plan.

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§5-10D-7. Compensation limitations; effective dates.

(a) Effective for plan years beginning after December 31, 1995, and prior to January 1, 2002, the annual compensation of a participant taken into account in determining benefits or contributions under any of the public retirement plans administered by the board and which are qualified plans under Section 401(a) of the Internal Revenue Code may not exceed $150,000, as indexed in accordance with the provisions of Section 401(a)(17) of the Internal Revenue Code. Effective for plan years beginning on or after January 1, 2002, the annual compensation of each participant taken into account in determining allocations for any plan year beginning on or after the January 1, 2002, shall not exceed $200,000 as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code. In determining benefit accruals in plan years beginning after December 31, 2001, the annual compensation limit for determination periods beginning before January 1, 2002, shall be $200,000. Annual compensation means compensation during the plan year or any other consecutive twelve-month period over which compensation is otherwise determined (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within that calendar year. This provision applies notwithstanding any other provision to the contrary in this code and notwithstanding any provisions of any legislative rule.

(b) In applying the limitations of subsection (a) of this section, the Consolidated Public Retirement Board may: (1) Adopt policies or procedures that may be necessary or appropriate in applying the compensation limitations of Section 401(a)(17) to participants, including, without limitation, the adoption and application of any transitional rules to implement the compensation limitations; and (2) to take any actions that may at any time be required by the internal revenue service regarding compliance with the requirements of Section 401(a)(17), including, without limitation, distributions, credits, set-asides or other adjustments.

WV Legislature

§5-10D-8.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5-10D-9. When annuities to be paid.

For all of the public retirement plans administered by the board, the board shall make monthly annuity payments on the twenty-fifth day of each month, except the month of December, when the board shall make the payments on December 18, . If the date of payment falls on a holiday, Saturday or Sunday, then the payment shall be made on the preceding workday. All annuities shall be paid in twelve monthly payments.

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§5-10D-10. Death benefits for participants or members who die while performing qualified military service; treatment of differential wage payments.

(a) Death benefits. In the case of a death occurring on or after January 1, 2007, if a participant or member of any plan administered by the board dies while performing qualified military service (as defined in Section 414(u) of the Internal Revenue Code), the survivors of the participant or member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan as if the participant or member had resumed and then terminated employment on account of death, to the extent required by Section 401(a)(37) of the Internal Revenue Code: Provided, That the death of the participant or member shall not be considered to be by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of the participant or member, or as having occurred in the performance of his or her duties as a member, or as a result of any service-related illness or injury.

(b) Differential wage payments. For years beginning on or after December 31, 2008, if a participant or member of any plan administered by the board is receiving a differential wage payment (as defined by Section 3401(h)(2) of the Internal Revenue Code), then for purposes of applying the Internal Revenue Code to the plan, all of the following shall apply: (i) The participant or member shall be treated as an employee of the employer making the payment; and (ii) the differential wage payment shall be treated as compensation of the participant or member for purposes of applying the Internal Revenue Code (but not for purposes of determining contributions and benefits under the plan, unless the plan terms explicitly so provide); (iii) the plan shall not be treated as failing to meet the requirements of any provision described in Section 414(u)(1)(C) of the Internal Revenue Code by reason of any contribution or benefit which is based on the differential wage payment.

(c) Nondiscrimination. Subsection (b)(iii) applies only if all employees of the employer performing service in the uniformed services described in Section 3401(h)(2)(A) of the Internal Revenue Code are entitled to receive differential wage payments (as defined in Section 3401(h)(2) of the Internal Revenue Code) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms.

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§5-10D-11. Liability of participating public employer for delinquent retirement contributions; liability of participating public employer's successor for delinquent retirement contributions; lien for delinquent contributions; collection by suit.

(a) A participating public employer of a public retirement system administered pursuant to this article that fails, for a period of sixty days, to pay: (i) An employee retirement contribution; (ii) an employer retirement contribution; (iii) a delinquency fee; (iv) any other fees, charges or costs related to the public retirement system; or (v) any combination of subdivisions (i) through (iv) of this subsection, is liable for the amount pursuant to this article.

(b) If a participating public employer of a public retirement system administered pursuant to this article: (i) Sells all or substantially all of its stock or assets; (ii) merges with another entity; (iii) dissolves its business; or (iv) participates, voluntarily or involuntarily, in an event which causes its business to terminate, all unpaid employee retirement contributions, employer retirement contributions, delinquency fees and other fees, charges, or costs related to the public retirement system shall be paid within thirty days of the date of applicable event identified in subdivision (i) through (iv) of this subsection.

(c) A transferee, successor or assignee of a participating public employer of a public retirement system administered pursuant to this article is liable for the payment of all employee retirement contributions, employer retirement contributions, delinquency fees and other fees, charges or costs related to the public retirement system, if the participating public employer does not pay those amounts as provided in subsection (b) of this section.

(d) All amounts due to the Consolidated Public Retirement Board from a participating public employer under this article is a debt owed to the Consolidated Public Retirement Board enforceable by a lien on all assets of a participating public employer, or its transferee, successor or assignee within this state. The lien attaches to all assets of a participating public employer within this state, or all assets of its transferee, successor or assignee on the date that any amount owed to the Consolidated Public Retirement Board is due. If a participating public employer, or its transferee, successor or assignee fails to pay an amount owed to the Consolidated Public Retirement Board under this article for a period of more than sixty days, the Consolidated Public Retirement Board may enforce the lien against the participating public employer, or its transferee, successor or assignee by instituting an action in the Circuit Court of Kanawha County. In the event that the Consolidated Public Retirement Board institutes an action against a participating public employer, or its transferee, successor or assignee to enforce a lien, the Consolidated Public Retirement Board is entitled to recover the amounts identified in subsection (a) of this section and in addition to those amounts, is entitled to recover all fees and costs incurred by the Consolidated Public Retirement Board during the pendency of the action, including, without limitation, accrued interest, expert witness costs, filing fees, deposition costs and reasonable attorney fees.

(e) If a section, subsection, subdivision, provision, clause or phrase of this article or its

WV Legislature

application to any person or circumstance is held unconstitutional or invalid, the unconstitutionality or invalidity does not affect other sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article are declared to be severable. The Legislature declares that it would have enacted the remaining sections, subsections, subdivisions, provisions, clauses and phrases of this article even if it had known that any sections, subsections, subdivisions, provisions, clauses and phrases of this article would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that its application to any person or circumstance would be held to be unconstitutional or invalid.

WV Legislature

§5-10D-12. Employer reporting requirements; payments by electronic funds transfer.

(a) Pursuant to its responsibility as a regulatory body, the Consolidated Public Retirement Board shall collect all information regarding individuals employed with a participating public employer of a retirement system administered pursuant to this article necessary to ensure compliance with retirement plan provisions. All participating public employers of a public retirement system administered pursuant to this article shall promptly report all individuals employed with the participating public employer to the board and include information regarding the individual including, but not limited to, the individual's name, Social Security number, gross salary or compensation, rate of pay, hours or days worked or paid, type of pay (salary, hourly or per diem), employment contract period, job title, permanent or temporary employment, full-time or part-time employment, scheduled hours and benefit eligibility.

(b) All participating public employers of a public retirement system administered pursuant to this article shall remit all retirement contributions and fees owed to the Consolidated Public Retirement Board by electronic funds transfer beginning July 1, 2024. Failure to comply will result in a $300 surcharge for each paper check submission. The executive director of the board or his or her designee may waive the surcharge on an emergency basis or for an extenuating circumstance.

WV Legislature

§5-10D-13. Withholding state and county money to satisfy delinquencies.

(a) If any employer participating in a retirement plan administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq*. of this code fails to make any payment due to the retirement system for a period of 60 days after the payment is due, the participating employer is delinquent, and the delinquency shall be certified by the Consolidated Public Retirement Board to the State Auditor, the county commission of the county in which the participating employer is located, and the sheriff of the county in which the participating employer is located. If any participating employer becomes delinquent as provided in this section, the State Auditor, county commission, or sheriff is authorized and directed to withhold any money due the participating employer by the state or county until the delinquency, together with interest thereon, is satisfied. The rate of interest applicable to the delinquency shall be the actuarial interest rate assumption as approved by the Consolidated Public Retirement Board for completing the actuarial valuation for the plan year immediately preceding the first day of the plan year in which the delinquency payment is made, compounded daily, and the minimum interest charge is $50. The money withheld by the State Auditor, county commission, or sheriff shall be paid to the applicable retirement system on behalf of the participating employer.

(b) The Consolidated Public Retirement Board shall provide notice to the participating employer 30 days prior to certifying delinquency under this section.

WV Legislature

§5-10D-14. Employer unilateral termination of participation prohibited.

Once an employer has begun participating, whether by election or by operation of law, in any public retirement system administered pursuant to this article, it may not terminate its participation without affirmative legislative action.

WV Legislature

§5-10D-15. Confidential information exempt from disclosure.

Due to the increased risk of fraud and personal identity theft, all information contained in the records maintained by the Consolidated Public Retirement Board for all retirement systems administered pursuant to this article that would tend to disclose personally identifiable information of a member, retirant, beneficiary, or alternate payee are confidential and exempt from disclosure under the provisions of §29B-1-1 *et seq*. of this code. This information includes, without limitation, Social Security numbers, account numbers, dates of birth, addresses, telephone numbers, e-mail addresses, medical or disability information, direct deposit information, and any other personally identifiable information. Members, retirants, beneficiaries, alternate payees, or persons authorized by them, are permitted access to their own information.

WV Legislature

§5-11-1. Short title.

[Repealed.]

WV Legislature

§5-11-2. Declaration of policy.

[Repealed.]

WV Legislature

§5-11-3. Definitions.

[Repealed.]

WV Legislature

§5-11-4. Powers and objectives.

[Repealed.]

WV Legislature

§5-11-5. Composition; appointment, terms, and oath of members; compensation and expenses.

[Repealed.]

WV Legislature

§5-11-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.

[Repealed.]

WV Legislature

§5-11-7. Assistance to commission; legal services.

[Repealed.]

WV Legislature

§5-11-8. Commission powers; functions; services.

[Repealed.]

WV Legislature

§5-11-9. Unlawful discriminatory practices.

[Repealed.]

WV Legislature

§5-11-9a. Veterans preference not a violation of equal employment opportunity under certain circumstances.

[Repealed.]

WV Legislature

§5-11-10. Discriminatory practices; investigations, hearings, procedures and orders.

[Repealed.]

WV Legislature

§5-11-11. Appeal and enforcement of commission orders.

[Repealed.]

WV Legislature

§5-11-12. Local human relations commissions.

[Repealed.]

WV Legislature

§5-11-13. Exclusiveness of remedy; exceptions.

[Repealed.]

WV Legislature

§5-11-14. Penalty.

[Repealed.]

WV Legislature

§5-11-15. Construction; severability.

[Repealed.]

WV Legislature

§5-11-16. Certain records exempt.

[Repealed.]

WV Legislature

§5-11-17. Posting of law and information.

[Repealed.]

WV Legislature

§5-11-18. Injunctions in certain housing complaints.

[Repealed.]

WV Legislature

§5-11-19. Private club exemption.

[Repealed.]

WV Legislature

§5-11-20. Violations of human rights; civil action by attorney general.

[Repealed.]

WV Legislature

§5-11-21.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5-11A-1. Short title.

[Repealed.]

WV Legislature

§5-11A-2. Declaration of policy.

[Repealed.]

WV Legislature

§5-11A-3. Definitions.

[Repealed.]

WV Legislature

§5-11A-3a. Volunteer services or materials to build or install basic universal design features; workers, contractors, engineers, and architects; immunity from civil liability.

[Repealed.]

WV Legislature

§5-11A-4. Application of article.

[Repealed.]

WV Legislature

§5-11A-5. Discrimination in sale or rental of housing and other prohibited practices.

[Repealed.]

WV Legislature

§5-11A-6. Discrimination in residential real estate-related transactions.

[Repealed.]

WV Legislature

§5-11A-7. Discrimination in provision of brokerage services.

[Repealed.]

WV Legislature

§5-11A-8. Religious organization or private club exemption.

[Repealed.]

WV Legislature

§5-11A-9. Administration; authority and responsibility; delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review; cooperation of the commission and executive departments and agencies to further fair housing purposes; functions of the commission.

[Repealed.]

WV Legislature

§5-11A-10. Education and conciliation; conferences and consultations; reports.

[Repealed.]

WV Legislature

§5-11A-11. Administrative enforcement; preliminary matters; complaints and answers; service; conciliation; injunctions; reasonable cause determinations; issuance of charge.

[Repealed.]

WV Legislature

§5-11A-12. Subpoenas; giving of evidence; witness fees; enforcement of subpoenas.

[Repealed.]

WV Legislature

§5-11A-13. Election of remedies; administrative hearings and discovery; exclusivity of remedies; final orders; review by commission; judicial review; remedies; attorney fees.

[Repealed.]

WV Legislature

§5-11A-14. Enforcement by private persons; civil actions; appointed attorneys; remedies; bona fide purchasers; intervention by Attorney General.

[Repealed.]

WV Legislature

§5-11A-15. Enforcement by Attorney General; pattern or practice cases; subpoena enforcement; remedies; intervention.

[Repealed.]

WV Legislature

§5-11A-16. Interference, coercion, or intimidation; enforcement by civil action.

[Repealed.]

WV Legislature

§5-11A-17. Cooperation with local agencies administering fairhousing laws; utilization of services and personnel; reimbursement; written agreements; publication instate register.

[Repealed.]

WV Legislature

§5-11A-18. Effect on other laws.

[Repealed.]

WV Legislature

§5-11A-19. Severability of provisions.

[Repealed.]

WV Legislature

§5-11A-20. Rules to implement article.

[Repealed.]

WV Legislature

§5-11B-1. Short title.

[Repealed.]

WV Legislature

§5-11B-2. Nondiscrimination with regard to reasonable accommodations related to pregnancy.

[Repealed.]

WV Legislature

§5-11B-3. Remedies and enforcement.

[Repealed.]

WV Legislature

§5-11B-4. Rule-making.

[Repealed.]

WV Legislature

§5-11B-5. Definitions.

[Repealed.]

WV Legislature

§5-11B-6. Relationship to other laws.

[Repealed.]

WV Legislature

§5-11B-7. Reports.

[Repealed.]

WV Legislature

§5-12-1.

Repealed.

Acts, 1977 1st Ex. Sess., Ch. 7.

WV Legislature

§5-12-2.

Repealed.

Acts, 1977 1st Ex. Sess., Ch. 7.

WV Legislature

§5-12-3.

Repealed.

Acts, 1977 1st Ex. Sess., Ch. 7.

WV Legislature

§5-12-4.

Repealed.

Acts, 1977 1st Ex. Sess., Ch. 7.

WV Legislature

§5-12-5.

Repealed.

Acts, 1977 1st Ex. Sess., Ch. 7.

WV Legislature

§5-13-1. Short title.

The short title by which this article may be referred to is "Public Employees' and Teachers' Reciprocal Service Credit Act."

WV Legislature

§5-13-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

(a) "Accumulated contributions" means the sum of the amounts deducted from the compensation of a member and credited to his or her individual account in a state system, together with interest, if any, credited thereto.

(b) "Annuity" means the annuity payable by a state system.

(c) "Member" means a member of either the West Virginia Public Employees Retirement System or the State Teachers Retirement System. The term "member" does not include any person who has retired under either state system.

(d) "Public final average salary" means a member's final average salary computed according to the law governing the public system. In computing his or her public final average salary, the compensation, if any, received by the member for services rendered in positions covered by the teacher system shall be used in the same manner as if the compensation were received for services covered by the public system: Provided, That for persons who first became members of the retirement system on or after July 1, 2015, no compensation for services rendered in positions covered by the teacher system may be used to compute his or her public system final average salary.

(e) "Public system" means the West Virginia Public Employees Retirement System established in article ten of this chapter.

(f) "Reciprocal service credit" for a member of the public system who subsequently becomes a member of the teacher system, or vice versa, means the sum of his or her credited service in force acquired as a member of the public system and his or her credited service in force acquired as a member of the teacher system: Provided, That persons who first became members of the public system or teacher system on or after July 1, 2015, must be employed and contributed for ten years or more in each system to receive reciprocal service credit.

(g) "State system" means the West Virginia Public Employees Retirement System and the State Teachers Retirement System.

(h) "Teacher final average salary" means a member's final average salary computed according to the law governing the teacher system. In computing his or her teacher final average salary, the compensation, if any, received by the member for services rendered in positions covered by the public system shall be used in the same manner as if the compensation were received for services covered by the teacher system: Provided, That for persons who first became members of the retirement system on or after July 1, 2015, no compensation for services rendered in positions covered by the public system may be used to compute his or her teacher system final average salary.

WV Legislature

(i) "Teacher system" means the State Teachers Retirement System established in article seven-a, chapter eighteen of this code.

(j) The masculine gender includes the feminine, and words of the singular number with respect to persons include the plural number, and vice versa.

WV Legislature

§5-13-3. Credited service upon transfer between systems.

(a) Transfer from public service system to teacher service system. -- Notwithstanding the provisions of law governing the West Virginia Public Employees Retirement System, in the event a member leaves a position covered by the public system and becomes employed in a position covered by the teacher system, he shall not forfeit his credited service acquired as a member of the public system: Provided, That he returns to the public system the amount of accumulated contributions he might have withdrawn therefrom, together with interest prescribed by the said public system: Provided, however, That he has not retired under either the public system or the teacher system: Provided further, That after the effective date of this article such subsequent employment in a position covered by the teacher system must occur within a period of five years from and after the date on which such person left a position covered by the public system. Such return of accumulated contributions shall be made in accordance with such rules and regulations as the board of trustees of the public system shall from time to time adopt.

(b) Transfer from teacher service system to public service system. -- Notwithstanding the provisions of law governing the state teachers' retirement system, in the event a member leaves a position covered by the teacher system and becomes employed in a position covered by the public system, he shall not forfeit his credited service acquired as a member of the teacher system: Provided, That he returns to the teacher system the amount of accumulated contributions he might have withdrawn therefrom, together with interest prescribed by the said teacher system: Provided, however, That he has not retired under either the public system or the teacher system: Provided further, That after the effective date of this article such subsequent employment in a position covered by the public system must occur within a period of five years from and after the date on which such person left a position covered by the teacher system. Such return of accumulated contributions shall be made in accordance with such rules and regulations as the retirement board of the teacher system shall from time to time adopt.

WV Legislature

§5-13-4. Reciprocal service.

In the event a member leaves a position covered by the public system and within five years thereafter becomes employed in a position covered by the teacher system, or a member leaves the position covered by the teacher system and within five years thereafter becomes employed in a position covered by the public system, in either case, the following provisions shall apply.

(a) A member's reciprocal service credit in force shall be used to satisfy the service requirements for retirement under the state system from which he or she retires.

(b) If a member, who has reciprocal service credit in force, retires under the public system, he or she shall receive an annuity payable by the public system and an annuity payable by the teacher system. His or her public system annuity shall be based upon: (1) The portion of his or her reciprocal service credit acquired as a member of the public system; and (2) his or her public final average salary. The member's teacher system annuity shall be based upon: (1) The portion of his or her reciprocal service credit acquired as a member of the teacher system; and (2) his or her teachers' final average salary as provided by the teachers retirement act. His or her teacher system annuity shall begin as of the date he or she retires under the public system, but in no case prior to the date the member would have been eligible to retire under the teacher system if all his or her reciprocal service credit had been acquired as a member of the teacher system.

(c) If a member, who has reciprocal service credit in force, retires under the teacher system, he or she shall receive an annuity payable by the teacher system and an annuity payable by the public system. The member's teacher system annuity shall be based upon: (1) The portion of his or her reciprocal service credit acquired as a member of the teacher system; and (2) his or her teachers' final average salary as provided by the teachers retirement act. His or her public system annuity shall be based upon: (1) The portion of the reciprocal service credit acquired as a member of the public system; and (2) his or her public final average salary. His or her public system annuity shall begin as of the date he or she retired under the teacher system, but in no case prior to the date he or she would have been eligible to retire under the public system if all his or her reciprocal service credit had been acquired as a member of the public system.

WV Legislature

§5-13-5. Prior service credit.

(a) In the event a member of the public system has served in a position prior to the date the teachers' system was created, which position would be covered under the teachers' system as of the date of retirement had the teachers' system been in existence at said time, the board of trustees of the public system may grant said member prior service credit for said time worked under such rules and regulations as the public board may from time to time adopt.

(b) In the event a member of the teacher system has served in a position prior to the date the public system was created, which position would be covered under the public system as of the date of retirement had the public system been in existence at said time, the teachers' retirement board of the teacher system may grant said member prior service credit for said time worked under such rules and regulations as the teacher board may from time to time adopt.

WV Legislature

§5-13-6. Disability reciprocal credit.

In the event a member, who has reciprocal service credit in force, retires under the public system on account of disability his annuity to be paid by the teacher system shall be subject to approval of his disability retirement by the retirement board of the teacher system. In the event a member, who has reciprocal service credit in force, retires under the teacher system on account of disability his annuity to be paid by the public system shall be subject to approval of his disability retirement by the board of trustees of the public system.

WV Legislature

§5-13-7.

Repealed.

Acts, 1974 Reg. Sess., Ch. 103.

WV Legislature

§5-14-1. Legislative findings.

The Legislature hereby finds and declares that:

(a) There is a need for West Virginia to adequately identify the deaf or hard of hearing population and provide efficient and effective services to such population;

(b) Deaf or hard of hearing people need to be more involved in the decisions and programs that affect their lives by soliciting and seriously considering their collective opinion on appropriate matters;

(c) Cooperation among state and local agencies must be facilitated in an effort to ensure that adequate and appropriate services are available and provided;

(d) In order to further the aforementioned goals it is necessary to determine what services exist and what services can be developed in order to match services to individual needs;

(e) A rubella epidemic from 1963 to 1965 caused a number of infants in West Virginia to be born deaf or hard of hearing. These individuals are approaching the ages where they will no longer be eligible for educational services, thus requiring services as young adults. The Legislature, therefore, declares that there is an unprecedented and imperative need to plan and prepare for the multiplicity of services required in order to ensure a life-long continuum of services to this particular population;

(f) There must be more emphasis on the use of interpreters for deaf and hard of hearing people and on the quality control of such services;

(g) There must be more emphasis on the use of telecommunication devices for the deaf (TDDs) and means to provide them for deaf or hard of hearing people;

(h) Through the implementation of the provisions of this article, the deaf and hard-of-hearing population of West Virginia will be aided in their efforts to live independent and productive lives.

WV Legislature

§5-14-2. Definitions.

As used in this article:

(a) "Deaf" means severe to profound impairment of the sense of hearing whereby the understanding of speech is unattainable through the ear alone with or without amplification, and visual communication is used as the primary mode of communication.

(b) "Hard of hearing" means significant impairment to the sense of hearing, but not to the extent that the person must rely primarily on visual communication.

WV Legislature

§5-14-3. Continuation of commission; membership.

(a) The West Virginia Commission for the Deaf and Hard of Hearing is continued within the Department of Health consisting of 17 persons, eight of whom shall serve ex officio. The remaining members are appointed by the Governor by and with the advice and consent of the Senate. The commission shall meet no less than four times annually. All meetings and activities held by the commission shall be attended by at least two qualified interpreters who shall be hired at the commission's expense or provided free of charge by agencies, organizations or individuals willing to volunteer qualified interpreters.

(b) The members are: The Secretary of the Department of Health, or his or her designee; the Commissioner of the Division of Labor, or his or her designee; the Commissioner of the Bureau for Public Health, or his or her designee; the State Superintendent of Schools, or his or her designee; the Director of the Division of Rehabilitation Services, or his or her designee; the Chairman of the Advisory Council for the Education of Exceptional Children, or his or her designee; and the Superintendent of the West Virginia School for the Deaf and Blind, or his or her designee, all of whom serve ex officio with full voting privileges.

(c) The Governor shall appoint nine persons, at least five of whom are deaf or hard of hearing, one of whom is the parent of a deaf child, one of whom is a certified teacher of the deaf or hard of hearing, one audiologist and one otolaryngologist. Of the five deaf people, at least three shall be selected from a list of five people recommended by the Board of the West Virginia Association of the Deaf.

WV Legislature

§5-14-4. Terms of office; quorum.

Members of the commission who do not serve ex officio shall be appointed for the following terms: Three members shall be appointed for a term of three years; three for a term of two years; and three for a term of one year. When a vacancy occurs, an appointment shall be made for the unexpired term. The members shall annually elect a chairman. A majority of the members constitutes a quorum for the transaction of business.

WV Legislature

§5-14-5. Powers and duties of the commission; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.

(a) The commission shall maintain a clearinghouse of information, the purpose of which is to aid deaf or hard of hearing persons and others in obtaining appropriate services or information about such services, including, but not limited to, education, communication (including interpreters), group home facilities, independent living skills, recreational facilities, employment, vocational training, health and mental health services, substance abuse and other services necessary to assure their ability to function in society. The commission shall consult existing public and private agencies and organizations in compiling and maintaining the clearinghouse.

(b) The commission shall establish, maintain and coordinate a statewide service to provide courts, state and local legislative bodies and others with a list of qualified and certified interpreters for the deaf and a list of qualified and certified teachers of American sign language.

(c) The Secretary of the Department of Health shall promulgate rules pursuant to §29A-3-1 *et seq*. of this code for the state quality assurance evaluation, including the establishment of required qualifications and ethical standards for interpreters, the approval of interpreters, the monitoring and investigation of interpreters and the suspension and revocation of approvals. The commission may conduct interpreter evaluations and collect and expend funds with regard thereto.

(d) The commission shall develop an outreach program to familiarize the public with the rights and needs of deaf or hard of hearing people and of available services.

(e) The commission shall investigate the condition of the hearing-impaired in this state with particular attention to those who are aged, homeless, needy, victims of rubella and victims of abuse or neglect. It shall determine the means the state possesses for establishing group homes for its hearing-impaired citizens and the need for additional facilities. The commission shall also determine the advisability and necessity of providing services to the multi-handicapped deaf or hard of hearing.

WV Legislature

§5-14-6. Seminars and training sessions.

The commission may establish one or more training sessions or workshops for the teaching of interpretive skills, in-service training and counseling for the deaf and hard of hearing. Seminars and training sessions may be conducted and are encouraged to work with the existing facilities and organizations established to accomplish the same goals.

WV Legislature

§5-14-7. Assistance of other agencies.

To effectuate the purposes of this article, the commission may request from any department, board, bureau, commission or other agency of the state, and the same are authorized to provide such assistance, services and data as will enable the commission to properly carry out its powers and duties hereunder.

WV Legislature

§5-14-8. Executive director; staff.

There shall be within the commission an executive director who shall be appointed by the commission and whose compensation shall be fixed by the commission within the budgetary appropriation thereof. The executive director shall be in the exempt class of civil service and may not be a member of the commission. The executive director may attend all meetings of the commission, as well as its committees, but has no vote on decisions or actions of the commission or its committees. The executive director shall carry out the decisions and actions of the commission, hire all staff, administer all affairs of the commission in accordance with its policies and discharge such other duties as the commission shall from time to time determine. The commission may employ such other officers, employees and clerical assistants as it considers necessary and may fix their compensation within the amounts made available by appropriation. To the extent possible, the executive director shall be deaf or hard of hearing and shall be proficient in communicating with deaf or hard of hearing individuals using varying communication modes.

WV Legislature

§5-14-9. Reports and recommendations.

The commission shall make an annual report to the Governor and the Legislature which shall include its recommendations and programs.

WV Legislature

§5-14-10. Grants and gifts; contracts.

The commission, with the approval of the Governor, may agree to accept and contract as agent of the state any gift, grant, devise or bequest, including federal grants, for any of the purposes of this article. Any moneys so received may be expended by the commission to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state moneys appropriated for the purposes of this article.

The commission may enter into contracts with any person, firm, corporation, municipality or governmental agency to effectuate the purposes of this article.

WV Legislature

§5-14-11. Reimbursement for expenses.

The members of the commission, other than its ex officio members, are entitled to reimbursement for their actual and necessary expenses incurred in the performance of official duties.

WV Legislature

§5-14-12.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5-14A-1. Short title.

This article shall be known and may be cited as the "West Virginia Interpreter for the Deaf Act."

WV Legislature

§5-14A-2. Definitions.

As used in this article:

(a) "Deaf person" means one whose sense of hearing is nonfunctional for the ordinary purposes of life;

(b) "Qualified interpreter" means an interpreter certified by the national association of the deaf (NAD) or registry of interpreters for the deaf (RID), or, in the event an interpreter so certified is not available, an interpreter whose qualifications are otherwise determined;

(c) "Oral interpreter" means a person who interprets language through facial and lip movements; and

(d) "Appointing authority" means any court, department, board, commission, agency, licensing authority, political subdivision or municipality of the state required to provide an interpreter.

WV Legislature

§5-14A-3. Appointment of interpreter in court action or grand jury proceeding.

(a) In any case before any court or the grand jury, wherein any deaf person is a complainant, defendant or witness, a qualified interpreter to interpret the proceedings to the deaf person and interpret his or her testimony or statements and to assist in preparation with counsel shall be appointed as provided under the provisions of section seven, article five, chapter fifty-seven of this code. The court shall work closely with West Virginia commission for the deaf and hard-of-hearing in finding the right interpreter for any duty in court.

(b) Efforts to obtain the services of a qualified interpreter certified with a legal skills certificate, or a comprehensive oral interpreting certificate will be made prior to accepting services of an interpreter with lesser certification. No qualified interpreter shall be appointed unless the appointing authority and the deaf person make a preliminary determination that the interpreter is able to communicate readily with the deaf person and is able to interpret accurately the statement of the deaf person and interpret the proceedings in which a deaf person may be involved.

WV Legislature

§5-14A-4. Arrests -- Appointment of an interpreter.

(a) In the event a person who is deaf is arrested and taken into custody for any alleged violation of a criminal law of this state, the arresting officer or his or her superiors shall procure a qualified interpreter in order to interrogate properly such deaf person and to interpret such person's statements. No statement taken from the deaf person before an interpreter is present may be admissible in court.

(b) An oral interpreter shall be provided upon the request of a deaf person entitled to an interpreter under this article, but who does not communicate in sign language. The right of a deaf person to an interpreter may not be waived except by a deaf person who does not use sign language and who initiates the request for waiver in writing. The waiver is subject to approval of legal counsel for the deaf person, if any, and is subject to approval of the appointing authority.

WV Legislature

§5-14A-5. Administrative proceedings -- Appointment of interpreter.

(a) In any proceeding before any department, board, commission, agency or licensing authority of the state, in any political subdivision or municipality, wherein any deaf person is a defendant, the department, board, commission, agency, licensing authority, political subdivision or municipality shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his or her testimony or statements if said deaf person requests an interpreter.

(b) In a proceeding before any department, board, commission, agency or licensing authority of the state, in any political subdivision or municipality, wherein any deaf person is an applicant, complainant or principal witness, the department, board, commission, agency, licensing authority, political subdivision or municipality may appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his or her testimony or statements if said deaf person requests an interpreter.

WV Legislature

§5-14A-6. Notice of necessity of interpreter -- Proof of deafness.

Every deaf person whose appearance in any proceeding entitles him or her to an interpreter shall notify the appointing authority of his or her desire for an interpreter at least forty-eight hours prior to any appearance and may request at the time the services of an interpreter: Provided, That if a deaf person reasonably expects the need for an interpreter for a period greater than a single day, he or she shall notify the appointing authority and the notification shall be sufficient for the duration of his or her participation in the proceedings.

An appointing authority may require a person requesting the appointment of an interpreter to furnish reasonable proof of his or her deafness when the appointing authority has reason to believe that the person is not deaf.

WV Legislature

§5-14A-7. Processing request for interpreter -- Duties and responsibilities.

It shall be the responsibility of the appointing authority to channel requests for qualified interpreters through the West Virginia commission for the deaf and hard-of-hearing except as provided under the provisions of section seven, article five, chapter fifty-seven of this code. This listing shall be made available to authorities in possible need of interpreter service as provided in this article.

WV Legislature

§5-14A-8. Confirmation of accuracy of interpretation.

Before a qualified interpreter may participate in any proceedings under the provisions of this article, the interpreter shall make an oath or affirmation that he or she will make a true interpretation in an understandable manner to the deaf person for whom he or she is appointed and that he or she will interpret the statements of the deaf person desiring that statements be made, in the English language to the best of his or her skill and judgment. The appointing authority shall provide recess periods as necessary for the interpreter when the interpreter so indicates. Any and all information that the interpreter gathers from the deaf person pertaining to any proceeding then pending shall at all times remain confidential and privileged, or on a equal basis with the attorney-client privilege, unless the deaf person desired that the information be communicated to other persons.

WV Legislature

§5-14A-9. Interpreter fee; authority for legislative rules.

Notwithstanding the provisions of section seven, article five, chapter fifty-seven with respect to fees, an interpreter appointed under the provisions of this article shall be entitled to a reasonable fee to be established by the West Virginia commission for the deaf and hard-of-hearing under a fee schedule promulgated by legislative rule pursuant to the provisions of chapter twenty-nine-a of this code. When the interpreter is appointed by a court, the fee shall be paid out of the local court fund and when the interpreter is otherwise appointed, the fee shall be paid out of funds available to the appointing authority.

WV Legislature

§5-15-1. Short title.

This article shall be known as the "White Cane Law."

WV Legislature

§5-15-2. Policy.

It is the policy of this state to encourage and enable persons who are blind or otherwise visually impaired or who have a disability to participate fully in the social and economic life of the state and to engage in remunerative employment.

WV Legislature

§5-15-3. Definitions.

For the purpose of this article:

(a) A "person who is blind" means a person whose central visual acuity does not exceed twenty/two hundred in the better eye with correcting lenses, or whose visual acuity is greater than twenty/two hundred but is occasioned by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

(b) A "person with a disability" means any person who has a physical or mental impairment that substantially limits one or more of the major life activities of the individual; who has a record of such an impairment or who is regarded as having such an impairment.

(c) A "service animal" means any guide dog, signal dog or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or fetching dropped items.

WV Legislature

§5-15-4. Equal right to use public facilities; service animals and trainers.

(a) A person who is blind or is a person with a disability shall have the same rights as other persons to the full and free use of the highways, roads, streets, sidewalks, walkways, public buildings, public facilities and other public places.

(b) Any person who is blind and any person with a disability is entitled to full and equal accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, restaurants, professional offices for health or legal services, hospitals, other places of public accommodation, amusement or resort, and other places, including places of employment, to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

(c) Every person who is blind, every person with a hearing impairment and every person with a disability shall have the right to be accompanied by a service animal in any of the places, accommodations or conveyances specified in subsection (b) of this section without being required to pay an extra charge for the admission of the service animal. The person who is blind, deaf or has a disability shall be liable for any damage done by the service animal to the premises or facilities or to persons using such premises or facilities: Provided, That the person who is blind, deaf or has a disability shall not be liable for any damage done by the service animal to any person or the property of a person who has contributed to or caused the service animal's behavior by inciting or provoking such behavior. A service animal shall not occupy a seat in any public conveyance and shall be upon a leash while using the facilities of a common carrier.

(d) The rights, privileges and responsibilities provided by this section also apply to any person who is certified as a trainer of a service animal while he or she is engaged in the training.

(e) A service animal as defined by section three of this article is not required to be licensed or certified by a state or local government, nor shall there be any requirement for the specific signage or labeling of a service animal.

WV Legislature

§5-15-5. Standard of care to be exercised by and with respect to persons who are blind or who have a disability.

(a) A person who is blind or who has a disability shall exercise that degree of care for his or her own safety in any of the places, accommodations or conveyances specified in section four of this article which an ordinarily prudent person would exercise under similar circumstances.

(b) The driver of a vehicle approaching a pedestrian who is blind or who has a disability and who knows, or in the exercise of reasonable care should know, that the pedestrian is blind because the pedestrian is carrying a cane predominantly white or metallic in color, with or without a red tip, or is using a service animal or otherwise, shall exercise care commensurate with the situation to avoid injuring the pedestrian or the service animal.

WV Legislature

§5-15-6. Annual proclamation of white cane day.

Each year the Governor shall take suitable public notice of October 15, as white cane day. The Governor shall issue a proclamation that:

(a) Comments upon the significance of the white cane;

(b) Calls upon the citizens of the state to observe the provisions of the white cane law and to take precautions necessary for the safety of persons who are blind;

(c) Reminds the citizens of the state of the policies with respect to persons who are blind herein declared and urges the citizens to cooperate in giving effect to them;

(d) Emphasizes the need of the citizens to be aware of the presence of persons who are blind or visually impaired in the community and to keep safe for persons who are blind or visually impaired the highways, roads, streets, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement and resort and other places to which the public is invited, and to offer assistance to persons who are blind upon appropriate occasions.

WV Legislature

§5-15-7. Policy of the state on employment of persons who are blind or persons with disabilities.

It is the policy of this state that persons who are blind or visually impaired and persons with disabilities shall be employed in the state service, the service of the political subdivisions of the state, in the public schools and in all other employment supported, in whole or in part, by public funds on the same terms and conditions as any other person, unless it is shown that the blindness or disability prevents the performance of the work involved.

WV Legislature

§5-15-8. Interference with rights hereunder; penalties.

Any person, firm or corporation, or the agent of any person, firm or corporation, who denies or interferes with admittance to or enjoyment of the places, accommodations or conveyances specified in section four of this article or otherwise interferes with the rights of a person who is blind or visually impaired or a person with a disability under the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $50.

WV Legislature

§5-15-9. Fraudulent representation; penalties.

(a) Any person who falsely represents to another that he or she is a person who is blind or a person with a disability with the intent to obtain any right or privilege protected by the provisions of §5-15-4 of this code is guilty of a misdemeanor and upon conviction thereof shall be fined not more than $200 or confined in jail for not more than 10 days, or both fined and confined.

(b) Any person who falsely represents that an animal is a service animal in order to obtain any right or privilege protected by the provisions of §5-15-4 of this code is guilty of a misdemeanor and, upon conviction, shall be fined not more than $200 or confined in jail for not more than 10 days, or both fined and confined.

(c) Notwithstanding the penalty provisions of §5-15-9(a) or §5-15-9(b) of this code, any person convicted of a second or subsequent violation of §5-15-9(a) or §5-15-9(b) of this code shall be fined not more than $1,000 or confined in jail for not more than 30 days, or both fined and confined.

(d) A right or privilege protected by the provisions of §5-15-4 of this code includes but is not limited to use of a service animal for assistance purposes.

WV Legislature

§5-16-1. Short title; legislative intent.

The short title by which this article may be referred to is "West Virginia Public Employees Insurance Act" and it is the express intent of the Legislature to encourage and promote a uniform partnership relation between all employers and employees participating in the insurance plan or plans formulated under the provisions of this article and constituting the insurance program, and to hereby declare such insurance program to be for a public purpose.

WV Legislature

§5-16-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

"Agency" or "PEIA" means the Public Employees Insurance Agency created by this article.

"Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences in order to produce socially significant improvement in human behavior and includes the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

"Autism spectrum disorder" means any pervasive developmental disorder, including autistic disorder, Asperger's syndrome, Rett syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

"Certified behavior analyst" means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

"Dependent" includes an eligible employee's child under the age of 26 as defined in the Patient Protection and Affordable Care Act.

"Device" means a blood glucose test strip, glucometer, continuous glucose monitor (CGM), lancet, lancing device, or insulin syringe used to cure, diagnose, mitigate, prevent, or treat diabetes or low blood sugar, but does not include insulin pumps.

"Director" means the Director of the Public Employees Insurance Agency created by this article.

"Distant site" means the telehealth site where the health care practitioner is seeing the patient at a distance or consulting with a patient's health care practitioner.

"Employee" means any person, including an elected officer, who works regularly full-time in the service of the State of West Virginia; and, for the purpose of this article only, the term "employee" also means any person, including an elected officer, who works regularly full-time in the service of a county board of education; a public charter school established pursuant to §18-5G-1 *et seq*. of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public Employees Insurance program; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or intellectually and developmentally

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disabled facility established, operated, or licensed pursuant to §27-2A-1 of this code and which is supported in part by state, county, or municipal funds; any person who works regularly full-time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, or a governing board as defined in §18B-1-2 of this code; any person who works regularly full-time in the service of a combined city-county health department created pursuant to §16-2-1 *et seq*. of this code; any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a long-term substitute as defined in §18A-1-1 of this code in the service of a county board of education: *Provided*, That a long-term substitute who is continuously employed for at least 133 instructional days during an instructional term, and, until the end of that instructional term, is eligible for the benefits provided in this article until September 1 following that instructional term: *Provided, however*, That a long-term substitute employed fewer than 133 instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election by a county board of education to allow elected board members to participate in the Public Employees Insurance Program pursuant to this article, any person elected to a county board of education shall be considered to be an "employee" during the term of office of the elected member. Upon election by the State Board of Education to allow appointed board members to participate in the Public Employees Insurance Program pursuant to this article, any person appointed to the State Board of Education is considered an "employee" during the term of office of the appointed member: *Provided further*, That the elected member of a county board of education and the appointed member of the State Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

On or after July 1, 1997, a person shall be considered an "employee" if that person meets the following criteria:

(A) Participates in a job-sharing arrangement as defined in §18A-1-1 *et seq*. of this code;

(B) Has been designated, in writing, by all other participants in that job-sharing arrangement as the "employee" for purposes of this section; and

(C) Works at least one-third of the time required for a full-time employee.

"Employer" means the State of West Virginia, its boards, agencies, commissions, departments, institutions, or spending units; a county board of education; a public charter school established pursuant to §18-5G-1 *et seq*. of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public Employees Insurance Program; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a

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governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or intellectually and developmentally disabled facility established, operated, or licensed by the Secretary of the Department of Health and Human Resources pursuant to §27-2A-1 *et seq*. of this code and which is supported in part by state, county, or municipal funds; a combined city-county health department created pursuant to §16-2-1 *et seq*. of this code; and a corporation meeting the description set forth in §18B-12-3 of this code that is employing a 21st Century Learner Fellow pursuant to §18A-3-11 of this code but the corporation is not considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" does not include within its meaning the National Guard.

"Established patient" means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

"Finance board" means the Public Employees Insurance Agency finance board created by this article.

"Health care practitioner" means a person licensed under §30-1-1 *et seq*. of this code who provides health care services.

"Originating site" means the location where the patient is located, whether or not accompanied by a health care practitioner, at the time services are provided by a health care practitioner through telehealth, including, but not limited to, a health care practitioner's office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient’s home, and other nonmedical environments such as school-based health centers, university-based health centers, or the work location of a patient.

"Objective evidence" means standardized patient assessment instruments, outcome measurements tools, or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during, and after treatment is recommended to quantify progress and support justifications for continued treatment. The tools are not required but their use will enhance the justification for continued treatment.

"Person" means any individual, company, association, organization, corporation, or other legal entity.

"Plan" means a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major medical insurance plan or plans, and a group life and accidental death insurance plan or plans.

"Prescription insulin drug" means a prescription drug that contains insulin and is used to

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treat diabetes, and includes at least one type of insulin in all of the following categories:

(1) Rapid-acting;

(2) Short-acting;

(3) Intermediate-acting;

(4) Long-acting;

(5) Pre-mixed insulin products;

(6) Pre-mixed insulin/GLP-1 RA products; and

(7) Concentrated human regular insulin.

"Primary coverage" means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder.

"Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload.

"Retired employee" means an employee of the state who retired after April 29, 1971, and an employee of the Higher Education Policy Commission, the Council for Community and Technical College Education, a state institution of higher education, or a county board of education who retires on or after April 21, 1972, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system, and whose last employer immediately prior to retirement under the state retirement system is a participating employer in the state retirement system and in the Public Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who are not covered by a state retirement system, but who are covered by a state-approved or state-contracted retirement program or a system approved by the director, shall, in the case of education employees, meet the minimum eligibility requirements of the State Teachers Retirement System, and in all other cases, meet the minimum eligibility requirements of the Public Employees Retirement System and may participate in the Public Employees Insurance Agency as retired employees upon terms as the director sets by rule as authorized in this article. Employers with employees who are, or who are eligible to become, retired employees under this article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to §5-16D-1 *et seq*. of this code. Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but may

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do so only upon the written certification, under oath, of an authorized officer of the employer that the employer has no employees who are, or who are eligible to become, retired employees and that the employer will defend and hold harmless the Public Employees Insurance Agency from any claim by one of the employer's past, present, or future employees for eligibility to participate in the Public Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee of a nonstate employer which has opted out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

"Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio-only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include e-mail messages or facsimile transmissions.

"Virtual telehealth" means a new patient or follow-up patient for acute care that does not require chronic management or scheduled medications.

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§5-16-3. Composition of Public Employees Insurance Agency.

(a) The Public Employees Insurance Agency consists of the director, the finance board, the advisory board, and any employees who may be authorized by law. The director shall be appointed by the Governor, with the advice and consent of the Senate, and serve at the will and pleasure of the Governor. The director shall have at least three years' experience in health or governmental health benefit administration as his or her primary employment duty prior to appointment as director. The director shall receive actual expenses incurred in the performance of official business. The director shall employ any administrative, technical, and clerical employees required for the proper administration of the programs provided in this article. The director shall perform the duties that are required of him or her under the provisions of this article and is the Chief Administrative Officer of the Public Employees Insurance Agency. The director may employ a deputy director.

(b) Except for the director, his or her personal secretary, the deputy director, and the chief financial officer, all positions in the agency shall be included in the classified service of the civil service system pursuant to §29-6-1 *et seq*. of this code.

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

(d) The director may, if it is financially advantageous to the state, operate the Medicare retiree health benefit plan offered by the agency based on a plan year that runs concurrent with the calendar year. Financial plans as addressed in section five of this article shall continue to be on a fiscal-year basis.

(e) The director should make every effort to evaluate and administer programs to improve quality, improve health status of members, develop innovative payment methodologies, manage health care delivery costs, evaluate effective benefit designs, evaluate cost sharing and benefit-based programs, and adopt effective industry programs that can manage the long-term effectiveness and costs for the programs at the Public Employees Insurance Agency to include, but not be limited to:

(1) Increasing generic fill rates;

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(2) Managing specialty pharmacy costs;

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

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

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

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

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

(8) Recommending cutting-edge benefit designs to the finance board to drive behavior and control costs for the plans;

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

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

(11) Initiating steps to adjust payment by the agency for the treatment of hospital-acquired infections and related events consistent with the payment policies, operational guidelines, and implementation timetable established by the Centers of Medicare and Medicaid Services. The agency shall protect employees and retired employees from any adjustment in payment for hospital acquired infections; and

(12) Initiating steps to reduce the number of employees and retired employees who experience avoidable readmissions to a hospital for the same diagnosis-related group illness within 30 days of being discharged by a hospital in this state or another state consistent with the payment policies, operational guidelines, and implementation timetable established by the Centers of Medicare and Medicaid Services.

WV Legislature

§5-16-4. Public Employees Insurance Agency Finance Board.

(a) The Public Employees Insurance Agency Finance Board is continued and consists of the Secretary of the Department of Administration or his or her designee, as a voting member, and 10 members appointed by the Governor, with the advice and consent of the Senate, for terms of four years and each may serve until his or her successor is appointed and qualified. Members may be reappointed for successive terms. No more than six members, including the Secretary of the Department of Administration, may be of the same political party. Members of the board shall satisfy the qualification requirements provided for by subsection (b) of this section. The Governor shall make appointments necessary to satisfy the requirements of subsection (b) of this section to staggered terms as determined by the Governor.

(b) (1) Of the 10 members appointed by the Governor with advice and consent of the Senate:

(A) One member shall represent the interests of education employees. The member shall hold a bachelor's degree, shall have obtained teacher certification, shall be employed as a teacher for a period of at least three years prior to his or her appointment, and shall remain a teacher for the duration of his or her appointment to remain eligible to serve on the board.

(B) One member shall represent the interests of public employees. The member shall be employed to perform full- or part-time service for wages, salary, or remuneration for a public body for a period of at least three years prior to his or her appointment and shall remain an employee of a public body for the duration of his or her appointment to remain eligible to serve on the board.

(C) One member shall represent the interests of retired employees. The member shall meet the definition of retired employee as provided in §5-16-2 of this code.

(D) One member shall represent the interests of a participating political subdivision. The member shall have been employed by a political subdivision for a period of at least three years prior to his or her appointment and shall remain an employee of a political subdivision for the duration of his or her appointment to remain eligible to serve on the board. The member may not be an elected official.

(E) One member shall represent the interests of hospitals. The member shall have been employed by a hospital for a period of at least three years prior to his or her appointment and shall remain an employee of a hospital for the duration of his or her appointment to remain eligible to serve on the board.

(F) One member shall represent the interests of non-hospital health care providers. The member shall have owned his or her non-hospital health care provider business for a period of at least three years prior to his or her appointment and shall maintain ownership of his or her non-hospital health care provider business for the duration of his or her appointment to remain eligible to serve on the board.

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(G) Four members shall be selected from the public at large, meeting the following requirements:

(i) One member selected from the public at large shall generally have knowledge and expertise relating to the financing, development, or management of employee benefit programs;

(ii) One member selected from the public at large shall have at least three years of experience in the insurance benefits business;

(iii) One member selected from the public at large shall be a certified public accountant with at least three years of experience with financial management and employee benefits program experience; and

(iv) One member selected from the public at large shall be a health care actuary or certified public accountant with at least three years of financial experience with the health care marketplace.

(2) No member of the board may be a registered lobbyist.

(3) All appointments shall be selected to represent the different geographical areas within the state and all members shall be residents of West Virginia. No member may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, neglect of fiduciary duty, or other specific responsibility imposed by this article or gross immorality.

(4) All members of the board shall have a fiduciary responsibility to protect plan assets for the benefit of plan participants.

(5) Beginning July 1, 2023, and every year thereafter, all board members shall complete fiduciary training and timely complete any conflict-of-interest forms required to serve as a fiduciary.

(c) The Secretary of the Department of Administration shall serve as chair of the finance board, which shall meet at times and places specified by the call of the chair or upon the written request to the chair by at least two members. The Director of the Public Employees Insurance Agency shall serve as staff to the board. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Six members shall constitute a quorum. The board shall pay each member the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties for each day or portion of a day engaged in the discharge of official duties.

(d) Upon termination of the board and notwithstanding any provisions of this article to the contrary, the director is authorized to assess monthly employee premium contributions and to change the types and levels of costs to employees only in accordance with this subsection.

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Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by legislative rule proposed by the director for promulgation pursuant to §29A-3-1 *et seq*. of this code. Any employee assessments or costs previously authorized by the finance board shall then remain in effect until amended by rule of the director promulgated pursuant to this subsection.

WV Legislature

§5-16-4a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5-16-5. Powers and duties of the finance board.

(a) The purpose of the finance board is to bring fiscal stability to the Public Employees Insurance Agency through development of annual financial plans and long-range plans designed to meet the agency's estimated total financial requirements, taking into account all revenues projected to be made available to the agency and apportioning necessary costs equitably among participating employers, employees, and retired employees and providers of health care services.

(b) The finance board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the Public Employees Insurance Agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by the finance board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the finance board or the director. All reasonable fees and expenses for actuarial services shall be paid by the Public Employees Insurance Agency. Any financial plan or modifications to a financial plan approved or proposed by the finance board shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the Governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the agency, including incurred but unreported claims, for the fiscal year for which the plan is proposed.

(c) All financial plans shall establish:

(1) The minimum level of reimbursement at 110 percent of the Medicare amount for all providers: *Provided*, That the plan shall reimburse a West Virginia hospital that provides inpatient medical care to a beneficiary, covered by the state and non-state plans, at a minimum rate of 110 percent of the Medicare diagnosis-related group rate for the admission, or the Medicare per diem, per day rate applicable to a critical access hospital, as appropriate: *Provided, however*, That the rates established pursuant to this subdivision do not apply to any Medicare primary retiree health plan.

(2) Any necessary cost-containment measures for implementation by the director;

(3) The levels of premium costs to participating employers; and

(4) The types and levels of cost to participating employees and retired employees.

The financial plans may provide for different levels of costs based on the insureds' ability to pay. The finance board may establish different levels of costs to retired employees based upon length of employment with a participating employer, ability to pay, or other relevant factors. The financial plans may also include optional alternative benefit plans with alternative types and levels of cost. The finance board may develop policies which encourage the use of West Virginia health care providers.

WV Legislature

In addition, the finance board may allocate a portion of the premium costs charged to participating employers to subsidize the cost of coverage for participating retired employees, on such terms as the finance board determines are equitable and financially responsible.

(d)(1) The finance board shall prepare an annual financial plan for each fiscal year. The finance board chairman shall request the actuary to estimate the total financial requirements of the Public Employees Insurance Agency for the fiscal year.

(2) The finance board shall prepare a proposed financial plan designed to generate revenues sufficient to meet all estimated program and administrative costs of the Public Employees Insurance Agency for the fiscal year. The proposed financial plan shall allow for no more than 30 days of accounts payable to be carried over into the next fiscal year. Before final adoption of the proposed financial plan, the finance board shall request the actuary to review the plan and to render a written professional opinion stating whether the plan will generate sufficient revenues to meet all estimated program and administrative costs of the Public Employees Insurance Agency for the fiscal year. The actuary's report shall explain the basis of its opinion. If the actuary concludes that the proposed financial plan will not generate sufficient revenues to meet all anticipated costs, then the finance board shall make necessary modifications to the proposed plan to ensure that all actuarially determined financial requirements of the agency will be met.

(3) Upon obtaining the actuary's opinion, the finance board shall conduct at least two public hearings in each congressional district to receive public comment on the proposed financial plan, shall review the comments, and shall finalize and approve the financial plan.

(4) For each fiscal year, the Governor shall provide his or her estimate of total revenues to the finance board no later than October 15 of the preceding fiscal year: *Provided*, That for the prospective financial plans required by this section, the Governor shall estimate the revenues available for each fiscal year of the plans based on the estimated percentage of growth in general fund revenues: *Provided, however*, That the director and finance board may only use revenue estimates from the Governor as necessary to maintain an actuarially recommended reserve fund and to maintain premium cost-sharing percentages as required in this article: *Provided, further*, That the director and finance board may not incorporate revenue sources into the finance board plan beyond the premium cost-sharing percentages as required in this article. The director shall provide the number of covered lives for the current fiscal year and a five-year analysis of the costs for covering paid claims to the finance board no later than October 15 of the preceding year. The finance board shall submit its final approved financial plan after obtaining the necessary actuary's opinion, which opinion shall include, but not be limited to, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, at a level of 80 percent for the employer and 20 percent for employees, to the Governor and to the Legislature no later than January 1 preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the director on July 1 of the fiscal year. In addition to each final approved financial plan required under this section, the finance board shall also simultaneously submit financial statements based on

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generally accepted accounting practices (GAAP) and the final approved plan restated on an accrual basis of accounting, which shall include allowances for incurred but not reported claims. The financial statements and the accrual-based financial plan restatement shall not affect the approved financial plan.

(e) The provisions of §29A-1-1 et seq. of this code shall not apply to the preparation, approval and implementation of the financial plans required by this section.

(f) By January 1 of each year, the finance board shall submit to the Governor and the Legislature a prospective financial plan for a period not to exceed five years for the programs provided in this article. Factors the board shall consider include, but are not limited to, the trends for the program and the industry; the medical rate of inflation; utilization patterns; cost of services; and specific information such as average age of employee population, active to retiree ratios, the service delivery system, and health status of the population.

(g) The prospective financial plans shall be based on the estimated revenues submitted in accordance §5-16-5(d)(4) of this code and shall include an average of the projected cost-sharing percentages of premiums and an average of the projected deductibles and copays for the various programs. Each plan year, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, shall be at a level of 80 percent for the employer and 20 percent for employees, except for the employers provided in §5-16-18(d) of this code whose premium cost-sharing percentages shall be governed by that subsection. After the submission of the initial prospective plan, the board may not increase costs to the participating employers or change the average of the premiums, deductibles, and copays for employees, except in the event of a true emergency. If the board invokes the emergency provisions, the cost shall be borne between the employers and employees in proportion to the cost-sharing ratio for that plan year. For purposes of this section, "emergency" means that the most recent projections demonstrate that plan expenses will exceed plan revenues by more than one percent in any plan year. The aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, may be offset, in part, by a legislative appropriation for that purpose.

(h) The finance board shall meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the Public Employees Insurance Agency. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures, and any other factors affecting the fiscal stability of the plan, and may make any additional modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met. The finance board may not increase the types and levels of cost to employees during its quarterly review except in the event of a true emergency.

(i) For any fiscal year in which legislative appropriations differ from the Governor’s estimate of general and special revenues available to the agency, the finance board shall, within 30

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days after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

(j) In the event the revenues in a given year exceed the expenses, the amount of revenues in excess of the expenses shall be retained by the Public Employees Insurance Agency to offset future premium increases.

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

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

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

[Repealed.]

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§5-16-6.

Repealed.

Acts, 2009 Reg. Sess., Ch. 22.

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§5-16-7. Authorization to establish plans; mandated benefits; optional plans; separate rating for claims experience purposes.

(a) The agency shall establish plans for those employees herein made eligible and establish and promulgate rules for the administration of these plans subject to the limitations contained in this article. These plans shall include:

(1) Coverages and benefits for x-ray and laboratory services in connection with mammograms when medically appropriate and consistent with current guidelines from the United States Preventive Services Task Force; pap smears, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or the American College of Obstetricians and Gynecologists; and a test for the human papilloma virus when medically appropriate and consistent with current guidelines from either the United States Preventive Services Task Force or the American College of Obstetricians and Gynecologists, when performed for cancer screening or diagnostic services on a woman age 18 or over;

(2) Annual checkups for prostate cancer in men age 50 and over;

(3) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing, and serum creatinine testing as recommended by the National Kidney Foundation;

(4) For plans that include maternity benefits, coverage for inpatient care in a duly licensed health care facility for a mother and her newly born infant for the length of time which the attending physician considers medically necessary for the mother or her newly born child. No plan may deny payment for a mother or her newborn child prior to 48 hours following a vaginal delivery or prior to 96 hours following a caesarean section delivery if the attending physician considers discharge medically inappropriate;

(5) For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in subdivision (4) of this subsection if inpatient care is determined to be medically necessary by the attending physician. These plans may include, among other things, medicines, medical equipment, prosthetic appliances, and any other inpatient and outpatient services and expenses considered appropriate and desirable by the agency; and

(6) Coverage for treatment of serious mental illness:

(A) The coverage does not include custodial care, residential care, or schooling. For purposes of this section, "serious mental illness" means an illness included in the American Psychiatric Association’s diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of:

(i) Schizophrenia and other psychotic disorders;

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(ii) Bipolar disorders;

(iii) Depressive disorders;

(iv) Substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders;

(v) Anxiety disorders; and

(vi) Anorexia and bulimia.

With regard to a covered individual who has not yet attained the age of 19 years, "serious mental illness" also includes attention deficit hyperactivity disorder, separation anxiety disorder, and conduct disorder.

(B) The agency shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness and it may use recognized health care quality and cost management tools including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost-containment measures, preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, using provider networks, and using patient cost sharing in the form of copayments, deductibles, and coinsurance. Additionally, the agency shall comply with the financial requirements and quantitative treatment limitations specified in 45 CFR 146.136(c)(2) and (c)(3), or any successor regulation. The agency may not apply any nonquantitative treatment limitations to benefits for behavioral health, mental health, and substance use disorders that are not applied to medical and surgical benefits within the same classification of benefits: *Provided*, That any service, even if it is related to the behavioral health, mental health, or substance use diagnosis if medical in nature, shall be reviewed as a medical claim and undergo all utilization review as applicable;

(7) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care if the covered person is:

(A) Seven years of age or younger or is developmentally disabled and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual, or other medically compromising condition of the individual and for whom a superior result can be expected from dental care provided under general anesthesia.

(B) A child who is 12 years of age or younger with documented phobias or with documented mental illness and with dental needs of such magnitude that treatment should not be delayed

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or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth, or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(8) (A) All plans shall include coverage for diagnosis, evaluation, and treatment of autism spectrum disorder in individuals ages 18 months to 18 years. To be eligible for coverage and benefits under this subdivision, the individual must be diagnosed with autism spectrum disorder at age eight or younger. Such plan shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist and in accordance with a treatment plan developed from a comprehensive evaluation by a certified behavior analyst for an individual diagnosed with autism spectrum disorder.

(B) The coverage shall include, but not be limited to, applied behavior analysis which shall be provided or supervised by a certified behavior analyst. This subdivision does not limit, replace, or affect any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U. S. C. §1400 *et seq.*, as amended from time to time, or other publicly funded programs. Nothing in this subdivision requires reimbursement for services provided by public school personnel.

(C) The certified behavior analyst shall file progress reports with the agency semiannually. In order for treatment to continue, the agency must receive objective evidence or a clinically supportable statement of expectation that:

(i) The individual's condition is improving in response to treatment;

(ii) A maximum improvement is yet to be attained; and

(iii) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(D) To the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of insurance plans offered by the Public Employees Insurance Agency.

(9) For plans that include maternity benefits, coverage for the same maternity benefits for all individuals participating in or receiving coverage under plans that are issued or renewed on or after January 1, 2014: *Provided*, That to the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the plan is offered in this state.

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(10) (A) Coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 *et seq*. or §30-14-1 *et seq*. of this code:

(i) Immunoglobulin E and nonimmunoglobulin E-medicated allergies to multiple food proteins;

(ii) Severe food protein-induced enterocolitis syndrome;

(iii) Eosinophilic disorders as evidenced by the results of a biopsy; and

(iv) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract (short bowel).

(B) The coverage required by paragraph (A) of this subdivision shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(C) For purposes of this subdivision, "medically necessary foods" or "medical foods" shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: *Provided*, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(D) The provisions of this subdivision shall not apply to persons with an intolerance for lactose or soy.

(11) The cost for coverage of children’s immunization services from birth through age 16 years to provide immunization against the following illnesses: Diphtheria, polio, mumps, measles, rubella, tetanus, hepatitis-b, hemophilia influenzae-b, and whooping cough. Any contract entered into to cover these services shall require that all costs associated with immunization, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration be exempt from any deductible, per visit charge, and copayment provisions which may be in force in these policies or contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible or copayment provisions.

(12) The provision requiring coverage for 12-month refill for contraceptive drugs codified at §33-58-1 of this code.

(13) The group life and accidental death insurance herein provided shall be in the amount of $10,000 for every employee.

(b) The agency shall make available to each eligible employee, at full cost to the employee,

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the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent.

(c) The finance board may cause to be separately rated for claims experience purposes:

(1) All employees of the State of West Virginia;

(2) All teaching and professional employees of state public institutions of higher education and county boards of education;

(3) All nonteaching employees of the Higher Education Policy Commission, West Virginia Council for Community and Technical College Education, and county boards of education; or

(4) Any other categorization which would ensure the stability of the overall program.

(d) The agency shall maintain the medical and prescription drug coverage for Medicare-eligible retirees by providing coverage through one of the existing plans or by enrolling the Medicare-eligible retired employees into a Medicare-specific plan, including, but not limited to, the Medicare/Advantage Prescription Drug Plan. If a Medicare-specific plan is no longer available or advantageous for the agency and the retirees, the retirees remain eligible for coverage through the agency.

(e) The agency shall establish procedures to authorize treatment with a nonparticipating provider if a covered service is not available within established time and distance standards and within a reasonable period after service is requested, and with the same coinsurance, deductible, or copayment requirements as would apply if the service were provided at a participating provider, and at no greater cost to the covered person than if the services were obtained at or from a participating provider.

(f) If the Public Employees Insurance Agency offers a plan that does not cover services provided by an out-of-network provider, it may provide the benefits required in paragraph (A), subdivision (6), subsection (a) of this section if the services are rendered by a provider who is designated by and affiliated with the Public Employees Insurance Agency, and only if the same requirements apply for services for a physical illness.

(g) In the event of a concurrent review for a claim for coverage of services for the prevention of, screening for, and treatment of behavioral health, mental health, and substance use disorders, the service continues to be a covered service until the Public Employees Insurance Agency notifies the covered person of the determination of the claim.

(h) Unless denied for nonpayment of premium, a denial of reimbursement for services for the prevention of, screening for, or treatment of behavioral health, mental health, and substance use disorders by the Public Employees Insurance Agency shall include the following language:

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(1) A statement explaining that covered persons are protected under this section, which provides that limitations placed on the access to mental health and substance use disorder benefits may be no greater than any limitations placed on access to medical and surgical benefits;

(2) A statement providing information about the internal appeals process if the covered person believes his or her rights under this section have been violated; and

(3) A statement specifying that covered persons are entitled, upon request to the Public Employees Insurance Agency, to a copy of the medical necessity criteria for any behavioral health, mental health, and substance use disorder benefit.

(i) On or after June 1, 2021, and annually thereafter, the Public Employees Insurance Agency shall submit a written report to the Joint Committee on Government and Finance that contains the following information regarding plans offered pursuant to this section:

(1) Data that demonstrates parity compliance for adverse determination regarding claims for behavioral health, mental health, or substance use disorder services and includes the total number of adverse determinations for such claims;

(2) A description of the process used to develop and select:

(A) The medical necessity criteria used in determining benefits for behavioral health, mental health, and substance use disorders; and

(B) The medical necessity criteria used in determining medical and surgical benefits;

(3) Identification of all nonquantitative treatment limitations that are applied to benefits for behavioral health, mental health, and substance use disorders and to medical and surgical benefits within each classification of benefits;

(4) The results of analyses demonstrating that, for medical necessity criteria described in subdivision (2) of this subsection and for each nonquantitative treatment limitation identified in subdivision (3) of this subsection, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to benefits for behavioral health, mental health, and substance use disorders within each classification of benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to medical and surgical benefits within the corresponding classification of benefits;

(5) The Public Employees Insurance Agency’s report of the analyses regarding nonquantitative treatment limitations shall include at a minimum:

(A) Identify factors used to determine whether a nonquantitative treatment limitation will

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apply to a benefit, including factors that were considered but rejected;

(B) Identify and define the specific evidentiary standards used to define the factors and any other evidence relied on in designing each nonquantitative treatment limitation;

(C) Provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to design each nonquantitative treatment limitation, as written, and the written processes and strategies used to apply each nonquantitative treatment limitation for benefits for behavioral health, mental health, and substance use disorders are comparable to, and are applied no more stringently than, the processes and strategies used to design and apply each nonquantitative treatment limitation, as written, and the written processes and strategies used to apply each nonquantitative treatment limitation for medical and surgical benefits;

(D) Provide the comparative analysis, including the results of the analyses, performed to determine that the processes and strategies used to apply each nonquantitative treatment limitation, in operation, for benefits for behavioral health, mental health, and substance use disorders are comparable to, and are applied no more stringently than, the processes and strategies used to apply each nonquantitative treatment limitation, in operation, for medical and surgical benefits; and

(E) Disclose the specific findings and conclusions reached by the Public Employees Insurance Agency that the results of the analyses indicate that each health benefit plan offered by the Public Employees Insurance Agency complies with paragraph (B), subdivision (6), subsection (a) of this section; and

(6) After the initial report required by this subsection, annual reports are only required for any year thereafter during which the Public Employees Insurance Agency makes significant changes to how it designs and applies medical management protocols.

(j) The Public Employees Insurance Agency shall update its annual plan document to reflect its comprehensive parity compliance. An annual report shall also be filed with the Joint Committee on Government and Finance and the Public Employees Insurance Agency Finance Board.

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§5-16-7a. Additional mandated benefits; third party reimbursement for colorectal cancer examination and laboratory testing.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, reimbursement or indemnification for colorectal cancer examinations and laboratory testing may not be denied for any nonsymptomatic person fifty years of age or older, or a symptomatic person under fifty years of age, when reimbursement or indemnity for laboratory or X ray services are covered under the policy and are performed for colorectal cancer screening or diagnostic purposes at the direction of a person licensed to practice medicine and surgery by the board of Medicine. The tests are as follows: An annual fecal occult blood test, a flexible sigmoidoscopy repeated every five years, a colonoscopy repeated every ten years and a double contrast barium enema repeated every five years.

(b) A symptomatic person is defined as: (1) An individual who experiences a change in bowel habits, rectal bleeding or stomach cramps that are persistent; or (2) an individual who poses a higher than average risk for colorectal cancer because he or she has had colorectal cancer or polyps, inflammatory bowel disease, or an immediate family history of such conditions.

(c) The same deductibles, coinsurance, network restrictions and other limitations for covered services found in the policy, provision, contract, plan or agreement of the covered person may apply to colorectal cancer examinations and laboratory testing.

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§5-16-7b. Coverage for telehealth services.

(a) The plan shall provide coverage of health care services provided through telehealth services if those same services are covered through face-to-face consultation by the policy.

(b) The plan may not exclude a service for coverage solely because the service is provided through telehealth services.

(c) The plan shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company for virtual telehealth encounters. The plan shall provide reimbursement for a telehealth service for an established patient, or care rendered on a consulting basis to a patient located in an acute care facility, whether inpatient or outpatient, on the same basis and at the same rate under a contract, plan, agreement, or policy as if the service is provided through an in-person encounter rather than provided via telehealth.

(d) The plan may not impose any annual or lifetime dollar maximum on coverage for telehealth services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to the provisions of or the requirements of this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

(e) An originating site may charge the plan a site fee.

(f) The coverage required by this section shall include the use of telehealth technologies as it pertains to medically necessary remote patient monitoring services to the full extent that those services are available.

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§5-16-7c. Required coverage for reconstruction surgery following mastectomies.

(a) The plan shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for:

(1) All stages of reconstruction of the breast on which the mastectomy has been performed;

(2) Surgery and reconstruction of the other breast to produce a symmetrical appearance; and

(3) Prostheses and physical complications of mastectomy, including lymphedemas in a manner determined in consultation with the attending physician and the patient. Coverage shall be provided for a minimum stay in the hospital of not less than 48 hours for a patient following a radical or modified mastectomy and not less than 24 hours of inpatient care following a total mastectomy or partial mastectomy with lymph node dissection for the treatment of breast cancer. Nothing in this section shall be construed as requiring inpatient coverage where inpatient coverage is not medically necessary or where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter in the summary plan description or similar document.

(b) The plan may not:

(1) Deny a patient eligibility, or continued eligibility, to enroll or renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section; and

(2) Penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

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§5-16-7d. Coverage for patient cost of clinical trials.

(a) The provisions of this section and section seven-e of this article apply to the health plans regulated by this article.

(b) This section does not apply to a policy, plan or contract paid for under Title XVIII of the Social Security Act.

(c) A policy, plan or contract subject to this section shall provide coverage for patient cost to a member in a clinical trial, as a result of:

(1) Treatment provided for a life-threatening condition; or

(2) Prevention of, early detection of or treatment studies on cancer.

(d) The coverage under subsection (c) of this section is required if:

(1)(A) The treatment is being provided or the studies are being conducted in a Phase II, Phase III or Phase IV clinical trial for cancer and has therapeutic intent; or

(B) The treatment is being provided in a Phase II, Phase III or Phase IV clinical trial for any other life-threatening condition and has therapeutic intent;

(2) The treatment is being provided in a clinical trial approved by:

(A) One of the national institutes of health;

(B) An NIH cooperative group or an NIH center;

(C) The FDA in the form of an investigational new drug application or investigational device exemption;

(D) The federal department of Veterans Affairs; or

(E) An institutional review board of an institution in the state which has a multiple project assurance contract approved by the office of protection from research risks of the national institutes of health;

(3) The facility and personnel providing the treatment are capable of doing so by virtue of their experience, training and volume of patients treated to maintain expertise;

(4) There is no clearly superior, noninvestigational treatment alternative;

(5) The available clinical or preclinical data provide a reasonable expectation that the treatment will be more effective than the noninvestigational treatment alternative;

(6) The treatment is provided in this state: Provided, That, if the treatment is provided

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outside of this state, the treatment must be approved by the payor designated in subsection (a) of this section;

(7) Reimbursement for treatment is subject to all coinsurance, copayment and deductibles and is otherwise subject to all restrictions and obligations of the health plan; and

(8) Reimbursement for treatment by an out of network or noncontracting provider shall be reimbursed at a rate which is no greater than that provided by an in network or contracting provider. Coverage shall not be required if the out of network or noncontracting provider will not accept this level of reimbursement.

(e) Payment for patient costs for a clinical trial is not required by the provisions of this section, if:

(1) The purpose of the clinical trial is designed to extend the patent of any existing drug, to gain approval or coverage of a metabolite of an existing drug, or to gain approval or coverage relating to additional clinical indications for an existing drug; or

(2) The purpose of the clinical trial is designed to keep a generic version of a drug from becoming available on the market; or

(3) The purpose of the clinical trial is to gain approval of or coverage for a reformulated or repackaged version of an existing drug.

(f) Any provider billing a third party payor for services or products provided to a patient in a clinical trial shall provide written notice to the payor that specifically identifies the services as part of a clinical trial.

(g) Notwithstanding any provision in this section to the contrary, coverage is not required for Phase I of any clinical trial.

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§5-16-7e. Definitions.

For purposes of section seven-d of this article:

(a) A "clinical trial" is a study that determines whether new drugs, treatments or medical procedures are safe and effective on humans. To determine the efficacy of experimental drugs, treatments or procedures, a study is conducted in four phases including the following:

Phase II: The experimental drug or treatment is given to, or a procedure is performed on, a larger group of people to further measure its effectiveness and safety.

Phase III: Further research is conducted to confirm the effectiveness of the drug, treatment or procedure, to monitor the side effects, to compare commonly used treatments and to collect information on safe use.

Phase IV: After the drug, treatment or medical procedure is marketed, investigators continue testing to determine the effects on various populations and to determine whether there are side effects associated with long-term use.

(b) "Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group.

(c) "Cooperative group" includes:

(1) The national cancer institute clinical cooperative group;

(2) The national cancer institute community clinical oncology program;

(3) The AIDS clinical trial group; and

(4) The community programs for clinical research in AIDS.

(d) "FDA" means the federal food and drug administration.

(e) "Life-threatening condition" means that the member has a terminal condition or illness that according to current diagnosis has a high probability of death within two years, even with treatment with an existing generally accepted treatment protocol.

(f) "Member" means a policyholder, subscriber, insured, certificate holder or a covered dependent of a policyholder, subscriber, insured or certificate holder.

(g) "Multiple project assurance contract" means a contract between an institution and the federal department of health and human services that defines the relationship of the institution to the federal department of health and human services and sets out the responsibilities of the institution and the procedures that will be used by the institution to

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protect human subjects.

(h) "NIH" means the national institutes of health.

(i) "Patient cost" means the routine costs of a medically necessary health care service that is incurred by a member as a result of the treatment being provided pursuant to the protocols of the clinical trial. Routine costs of a clinical trial include all items or services that are otherwise generally available to beneficiaries of the insurance policies. "Patient cost" does not include:

(1) The cost of the investigational drug or device;

(2) The cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided to the member for purposes of the clinical trial;

(3) Services customarily provided by the research sponsor free of charge for any participant in the trial;

(4) Costs associated with managing the research associated with the clinical trial including, but not limited to, services furnished to satisfy data collection and analysis needs that are not used in the direct clinical management of the participant; or

(5) Costs that would not be covered under the participant's policy, plan, or contract for noninvestigational treatments;

(6) Adverse events during treatment are divided into those that reflect the natural history of the disease, or its progression, and those that are unique in the experimental treatment. Costs for the former are the responsibility of the payor as provided in section two of this article, and costs for the later are the responsibility of the sponsor. The sponsor shall hold harmless any payor for any losses and injuries sustained by any member as a result of his or her participation in the clinical trial.

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§5-16-7f. Prior authorization.

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

"Episode of care" means a specific medical problem, condition, or specific illness being managed, including tests, procedures, and rehabilitation initially requested by the health care practitioner, to be performed at the site of service, excluding out-of-network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

"National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard" means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

"Prior authorization" means obtaining advance approval from the Public Employees Insurance Agency regarding the coverage of a service or medication.

(b) The Public Employees Insurance Agency shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. The portal shall be placed in an easily identifiable and accessible place on the Public Employees Insurance Agency's webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the Public Employees Insurance Agency requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the Public Employees Insurance Agency requires a plan member to use step therapy protocols. This shall be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the Public Employees Insurance Agency and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by July 1, 2024.

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(c) The Public Employees Insurance Agency shall provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the Public Employees Insurance Agency shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request: *Provided*, That the Public Employees Insurance Agency shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient's psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient's medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the Public Employees Insurance Agency shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization, request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner. The Public Employees Insurance Agency shall render a decision within two business day after receipt of the additional information submitted by the health care provider. If the health care practitioner fails to submit additional information, the prior authorization is considered denied and a new request shall be submitted.

(f) If the Public Employees Insurance Agency wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

(g) A prior authorization approved by the Public Employees Insurance Agency is carried over to all other managed care organizations and health insurers for three months if the services are provided within the state.

(h) The Public Employees Insurance Agency shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the Public Employees Insurance Agency and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner,

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similar in specialty, education, and background. The Public Employees Insurance Agency's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of the request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization may not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed $5,000 per day and the health care practitioner shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization shall be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 *et seq*. of this code.

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the Public Employees Insurance Agency shall not require the health care practitioner to submit a prior authorization for at least the next six months, or longer if the Public Employees Insurance Agency allows: *Provided*, That at the end of the six-month time frame, or longer if the Public Employees Insurance Agency allows, the exemption shall be reviewed prior to renewal. If approved, the renewal shall be granted for a time period equal to the previously granted time period, or longer if the Public Employees Insurance Agency allows. This exemption is subject to internal auditing, at any time, by the Public Employees Insurance Agency and may be rescinded if the Public Employees Insurance Agency determines the health care practitioner is not performing services or procedures in conformity with the Public Employees Insurance Agency's benefit plan, it identifies substantial variances in historical utilization, or identifies other anomalies based upon the results of the Public Employees Insurance Agency's internal audit. The Public Employees Insurance Agency shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit the Public Employees Insurance Agency from requiring a prior authorization for an experimental treatment, non-covered benefit, pharmaceutical medication, or any out-of-network service or procedure.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Insurance Commissioner shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to,

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prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status physician, and the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Insurance Commissioner may assess a civil penalty for a violation of this section.

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§5-16-7g. Coverage for prescription insulin drugs.

(a) A policy, plan, or contract that is issued or renewed on or after January 1, 2024, shall provide coverage for prescription insulin drugs and equipment to this section.

(b) Cost sharing for a 30-day supply of a covered prescription insulin drug may not exceed $35 in aggregate, including situations where the covered person is prescribed more than one insulin drug, per 30-day supply, regardless of the amount or type of insulin needed to fill such covered person's prescription. Cost sharing for a 30-day supply of covered device(s) may not exceed $100 in aggregate, including situations where the covered person is prescribed more than one device, per 30-day supply. Each cost-share maximum is covered regardless of the person's deductible, copayment, coinsurance, or any other cost-sharing requirement.

(c) Nothing in this section prevents the agency from reducing a covered person's cost sharing by an amount greater than the amount specified in this subsection.

(d) No contract between the agency or its pharmacy benefits manager and a pharmacy or its contracting agent shall contain a provision: (i) Authorizing the agency's pharmacy benefits manager or the pharmacy to charge; (ii) requiring the pharmacy to collect; or (iii) requiring a covered person to make a cost-sharing payment for a covered prescription insulin drug in an amount that exceeds the amount of the cost-sharing payment for the covered prescription insulin drug established by the agency as provided in subsection (b) of this section.

(e) The agency shall provide coverage for the following equipment and supplies for the treatment or management of diabetes for both insulin-dependent and noninsulin-dependent persons with diabetes and those with gestational diabetes: Blood glucose monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar, and orthotics.

(f) The agency shall provide coverage for diabetes self-management education to ensure that persons with diabetes are educated as to the proper self-management and treatment of their diabetes, including information on proper diets. Coverage for self-management education and education relating to diet shall be provided by a health care practitioner who has been appropriately trained as provided in §33-53-1(k) of this code.

(g) The education may be provided by a health care practitioner as part of an office visit for diabetes diagnosis or treatment, or by a licensed pharmacist for instructing and monitoring a patient regarding the proper use of covered equipment, supplies, and medications, or by a certified diabetes educator or registered dietitian.

(h) A pharmacy benefits manager, a health plan, or any other third party that reimburses a pharmacy for drugs or services shall not reimburse a pharmacy at a lower rate and shall not assess any fee, charge-back, or adjustment upon a pharmacy on the basis that a covered person's costs sharing is being impacted.

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§5-16-7h. Patient-centered treatment flexibility.

(a) For purposes of this section:

"Covered treatment" means a service, procedure, therapy, medication, or course of care covered under an agency health plan.

"Alternative treatment" means a different covered treatment for the same diagnosed condition or illness that is medically appropriate and clinically indicated,

"Prior authorization" means approval issued by the agency or its administrator authorizing coverage of a specific treatment.

(b) If a patient has received prior authorization from the agency for a covered treatment for a diagnosed condition, the patient may receive an alternative covered treatment for the same condition without requiring a new or additional prior authorization, subject to the requirements of

this section. A patient is not eligible to receive the alternative treatment and the original covered treatment at the same time.

(c) The agency shall provide coverage for an alternative treatment selected pursuant to subsection (b) of this section and may not deny coverage solely on the basis that the alternative treatment was not separately prior authorized, if:

(1) The alternative treatment is medically appropriate for the same diagnosed condition; and

(2) The total allowed cost to the agency for the alternative treatment does not exceed the allowed cost of the originally authorized treatment.

(d) Coverage under this section is subject to the following conditions:

(1) A licensed health care provider shall document in the patient's medical record that the alternative treatment is medically appropriate and intended to treat the same diagnosed condition as the originally authorized treatment.

(2) The agency may require reasonable documentation to verify that the allowed cost of the alternative treatment does not exceed the allowed cost of the originally authorized treatment, using established agency pricing methodologies.

(3) Nothing in this section requires coverage of a treatment that is not otherwise a covered benefit under the applicable agency health plan.

(4) The alternative treatment may not be used to initiate treatment for a new or unrelated diagnosis for which prior authorization would otherwise be required.

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(5) Nothing in this section limits the authority of the agency to conduct audits or deny claims in cases of fraud, waste, abuse, or material misrepresentation.

(e) The agency may not:

(1) Require a new prior authorization solely because a patient elects to receive an alternative covered treatment that meets the requirements of this section; or

(2) Impose administrative requirements that have the effect of unreasonably delaying access to an alternative treatment authorized under this section.

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§5-16-8. Conditions of insurance program.

The insurance plans provided for in this article shall be designed by the Public Employees Insurance Agency:

(1) To provide a reasonable relationship between the hospital, surgical, medical, and prescription drug benefits to be included and the expected reasonable and customary hospital, surgical, medical, and prescription drug expenses as established by the director to be incurred by the affected employee, his or her spouse, and his or her dependents. The establishment of reasonable and customary expenses by the Public Employees Insurance Agency pursuant to the preceding sentence is not subject to chapter §29A-1-1 *et seq*. of this code;

(2) To include reasonable controls which may include deductible and coinsurance provisions applicable to some or all of the benefits, and shall include other provisions, including, but not limited to, copayments, preadmission certification, case management programs, and preferred provider arrangements;

(3) To prevent unnecessary utilization of the various hospital, surgical, medical, and prescription drug services available;

(4) To provide reasonable assurance of stability in future years for the plans;

(5) To provide major medical insurance for the employees covered under this article;

(6) To provide certain group life and accidental death insurance for the employees covered under this article;

(7) To include provisions for the coordination of benefits payable by the terms of the plans with the benefits to which the employee, or his or her spouse, or his or her dependents may be entitled by the provisions of any other group hospital, surgical, medical, major medical, or prescription drug insurance, or any combination thereof;

(8) To provide a cash incentive plan for employees, spouses, and dependents to increase utilization of, and to encourage the use of, lower cost alternative health care facilities, health care providers, and generic drugs. The plan shall be reviewed annually by the director and the advisory board;

(9) To provide health and wellness programs and resources impacting various components of health and wellness. PEIA may explore, review, evaluate, and offer a variety of health and wellness programming and resources to meet the needs of its members. These programs are voluntary for participants and are separate and distinct from any medical benefit;

(10) To provide a program, to be administered by the director, for a patient audit plan with reimbursement up to a maximum of $1,000 annually to employees for discovery of health care provider or hospital overcharges when the affected employee brings the overcharge to

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the attention of the plan. The hospital or health care provider shall certify to the director that it has provided, prior to or simultaneously with the submission of the statement of charges for payments, an itemized statement of the charges to the employee participant for which payment is requested of the plan;

(11) To require that all employers give written notice to each covered employee prior to institution of any changes in benefits to employees, and to include appropriate penalty for any employer not providing the required information to any employee; and

(12) (A) To provide coverage for emergency services under offered plans.

(B) Plans shall provide coverage for emergency services, including any pre-hospital services, to the extent necessary to screen and stabilize the covered person. The plans shall reimburse, less any applicable copayments, deductibles, or coinsurance for emergency services rendered and related to the condition for which the covered person presented. Prior authorization of coverage shall not be required for the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. In the event that prior authorization was obtained, the authorization may not be retracted after the services have been provided except when the authorization was based on a material misrepresentation about the medical condition by the provider of the services or the insured person. The provider of the emergency services and the plan representative shall make a good faith effort to communicate with each other in a timely fashion to expedite post-evaluation or post-stabilization services. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(C) For purposes of this subdivision:

"Emergency services" means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including pre-hospital care;

"Prudent layperson" means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

"Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual’s health, or, with respect to a pregnant woman, the health of the unborn child, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part;

"Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no

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medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: *Provided*, That this provision may not be construed to prohibit, limit, or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

"Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

"Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child, serious impairment to bodily functions, or serious dysfunction of any bodily part or organ.

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§5-16-8a. Air-ambulance fees.

(a) The plan shall reimburse any air-ambulance provider that provides emergency air transportation or related emergency medical or treatment services to an employee or dependent of an employee covered by the plan the amount then in effect for the federal Medicare program, including any applicable Geographic Practice Cost Index.

(b) Nothing in this section limits the authority of the director under §5-16-3(c) and §5-16-9 of this code, including, but not limited to, his or her authority to manage provider contracting and payments and to designate covered and noncovered services.

(c) This section does not limit the authority of the director, the plan, or the plans under §5-16-11 of this code.

(d) Notwithstanding any provision of this code to the contrary, wherever 49 U.S.C. §41713(b) applies to the reimbursement of air ambulance providers under §5-16-8a of this code, the provisions of this code, including any administrative, civil, or criminal penalties, are inapplicable.

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§5-16-8b. Required coverage for scalp cooling system for cancer chemotherapy treatment.

(a) For the purpose of this section, "scalp cooling system" means any device used to cool the human scalp to prevent or reduce hair loss during cancer chemotherapy treatment, provided that such device is designed and intended for repeated use and is primarily and customarily used to serve a medical purpose.

(b) Any insurer who delivers or issues a policy, plan, or contact that is issued or renewed on or after January 1, 2027, under the provisions of this article and provides coverage for cancer chemotherapy treatment shall provide coverage for scalp cooling systems used in connection with cancer chemotherapy treatment as defined by the Centers for Medicare and Medicaid Services. Coverage provided under this section may be subject to annual deductibles and coinsurance, including copayments, as may be deemed appropriate by the commissioner and as are consistent with those established for other benefits within a given policy.

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§5-16-9. Authorization to execute contracts.

(a) The director is given exclusive authorization to execute such contract or contracts as are necessary to carry out the provisions of this article.

(b) The provisions of §5A-3-1 *et seq*. of this code, relating to the Division of Purchasing of the Department of Finance and Administration, shall not apply to any contracts for any insurance coverage or professional services authorized to be executed under the provisions of this article. Before entering into any contract for any insurance coverage, as authorized in this article, the director shall invite competent bids from all qualified and licensed insurance companies or carriers that may wish to offer plans for the insurance coverage desired. The director shall negotiate and contract directly with health care providers and other entities, organizations, and vendors in order to secure competitive premiums, prices, and other financial advantages. The director shall deal directly with insurers or health care providers and other entities, organizations, and vendors in presenting specifications and receiving quotations for bid purposes. No commission or finder's fee, or any combination thereof, shall be paid to any individual or agent: *Provided*, That this shall not preclude an underwriting insurance company or companies, at their own expense, from appointing a licensed resident agent within this state to service the companies' contracts awarded under the provisions of this article. Commissions reasonably related to actual service rendered for the agent or agents may be paid by the underwriting company or companies. In no event shall payment be made to any agent or agents when no actual services are rendered or performed. The director shall award the contract or contracts on a competitive basis. In awarding the contract or contracts, the director shall consider the experience of the offering agency, corporation, insurance company, or service organization in the group hospital and surgical insurance field, group major medical insurance field, group prescription drug field, and group life and accidental death insurance field, and its facilities for the handling of claims. In evaluating these factors, the director may employ the services of impartial, professional insurance analysts or actuaries, or both. Any contract executed by the director with a selected carrier shall be a contract to govern all eligible employees subject to the provisions of this article. Nothing contained in this article shall prohibit any insurance carrier from soliciting employees covered hereunder to purchase additional hospital and surgical, major medical, or life and accidental death insurance coverage.

(c) The director may authorize the carrier with whom a primary contract is executed to reinsure portions of the contract with other carriers which elect to be a reinsurer and who are legally qualified to enter into a reinsurance agreement under the laws of this state.

(d) Each employee who is covered under any contract or contracts shall receive a statement of benefits to which the employee, his or her spouse, and his or her dependents are entitled under the contract, setting forth the information as to whom the benefits are payable, to whom claims shall be submitted, and a summary of the provisions of the contract or contracts as they affect the employee, his or her spouse, and his or her dependents.

(e) The director may at the end of any contract period discontinue any contract or contracts

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it has executed with any carrier and replace the same with a contract or contracts with any other carrier or carriers meeting the requirements of this article.

(f) The director shall include language in all contracts for pharmacy benefits management, as defined by §33-51-3 of this code, requiring the pharmacy benefit manager to report quarterly to the agency the following:

(1) The overall total amount charged to the agency for all claims processed by the pharmacy benefit manager during the quarter;

(2) The overall total amount of reimbursements paid to pharmacy providers during the quarter;

(3) The overall total number of claims in which the pharmacy benefits manager reimbursed a pharmacy provider for less than the amount charged to the agency for all claims processed by the pharmacy benefit manager during the quarter; and

(4) For all pharmacy claims, the total amount paid to the pharmacy provider per claim, including, but not limited to, the following:

(A) The cost of drug reimbursement;

(B) Dispensing fees;

(C) Copayments;

(D) The amount charged to the agency for each claim by the pharmacy benefit manager;

(E) Date of service;

(F) NDC-11;

(G) Drug name;

(H) Drug strength;

(I) Quantity;

(J) Days of therapy;

(K) Rx count;

(L) Mail/retail code;

(M) Brand/generic indicator;

(N) Specialty drug indicator;

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(O) Compound indicator;

(P) Formulary indicator;

(Q) Gross cost;

(R) Member cost;

(S) Plan cost;

(T) Dispense as written;

(U) Pharmacy NPI number;

(V) Pharmacy Claim ID;

(W) Prescriber NPI number;

(X) Pharmacy name; and

(Y) Ingredient cost.

In the event there is a difference between the amount for any pharmacy claim paid to the pharmacy provider and the amount reimbursed to the agency, the pharmacy benefit manager shall report an itemization of all administrative fees, rebates, or processing charges associated with the claim. The director shall provide an annual report to the Joint Committee on Health detailing the information required by this section, including any difference or spread between the overall amount paid by pharmacy benefit managers to the pharmacy providers and the overall amount charged to the agency for each claim by the pharmacy benefit manager. To the extent necessary, the director shall use aggregated, nonproprietary data only: *Provided*, That the director must provide a clear and concise summary of the total amounts charged to the agency and reimbursed to pharmacy providers on an annual basis.

(g) If the information required herein is not provided, the agency may terminate the contract with the pharmacy benefit manager and the Office of the Insurance Commissioner shall discipline the pharmacy benefit manager as provided in §33-51-8(e) of this code.

(h) The Public Employees Insurance Agency shall contract with networks to provide care to its members out of state.

(i) The Public Employees Insurance Agency shall require each of the following in its requests for proposals and contracts with a pharmacy benefit manager:

(1) The pharmacy benefit manager shall disclose all information and data related to contracting, reimbursement, networks, rebates, fees, and any other information and data requested by the Public Employees Insurance Agency, the Legislature, and vendors for the

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purpose of performing study and analysis.

(2) A pharmacy benefit manager shall not reimburse a West Virginia pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the national average drug acquisition cost for a prescription drug or pharmacy service at the time the drug is administered or dispensed, plus a professional dispensing fee at least equal to the professional dispensing fee paid by West Virginia Medicaid for outpatient drugs. Increases to the professional dispensing fee may be set by the director in accordance with this subdivision: *Provided*, That if the national average drug acquisition cost is not available at the time a drug is administered or dispensed, a pharmacy benefit manager may not reimburse a West Virginia pharmacy or pharmacist in an amount that is less than the wholesale acquisition cost of the drug, as defined in 42 U.S.C. § 1395w-3a(c)(6)(B), plus a dispensing fee as described in this subdivision. A West Virginia pharmacy is a domestic business entity as registered with the West Virginia Secretary of State. The provisions in this subdivision shall be effective for the Public Employees Insurance Agency plan year beginning on July 1, 2024.

(j) Any contract with the Public Employees Insurance Agency for pharmacy benefits management services with a pharmacy benefit manager is subject to the requirements of §33-51-1 *et seq*. of this code and the jurisdiction of the Office of the Insurance Commissioner: *Provided*, That the Public Employees Insurance Agency is not subject to §33-51-9(e) of this code, and nothing in this subsection shall be applied to conflict with Medicare.

(k) By July 1, 2026, the Public Employees Insurance Agency shall issue a competitive bid solicitation for a contract with a pharmacy cost containment vendor actively engaging prescribing providers by presenting information regarding cost and effectiveness, including but not limited to data related to lowest net cost pharmaceutical decisions and related to reductions to polypharmacy rates, if clinically reviewed and appropriate.

(1) The vendor managing this service shall be separate and distinct from any pharmacy benefit management contract that any state agency may have in the management of the pharmacy benefit.

(2) The vendor shall work with the Public Employees Insurance Agency to ensure that the lowest net cost outcome is achieved, including calculation of drug manufacturer rebates and other considerations that may be offered to the state, while not negatively impacting patient outcomes.

(3) Prescribing providers engaged by the vendor are not required to modify their prescribing based on the information presented pursuant to this subsection but the agency retains discretion to modify its drug formulary based on the vendor's recommendations.

(4) The pharmacy cost containment vendor contract shall contain provisions guaranteeing the state an itemized monthly activity and savings report and a total net savings guarantee

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related to all expenditures and fees for the pharmacy cost containment service.

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§5-16-10. Contract provisions for group hospital and surgical, group major medical, group prescription drug and group life, and accidental death insurance for retired employees, their spouses, and dependents.

A plan may provide benefits for retired employees and their spouses and dependents as defined by rules and regulations of the Public Employees Insurance Agency, and on such terms as the director may deem appropriate.

In the event the Public Employees Insurance Agency provides the above benefits for retired employees, their spouses, and dependents, the Public Employees Insurance Agency shall adopt rules and regulations prescribing the conditions under which retired employees may elect to participate in or withdraw from the plan or plans. Any plan provided for shall be secondary to any insurance plan administered by the United States Department of Health and Human Services to which the retired employee, spouse, or dependent may be eligible under any law or regulation of the United States. If an employee eligible to participate in the Public Employees Insurance Agency plans is also eligible to participate in the state Medicaid program, and chooses to do so, then the Public Employees Insurance Agency may transfer to the Medicaid program funds to pay the required state share of such employee's participation in Medicaid except that the amount transferred may not exceed the amount that would be allocated by the agency to subsidize the cost of coverage for the retired employee if he or she were enrolled in the Public Employees Insurance Agency's plans.

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§5-16-11. To whom benefits paid.

Any benefits payable under a plan may be paid either directly to the medical provider, hospital, medical group, or other person, firm, association, or corporation furnishing the service upon which the claim is based, or to the insured upon presentation of valid bills for such service, subject to such provisions designed to facilitate payments as may be made by the director.

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§5-16-12. Misrepresentation by employer, employee or provider; penalty.

(a) It shall be a violation of this article for any person to:

(1) Knowingly secure or attempt to secure benefits payable under this article to which they are not entitled;

(2) Knowingly secure or attempt to secure greater benefits than those to which the person is entitled;

(3) Willfully misrepresent the presence or extent of benefits to which the person is entitled under a collateral insurance source;

(4) Willfully misrepresent any material fact relating to any other information requested by the director;

(5) Willfully overcharge for services provided; or

(6) Willfully misrepresent a diagnosis or nature of the service provided.

Any person who has violated any of the foregoing provisions shall be civilly liable for the amount of benefits, overpayment or other sums improperly received in addition to any other relief available in a court of competent jurisdiction.

(b) If, after notice and an administrative proceeding, it is determined the person has violated the article, the person is liable for any overpayment received. The director shall withhold and set off any payment of any benefits or other payment due to that person until any overpayment is recovered.

(c) In addition to any civil liability for a violation pursuant to subsection (a) of this section, any person who knowingly secures or attempts to secure benefits payable under this article, or knowingly attempts to secure greater benefits than those to which the person is entitled, by willfully misrepresenting or aiding in the misrepresentation of any material fact relating to employment, diagnosis or services rendered is guilty of a felony, and upon conviction thereof, shall be fined not more than $1,000, imprisoned for not less than one nor more than five years, or both. Errors in coding for billing purposes shall not be considered a violation of this subsection absent other evidence of willful wrongdoing.

(d) Any person who violates any provision of this article which results in a loss to, or overpayment from, the plan, or to the State of West Virginia of less than $1,000, and for which no other penalty is specifically provided, is guilty of a misdemeanor and, upon conviction thereof, is subject to a fine of not less than $100 but not more than $500, or imprisonment for a period of not less than twenty-four hours but not more than fifteen days, or both. Any person who violates any provision of this article which results in a loss to, or overpayment from, the plan or the State of West Virginia of $1,000 or more, and for which no other penalty is specifically provided, is guilty of a felony and, upon conviction thereof, is

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subject to a fine of not less than $1,000 but not more than $5,000, or imprisonment for a period of not less than one nor more than five years, or both.

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§5-16-12a. Inspections; violations and penalties.

(a) Employers and employees participating in any of the Public Employees Insurance Agency plans shall provide, to the director, upon request, all documentation reasonably required for the director to discharge the responsibilities under this article. This documentation includes, but is not limited to, employment or eligibility records sufficient to verify actual full-time employment and eligibility of employees who participate in the Public Employees Insurance Agency plans.

(b) Upon a determination of the director or his or her designated representative that there is probable cause to believe that fraud, abuse or other illegal activities involving transactions with the agency has occurred, the director or his or her designated representative is authorized to refer the alleged violations to the Insurance Commissioner for investigation and, if appropriate, prosecution, pursuant to article forty-one, chapter thirty-three of this code. For purposes of this section, "transactions with the agency" includes, but is not limited to, application by any insured or dependent, any employer or any type of health care provider for payment to be made to that person or any third party by the agency.

(c) The Public Employees Insurance Agency is authorized through administrative proceeding to recover any benefits or claims paid to or for any employee, or their dependents, who obtained or received benefits through fraud. The Public Employees Insurance Agency is also authorized through administrative proceeding to recover any funds due from an employer that knowingly allowed or provided benefits or claims to be fraudulently paid to an employee or dependents.

(d) For the purpose of any investigation or proceeding under this article, the director or any officer designated by him or her may administer oaths and affirmations, issue administrative subpoenas, take evidence, and require the production of any books, papers, correspondences, memoranda, agreements or other documents or records which may be relevant or material to the inquiry.

(1) Administrative subpoenas shall be served by personal service by a person over the age of eighteen, or by registered or certified mail addressed to the entity or person to be served at his or her residence, principal office or place of business. Proof of service, when necessary, shall be made by a return completed by the person making service, or in the case of registered or certified mail, such return shall be accompanied by the post office receipt of delivery of the subpoena. A party requesting the administrative subpoena is responsible for service and payment of any fees for service. Any person who serves the administrative subpoena pursuant to this section is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state.

(2) Fees for the attendance and travel of witnesses subpoenaed shall be the same as for witnesses before the circuit courts of this state. All such fees related to any administrative subpoena issued at the request of a party to an administrative proceeding shall be paid by the requesting party. All requests by parties for administrative subpoenas shall be in writing

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and shall contain a statement acknowledging that the requesting party agrees to pay such fees.

(3) In case of disobedience or neglect of any administrative subpoena served, or the refusal of any witness to testify to any matter for which he or she may be lawfully interrogated, or to produce documents subpoenaed, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, upon application by the director, may compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein. Witnesses at such hearings shall testify under oath or affirmation.

(e) Only authorized employees or agents shall have access to confidential data or systems and applications containing confidential data within the Public Employees Insurance Agency.

WV Legislature

§5-16-12b. Privileges and immunity.

(a) Any person who makes a report or furnishes information, written or oral, concerning suspected, anticipated or fraudulent activity to secure benefits payable under this article, or to secure greater benefits than those to which the person or provider is entitled, is entitled to those privileges and immunities existing under common or statutory law, as well as the immunity established in this section.

(b) In the absence of fraud, malice or bad faith, no person or agent, employee or designee of that person shall be subject to civil liability of any nature arising out of that person's provision of information related to suspected, anticipated or fraudulent activity in the securing of benefits payable or securing greater benefits than those to which the person or provider is entitled.

(c) Nothing in this section shall be construed to limit, abrogate or modify existing statutes or case law applicable to the duties or liabilities of persons acting in a manner that is itself fraudulent, with malice or in bad faith.

WV Legislature

§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan; limiting employer contribution.

(a) Cost-sharing. — The director shall provide plans that shall be paid by the employer and employee.

(b) Spouse and dependent coverage. —(1) An employee is entitled to have his or her spouse and dependents included in any plan to which the employee is entitled to participate.

(2) The spouse and dependent coverage is limited to excess or secondary coverage for each spouse and dependent who has primary coverage from any other source. If an employee's spouse has health insurance available through an employer not defined in §5-16-2 of this code, then the employer may not cover any portion of premiums for the employee's spouse coverage, unless the employee adds his or her spouse to his or her coverage by paying the cost of the actuarial value of the plan: *Provided*, That this does not apply to spouses of retired employees or employers subject to §5-16-22 of this code. For purposes of this subsection, "actuarial value" means the value as recommended by healthcare actuaries under §5-16-5 of this code.

The director may require proof regarding spouse and dependent primary coverage and shall adopt rules governing the nature, discontinuance, and resumption of any employee's coverage for his or her spouse and dependents.

(c) Continuation after termination. — If an employee participating in the plan is terminated from employment involuntarily or in reduction of work force, the employee's insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee and the employer shall continue to contribute the employer's share of plan premiums for the coverage. An employee discharged for misconduct shall not be eligible for extended benefits under this section. Coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued. If the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within 12 months of his or her prior termination, he or she shall not be considered a new enrollee and may not be required to again contribute his or her share of the premium cost if he or she had already fully contributed such share during the prior period of employment.

(d) Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan before July, 1988. — Except as otherwise provided in subsection (g) of this section, when an employee participating in the plan, who elected to participate in the plan before July 1, 1988, is compelled or required

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by law to retire before reaching the age of 65, or when a participating employee voluntarily retires as provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: The insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. For a retired employee, his or her spouse and dependents, the insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement.(e) Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan after June, 1988. — Notwithstanding subsection (d) of this section, and except as otherwise provided in subsections (g) and (l) of this section, when an employee participating in the plan who elected to participate in the plan on and after July 1, 1988, is compelled or required by law to retire before reaching the age of 65, or when the participating employee voluntarily retires as provided by law, that employee's annual leave or sick leave, if any, shall be credited toward one half of the premium cost of the insurance provided by this article, for periods and scope of coverage determined according to the following formulae: (1) One additional month of single retiree coverage for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement; or (2) one additional month of coverage for a retiree, his or her spouse, and dependents for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. The remaining premium cost shall be borne by the retired employee if he or she elects the coverage. For purposes of this subsection, an employee who has been a participant under spouse or dependent coverage and who reenters the plan within 12 months after termination of his or her prior coverage shall be considered to have elected to participate in the plan as of the date of commencement of the prior coverage. For purposes of this subsection, an employee shall not be considered a new employee after returning from extended authorized leave on or after July 1, 1988.

(f) In the alternative to the extension of insurance coverage through premium payment provided in subsections (d) and (e) of this section, the accrued annual leave and sick leave of an employee participating in the plan may be applied, on the basis of two days' retirement service credit for each one day of accrued annual and sick leave, toward an increase in the employee's retirement benefits with those days constituting additional credited service in computation of the benefits under any state retirement system: *Provided*, That for a person who first becomes a member of the Teachers Retirement System as provided in §18-7A-1 *et seq*. of this code on or after July 1, 2015, accrued annual and sick leave of an employee participating in the plan may not be applied for retirement service credit: *Provided, however*, That the additional credited service shall not be used in meeting initial eligibility for retirement criteria, but only as additional service credited in excess thereof.

(g) Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for certain higher education employees. Except as otherwise provided in

subsection (k) of this section, when an employee, who is a higher education full-time faculty member employed on an annual contract basis other than for 12 months, is compelled or required by law to retire before reaching the age of 65, or when such a participating employee voluntarily retires as provided by law, that employee's insurance coverage, as provided by this article, shall be extended according to the following formulae: The insurance coverage for a retired higher education full-time faculty member, formerly employed on an annual contract basis other than for 12 months, shall continue beyond the effective date of his or her retirement one additional year for each three and one-third years of teaching service, as determined by uniform guidelines established by the University of West Virginia Board of Trustees and the Board of Directors of the State College System, for individual coverage, or one additional year for each five years of teaching service for family coverage.

(h) Retiree participation. —All retired employees are eligible to obtain health insurance coverage. The retired employee's premium contribution for the coverage shall be established by the finance board.

(i) Surviving spouse and dependent participation. — A surviving spouse and dependents of a deceased employee, who was either an active or retired employee participating in the plan just prior to his or her death, are entitled to be included in any comprehensive group health insurance coverage provided under this article to which the deceased employee was entitled, and the spouse and dependents shall bear the premium cost of the insurance coverage. The finance board shall establish the premium cost of the coverage.

(j) Elected officials. — In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now, nor has it ever been the Legislature's intent that elected public officials be provided any sick leave, annual leave, or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave, or personal leave to elected public officials, and the very nature of those positions preclude the arising or accumulation of any leave so as to be thereafter usable as premium paying credits for which the officials may claim extended insurance benefits.

(k) Participation of certain former employees. — An employee, eligible for coverage under the provisions of this article who has 20 years of service with any agency or entity participating in the public employees insurance program or who has been covered by the public employees insurance program for 20 years may, upon leaving employment with a participating agency or entity, continue to be covered by the program if the employee pays 105 percent of the cost of retiree coverage: *Provided*, That the employee shall elect to continue coverage under this subsection within two years of the date the employment with a participating agency or entity is terminated.

(l) Prohibition on conversion of accrued annual and sick leave for extended coverage upon retirement for new employees who elect to participate in the plan after June, 2001. — Any employee hired on or after July 1, 2001, who elects to participate in the plan may not apply

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accrued annual or sick leave toward the cost of premiums for extended insurance coverage upon his or her retirement. This prohibition does not apply to the conversion of accrued annual or sick leave for increased retirement benefits, as authorized by this section: *Provided*, That any person who has participated in the plan prior to July 1, 2001, is not a new employee for purposes of this subsection if he or she becomes reemployed with an employer participating in the plan within two years following his or her separation from employment and he or she elects to participate in the plan upon his or her reemployment.

(m) Prohibition on conversion of accrued years of teaching service for extended coverage upon retirement for new employees who elect to participate in the plan July, 2009. —Any employee hired on or after July 1, 2009, who elects to participate in the plan may not apply accrued years of teaching service toward the cost of premiums for extended insurance coverage upon his or her retirement.

WV Legislature

§5-16-14. Program qualifying for favorable federal income tax treatment.

The director shall developdeductible and employee premium programs which qualify for favorable federal income tax treatment under section 125 of the Internal Revenue Code.

WV Legislature

§5-16-15. Optional dental, optical, disability, and prepaid retirement plan, and audiology and hearing-aid service plan.

(a) The director shall make available to participants in the public employees insurance system:

(1) A dental insurance plan;

(2) An optical insurance plan;

(3) A disability insurance plan;

(4) A prepaid retirement insurance plan; and

(5) An audiology and hearing-aid services insurance plan.

(b) Public employees insurance participants may elect to participate in any one of these plans separately or in combination. All actuarial and administrative costs of each plan shall be totally borne by the premium payments of the participants or local governing bodies electing to participate in that plan. The director is authorized to employ such administrative practices and procedures with respect to these optional plans as are authorized for the administration of other plans under this article. The director shall establish separate funds for each of the above listed plans. The funds shall not be supplemented by nor be used to supplement any other funds.

WV Legislature

§5-16-16. Preferred provider plan.

The director shall establish a preferred provider system for the delivery of health care to plan participants by all health care providers, which may include, but not be limited to, medical doctors, chiropractors, physicians, osteopathic physicians, surgeons, hospitals, clinics, nursing homes, pharmacies, and pharmaceutical companies.

The director shall establish the terms of the preferred provider system and the incentives therefor. The terms and incentives may include multiyear renewal options as are not prohibited by the Constitution of this state and capitated primary care arrangements which are not subject to the provisions of §33-25A-1 *et seq*. of this code.

WV Legislature

§5-16-17. Preexisting conditions not covered; defined.

A preexisting condition is an injury, or sickness, or any condition relating to that injury, or sickness, for which a participant is diagnosed, receives treatment, or incurs expenses prior to the effective date of coverage.

For all participants enrolling in the plan after the effective date of this section, payment shall be made for expenses incurred for or in connection with a preexisting condition: Provided, That participants may enroll or make plan selections only at the time of hire, during annual open enrollment or upon the occurrence of a "qualifying event" under section 125 of the United States Internal Revenue Code.

WV Legislature

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of Treasurer with respect thereto.

(a) All employers operating from state general revenue or special revenue funds, or federal funds, or any combination of those funds, shall budget the cost of insurance coverage provided by the Public Employees Insurance Agency to current and retired employees of the employer as a separate line item titled PEIA in its respective annual budget and are responsible for the transfer of funds to the director for the cost of insurance for employees covered by the plan. Each spending unit shall pay to the director its proportionate share from each source of funds. Any agency wishing to charge General Revenue Funds for insurance benefits for retirees under §5-16-13 of this code shall provide documentation to the director that the benefits cannot be paid for by any special revenue account or that the retiring employee has been paid solely with General Revenue Funds for 12 months prior to retirement.

(b) If the general revenue appropriation for any employer, excluding county boards of education, is insufficient to cover the cost of insurance coverage for the employer's participating employees, retired employees, and surviving dependents, the employer shall pay the remainder of the cost from its "personal services" or "unclassified" line items. The amount of the payments for county boards of education shall be determined by the method set forth in §18-9A-24 of this code: *Provided*, That local excess levy funds shall be used only for the purposes for which they were raised: *Provided, however*, That after approval of its annual financial plan, but in no event later than December 31 of each year, the finance board shall notify the Legislature and county boards of education of the maximum amount of employer premiums that the county boards of education shall pay for covered employees during the following fiscal year.

(c) All other employers not operating from the state General Revenue Fund shall pay to the director their share of premium costs from their respective budgets. The finance board shall establish the employers' share of premium costs to reflect and pay the actual costs of the coverage including incurred but not reported claims.

(d) The contribution of the other employers that are counties, cities, or towns in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or comprehensive mental health facility established, operated, or licensed pursuant to §27-2A-1 *et seq*. of this code, and which is supported in part by state, county, or municipal funds; and a combined city-county health department created pursuant to §16-2-1 *et seq*. of this code for their employees shall be the percentage of the cost of the employees' insurance package as the employers determine reasonable and proper under their own particular circumstances.

(e) The employee's proportionate share of the premium or cost shall be withheld or deducted

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by the employer from the employee's salary or wages as and when paid and the sums shall be forwarded to the director with any supporting data as the director may require.

(f) All moneys received by the Public Employees Insurance Agency shall be deposited in a special fund or funds as are necessary in the State Treasury and the Treasurer is custodian of the fund or funds and shall administer the fund or funds in accordance with the provisions of this article or as the director may from time to time direct. The Treasurer shall pay all warrants issued by the State Auditor against the fund or funds as the director may direct in accordance with the provisions of this article. All funds received by the agency, shall be deposited, as determined by the director, in any of the investment pools with the West Virginia Investment Management Board, with the interest income or other earnings a proper credit to all such funds for the benefit of the Public Employees Insurance Agency.

(g) The Public Employees Insurance Agency may recover an additional interest amount from any employer that fails to pay in a timely manner any premium or minimum annual employer payment, as defined in §5-16D-1 *et seq*. of this code, which is due and payable to the Public Employees Insurance Agency or the Retiree Health Benefit Trust. The agency may recover the amount due plus an additional amount equal to 2.5 percent per annum of the amount due. Accrual of interest owed by the delinquent employer commences upon the 31st day following the due date for the amount owed and shall continue until receipt by the Public Employees Insurance Agency of the delinquent payment. Interest shall compound every 30 days.

WV Legislature

§5-16-19. Authorization to take advantage of acts of congress, accept gifts, grants and matching funds.

The Public Employees Insurance Agency is authorized to take full advantage of the benefits and provisions of any acts of congress and to accept any and all gifts, grants and matching funds, whether in the form of money or services.

WV Legislature

§5-16-20. Expense fund.

The Legislature shall annually appropriate such sums as may be necessary to pay the proportionate share of the administrative costs for the state as an employer, and each division, agency, board, commission or department of the state which operates out of special revenue funds or federal funds or both shall pay its proportionate share of the administrative costs of the insurance plan or plans authorized under the provisions of this article. All other employers not operating from the state General Revenue Fund shall pay their proportionate share of the administrative costs of the insurance plan or plans authorized under the provisions of this article.

WV Legislature

§5-16-21. No member or employee of public employees insurance agency shall gain directly or indirectly from any contract or contracts provided for hereunder; criminal penalties.

No elected or appointed official of the State of West Virginia; nor any member, officer, or employees of the Legislature; nor any officer, agent, servant or employee in the executive branch of state government shall have any interest, direct or indirect, in the gain or profits arising from any contract or contracts provided for in this article. Any such person who shall gain, directly or indirectly, from any contract or contracts herein provided for, except as an insured beneficiary thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment in the county jail for a period not exceeding one year, or by both, in the discretion of the court: Provided, That nothing in this section shall be construed to prohibit an elected or appointed official of this state, nor an employee of the legislative, judicial or executive branches, from providing health care or entering into contracts provided for in section seventeen of this article.

WV Legislature

§5-16-22. Permissive participation; exemptions.

The provisions of this article are not mandatory upon any employee or employer who is not an employee of, or is not, the State of West Virginia, its boards, agencies, commissions, departments, institutions or spending units, or a county board of education, and nothing contained in this article compels any employee or employer to enroll in or subscribe to any insurance plan authorized by the provisions of this article: *Provided,* That nothing in this section requires a public charter school to participate in the Public Employees Insurance Agency program.

Those employees enrolled in the insurance program authorized under the provisions of §21A-2B-1 *et seq.* of this code are not required to enroll in or subscribe to an insurance plan or plans authorized by the provisions of this article, and the employees of any department which has an existing insurance program for its employees to which the government of the United States contributes any part or all of the premium or cost of the premium may be exempted from the provisions of this article. Any employee or employer exempted under the provisions of this paragraph may enroll in any insurance program authorized by the provisions of this article at any time, to the same extent as any other qualified employee or employer, but employee or employer may not remain enrolled in both programs.

Any plan established or administered by the Public Employees Insurance Agency pursuant to this article is exempt from the provisions of chapter 33 of this code unless explicitly stated. Notwithstanding any provision of this code to the contrary, the Public Employees Insurance Agency is not an insurer or engaged in the business of insurance as defined in chapter 33 of this code.

Employers, other than the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education, are exempt from participating in the insurance program provided for by the provisions of this article unless participation by the employer has been approved by a majority vote of the employer's governing body. It is the duty of the clerk or secretary of the governing body of an employer who by majority vote becomes a participant in the insurance program to notify the director not later than 10 days after the vote.

Any employer, whether the employer participates in the Public Employees Insurance Agency insurance program as a group or not, which has retired employees, their dependents or surviving dependents of deceased retired employees who participate in the Public Employees Insurance Agency insurance program as authorized by this article, shall pay to the agency the same contribution toward the cost of coverage for its retired employees, their dependents or surviving dependents of deceased retired employees as the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education pay for their retired employees, their dependents and surviving dependents of deceased retired employees, as determined by the finance board: *Provided*, That after June 30, 1996, an employer not mandated to participate in the plan is only required to pay a contribution toward the cost of coverage for its retired

WV Legislature

employees, their dependents or the surviving dependents of deceased retired employees who elect coverage when the retired employee participated in the plan as an active employee of the employer for at least five years: *Provided, however*, That those retired employees of an employer not participating in the plan who retire on or after July 1, 2010, who have participated in the plan as active employees of the employer for less than five years are responsible for the entire premium cost for coverage and the Public Employees Insurance Agency shall bill for and collect the entire premium from the retired employees, unless the employer elects to pay the employer share of the premium. Each employer is hereby authorized and required to budget for and make such payments as are required by this section.

WV Legislature

§5-16-23. Members of Legislature may be covered if cost of the entire coverage is paid by such members.

Notwithstanding any other provision of this article to the contrary, members of the Legislature may participate in and be covered by any insurance plan or plans authorized hereunder for state officers and employees, except that all members of the Legislature who elect to participate in or to be covered by any such plan or plans shall pay their proportionate individual share of the full cost for all group coverage on themselves, their spouses, and dependents, so that there will be no cost to the state for the coverage of any such members, spouses, and dependents.

WV Legislature

§5-16-24. Rules for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.

The director shall promulgate any necessary rules for the effective administration of the provisions of this article. Except as specifically provided in subsection (e), section four of this article, all rules of the Public Employees Insurance Agency and all hearings held by the Public Employees Insurance Agency are exempt from the provisions of chapter twenty-nine-a of this code. Any rules promulgated by the public employees insurance board or director shall remain in full force and effect until they are amended or replaced by the director.

The rules shall provide that any employee of the state who has been compelled or required by law to retire before reaching the age of sixty-five years is eligible to participate in the public employees' health insurance program at the premium contribution established by the finance board after any extended coverage to which he or she, his or her spouse and dependents may be entitled by virtue of his or her accrued annual leave or sick leave, pursuant to the provisions of section thirteen of this article, has expired. Any employee who voluntarily retires, as provided by law, is eligible to participate in the public employees' health insurance program at the premium contribution established by the finance board after any extended coverage to which he or she, his or her spouse and dependents may be entitled by virtue of his or her accrued annual leave or sick leave, pursuant to the provisions of section thirteen of this article, has expired: Provided, That the employee's last employer is a participating employer. The dependents of any deceased retired employee are entitled to continue their participation and coverage upon payment of the premium contribution established by the finance board. In establishing the cost of health insurance coverage for retired employees and their spouses and dependents, the finance board, in its discretion, may cause the claims experience of the retired employees and their spouses and dependents to be rated separately from that of active employees and their spouses and dependents, or may cause the claims experience of retired and active employees, and their spouses and dependents, to be rated together.

Any employee who is on a medical leave of absence, approved by his or her employer, is subject to the following provisions of this paragraph, is entitled to continue his or her coverage until he or she returns to his or her employment, and the employee and employer shall continue to pay their proportionate share of premium costs as provided by this article: Provided, That the employer is obligated to pay its proportionate share of the premium cost only for a period of one year: Provided, however, That during the period of the leave of absence, the employee shall, at least once each month, submit to the employer the statement of a qualified physician certifying that the employee is unable to return to work.

Any retiree is eligible to participate in the public employees' life insurance program, including the optional life insurance coverage as already available to active employees under this article, at his or her own expense for the cost of coverage, based upon actuarial experience; and the director shall prepare, by rule, for that participation and coverages under declining term insurance and optional additional coverage for the retirees.

§5-16-24a. Paper transactions.

The director may, by rule as authorized in section twenty-four of this article, establish a fee not to exceed $5 per transaction which the Public Employees Insurance Agency may charge to employers for performing business transactions with the agency by paper when the transaction could be performed electronically.

WV Legislature

§5-16-25. Reserve fund.

The finance board shall establish and maintain a reserve fund for the purposes of offsetting unanticipated claim losses in any fiscal year. The finance board shall maintain the actuarily recommended reserve in an amount no less than 10 percent of the projected total plan costs for that fiscal year in the reserve fund, which is to be certified by the actuary and included in the final, approved financial plan submitted to the Governor and Legislature.

WV Legislature

§5-16-26. Quarterly report.

On or before the 30th day of January, April, July, and October the director shall prepare for the approval of the finance board, and thereafter present to the Joint Committee on Government and Finance a quarterly report setting forth:

(a) A summary of the cost to the plan of health care claims incurred in the preceding calendar quarter;

(b) A summary of the funds accrued to the plan by legislative appropriation, employer and employee premiums, or otherwise, in the preceding calendar quarter for payment of health care claims;

(c) An explanation of all cost containment measures, increased premium rates, and any other plan changes adopted by the director in the preceding calendar quarter and estimated cost savings and enhanced revenues resulting therefrom, and a certification that the director made a good faith effort to develop and implement all reasonable health care cost containment alternatives;

(d) Expected claim costs for the next calendar year;

(e) Such other information as the director deems appropriate; and

(f) Any other financial or other information as may be requested by the Joint Committee on Government and Finance.

WV Legislature

§5-16-27.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5-16-28. Incorporation of the coverage for 12-month refill for contraceptive drugs.

[Repealed.]

WV Legislature

§5-16-29. Limitation on PEIA participation.

Notwithstanding any other provision of this article to the contrary, the director may not consider any employer eligible for participation in a plan except for the following:

(1) All mandatory participants, including the State of West Virginia, its boards, agencies, commissions, departments, institutions, or spending units.

(2) Any county board of education or public charter school established pursuant to §18- 5G-1 *et seq*. of this code, if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public Employees Insurance program: *Provided,* That as it relates to eligible public charter schools, only employees directly employed by a charter school that is exempt from the payment of taxes under the United States Internal Revenue Code, Title 26 U.S.C. § 501(c)(3), may participate in a plan.

(3) Any employer participating in a plan as of the effective date of the enactment of this section in the regular session of the Legislature, 2021.

WV Legislature

§5-16-30. PEIA solvency.

The Public Employees Insurance Agency shall return to, and provide that, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, shall be at a level of 80 percent for the employer and 20 percent for employees during fiscal year 2024 and thereafter.

WV Legislature

§5-16-31. PEIA actuarial study.

PEIA shall conduct an independent actuarial study of the financial solvency of the plan, including, but not limited to, a consideration of alternatives to bring long-term financial stability to the plan, options regarding continued nonstate employee participation in the plan, collapsing salary levels, and any other cost-saving measures. PEIA shall seek input from public employees, retirees, providers, and other interested parties on solutions to evaluate in the study. The actuarial study shall begin on or before July 1, 2023. A report on the study shall be presented to the Joint Committee on Government and Finance on or before July 1, 2024.

WV Legislature

§5-16-32. Effective date of amendments.

The amendments made to this article during the regular session of the Legislature, 2023, shall be incorporated into the plan beginning with plan year 2024.

WV Legislature

§5-16A-1.

Repealed.

Acts, 2004 Reg. Sess., Ch. 145.

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§5-16A-2.

Repealed.

Acts, 2004 Reg. Sess., Ch. 145.

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§5-16A-3.

Repealed.

Acts, 2004 Reg. Sess., Ch. 145.

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§5-16A-4.

Repealed.

Acts, 2004 Reg. Sess., Ch. 145.

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§5-16A-5.

Repealed.

Acts, 2004 Reg. Sess., Ch. 145.

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§5-16A-6.

Repealed.

Acts, 2004 Reg. Sess., Ch. 145.

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§5-16A-7.

Repealed.

Acts, 2004 Reg. Sess., Ch. 145.

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§5-16A-8.

Repealed.

Acts, 2004 Reg. Sess., Ch. 145.

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§5-16A-9.

Repealed.

Acts, 2004 Reg. Sess., Ch. 145.

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§5-16A-10.

Repealed.

Acts, 2004 Reg. Sess., Ch. 145.

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§5-16A-11.

Repealed.

Acts, 2004 Reg. Sess., Ch. 145.

WV Legislature

§5-16B-1. Expansion of health care coverage to children; continuation of program; legislative directives.

(a) It is the intent of the Legislature to expand access to health services for eligible children and to pay for this coverage by using private, state, and federal funds to purchase those services or purchase insurance coverage for those services. To achieve this intention, the West Virginia Children's Health Insurance Program heretofore created shall be continued and administered by the Department of Human Services, in accordance with the provisions of this article and the applicable provisions of Title XXI of the Social Security Act of 1997: *Provided*, That on and after July 1, 2022, the agencies, boards and programs including all of the allied, advisory, affiliated, or related entities and funds associated with the Children's Health Insurance Program and Children's Health Insurance Agency, shall be incorporated in and administered as a part of the Bureau for Medical Services. Participation in the program may be made available to families of eligible children, subject to eligibility criteria and processes to be established, which does not create an entitlement to coverage in any person. Nothing in this article requires any appropriation of State General Revenue Funds for the payment of any benefit provided in this article. If this article conflicts with the requirements of federal law, federal law governs.

(b) In developing a Children's Health Insurance Program that operates with the highest degree of simplicity and governmental efficiency, the director shall avoid duplicating functions available in existing agencies and may enter into interagency agreements for the performance of specific tasks or duties at a specific or maximum contract price.

(c) In developing benefit plans, the director may consider any cost savings, administrative efficiency, or other benefit to be gained by considering existing contracts for services with state health plans and negotiating modifications of those contracts to meet the needs of the program.

(d) In order to enroll as many eligible children as possible in the program created by this article and to expedite the effective date of their health insurance coverage, the director shall develop and implement a plan whereby applications for enrollment may be taken at any primary care center or other health care provider, as determined by the director, and transmitted electronically to the program's offices for eligibility screening and other necessary processing. The director may use any funds available to the agency in the development and implementation of the plan, including grant funds or other private or public moneys.

WV Legislature

§5-16B-2. Definitions.

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

"Agency" means the Children’s Health Insurance Agency, a division within the Bureau for Medical Services.

"Board" means the Children’s Health Insurance Program Advisory Board.

"Commissioner" means the Commissioner of the Bureau for Medical Services appointed by the Secretary of the Department of Human Services.

"Director" means the deputy commissioner within the Bureau for Medical Services who has responsibility for the operation and oversight of the Children's Health Insurance Agency.

"Essential community health service provider" means a health care provider that:

(1) Has historically served medically needy or medically indigent patients and demonstrates a commitment to serve low-income and medically indigent populations which constitute a significant portion of its patient population or, in the case of a sole community provider, serves medically indigent patients within its medical capability; and

(2) Either waives service fees or charges fees based on a sliding scale and does not restrict access or services because of a client’s financial limitations. Essential community health service provider includes, but is not limited to, community mental health centers, school health clinics, primary care centers, pediatric health clinics or rural health clinics.

"Program" means the West Virginia Children’s Health Insurance Program.

WV Legislature

§5-16B-3. Reporting requirements.

(a) Annually on January 1, the director shall report to the Governor and the Legislature regarding the number of children enrolled in the program; the average annual cost per child per program; the estimated number of remaining uninsured children; and the outreach activities for the previous year. The report shall include any information that can be obtained regarding the prior insurance and health status of the children enrolled in programs created pursuant to this article. The report shall include information regarding the cost, quality, and effectiveness of the health care delivered to enrollees of this program; satisfaction surveys; and health status improvement indicators. The agency, in conjunction with other state health and insurance agencies, shall develop indicators designed to measure the quality and effectiveness of children's health programs, which information shall be included in the annual report.

(b) On a quarterly basis, the director shall provide reports to the Legislative Oversight Commission on Health and Human Resources Accountability on the number of children served, including the number of newly enrolled children for the reporting period and current projections for future enrollees; outreach efforts and programs; statistical profiles of the families served and health status indicators of covered children; the average annual cost of coverage per child; the total cost of children served by provider type, service type, and contract type; outcome measures for children served; reductions in uncompensated care; performance with respect to the financial plan; and any other information as the Legislative Oversight Commission on Health and Human Resources Accountability may require.

WV Legislature

§5-16B-4. Children's health policy advisory board created; qualifications and removal of members; powers; duties; meetings; and compensation.

(a) There is hereby created the West Virginia children's health insurance advisory board, which shall consist of the Director of the Public Employees Insurance Agency, the Secretary of the Department of Human Services, or his or her designee, and six citizen members appointed by the Governor, one of whom shall represent children's interests and one of whom shall be a certified public accountant, to assume the duties of the office immediately upon appointment. A member of the Senate, as appointed by the Senate President and a member of the House of Delegates, as appointed by the Speaker of the House of Delegates, shall serve as ex officio members. All appointments shall be for terms of three years, except that an appointment to fill a vacancy shall be for the unexpired term only: *Provided*, That the citizen members appointed prior to July 1, 2022, shall serve for the remainder of his or her term of appointment and be deemed a member of the advisory board. Three of the citizen members shall have at least a bachelor's degree and experience in the administration or design of public or private employee or group benefit programs and the children's representative shall have experience that demonstrates knowledge in the health, educational, and social needs of children. No more than three citizen members may be members of the same political party and no board member may represent or have a pecuniary interest in an entity reasonably expected to compete for contracts under this article. Members of the board shall assume the duties of the office immediately upon appointment. The director of the agency shall serve as the chairperson of the board. Vacancies in the board shall be filled in the same manner as the original appointment.

(b) The purpose of the advisory board is to present recommendations and alternatives for the design of the annual plans and to advise the director with respect to other actions necessary to be undertaken in furtherance of this article.

(c) The board shall meet by the call of the director.

(d) Each member of the advisory board shall receive reimbursement for reasonable and necessary travel expenses for each day actually served in attendance at meetings of the board in accordance with the state's travel rules. Requisitions for the expenses shall be accompanied by an itemized statement, which shall be filed with the auditor and preserved as a public record.

WV Legislature

§5-16B-4a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5-16B-5. Director of the Children's Health Insurance Program; qualifications; powers and duties.

(a) The commissioner shall appoint an individual in the classified service as a deputy commissioner to serve as the director who shall be responsible for the implementation, administration, and management of the Children's Health Insurance Program created under this article. The director shall have at least a bachelor's degree and a minimum of three years' experience in health insurance administration.

(b) The director shall employ any administrative, technical, and clerical employees that are required for the proper administration of the program and for the work of the board.

(c) The director is responsible for the administration and management of the program and may make all rules necessary to effectuate the provisions of this article. Nothing in this article may be construed as limiting the director's otherwise lawful authority to manage the program on a day-to-day basis.

(d) The director may execute any contracts that are necessary to effectuate the provisions of this article. The provisions of §5A-3-1 *et seq*. of this code, relating to the division of purchasing of the department of finance and administration, may not apply to any contracts for any health insurance coverage, health services, or professional services authorized to be executed under the provisions of this article: *Provided*, That before entering into any contract, the director shall invite competitive bids from all qualified entities and shall deal directly with those entities in presenting specifications and receiving quotations for bid purposes. The director shall award those contracts on a competitive basis taking into account the experience of the offering agency, corporation, insurance company, or service organization. Before any proposal to provide benefits or coverage under the plan is selected, the offering agency, corporation, insurance company, or service organization shall provide assurances of utilization of essential community health service providers to the greatest extent practicable. In evaluating these factors, the director may employ the services of independent, professional consultants. The director shall then award the contracts on a competitive basis.

(e) The director shall issue requests for proposals on a regional or statewide basis from essential community health service providers for defined portions of services under the children's health insurance plan and shall, to the greatest extent practicable, either contract directly with, or require participating providers to contract with, essential community health service providers to provide the services under the plan.

(f) The director may require reinsurance of primary contracts, as contemplated in the provisions of §33-4-15 and §33-4-15a of this code.

WV Legislature

§5-16B-6. Financial plans requirements.

(a) *Benefit plan design*. — All financial plans required by this section shall establish: (1) the design of a benefit plan or plans; (2) the maximum levels of reimbursement to categories of health care providers; (3) any cost containment measures for implementation during the applicable fiscal year; and (4) the types and levels of cost to families of covered children. To the extent compatible with simplicity of administration, fiscal stability, and other goals of the program established in this article, the financial plans may provide for different levels of costs based on ability to pay.

(b) *Annual plans*. — The director shall review implementation of the current financial plan in light of actual experience and shall prepare an annual financial plan for each ensuing fiscal year. The director shall solicit comments in writing from interested and affected persons. The agency shall submit its final, approved financial plan, subject to the actuarial requirements of this article, to the Legislature no later than September 1, preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the director on July 1, of that fiscal year. Annual plans developed pursuant to this subsection are subject to the provisions of subsection (a) of this section and the following guidelines:

(1) The aggregate actuarial value of the plan established as the benchmark plan should be considered as a targeted maximum or limitation in developing the benefits package;

(2) All estimated program and administrative costs, including incurred but not reported claims, may not exceed 90 percent of the funding available to the program for the applicable fiscal year; and

(3) The state's interest in achieving health care services for all its children at less than 200 percent of the federal poverty guideline shall take precedence over enhancing the benefits available under this program.

(c) The provisions of §29A-1-1 *et seq*. of this code do not apply to the preparation, approval and implementation of the financial plans required by this section.

(d) The director shall review implementation of the current financial plan each quarter and, using actuarial data, shall make those modifications to the plan that are necessary to ensure its fiscal stability and effectiveness of service. The director may not increase the types and levels of cost to families of covered children during the quarterly review except in the event of a true emergency. The agency may not expand the population of children to whom the program is made available except in its annual plan: *Provided*, That upon the effective date of this article, the director may expand coverage to any child eligible under the provisions of Title XXI of the Social Security Act of 1997: *Provided, however*, That the agency shall implement cost-sharing provisions for children who may qualify for the expanded coverage and whose family income exceeds 150 percent of the federal poverty guideline. The cost-sharing provisions may be imposed through any one or a combination of the following:

WV Legislature

enrollment fees, premiums, copayments, and deductibles.

(e) The agency may develop and implement programs that provide for family coverage or employer subsidies, or both, within the limits authorized by the provisions of Title XXI of the Social Security Act of 1997 or the federal regulations promulgated thereunder: *Provided*, That any family health insurance coverage offered by or through the program shall be structured so that the agency assumes no financial risk.

WV Legislature

§5-16B-6a. Required coverage for patient cost of clinical trials and autism spectrum disorder treatment.

Health insurance provided by the program, including coverage provided through a contract with a managed care corporation, shall include coverage of: (i) The patient cost of clinical trials, to the same extent as such coverage is mandated for the public employees insurance program by §5-16-7d and §5-16-7e of this code; and (ii) the diagnosis, evaluation and treatment of autism spectrum disorders for individuals ages 18 months to 18 years, to the same extent as such coverage is mandated for the public employees insurance program by §5-16-7(a)(8) of this code.

WV Legislature

§5-16B-6b. Definitions.

[Repealed.]

WV Legislature

§5-16B-6c. Modified benefit plan for children of families of low income between two hundred and three hundred percent of the poverty level.

[Repealed.]

WV Legislature

§5-16B-6d. Modified benefit plan implementation.

(a) Upon approval by the Centers for Medicare and Medicaid Services, the agency shall implement a benefit plan for uninsured children of families with income between 200 and 300 percent of the federal poverty level.

(b) The benefit plans offered pursuant to this section shall include services determined to be appropriate for children but may vary from those currently offered by the agency.

(c) The agency shall structure the benefit plans for this expansion to include premiums, coinsurance or copays, and deductibles. The agency shall develop the cost-sharing features in such a manner as to keep the program fiscally stable without creating a barrier to enrollment. The features may include different cost-sharing features within this group based upon the percentage of the federal poverty level.

All provisions of §5-16B-1 *et seq*. of this code are applicable to this expansion unless expressly addressed in §5-16B-6d of this code.

(d) Nothing in §5-16B-6d of this code may be construed to require any appropriation of state general revenue funds for the payment of any benefit provided pursuant to this section, except for the state appropriation used to match the federal financial participation funds. In the event that federal funds are no longer authorized for participation by individuals eligible at income levels above 200 percent, the director shall take immediate steps to terminate the expansion provided for in this section and notify all enrollees of the termination. If federal appropriations decrease for the programs created pursuant to Title XXI of the Social Security Act of 1997, the director shall make those decreases in this expansion program before making changes to the programs created for those children whose family income is less than 200 percent of the federal poverty level.

WV Legislature

§5-16B-6e. Coverage for treatment of autism spectrum disorders.

[Repealed.]

WV Legislature

§5-16B-7. West Virginia children's health fund.

(a) There is hereby created in the state Treasury a special revolving fund to be known as the "West Virginia children's health fund", which shall be an interest-bearing account. All moneys deposited or accrued in this fund shall be used exclusively:

(1) To provide the state's share of the children's health fund;

(2) To cover administrative costs associated with the children's health program; and

(3) To cover outreach activities.

(b) Moneys from the following sources may be placed into the fund:

(1) All public funds appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal program laws;

(2) All private moneys contributed by corporations, individuals or other entities to the fund as contemplated and permitted by applicable federal and state laws;

(3) Any accrued interest; and

(4) Federal financial participation matching the amounts referred to in subdivisions (1), (2) and (3) of this subsection, in accordance with Section 1902 (a) (2) of the Social Security Act.

(c) Any balance remaining in the children's health fund at the end of any state fiscal year shall not revert to the state Treasury but shall remain in this fund and shall be used only in a manner consistent with this article.

(d) Notwithstanding the provisions of section two, article two, chapter twelve of this code, funds of the West Virginia children's health fund may not be redesignated for any purpose other than those set forth in this subsection. All state and private moneys received by the program shall be deposited in the West Virginia consolidated investment pool with the West Virginia Investment Management Board, with the interest income a proper credit to all such funds.

WV Legislature

§5-16B-8. Termination and reauthorization.

The program established in this article abrogates and and has no further force and effect, without further action by the Legislature, upon the occurrence of any of the following:

(a) The date of entry of a final judgment or order by a court of competent jurisdiction which disallows the program;

(b) The effective date of any reduction in annual federal funding levels below the amounts allocated or projected, or both, in Title XXI of the Social Security Act of 1997;

(c) The effective date of any federal rule or regulation negating the purposes or effect of this article; or

(d) For purposes of subsections (b) and (c) of this section, if a later effective date for reduction or negation is specified, that date shall control.

WV Legislature

§5-16B-9. Public-private partnerships.

The director may work in conjunction with a nonprofit corporation organized pursuant to the corporate laws of the state, structured to permit qualification pursuant to section 501(c) of the Internal Revenue Code for purposes of assisting the children's health program and funded from sources other than the state or federal government.

WV Legislature

§5-16B-10. Assignment of rights; right of subrogation by children's health insurance agency to the rights of recipients of medical assistance; rules as to effect of subrogation.

(a) Definitions. — As used in this section, unless the context otherwise requires:

"Bureau" means the Bureau for Medical Services.

"Department" means the West Virginia Department of Human Services, or its contracted designee.

"Recipient" means a person who applies for and receives assistance under the Children's Health Insurance Program.

"Secretary" means the Secretary of the Department of Human Services.

"Third-party" means an individual or entity that is alleged to be liable to pay all or part of the costs of a recipient's medical treatment and medical-related services for personal injury, disease, illness, or disability, as well as any entity including, but not limited to, a business organization, health service organization, insurer, or public or private agency acting by or on behalf of the allegedly liable third-party.

(b) Assignment of rights. —

(1) Submission of an application to the children's health insurance agency for medical assistance is, as a matter of law, an assignment of the right of the applicant or his or her legal representative, to recover from third parties past medical expenses paid for by the children's health insurance program. This assignment of rights does not extend to Medicare benefits. At the time the application is made, the children's health insurance agency shall include a statement along with the application that explains that the applicant has assigned all of his or her rights as provided in this section and the legal implications of making this assignment.

(2) This section does not prevent the recipient or his or her legal representative from maintaining an action for injuries or damages sustained by the recipient against any third party and from including, as part of the compensatory damages sought to be recovered, the amount or amounts of his or her medical expenses.

(3) The department shall be legally subrogated to the rights of the recipient against the third party.

(4) The department shall have a priority right to be paid first out of any payments made to the recipient for past medical expenses before the recipient can recover any of his or her own costs for medical care.

(5) A recipient is considered to have authorized all third parties to release to the department

WV Legislature

information needed by the department to secure or enforce its rights as assignee under this article.

(c) Notice requirement for claims and civil actions. —

(1) A recipient's legal representative shall provide notice to the department within 60 days of asserting a claim against a third party. If the claim is asserted in a formal civil action, the recipient's legal representative shall notify the department within 60 days of service of the complaint and summons upon the third party by causing a copy of the summons and a copy of the complaint to be served on the department as though it were named a party defendant.

(2) If the recipient has no legal representative and the third party knows or reasonably should know that a recipient has no representation then the third party shall provide notice to the department within 60 days of receipt of a claim or within 30 days of receipt of information or documentation reflecting the recipient is receiving children's health insurance program benefits, whichever is later in time.

(3) In any civil action implicated by this section, the department may file a notice of appearance and shall thereafter have the right to file and receive pleadings, intervene, and take other action permitted by law.

(4) The department shall provide the recipient and the third party, if the recipient is without legal representation, notice of the amount of the purported subrogation lien within 30 days of receipt of notice of the claim. The department shall provide related supplements in a timely manner, but no later than 15 days after receipt of a request for same.

(d) Notice of settlement requirement. —

(1) A recipient or his or her representative shall notify the department of a settlement with a third party and retain in escrow an amount equal to the amount of the subrogation lien asserted by the department. The notification shall include the amount of the settlement being allocated for past medical expenses paid for by the Medicaid program. Within 30 days of the receipt of any such notice, the department shall notify the recipient of its consent or rejection of the proposed allocation. If the department consents, the recipient or his or her legal representation shall issue payment out of the settlement proceeds in a manner directed by the secretary or his or her designee within 30 days of consent to the proposed allocation.

(2) If the total amount of the settlement is less than the department's subrogation lien, then the settling parties shall obtain the department's consent to the settlement before finalizing the settlement. The department shall advise the parties within 30 days and provide a detailed itemization of all past medical expenses paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds.

(3) If the department rejects the proposed allocation, the department shall seek a judicial determination within 30 days and provide a detailed itemization of all past medical expenses

WV Legislature

paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds.

(A) If judicial determination becomes necessary, the trial court is required to hold an evidentiary hearing. The recipient and the department shall be provided ample notice of the same and be given just opportunity to present the necessary evidence, including fact witness and expert witness testimony, to establish the amount to which the department is entitled to be reimbursed pursuant to this section.

(B) The department has the burden of proving by a preponderance of the evidence that the allocation agreed to by the parties was improper. For purposes of appeal, the trial court's decision should be set forth in a detailed order containing the requisite findings of fact and conclusions of law to support its rulings.

(4) Any settlement by a recipient with one or more third parties which would otherwise fully resolve the recipient's claim for an amount collectively not to exceed $20,000 shall be exempt from the provisions of this section.

(5) Nothing herein prevents a recipient from seeking judicial intervention to resolve any dispute as to allocation prior to effectuating a settlement with a third party.

(e) Department failure to respond to notice of settlement. — If the department fails to appropriately respond to a notification of settlement, the amount to which the department is entitled to be paid from the settlement shall be limited to the amount of the settlement the recipient has allocated toward past medical expenses.

(f) Penalty for failure to notify the department. — A legal representative acting on behalf of a recipient or third party that fails to comply with the provisions of this section is liable to the department for all reimbursement amounts the department would otherwise have been entitled to collect pursuant to this section but for the failure to comply. Under no circumstances may a pro se recipient be penalized for failing to comply with the provisions of this section.

(g) Miscellaneous provisions relating to trial. —

(1) Where an action implicated by this section is tried by a jury, the jury may not be informed at any time as to the subrogation lien of the department.

(2) Where an action implicated by this section is tried by judge or jury, the trial judge shall, or in the instance of a jury trial, require that the jury precisely identify the amount of the verdict awarded that represents past medical expenses.

(3) Upon the entry of judgment on the verdict, the court shall direct that upon satisfaction of the judgment any damages awarded for past medical expenses be withheld and paid directly to the department, not to exceed the amount of past medical expenses paid by the department on behalf of the recipient.

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(h) Attorneys’ fees. — Irrespective of whether an action or claim is terminated by judgment or settlement without trial, from the amount required to be paid to the department there shall be deducted the reasonable costs and attorneys' fees attributable to the amount in accordance with and in proportion to the fee arrangement made between the recipient and his or her attorney of record so that the department shall bear the pro-rata share of the reasonable costs and attorneys' fees: *Provided*, That if there is no recovery, the department may under no circumstances be liable for any costs or attorneys' fees expended in the matter.

(i) Class actions and multiple plaintiff actions not authorized. — Nothing in this article authorizes the department to institute a class action or multiple plaintiff action against any manufacturer, distributor, or vendor of any product to recover medical care expenditures paid for by the Medicaid program.

(j) Secretary's authority. — The secretary or his or her designee may compromise, settle, and execute a release of any claim relating to the department's right of subrogation, in whole or in part.

WV Legislature

§5-16C-1. Legislative findings; purpose; short title.

The Legislature finds that the rapidly rising cost of prescription drugs places an undue financial burden on the State of West Virginia, the payors and the consumers of prescription drugs. The purpose of this legislation is to authorize the director of the Public Employees Insurance Agency to act on behalf of specified agencies, programs and political subdivisions to manage the steady increase in prescription drug costs, thus benefitting the citizens and fiscal strength of this state. This article shall be known and may be cited as the "Prescription Drug Cost Management Act."

WV Legislature

§5-16C-2. Definitions.

As used in this article:

(1) "Audit" means a systematic examination and collection of sufficient, competent evidential matter needed for an Auditor to attest to the fairness of management's assertions in the financial statements and to evaluate whether management has sufficiently and effectively carried out its responsibilities and complied with applicable laws and regulations, conducted by an independent certified public accountant in accordance with the applicable statement on standards: Provided, That the report shall include an incurred-but-not-reported calculation, where available.

(2) "Director" means the director of the Public Employees Insurance Agency created under article sixteen of this chapter.

(3) "Finance board" means the Public Employees Insurance Agency finance board created in section four, article sixteen of this chapter.

(4) "Pharmacy benefit manager" means an entity that procures prescription drugs at a negotiated rate under a contract and which may serve as a third party prescription drug benefit administrator.

(5) "Prescription drug purchasing agreement" means a written agreement to pool all parties' prescription drug buying power in order to negotiate the best possible prices and which delegates authority to negotiate on behalf of the parties to the director.

(6) "Prescription drugs" mean substances recognized as drugs in the official "United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or National Formulary", or any supplement thereto, dispensed pursuant to a prescription issued by an authorized health care practitioner, for use in the diagnosis, cure, mitigation, treatment or prevention of disease in a human, as well as prescription drug delivery systems, testing kits and related supplies.

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§5-16C-3. Finance board responsibilities for review and approval of certain contracts.

The finance board is responsible for reviewing any proposed contract authorized by this article before it is executed by the director of the Public Employees Insurance Agency. If the board determines that the proposed contract meets the requirements of this article and would assist in effectively managing the costs for the programs involved and would not result in jeopardizing state funds or funds due the state, it shall approve the contract and authorize the director of the Public Employees Insurance Agency to execute the contract.

WV Legislature

§5-16C-4. Authorization to execute prescription drug purchasing agreements.

(a) The director may execute, subject to the provisions of subsections (b), (c) and (d) of this section and as permitted by applicable federal law, prescription drug purchasing agreements with:

(1) All departments, agencies, authorities, institutions, programs, quasipublic corporations and political subdivisions of this state, including, but not limited to, the Children's Health Insurance Program, the Division of Corrections, the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, the workers' compensation fund, state colleges and universities, public hospitals, state or local institutions such as nursing homes, veterans' homes, the division of rehabilitation, public health departments and the bureau of medical services: Provided, That any contract or agreement executed with or on behalf of the bureau of medical services shall contain all necessary provisions to comply with the provisions of Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq., dealing with pharmacy services offered to recipients under the medical assistance plan of West Virginia;

(2) Governments of other states and jurisdictions and their individual departments, agencies, authorities, institutions, programs, quasipublic corporations and political subdivisions;

(3) Regional or multistate purchasing alliances or consortia, formed for the purpose of pooling the combined purchasing power of the individual members in order to increase bargaining power; and

(4) Arrangements with entities in the private sector, including self-funded benefit plans, toward combined purchasing of health care services, health care management services, pharmacy benefits management services or pharmaceutical products: Provided, That no private entity may be compelled to participate in the prescription drug purchasing pool: Provided, however, That the director may not execute a contract with a private entity without further enactment of the Legislature specifically authorizing the agreement.

(b) The finance board shall approve each agreement before it is executed by the director and the director may not execute any agreement not approved by the finance board.

(c) The finance board may not approve and the director may not execute any agreement that does not effectively and efficiently manage rising drug costs on behalf of the parties to the agreement.

(d) The finance board may not approve and the director may not execute any agreement that grants the state's credit for the purchase of prescription drugs by any entity other than this state.

WV Legislature

§5-16C-5. Authorization to amend existing contracts.

The director may renegotiate and amend existing prescription drug contracts to which the Public Employees Insurance Agency is a party for the purpose of managing rising drug costs.

WV Legislature

§5-16C-6. Authorization to execute pharmacy benefit management contract.

The director may negotiate and execute pharmacy benefit management contracts for the purpose of managing rising drug costs for this state and all parties which have executed prescription drug purchasing agreements with the director.

WV Legislature

§5-16C-7. Exemption from Purchasing Division requirements.

The provisions of article three, chapter five-a of this code do not apply to the agreements and contracts executed under the provisions of this article, except that the contracts and agreements shall be approved as to form and conformity with applicable law by the Attorney General.

WV Legislature

§5-16C-8. Audit required; reports.

(a) The director shall cause to be conducted an audit of any funds expended pursuant to any prescription drug purchasing agreement or pharmacy benefit management contract executed under the provisions of this article for each fiscal year that the prescription drug purchasing agreement or pharmacy benefit management contract is in effect. The director shall submit the audit to the Joint Committee on Government and Finance upon completion, but in no event later than December 31, after the end of the fiscal year subject to audit.

(b) The director shall provide written notice to the Joint Committee on Government and Finance before executing a prescription drug purchasing agreement or a pharmacy benefit management contract or amending an existing prescription drug contract.

WV Legislature

§5-16C-9. Innovative strategies.

(a) The director may explore innovative strategies by which West Virginia may manage the increasing costs of prescription drugs and increase access to prescription drugs for all of the state's citizens, including:

(1) Enacting fair prescription drug pricing policies;

(2) Providing for discount prices or rebate programs for seniors and persons without prescription drug insurance;

(3) Coordinating programs offered by pharmaceutical manufacturers that provide prescription drugs for free or at reduced prices;

(4) Requiring prescription drug manufacturers to disclose to the state expenditures for advertising, marketing and promotion, as well as for provider incentives and research and development efforts;

(5) Establishing counter-detailing programs aimed at educating health care practitioners authorized to prescribe prescription drugs about the relative costs and benefits of various prescription drugs, with an emphasis on generic substitution for brand name drugs when available and appropriate; prescribing older, less costly drugs instead of newer, more expensive drugs, when appropriate; and prescribing lower dosages of prescription drugs, when available and appropriate;

(6) Establishing disease state management programs aimed at enhancing the effectiveness of treating certain diseases identified as prevalent among this state's population with prescription drugs;

(7) Studying the feasibility and appropriateness of executing prescription drug purchasing agreements with large private sector purchasers of prescription drugs and including those private entities in pharmacy benefit management contracts;

(8) Studying the feasibility and appropriateness of authorizing the establishment of voluntary private buying clubs, cooperatives or purchasing alliances comprised of small businesses and or individuals for the purpose of purchasing prescription drugs at optimal prices; and

(9) Other strategies, as permitted under state and federal law, aimed at managing escalating prescription drug prices and increasing affordable access to prescription drugs for all West Virginia citizens.

(b) The director shall report to the Joint Committee on Government and Finance on a multiannual basis regarding activities and recommendations relating to the mandates of this section.

WV Legislature

§5-16C-10.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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

WV Legislature

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.

WV Legislature

(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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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 at 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.

WV Legislature

§5-17-1.

Repealed.

Acts 1975, Ch. 134; Acts 1981, Ch. 173.

WV Legislature

§5-17-2.

Repealed.

Acts 1975, Ch. 134; Acts 1981, Ch. 173.

WV Legislature

§5-17-3.

Repealed.

Acts 1975, Ch. 134; Acts 1981, Ch. 173.

WV Legislature

§5-17-4.

Repealed.

Acts 1975, Ch. 134; Acts 1981, Ch. 173.

WV Legislature

§5-17-5.

Repealed.

Acts 1975, Ch. 134; Acts 1981, Ch. 173.

WV Legislature

§5-17-6.

Repealed.

Acts 1975, Ch. 134; Acts 1981, Ch. 173.

WV Legislature

§5-17-7.

Repealed.

Acts 1975, Ch. 134; Acts 1981, Ch. 173.

WV Legislature

§5-17-8.

Repealed.

Acts 1975, Ch. 134; Acts 1981, Ch. 173.

WV Legislature

§5-17-9.

Repealed.

Acts 1975, Ch. 134; Acts 1981, Ch. 173.

WV Legislature

§5-17-10.

Repealed.

Acts 1975, Ch. 134; Acts 1981, Ch. 173.

WV Legislature

§5-18-1.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-2.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-3.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-4.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-5.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-6.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-7.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-8.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-9.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-10.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-11.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-12.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-13.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-14.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-15.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-16.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-17.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-18.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-19.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-20.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-21.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-22.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-23.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-24.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-25.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-26.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-27.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-28.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-29.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18-30.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18A-1.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18A-2.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18A-3.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18A-4.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18A-5.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18A-6.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18A-7.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18A-8.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18A-9.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18A-10.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-18A-11.

Repealed.

Acts, 1999 Reg. Sess., Ch. 224.

WV Legislature

§5-19-1. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

"Public agency" means the State of West Virginia, counties, municipalities, towns, boards of education, public service districts and other political subdivisions of this state.

"Public works" includes roads, highways, streets, bridges, sidewalks, sewage systems, buildings, engineering and architectural works, and any other structure, facility or improvement constructed or undertaken by a public agency.

"Aluminum, glass and steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed from aluminum, glass and steel; “domestic aluminum, glass and steel products" means aluminum, glass and steel products made in the United States.

WV Legislature

§5-19-2. Preference for domestic aluminum, glass and steel products; mandatory contract provisions; exceptions.

(a) Every state spending unit, as defined in chapter five-a, shall require that every contract or subcontract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works contain a provision that, if any aluminum, glass or steel products are to be supplied in the performance of the contract, or subcontract, only domestic aluminum, glass or steel products shall be supplied unless the spending officer, as defined in chapter five-a, determines, in writing, after the receipt of offers or bids, that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest or that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements: Provided, That this article applies to any public works contract awarded in an amount more than $50,000, and with regard to steel only, this article applies to any public works contract awarded in an amount more than $50,000 or requiring more than ten thousand pounds of steel products.

(b) The commissioner of finance and administration shall issue rules which provide that, for purposes of this article, the bid or offered price of any aluminum, glass or steel products of domestic origin, as defined in section one of this article (including any applicable duty), is not unreasonable if it does not exceed the sum of a differential of twenty percent of the bid or offered price of the aluminum, glass or steel products of foreign origin: Provided, That if such products are produced in a "substantial labor surplus area" as defined by the United States department of labor, the differential applied under this article shall be thirty percent.

WV Legislature

§5-19-3. Contract payments; recovery in cases of violation of article.

A public agency may not authorize or make any payments to a contractor under a contract which contains or should contain the provision required by section two of this article unless such contractor has fully complied with such provision. Prior to such payment, the public agency shall require sworn certificates of compliance from all contractors, subcontractors and suppliers whose work involved the supplying of aluminum, glass or steel products. Payments made by a public agency to any contractor who did not comply with this article may be recovered by such agency.

WV Legislature

§5-19-4. Bid or offered price of steel products of foreign origin.

If prior to the award of a contract under this article, the spending officer, as defined in chapter five-a, determines that there exists a bid or offered price of like aluminum, glass or steel products of foreign origin that is reasonable and lower than the lowest bid or offered price of aluminum, glass or steel products of domestic origin, the spending officer, as defined in chapter five-a, may request in writing a reevaluation and reduction in the lowest bid offered price of such products of domestic origin.

WV Legislature

§5-20-1. Legislative findings, purposes and intent.

[Repealed.]

WV Legislature

§5-20-2. Governor's commission on Willow Island continued; composition; appointment of members.

[Repealed.]

WV Legislature

§5-20-3. Powers of the commission.

[Repealed.]

WV Legislature

§5-20-4. Compensation and expenses of members; expenses of the commission.

[Repealed.]

WV Legislature

§5-20-5. Executive sessions authorized; demand to be heard in open hearing.

[Repealed.]

WV Legislature

§5-20-6. Immunity granted to commission members.

[Repealed.]

WV Legislature

§5-20-7. Privilege granted to commission findings, reports and evidence.

[Repealed.]

WV Legislature

§5-20-8. Reports of the commission; termination of commission.

[Repealed.]

WV Legislature

§5-20-9. Interpretation of section.

[Repealed.]

WV Legislature

§5-21-1. Definitions.

As used in this article:

(a) "ASHRAE" means the organization known as the American Society of Heating, Refrigerating and Air Conditioning Engineers.

(b) "Director" means the director of the Governor's office of economic and community development.

WV Legislature

§5-21-2. Establishment of energy cost reduction guidelines; certification; training.

The director shall develop statewide energy cost reduction guidelines to be applicable to new and significantly renovated buildings for which a building permit is issued. In developing the guidelines, the director shall establish as the minimum criterion the ASHRAE 90-75 standard energy conservation in new building design.

Based on the state guidelines each local jurisdiction in the state having a building code shall require each permit application to be accompanied by sufficient information to determine that the energy conservation measures under the guidelines are met. A letter of certification from an architect or a registered professional engineer may provide adequate certification that the new construction or renovation is in compliance with the minimum criteria as established by the director.

The director shall provide training to local jurisdictions on the application of the state guidelines, which may include training programs developed by agencies of the federal government.

WV Legislature

§5-21-3. Advisory commission.

To assist in the development and implementation of statewide energy guidelines under this article, the director shall appoint an advisory commission of seven members who shall serve without compensation. In appointing the commission, the director shall include representatives of building code enforcement agencies, the architectural and engineering professions, public utilities, the construction industry, legislative bodies of local units of government and the general public.

WV Legislature

§5-21-4. Exemptions.

The following shall be exempt from compliance with the energy cost reduction guidelines developed under this article:

(a) Any type or class of building specifically made exempt by the local jurisdiction;

(b) Mobile homes;

(c) Any structure neither heated nor cooled, nor designed for human occupancy; and

(d) Any building specifically designated by a local jurisdiction as being of historical significance.

WV Legislature

§5-21-5. Effective date of guidelines on permit applications.

The provisions of this article shall not apply to any application for a building permit made before January 1, 1981.

WV Legislature

§5-22-1. Bidding required; government construction contracts to go to lowest qualified responsible bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.

(a) This section and the requirements in this section may be referred to as the West Virginia Fairness in Competitive Bidding Act.

(b) As used in this section:

(1) "Alternates" means any additive options or alternative designs included in a solicitation for competitive bids that are different from and priced separately from what is included in a base bid.

(2) "Construction project" means a specifically identified scope of work involving the act, trade, or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding, or demolishing of a building, structure, facility, road, or highway. Repair and maintenance of existing public improvements that are recurring or ongoing in nature and that are not fully identified or known at any one time shall be considered a construction project and procured according to this article on an open-ended basis, so long as the work to be performed under the contract falls into a generally accepted single class, or type, and bidders are notified of the open-ended nature of the work in the solicitation: *Provided*, That no open-ended repair or maintenance contract may exceed $500,000. A construction project does not include a design-build project as set forth in §5-22A-1 *et seq*. of this code or a construction management at-risk project as set forth in §5-22B-1 *et seq*. of this code.

(3) "Lowest qualified responsible bidder" means the bidder that bids the lowest price and that meets, at a minimum, all the following requirements in connection with the bidder's response to the bid solicitation. The bidder shall certify that it:

(A) Is ready, able, and willing to timely furnish the labor and materials required to complete the contract;

(B) Is in compliance with all applicable laws of the State of West Virginia; and

(C) Has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.

(4) "The state and/or its subdivisions" means the state of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities, and all county boards of education.

(5) "State spending unit" means a department, agency, or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

WV Legislature

(c) The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding $50,000 in total cost.

(1) If a solicitation contains a request for any alternates, the alternates shall be listed numerically in the order of preference in the solicitation.

(2) A vendor who has been debarred pursuant to §5A-3-33b through §5A-3-33f of this code may not bid on or be awarded a contract under this section.

(d) All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions.

(e) Following the solicitation of bids, the construction contract shall be awarded to the lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond. The state and its subdivisions may reject all bids and solicit new bids on the project.

(f) Any solicitation of bids shall include no more than five alternates. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Any unaccepted alternate contained within a bid shall expire 90 days after the date of the opening of bids for review.

Determination of the lowest qualified responsible bidder shall be based on the sum of the base bid and any alternates accepted.

(g) The apparent low bidder on a contract valued at more than $250,000 for the construction, alteration, decoration, painting, or improvement of a new or existing building or structure with a state spending unit shall submit a list of all subcontractors who will perform more than $25,000 worth of work on the project including labor and materials. This section does not apply to other construction projects such as highway, mine reclamation, water, or sewer projects. The list shall include the names of the bidders and the license numbers as required by §30-42-1 *et seq*. of this code. This information shall be provided to the state spending unit within one business day of the opening of bids for review prior to the awarding of a construction contract. If the apparent low bidder fails to submit the subcontractor list, the state spending unit shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the subcontractor list within one business day of the request. Failure to submit the subcontractor list within one business day of receiving the request shall result in disqualification of the bid. A subcontractor list may not be required if the bidder provides notice in the bid submission or in response to a request for a subcontractor list that no subcontractors who will perform more than $25,000 worth of work will be used to complete the project.

(h) Written approval must be obtained from the state spending unit before any subcontractor substitution is permitted. Substitutions are not permitted unless:

(1) The subcontractor listed in the original bid has filed for bankruptcy;

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(2) The state spending unit refuses to approve a subcontractor in the original bid because the subcontractor is under a debarment pursuant to §5A-3-33d of this code or a suspension under §5A-3-32 of this code; or

(3) The contractor certifies in writing that the subcontractor listed in the original bill fails, is unable, or refuses to perform the subcontract.

(i) The contracting public entity may not award the contract to a bidder which fails to meet the minimum requirements set out in this section. As to a prospective low bidder which the contracting public entity determines not to have met one or more of the requirements of this section or other requirements as determined by the public entity in the written bid solicitation, prior to the time a contract award is made, the contracting public entity shall document in writing and in reasonable detail the basis for the determination and shall place the writing in the bid file. After the award of a bid under this section, the bid file of the contracting public agency and all bids submitted in response to the bid solicitation shall be open and available for public inspection.

(j) The contracting public entity shall not award a contract pursuant to this section to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees. Any governmental entity may submit to the Division of Purchasing information which identifies vendors that qualify as being in default on a monetary obligation to the entity. The contracting public entity shall take reasonable steps to verify whether the lowest qualified bidder is in default pursuant to this subsection prior to awarding a contract.

(k) A public official or other person who individually or together with others knowingly makes an award of a contract under this section in violation of the procedures and requirements of this section is subject to the penalties set forth in §5A-3-29 of this code.

(l) No officer or employee of this state or of a public agency, public authority, public corporation, or other public entity and no person acting or purporting to act on behalf of an officer or employee or public entity may require that a performance bond, payment bond, or surety bond required or permitted by this section be obtained from a particular surety company, agent, broker, or producer.

(m) All bids shall be open in accordance with the provisions of §5-22-2 of this code, except design-build projects which are governed by §5-22A-1 *et seq*. of this code and are exempt from these provisions.

(n) Nothing in this section applies to:

(1) Work performed on construction or repair projects by regular full-time employees of the state or its subdivisions;

WV Legislature

(2) Prevent students enrolled in vocational educational schools from being utilized in construction or repair projects when the use is a part of the student’s training program;

(3) Emergency repairs to building components, systems, and public infrastructure. For the purpose of this subdivision, the term "emergency repairs" means repairs that if not made immediately will seriously impair the use of building components, systems, and public infrastructure or cause danger to persons using the building components, systems, and public infrastructure; and

(4) A situation where the state or subdivision thereof reaches an agreement with volunteers, or a volunteer group, in which the governmental body will provide construction or repair materials, architectural, engineering, technical, or other professional services, and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body.

WV Legislature

§5-22-1a. Permitting government construction contracts arising out of declared states of emergency on open-ended quantity or unit price basis; types of contracts allowed for construction projects; specific location of construction project not required in solicitation; certain bonds discretionary; other bidding requirements applicable.

(a) The state, not including its subdivisions, may solicit competitive bids for construction projects arising out of a state of emergency declared pursuant to §15-5-6 of this code, in a manner that is open-ended as to quantity only, or for unit prices on estimated quantities, and may also award contracts to multiple qualified responsible bidders, thereby creating a pool of qualified responsible bidders, so long as the nature of the contract is fully disclosed in the solicitation in a way that allows for fair and competitive bidding. The state reserves the right to reject a bid that it deems to be nonresponsive, a bid from a bidder that is not qualified responsible, as defined in the first section of this article, or a bid that is higher than the state is willing to pay.

(b) If the state creates a pool of qualified responsible bidders, it must first offer work available to the multiple contract holders to the contract holder identified as the lowest qualified responsible bidder, and if that vendor is unable or unwilling to perform, then the same work must be extended to the contract holder identified as the second lowest qualified responsible bidder, and so on, until the work is either accepted or there are no remaining qualified responsible bidders holding a contract that are willing to perform the work. If no vendors accept the work, the state may revise the work and reoffer it to the lowest qualified responsible bidder, then the second lowest qualified responsible bidder, and so on.

(c) Solicitations or contracts under this section are not required to specify the exact addresses or identify the locations of the construction project, so long as the solicitation and resulting contract clearly articulate the mechanism by which the exact address or location will be identified prior to work being performed.

(d) For projects limited to the construction or replacement of one or more residential dwellings or appurtenances, the state agency responsible for overseeing the work may, in its discretion, choose not to require an entity to whom the contract is awarded to furnish payment or performance bonds, but only if it clearly indicates in the solicitation for bids that payment or performance bonds will not be required: Provided, That in the event a payment or performance bond is not required, the entity responsible for the contract shall provide to the state agency responsible for overseeing the work a document certifying that all of the claims of subcontractors, laborers, materialmen, and all persons furnishing material have been paid, satisfied, and discharged before final payment is released.

(e) A vendor or contractor that has been debarred pursuant to §5A-3-33f of this code may not bid on or be awarded a contract under this section.

(f) Except where other provisions of this article conflict with the provisions of this section, the other provisions of this article remain in effect.

WV Legislature

§5-22-2. Designation of time and place for opening of bids; right to reject or withdraw bid; bid resubmission; bid validity date.

(a) The public entity accepting public contract bids shall, in its resolution providing for the contract or purchase and for the advertisement for bids, designate the time and place that the bids will be received and shall at that time and place publicly open the bids and read them aloud. No public entity may accept or take any bid, including receiving any hand-delivered bid, after the time advertised to take bids. No bid may be opened on days which are recognized as holidays by the United States Postal Service. No public entity may accept or consider any bids that do not contain a valid bid bond or other surety approved by the state of West Virginia or its subdivisions.

(b) The provisions and requirements of this section, §5-22-1 of this code, the requirements stated in the advertisement for bids, and the requirements on the bid form may not be waived by any public entity. The public entity may only reject an erroneous bid after the opening if all of the following conditions exist: (1) An error was made; (2) the error materially affected the bid; (3) rejection of the bid would not cause a hardship on the public entity involved, other than losing an opportunity to receive construction projects at a reduced cost; and (4) enforcement of the bid in error would be unconscionable. If a public entity rejects a bid, it shall maintain a file of documented evidence demonstrating that all the conditions set forth in this subdivision existed. If the public entity determines the bid to be erroneous, the public entity shall return the bid security to the contractor.

(c) A contractor who withdraws a bid under the provisions of this section may not resubmit a bid on the same project. If the bid withdrawn is the lowest bid, the next lowest bid may be accepted.

(d) The provisions of a bid shall remain valid and legally binding for a period of 90 calendar days. The 90 days begin to run from the date of the bid opening as prescribed by the public entity bid solicitation. The 90-day period as set forth in this section may be extended by mutual agreement of the contractor and the public entity. Any extension shall be in writing.

WV Legislature

§5-22-3. Certain labor requirements not to be imposed on contractor or subcontractor.

(a) This section may be known and cited as The Fair and Open Competition in Governmental Construction Act.

(b) Legislative findings. -- The Legislature finds that to promote and ensure fair competition on governmental, governmental funded or governmental assisted construction projects that open competition in governmental construction contracts is necessary. The Legislature also finds that when a governmental entity awards a grant, tax abatement or tax credit that it should be an open and fair process. Therefore, to prevent discrimination against governmental bidders, offerors, contractors or subcontractors based upon labor affiliation or the lack thereof, the Legislature declares that project labor agreements should not be part of the competitive bid process or be a condition for a grant, tax abatement or tax credit.

(c) Definitions. -- For purposes of this section:

(1) "Construction" means the act, trade or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding or demolishing of a building, structure, facility, road or highway, and includes the planning, designing and financing of a specific construction project.

(2) "Governmental entity" means the state, a political subdivision or any agency or spending unit thereof.

(3) "Project labor agreement" means any pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.

(d) Prohibition - Competitive bid. -- Commencing July 1, 2015, a governmental entity or a construction manager acting on behalf of a governmental entity, seeking a construction bid solicitation, awarding a construction contract or obligating funds to a construction contract, shall not include the following in the bid specifications, bid requests, project agreements or any other controlling documents for the construction project:

(1) A requirement or prohibition that a bidder, offeror, contractor or subcontractor must enter into or adhere to a project labor agreement;

(2) A term, clause or statement that infers, either directly or indirectly, that a bidder, offeror, contractor or subcontractor must enter into or adhere to a project labor agreement;

(3) A term, clause or statement that rewards or punishes a bidder, offeror, contractor or subcontractor for becoming or remaining, or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, a project labor agreement; or

(4) Any other provision dealing with project labor agreements.

WV Legislature

(e) Prohibition - Grant, tax abatement or tax credit. -- Commencing July 1, 2015, a governmental entity may not award a grant, tax abatement or tax credit for construction that is conditioned upon a requirement that the awardee include any prohibited provision set out in subsection (d) of this section.

(f) Exclusions. -- This section does not:

(1) Prohibit a governmental entity from awarding a contract, grant, tax abatement or tax credit to a private owner, bidder, contractor or subcontractor who enters into or who is party to an agreement with a labor organization, if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, tax abatement or tax credit, and if the governmental entity does not discriminate against a private owner, bidder, contractor or subcontractor in the awarding of that contract, grant, tax abatement or tax credit based upon the status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.

(2) Prohibit a private owner, bidder, contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract with a governmental entity or funded, in whole or in part, from a grant, tax abatement or tax credit from the governmental entity.

(3) Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act, 29 U. S. C. §§151 to 169.

(4) Interfere with labor relations of parties that are left unregulated under the National Labor Relations Act, 29 U. S. C. §§151 to 169.

(g) Exemptions. -- The head of a governmental entity may exempt a particular project, contract, subcontract, grant, tax abatement or tax credit from the requirements of any or all of the provisions of subsections (d) and (e) of this section if the governmental unit finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this subsection may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations or concerning employees on the project who are not members of or affiliated with a labor organization.

WV Legislature

§5-22-4. Negotiation when all bids exceed budgeted amount.

(a) The state and its subdivisions may establish a maximum budgeted amount for each construction project. In the event the bids for a construction project exceed the funds available, the contracting public agency may negotiate with the lowest qualified responsible bidder pursuant to the provisions of this section.

(b) To utilize the provisions of this section, the contracting public agency shall:

(1) Establish a maximum budgeted amount;

(2) Maintain confidentiality of the maximum budgeted amount prior to the award of a contract; and

(3) Not proceed with a negotiated award if that results in more than a 10 percent change in cost from the original base bid.

(c) A negotiated award made pursuant to the provisions of this section shall be made within 60 calendar days of the original bid opening date.

(d) Negotiations under this section shall be completed in the following manner:

(1) If only one responsive and responsible bidder responds to a solicitation the contracting agency may negotiate an award based solely on the specifications contained within the original solicitation;

(2) If more than one bidder responds to a solicitation, the contracting public agency may negotiate with the apparent lowest qualified responsible bidder, as defined in §5-22-1 of this code: *Provided*, That any such negotiation must be based on the specifications contained within the original solicitation;

(3) The contracting public agency shall make available for public inspection all negotiated contracts; and

(4) The contracting public agency shall memorialize any change to the original project specifications that occur as a result of a negotiated award made pursuant to the provisions of this section.

(e) The provisions of this section are permissive and not mandatory for any contracting public agency.

(f) An award of a negotiated contract pursuant to the provisions of this section may not be made to a bidder who fails to meet the other qualifications set forth in this article.

(g) For the purposes of this section, "construction project" does not mean the construction of a road, bridge, or highway.

WV Legislature

(h) The provisions of this section expire and shall have no force and effect after December 31, 2029.

WV Legislature

§5-22A-1. Short title; applicability of article.

This article shall be known and may be cited as the "West Virginia Design-Build Procurement Act."

The provisions of this article must be used to select design-builders for authorized projects that are constructed and owned, potentially owned, or ultimately owned by any agency.

WV Legislature

§5-22A-2. Definitions.

For the purpose of this article:

(1) "Agency" means all state departments, agencies, authorities, quasi-public corporations and all political subdivisions, including cities, counties, boards of education and public service districts and the individual representatives of the agency appointed to oversee or supervise the project.

(2) "Board" means the Design-Build Board established pursuant to section four of this article to determine whether a public project satisfies the requirements of this article.

(3) "Design-build" is defined as providing responsibility within a single contract for design, construction or alteration of a building or buildings, together with incidental approaches, structures and facilities to be constructed, in which services within the scope of the practice of professional engineering or architecture, as defined by the laws of the State of West Virginia, are performed by an engineer or architect duly licensed in the State of West Virginia and in which services within the scope of construction contracting, as defined by the laws of the State of West Virginia, are performed by a contractor qualified and licensed under the applicable statutes. The design-build method of construction may not be used for any other construction projects, such as highway, water or sewer projects.

(4) "Design-build contract" means the contract between an agency and a design-builder to furnish the architecture, engineering, and related services as required, for a given public project, and to furnish the labor, materials and other construction of services for the same public project. A design-build contract may be conditional upon subsequent refinements in scope and price, and may permit the agency to make changes in the scope of the project without invalidating the design-build contract.

(5) "Design-builder" means the entity, whether natural person, partnership, joint venture, corporation, professional corporation, business association or other legal entity, that proposes to design and construct any public project governed by the procedures of section seven, article six of this chapter and this article.

(6) "Firm" means any individual, firm, partnership, corporation, limited liability company, limited liability partnership, association, joint venture or other legal entity permitted by law to practice engineering, architecture or construction contracting in the State of West Virginia.

(7) "Invitation for proposals" means the document or publication by which an agency solicits proposals for a design-build project.

(8) "Invitation for qualifications" means the document or publication by which an agency solicits a statement of qualifications from potential design-builders in order to select three to five design-builders to respond to the agency's invitation for proposal.

WV Legislature

(9) "Performance criteria" means the requirements for the public project, including as appropriate, aesthetics, capacity, durability, production standard, ingress and egress requirements or other criteria for the intended use of the public project, expressed in performance-oriented drawings and specifications suitable to allow the design-builder to make a proposal.

(10) "Performance criteria developer" means an architect or engineer licensed under the laws of this state and, if applicable, the architect's or engineer's employer, company, partners, joint venturers, affiliates or subcontractors retained by the agency to develop performance criteria and to serve as the agency's technical advisor.

(11) "Project" means that project described in the public announcement.

(12) "Proposal" means an offer to enter into a design-build contract, as further defined in this article.

(13) "Qualified design-builder" means one of the three to five design-builders selected by the agency to respond to the invitation for proposals.

(14) "Responsive proposal" means a proposal that scores a minimum of seventy points out of a possible one hundred points in the qualitative evaluation.

(15) "Statement of qualifications" means descriptive information or other data submitted by a design-builder indicating its ability to satisfy the requirements set forth in the invitation for qualifications.

(16) "Substantial completion" means the stage in the progress of the work when the work or designated portion thereof is sufficiently complete in accordance with the design-build contract so the agency can occupy or utilize the work for its intended use.

(17) "Technical review committee" means the group of individuals who have education and experience in the design, construction, operation, administration, and finance requirements of the project and users of the project selected by the agency to review, evaluate and score the statement of qualifications and invitation for proposal.

(18) "Work" means the design, construction and services required by the design-build contract, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the design-builder to fulfill the design-builder's obligations. The work may constitute the whole or a part of the project.

WV Legislature

§5-22A-3. Public policy; conditions for contract.

(a) Recognizing that the design-bid-build method provides a viable delivery method for public projects, it is the public policy of this state to permit an agency to enter into design-build contracts for public projects.

(b) An agency may not enter into a design-build contract for a public project unless:

(1) The Department of Administration promulgates and publishes legislative rules pursuant to section six of this article, and consistent with this article for the solicitation and award of design-build contracts and adheres to this article and those rules;

(2) The agency, for each public project or projects procured pursuant to this article, determines that it is in the best interest of the public to enter into a design-build contract to complete the public project or projects and adheres to this article and the rules; and

(3) The Board established pursuant to section four of this article determines that the public project is appropriate as a design-build project utilizing the mandatory criteria as provided in section five of this article.

(c) When the Design-Build Board, established pursuant to section four of this article, is terminated pursuant to the Acts of the Legislature, no agency may enter into a design-build contract: Provided, That agencies may pursue and complete any design-build projects approved by the board prior to its termination date.

WV Legislature

§5-22A-4. Design-Build Board and members; appointments; expense reimbursement; meetings.

(a) The Design-Build Board is continued within the Department of Administration and is composed of the following nine members who are appointed by the Governor with the advice and consent of the Senate: Two contractors licensed in the State of West Virginia; one architect licensed in the State of West Virginia; one professional engineer licensed in the State of West Virginia; the Secretary of the Department of Administration, ex officio; one representative from labor; and three other members of the public at large. Members of the board are not entitled to compensation for services performed as members, but may be reimbursed for actual and necessary expenses incurred for each day in which he or she is engaged in the discharge of official business, in accordance with rules promulgated pursuant to section eleven, article three, chapter twelve of this code and travel management policies adopted by the Department of Administration. Each member of the board shall take and subscribe to the oath or affirmation required pursuant to section five, article IV of the Constitution of West Virginia.

(b) Terms of office are for three years, which are staggered in accordance with the initial appointments under prior enactment of this section, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member holds office from the date of his or her appointment or until his or her successor qualifies for office. When a vacancy occurs as a result of death, resignation or removal in the membership of the board, the Governor shall fill the vacancy by an appointment within thirty days of the vacancy for the unexpired portion of the term in the same manner as original appointments.

(c) The Board shall elect a chairperson and other necessary officers. The Board shall adopt rules for its procedures. Five members of the board is a quorum. A majority of the total membership is necessary to act at all times. Meetings of the board shall be held upon the call of the Secretary of the Department of Administration, the call of the chairperson or the call of any two members of the board: Provided, That the board shall meet at least four times each calendar year and all meetings of the board must be held in accordance with the open governmental proceedings act as set out in article nine-a, chapter six of this code.

WV Legislature

§5-22A-5. Duties of board to approve and monitor projects.

(a) Upon receipt of information that an agency wants to pursue the design-build method of project delivery, the board, with the administrative support of the Secretary of the Department of Administration, shall notify the agency that failure to comply with the requirements of this article is a violation of state law. The Board shall notify the Secretary of the Department of Administration of any agency knowingly proceeding without meeting the requirements of this article.

(b) Prior to an agency issuing an invitation for qualifications for public projects, the board must determine that the public project is appropriate as a design-build project in accordance with all of the following:

(1) The agency has the appropriate legal authority to enter into a design-build contract;

(2) The agency requires a project design and construction time line that is faster than the traditional design-bid-build process would allow;

(3) The project requires close coordination of design and construction expertise or an extreme amount of coordination;(4) The agency requires early cost commitments;

(5) The agency provides a written plan for funding the project including, but not limited to, the funding necessary to pay for design services and construction costs; and

(6) The agency has completed and submitted a written application for approval to the board and requested a meeting with the board to present its request for approval from the board.

(c) Upon project approval under subsection (b) of this section, the agency shall submit to the board monthly reports detailing the progress of the approved project. The reports shall continue until the start of construction to ensure that the agency has complied with any requirements established by the board in its approval of the project. If any requirement is not satisfied, the board may withdraw its approval of the project at any time prior to the start of construction. If the board withdraws its approval, the agency may not proceed with the project as a design-build project until the requirements set forth in the board's approval and the requirements of this article are met, as determined by the board.

(d) On or before January 1, of each year, the board shall file an annual report with the Joint Committee on Government and Finance, and a copy of the report with the Legislative Librarian, setting forth a description of the projects approved during the preceding year, including copies of monthly monitoring reports submitted to the board pursuant to subsection (c) of this section.

WV Legislature

§5-22A-6. Design-build rules.

The Department of Administration shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code and consistent with this article for the award of design-build contracts, which provide, at a minimum:

(1) The procedures to select or designate a performance criteria developer and prepare performance criteria;

(2) The application process for approval of a design-build project;

(3) The procedures for selecting the most qualified design-builders prior to the release of the invitation for proposals;

(4) The procedures for the preparation and contents of invitations for proposals;

(5) The procedures for preparing and submitting proposals;

(6) The procedures for evaluating proposals;

(7) The procedures for negotiations between the agency and those submitting proposals prior to the acceptance of a proposal, if any such negotiations are contemplated;

(8) The procedures for awarding and executing design-build contracts;

(9) The procedures for awarding design-build contracts in the event of public emergencies as defined in the applicable statutes; and

(10) The procedures for acting on formal protests relating to the solicitation or award of design-build contracts.

WV Legislature

§5-22A-7. Design-builder qualifications; duties and powers.

(a) Each design-builder shall be licensed to do business in this state and be a licensed architect or engineer or a general contractor.

(b) Each design-builder may:

(1) Assign or sublet the responsibility for professional design services to an architect or engineer licensed in this state. The architect or engineer shall carry, at all times, professional design liability insurance in an appropriate amount as designated by the agency. The architect or engineer may be a full or part-time employee of the design-builder; and

(2) Assign or sublet responsibility for construction or other services requiring a contractor's license to persons or entities licensed or otherwise qualified to provide those services in this state.

(c) Each design-builder may contract to provide professional services or construction services to the agency that the design-builder is not licensed, registered or otherwise authorized to provide so long as those services are assigned or sublet to a firm that is registered, licensed and qualified to provide those services.

WV Legislature

§5-22A-8. Development of performance criteria.

(a) Each invitation for proposal must contain performance criteria prepared by an architect or engineer licensed under the laws of this state, referred to as the "performance criteria developer." The agency shall select the performance criteria developer in accordance with the requirements of article one, chapter five-g of this code, and shall retain the performance criteria developer through final completion of the project to monitor adherence to the performance criteria.

(b) The agency may use its own employees to determine whether the agency should seek to construct a project using the design-build method of construction. The agency may use an employee as its performance criteria developer on projects for which construction costs are estimated to be $1 million or less.

(c) The performance criteria developer and his or her employer, company, partners, joint venturers, affiliates or consultants may not submit a proposal to enter into the design-build contract and may not perform services under the design-build contract.

(d) The performance criteria developer may delegate the development of specific aspects of the design criteria to an architect or engineer licensed by this state and his or her employer, company, partners, joint venturers, affiliates or other consultants.

WV Legislature

§5-22A-9. Scope of project.

(a) The agency, in consultation with the performance criteria developer, shall determine the scope and level of detail required for the performance criteria. The performance criteria must be detailed enough to permit qualified persons to submit proposals in accordance with the request for proposals, given the nature of the public project and the level of design to be provided in the proposal.

(b) The performance criteria developer shall review the program furnished by the agency to ascertain the requirements of the project and shall arrive at a mutual understanding of such requirements with the agency.

(c) Based on the mutually agreed-upon program, schedule and construction budget requirements, the performance criteria developer shall prepare for approval by the agency documents indicating the scale and relationship of project components.

WV Legislature

§5-22A-9a. Invitation for qualifications; selection of design-builders.

(a) The agency shall publish an invitation for qualifications which provides, at a minimum:

(1) A descriptive narrative of the type, scope and size of the proposed work;

(2) The evaluation criteria for selecting the three to five qualified design-builders; and

(3) A request for descriptive information or data supporting a design-builder's claim to be able to perform the work, including, but not limited to:

(A) Licensing, insurance and evidence of good standing with the State of West Virginia and the agency;

(B) Bonding ability;

(C) Experience and technical expertise;

(D) History of past performance;

(E) Qualifications, experience and licenses of key management and professional staff including contractors, architects and engineers;

(F) Staffing capabilities;

(G) Current workload;

(H) Quality control and quality assurance policies and programs; and

(I) Safety record, including employee modification rating for the past three years.

(b) The agency shall review the statements of qualifications and select not fewer than three nor more than five of the most qualified design-builders to participate in the invitation for proposals. If fewer than three design-builders are determined to be qualified, the agency shall seek approval of the Design-Build Board to continue with the selection process.

(c) The agency shall make the results of the selection available to the design-builders within ten working days of the selection.

WV Legislature

§5-22A-10. Invitation for proposals.

(a) The agency shall prepare an invitation for proposals for the qualified design-builders, which must provide at a minimum:

(1) The identity of the agency which will award the design-build contract;

(2) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, and the procedures for making awards, including a reference to the requirements of this article, the legislative rules promulgated pursuant to section six of this article and any specific requirements of the agency;

(3) The proposed terms and conditions for the design-build contract;

(4) The performance criteria;

(5) The description of the drawings, specifications or other information to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;

(6) A schedule for planned commencement and completion of the design-build contract;

(7) Budget limits for the design-build contract, if any;

(8) Requirements or restrictions for the subletting of specific portions of the design-build contract, if any; and

(9) Requirements for performance bonds, payment bonds, insurance, professional liability insurance and workers' compensation coverage: Provided, That no officer or employee of this state or of any public agency, public authority, public corporation, or other public entity, and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any performance bond, payment bond, or bid bond required or permitted by this section be obtained from any particular surety company, agent, broker, or producer.

(b) The agency shall provide, as applicable, additional information to the design-builder, including, but not limited to, surveys, soils reports, drawings or information regarding existing structures, environmental studies, photographs or references to public records, or other pertinent information.

WV Legislature

§5-22A-11. Proposals.

(a) Proposals shall be submitted in two separate, clearly identified, sealed packages, with the first containing the technical submission and the second containing the cost submission. If the technical submission and cost submission are not submitted in two separate, clearly identified sealed packages, the board shall disqualify the submission.

(b) Proposals may not be opened until expiration of the time established for making proposals as set forth in the invitation for proposals.

(c) The design-builder shall furnish a bid bond not to exceed five percent of the maximum cost of the design-build contract. In the event the proposal is accepted and the design-builder fails to execute the design-build contract, the bid bond will be forfeited.

(d) To the extent required in the invitation for proposal, the design-builder shall identify each firm to whom the design-builder proposes to sublet obligations under the design-build contract. At a minimum, the design-builder shall identify each firm responsible for the design and primary construction and their affiliation to the design-builder.

(e) The design-builder shall specify in the proposal the cost of the design-build contract that will not be exceeded if the proposal is accepted without change. After award of the proposal, the maximum cost of the proposal may be converted to fixed prices by negotiated agreement between the agency and the design-builder.

(f) Prior to the award of the design-build contract, all drawings, specifications and other information submitted in the proposal shall remain the property of the design-builder submitting the proposal. Additionally, prior to the award of the design-build contract, the agency shall maintain the secrecy and confidentiality of all information contained in the proposal. Once a proposal is accepted, the disclosure of the proposal and the information in the proposal, and the ownership of the drawings, specifications and information therein, shall be determined in accordance with existing law and the terms of the design-build contract.

(g) Proposals may not be amended during the review process.

(h) At the discretion of the agency, a stipend may be paid to the design-builders not ultimately selected.

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§5-22A-12. Acceptance of design-build proposal.

(a) The design-builder shall submit the proposal to the agency as required in the invitation for proposals. Clarifications may be required to ensure conformance of proposals with the performance criteria. In seeking clarifications, the performance criteria developer may not reveal any aspect of any proposal to any other design-builder. The performance criteria developer must certify that the proposal complies with the performance criteria.

(b) In the event the agency receives fewer than three proposals, the board shall, in consultation with the Secretary of the Department of Administration, determine whether the agency may proceed or shall start the invitations for qualifications process over.

(c) After receiving the proposals, the technical review committee shall evaluate and score the technical submissions based upon the criteria and procedures set forth in the invitation for proposals.

(d) The agency shall submit the technical submissions, including the scores of the technical submissions, to the board. The agency shall make the scores of the technical submissions available for public review.

(e) The Board shall ascertain that the technical submissions comply with the requirements of this article and shall notify the agency of its approval. The agency shall open the cost submissions and accept the proposal that receives the best score, as set forth in the legislative rules promulgated pursuant to section six of this article.

(f) The agency shall notify the design-builder in writing that its proposal was accepted. At the same time notice of acceptance is delivered, the agency shall also inform, in writing, the design-builders whose proposals were not accepted. When a design-builder receives notification that its proposal was not accepted, the design-builder may, within three days after receipt of such notification, request in writing a copy of the scores and all other factors used or considered in the selection process.

WV Legislature

§5-22A-13. Construction and final certification.

The performance criteria developer must visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the work completed and to determine in general if the work is being performed in a manner indicating that work, when completed, will be in accordance with the design-build contract. On the basis of such on-site observations the performance criteria developer shall keep the agency informed of the progress of the work on the project and shall endeavor to guard the agency against defects and deficiencies in such work.

The performance criteria developer shall assist the agency in determining whether the agency shall reject work which does not conform to the design-build contract.

The performance criteria developer shall assist the agency in conducting inspections, to determine the date or dates of substantial completion and of final completion, and shall review and approve, or take other appropriate action regarding the contractor's list of items to be completed or corrected, and shall forward the list to the agency for final disposition. The performance criteria developer shall issue to the agency a final certification in writing with respect to final acceptance of the project.

WV Legislature

§5-22A-14. Withdrawal of proposals.

At the option of the design-builder, proposals may be withdrawn for any reason at any time prior to their opening without forfeiture of the security. Once opened, a proposal may be withdrawn for any reason prior to acceptance with forfeiture of the bid bond.

WV Legislature

§5-22A-15.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5-22A-16. Severability.

The provisions of subsection (cc), section ten, article two, chapter two of this code shall apply to the provisions of this chapter to the same extent as if the same were set forth in extension herein.

WV Legislature

§5-22B-1. Short title; applicability of article.

This act shall be known as the Government Construction Management At-Risk Contracts Act. The provisions of this article may be used to select construction managers at-risk for authorized public construction projects as set forth in this article. Notwithstanding the provisions of §5-22-1 *et seq*. and §5-22A-1 *et seq*. of this code, construction management at-risk contracts shall be awarded pursuant to the provisions of this article: *Provided*, That a construction management at-risk contract shall not be authorized for a construction project of less than $20 million in estimated total cost.

WV Legislature

§5-22B-2. Definitions.

The following terms shall have the following meaning:

"Best value" means a selection process in which proposals contain both pricing and performance components, an award is based upon a combination of pricing and performance considerations to determine the offer deemed most advantageous and of the greatest value to the state spending authority.

"Construction fee" means a combination of home office overhead and profit for services provided during the construction phase of the project, as defined in the contract documents.

"Construction management at-risk contract" means a contract by which a construction manager:

(1) Assumes the legal responsibility to deliver a construction project within a contracted price;

(2) Acts as a construction consultant to the state and/or its subdivision during the design development phase of the project when the state and/or its subdivisions architect or engineer designs the project; and

(3) Is the builder during the construction phase of the project;

"Construction manager" means the legal entity that proposes to enter into a construction management at-risk contract pursuant to this article;

"General conditions" means materials, services, and equipment necessary to perform the work but that are not incorporated into the project as defined in the contract documents;

"Letter of interest" means a statement indicating interest to enter into a construction management at-risk contract for a public project pursuant to this article;

"Lowest qualified responsible bidder" shall have the same meaning as that term is used in §5-22-1(b) of this code;

"Preconstruction fee" means a combination of home office overhead and profit for services provided during the preconstruction phase of the project, as defined in the contract documents;

"Proposal" means an offer in response to a request for proposals by a construction manager to enter into a construction management at-risk contract for a project pursuant to the provisions of this article;

"Request for qualifications" means the documentation or publication by which a state and/or its subdivisions solicits letters of interest detailing a firm's qualifications for a specific

WV Legislature

project;

"Request for proposals" means the documentation by which a state and/or its subdivisions solicits proposals;

"The state and/or its subdivisions" means the state of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities, and all county boards of education.

WV Legislature

§5-22B-3. Authorization of construction management at-risk contracts for public construction projects.

(a) Notwithstanding any other provision of this code to the contrary, the state and/or its subdivisions who comply with the provisions of this article may solicit and execute a construction management at-risk contract.

(b) The execution of a construction management at-risk contract between the state and/or its subdivisions and a construction manager is optional. The use of a construction management at-risk contract is at the discretion of the state and/or its subdivisions. If the state and/or its subdivisions opt not to execute a construction management at-risk contract the provisions of §5-22-1 *et seq*. of this code shall apply to the selection and management of the bidding process of the project.

(c) Prior to entering into a construction management at-risk contract, the state and/or its subdivisions shall adopt policies for utilization of a construction management at-risk contract. The policies shall require that such contracts include, at a minimum, the following:

(1) Procedures for the preparation and content of requests for qualifications and requests for proposals;

(2) Procedures for preparing and submitting proposals;

(3) Procedures for evaluating proposals in accordance with §5-22B-12 of this code;

(4) Procedures for negotiations between the state and/or its subdivisions and the construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated; and

(5) Procedures for filing and acting on formal protests relating to the solicitation or execution of construction management at-risk contracts.

(d) The state and/or its subdivisions may require supplemental conditions to a construction management at-risk agreement and any modifications to the agreement will be communicated to all parties prior to the execution of the contract.

WV Legislature

§5-22B-4. Construction management at-risk contract required procedures.

(a) The state and/or its subdivisions shall utilize a two-step process for every construction manager at-risk project. The first phase shall be the qualifications phase and the second shall be a request for proposal phase. For each construction manager at-risk project, it shall be the responsibility of the state and/or its subdivisions to:

(1) Identify the qualifications criteria required for the project in accordance with subsection (b) of this section and determine how the qualifications criteria shall be evaluated in the qualifications phase of the selection;

(2) Identify if there are any minimum or mandatory technical requirements for the project; and

(3) Establish a process for maintaining records of decisions made at all stages of the selection process.

(b) Prior to the announcement of the qualifications phase, the state and/or its subdivisions shall establish criteria for the evaluation of a firm's qualifications subject to the provisions of §5-22B-12 of this code. The state and/or its subdivisions shall include the following as part of its qualifications criteria:

(1) Competence to perform the required management services as indicated by the technical training, education, and experience of the construction manager at-risk's personnel, especially the technical training, education, and experience of the construction manager at-risk's employees who would be assigned to perform the services;

(2) Ability in terms of workload and the availability of qualified personnel, equipment, and facilities to perform the required management services competently and expeditiously, and experience working on similar types of projects;

(3) Past performance as reflected by the evaluation of previous clients with respect to factors such as control of costs, quality of work, dispute resolution, administration of subcontractors, and meeting of deadlines;

(4) Financial responsibility including evidence of the capability to provide a surety letter; and

(5) Other qualifications that are consistent with the scope and needs of the project including, but not limited to, knowledge of the local area and working relationships with local subcontractors and suppliers.

WV Legislature

§5-22B-5. Evaluation committee.

(a) The state and/or its subdivisions shall convene an evaluation committee. The composition of the committee is at the discretion of the state and/or its subdivisions; however, the composition of the committee shall not consist of enough members of a public body to constitute a quorum. The state and/or its subdivisions may permit the project's architectural or professional design firm if selected, or other independent advisors to support the evaluation committee or advise it on technical and pricing issues. The architectural or professional design firm or independent advisors shall not participate as a voting member of the committee.

(b) Membership on the evaluation committee may include, but is not required to include:

(1) Procurement officer: Who is responsible for the procurement and ensuring compliance with relevant laws and policies;

(2) Technical and administrative personnel: Members with technical and administrative expertise;

(3) User department staff: Members from the department that will use the product or service;

(4) Specialists: Members with expertise in specific areas, such as finance, database design, or business; and

(5) Other knowledgeable people: Individuals from the organization who can bring special expertise to the process.

WV Legislature

§5-22B-6. Request for qualifications phase.

(a) Following the determination of qualifications and establishment of the evaluation team, the state and/or its subdivisions shall prepare a request for qualifications for construction manager at-risk contract proposals in accordance with the provisions of this article. The request for qualifications shall describe the project in sufficient detail to permit a construction manager to submit a letter of interest detailing their qualifications.

(b) The request for qualifications shall be:

(1) Published as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code for at least 30 days prior to the deadline for receiving letters of interest; and

(2) Sent by first-class mail to any construction manager upon request.

(c) The state and/or its subdivisions shall answer any questions from interested firms in writing and make all questions and answers available to all interested firms.

WV Legislature

§5-22B-7. Prequalified firms.

(a) When the state and/or its subdivisions receive responses to the request for qualifications, the evaluation committee shall evaluate the responses based on the information submitted to the state and/or its subdivisions in response to a request for qualifications and select no fewer than three firms that it considers most qualified to provide the required services: *Provided*, That the evaluation committee shall select fewer than three firms when it determines in writing that fewer than three qualified construction managers at risk are available. The firms selected in the qualifications phase shall be referred to as the "prequalified firms" in the request for proposal phase.

(b) Prior to the submission of proposals, the state and/or its subdivisions may meet individually with each prequalified listed firm to permit them to clarify any ambiguities in the qualifications of the prequalified firm and allow the prequalified firm to ask questions regarding the proposal requirements.

WV Legislature

§5-22B-8. Request for proposal phase.

(a) The second phase shall be the request for proposals. Following the selection of prequalified firms, the state and/or its subdivisions shall prepare a request for proposal for construction manager at-risk contract proposals. The request for proposal shall consist of two portions.

(1) Pricing criteria: As part of its preparation for the pricing component of the request for proposal phase, the state and/or its subdivisions shall establish pricing criteria which shall contain the following components:

(A) Preconstruction fee;

(B) Construction fee; and

(C) General conditions.

(2) Performance criteria: As part of its preparation for the technical component of the proposal phase, the state and/or its subdivisions shall establish performance criteria which may include an evaluation of a firm's proposed:

(A) Schedule;

(B) Approach to the work, including any anticipated self-performed work;

(C) Work sequencing;

(D) Performance history;

(E) Approaches to performance specifications when used;

(F) Plan for anticipated procurement difficulties;

(G) Plan for additional considerations which may include technical design, technical approach, quality of proposed personnel, and management plan.

(b) Once the evaluation committee has selected the prequalified firms, the state and/or its subdivisions shall prepare a request for proposals for each construction management at-risk contract in accordance with the provisions of this article. At least 30 days prior to the deadline for receiving and opening proposals, notice of the request shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code; and sent by first-class mail to any construction manager upon request.

(c) The request for proposals shall contain, at a minimum, the following elements:

(1) The identity of the state and/or its subdivision for which the project will be built and the name of the state agency or subdivision that will execute the contract;

WV Legislature

(2) The proposed terms and conditions of the construction manager at-risk contract, including any terms and conditions that are subject to further negotiation. The proposed general terms and conditions shall be consistent with nationally recognized model general terms and conditions which are standard in the design and construction industry in West Virginia. The proposed terms and conditions may set forth an initial determination of the manner by which the construction manager selects any subcontractor;

(3) Any bonds and insurance required by law or as may be additionally required by the state and/or its subdivisions;

(4) General information about the project which will assist the state and/or its subdivisions in its selection of the construction manager, including a project statement that contains information about the scope and nature of the project, the project site, and the project schedule;

(5) The criteria for evaluation of proposals;

(6) Estimated construction budget; and

(7) A description of any other information the state and/or its subdivisions may require.

WV Legislature

§5-22B-9. Proposal format.

A proposal submitted by a firm in response to a request for proposal as set out in this article shall be submitted in the following format:

(1) Signed cover page;

(2) Offeror profile;

(3) Staffing plan and key personnel;

(4) Similar project examples from prior 10 years;

(5) Conflict of interest statement;

(6) Proof of insurance;

(7) Cost summary which shall include reconstruction costs, construction fees, and general conditions;

(8) Additional attachments from the request for proposal that require input from offeror (if any);

(9) Surety letter demonstrating the bond capacity of the construction manager; and

(10) West Virginia contractor license.

WV Legislature

§5-22B-10. Determination of best value.

(a) The evaluation committee shall interview each prequalified firm that submits a proposal. The purpose of the interview is to allow each prequalified firm an opportunity to clarify and respond to questions related to its proposal. The state and/or its subdivisions may provide a list of questions to the short-listed firms in advance of each interview. The interview will not be scored or included in the scoring of the proposal. Should a state and/or its subdivisions find any major discrepancy or irregularity in the proposal, the state and/or its subdivisions shall notify the affected firm in writing to address the concern at the interview and require the firm to provide its response in writing no later than the date of the interview. This interview may be done in person or electronically.

(b) The evaluation committee shall evaluate each proposal utilizing the criteria established by the state and/or its subdivisions and as set out in this article.

(c) The committee shall rank the prequalified firms based on the final evaluation of each proposal to determine the best value.

(d) The state and/or its subdivisions shall announce the firm determined to be the best value and shall enter into negotiations for a construction management contract.

WV Legislature

§5-22B-11. Evaluation of proposals; selection of construction managers.

(a) The state and/or its subdivisions shall evaluate proposals for a construction management at-risk contract in accordance with the provisions of this article.

(b) The state and/or its subdivisions shall evaluate and rank each proposal on the basis of best meeting the criteria in the request for proposals and taking into consideration the recommendation of the evaluation committee pursuant to the provisions of this article.

(c) The state and/or its subdivisions shall attempt to negotiate a construction management at-risk contract with the highest ranked construction manager and may execute a construction management at-risk contract after negotiations. The negotiations shall include a final determination of the manner by which the construction manager selects each subcontractor. If the state and/or its subdivisions are unable to negotiate a satisfactory contract with the highest ranked construction manager, the state and/or its subdivisions may terminate negotiations with that construction manager. Only after negotiations have been terminated with the highest ranked construction manager may the state and/or its subdivisions undertake negotiations with the second highest ranked construction manager and may execute a construction management at-risk contract after negotiations. Only after negotiations have been terminated with the second highest ranked construction manager may the state and/or its subdivisions undertake negotiations with the third highest ranked construction manager, if any, and may execute a construction management at-risk contract after negotiations.

(d) If the state and/or its subdivisions are unable to negotiate a satisfactory contract with any of the prequalified and ranked construction managers, the state and/or its subdivisions may either revise the request for proposals and solicit new proposals or cancel the construction management at-risk process.

WV Legislature

§5-22B-12. Criteria for evaluation.

(a) The evaluation committee shall evaluate proposals taking into consideration the criteria set out in this section with the maximum percentage of total points for evaluation which may be assigned to each criterion as set forth in this section. The following criteria shall be evaluated, when applicable:

(1) The financial resources of the construction manager to complete the project, 10 percent;

(2) The ability of the proposed personnel of the construction manager to perform, 20 percent;

(3) The character, integrity, reputation, judgment, experience, and efficiency of the construction manager, 20 percent;

(4) The quality of performance on previous projects, 20 percent;

(5) The ability of the construction manager to perform within the time specified, 10 percent;

(6) The previous and existing compliance of the construction manager with laws relating to the contract, 10 percent; and

(7) Such other information as may be secured having a bearing on the selection, 10 percent.

(b) The records of the evaluation committee in evaluating proposals and making recommendations shall be considered public records for purposes of §29B-1-1 *et seq*. of this code.

WV Legislature

§5-22B-13. Amendments to construction management at-risk contract after acceptance.

A construction management at-risk contract may be conditioned upon later refinements in scope and price and may permit the state and/or its subdivisions in agreement with the construction manager to make changes in the project without invalidating the contract. Later refinements to a contract pursuant to the provisions of this section shall not exceed the scope of the project statement contained in the request for proposals.

WV Legislature

§5-22B-14. Public records.

(a) Records that are maintained by the state and/or its subdivisions during the qualifications phase and proposal phase are public, to the extent permitted by §29B-1-1 *et seq*. of this code, and shall be available for inspection only after the announcement of the state and/or its subdivisions set forth in §5-22B-10(d) of this code.

(b) Nothing in this article affects a state and/or its subdivisions' right to accept or reject any or all proposals in whole or in part.

WV Legislature

§5-22B-15. No effect on bonding and insurance requirements.

Nothing contained within the provisions of this article shall be construed to limit or reduce existing statutory or regulatory requirements regarding bonding or insurance.

WV Legislature

§5-22B-16. Specialty maintenance projects.

(a) The state and/or its subdivisions shall not use a construction management at-risk contract for a construction project with locations on parcels of land which are not contiguous except for specialty maintenance projects.

(b) For purposes of this section:

(1) A specialty maintenance project is a construction project for the maintenance of an existing facility with a specialty contractor, including, but not limited to, an electrical contractor or plumbing contractor; and

(2) Parcels are considered contiguous if they would be contiguous but for the existence of a public road.

WV Legislature

§5-22B-17. Rulemaking.

The Division of Purchasing shall propose rules for legislative approval in accordance with the procedures of §29A-3-1 *et seq*. of this code to develop standardized forms for use in construction management at-risk contracting. These forms shall include:

(1) An offeror required information form;

(2) A signed contract form; and

(3) A conflict of interest statement form.

WV Legislature

§5-22B-18. Reporting.

The Division of Purchasing shall report to the Joint Committee on Government and Finance by December 31, 2025, and annually thereafter until the provisions of this article have no further force or effect on the usage of the provisions of this article including, but not limited to:

(1) The number of contracts processed as a construction manager at-risk contract during that year;

(2) The number of contracts that could have been processed as a construction manager at-risk contract but were processed instead pursuant to the provisions of §5-22-1 *et seq*. of this code;

(3) A list of state entities or subdivisions of the state that have awarded contracts pursuant to the provisions of this article;

(4) Any suggested changes to this article to make the process of construction manager at-risk contracts more useful and effective; and

(5) Any other information that the Division of Purchasing finds informative and probative.

WV Legislature

§5-22B-19. Sunset date.

This article shall have no further force or effect and no construction manager at risk contract shall be authorized on or after July 1, 2030, unless further reenacted by the Legislature.

WV Legislature

§5-23-1.

Repealed.

Acts, 1988 Reg. Sess., Ch. 115.

WV Legislature

§5-23-2.

Repealed.

Acts, 1988 Reg. Sess., Ch. 115.

WV Legislature

§5-23-3.

Repealed.

Acts, 1988 Reg. Sess., Ch. 115.

WV Legislature

§5-23-4.

Repealed.

Acts, 1988 Reg. Sess., Ch. 115.

WV Legislature

§5-23-5.

Repealed.

Acts, 1988 Reg. Sess., Ch. 115.

WV Legislature

§5-23-6.

Repealed.

Acts, 1988 Reg. Sess., Ch. 115.

WV Legislature

§5-23-7.

Repealed.

Acts, 1988 Reg. Sess., Ch. 115.

WV Legislature

§5-23-8.

Repealed.

Acts, 1988 Reg. Sess., Ch. 115.

WV Legislature

§5-23-9.

Repealed.

Acts, 1988 Reg. Sess., Ch. 115.

WV Legislature

§5-23-10.

Repealed.

Acts, 1988 Reg. Sess., Ch. 115.

WV Legislature

§5-23-11.

Repealed.

Acts, 1988 Reg. Sess., Ch. 115.

WV Legislature

§5-23-12.

Repealed.

Acts, 1988 Reg. Sess., Ch. 115.

WV Legislature

§5-24-1. Short title.

This article shall be known by and may be cited as "The Forestry Development Act of l987."

WV Legislature

§5-24-2. Legislative findings, purposes and intent.

The Legislature hereby finds and declares:

(a) That the future economic base of West Virginia is tied to the development of the forestry industry.

(b) That efforts to enhance and promote the expansion of the forestry industry should be coordinated among the several state and federal agencies, commissions, boards, committees, associations and other entities.

(c) That the development of the forestry and wood products industry will require: (1) The development of multiple-use, sustained-yield management plans for nonindustrial timber tracts; (2) the development of products and markets for the grade of materials that currently comprise a majority of the state's available resources; (3) a stable and predictable tax program for both new and existing firms; (4) a centralized protection program that will reduce risk from fire and pestilence; and (5) financial assistance for the attraction and expansion of new and existing secondary manufacturing facilities with special emphasis on assistance for smaller firms employing less than twenty persons.

(d) That the present and future welfare of the people of the state require, as a public purpose, a continuing effort toward the promotion and development of the forestry and wood products industry.

(e) In recognition of these findings and purposes, it is in the best interest of this state to create the West Virginia forest management review commission as a statutory body.

WV Legislature

§5-24-3. Commission continued; composition; appointment of members.

The West Virginia Forest Management Review Commission is continued for the purposes set forth in this article. This commission shall be comprised of an equal number of senators and delegates, as appointed by the President of the Senate and the Speaker of the House of Delegates, and four members to be representatives from the commercial forest industry in the state, and three members of the public-at-large. The members shall be appointed by the Governor, with the advice and consent of the Senate. The successor of each such appointed member shall be appointed for an overlapping term of six years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only to the remainder of such term. Each board member shall serve until the appointment of his or her successor.

WV Legislature

§5-24-4. Powers, duties and responsibilities.

The commission shall have the power, duty and responsibility to:

(a) Generally assist in the retention, expansion and attraction of forestry and forestry related industries by creating a climate for the development and support of the industry.

(b) Coordinate the current efforts to enhance and promote the expansion of the forestry industry among the several state and federal agencies, commissions, boards, committees, associations and other entities.

(c) Urge the development of multiple-use sustained-yield management plans for nonindustrial timber tracts.

(d) Develop products and markets for the grade of materials that currently comprise a majority of the state's resources.

(e) Recommend a stable and predictable tax program for both new and existing firms in the state.

(f) Develop a centralized and enhanced protection program that will reduce risks from fire and pestilence.

(g) Develop financial assistance for the attraction and expansion of new and existing secondary manufacturing facilities, with special emphasis on assistance for smaller firms employing less than twenty persons.

(h) Utilize recognized research expertise of appropriate existing educational, public and industrial institutions or agencies of the state. Research shall include economic development efforts in West Virginia, including silviculture, wood land management, forest management, the development of new products as well as other products designed to aid forestry development.

(i) Employ, if needed, and only with prior approval of the West Virginia Legislature's Joint Committee on Government and Finance, such staff as may be necessary. In the event an executive director may be necessary, such individual shall be a forestry graduate of a four-year college of forestry and shall, in addition, have administrative and research experience, preferably, but not mandatorily, with at least five years' experience in government.

WV Legislature

§5-24-5. Appalachian hardwood research center; creation; duties; responsibilities.

The appalachian hardwood research center is hereby created, in association with, and the director shall be a member of the faculty of, the forestry school at West Virginia University. The center shall utilize, to the extent possible, the programs already created under the vandalia partnership program as provided for in chapter five-b, article two-a, section four, et seq., of this code.

The appalachian hardwood research center at West Virginia University is directed to establish priorities and coordinate its research functions with the Governor and the Legislature. The center shall: (1) Develop and maintain a computerized inventory of all possible scientific information relating to appalachian hardwood tree species, silviculture, management, products and product development; (2) initiate research projects, including applied research, either originally or by request, designed to aid forestry economic development efforts in West Virginia, including the development of new products as well as other projects designed to increase the utility of low grade appalachian hardwoods; and (3) be generally responsible for encouraging the development of research needed by the forest industry of the state.

WV Legislature

§5-24-6. Compensation and expenses of members; expenses of the commission.

The members of the commission shall be reimbursed for all of their reasonable and necessary travel and other expenses incurred in connection with carrying out their duties as members, which expenses shall be paid in the manner and form prescribed by law. Members of the commission may receive no other compensation for their services on or with the commission.

WV Legislature

§5-24-7. Reports.

The commission shall report to the Legislature's Joint Committee on Government and Finance as to the progress being made in forestry development activity by state governmental entities and projects, and shall report, at least annually, but more often if requested, the financing deemed necessary to continue funding, if desired, of forestry development activities.

WV Legislature

§5-24-8.

Repealed.

Acts, 1997 Reg. Sess., Ch. 58.

WV Legislature

§5-25-1. Resident trustee accounts required, reports.

All state institutions including, but not limited to, those institutions under the control of the department of Veterans Affairs, the department of health, or the department of human services which provide custodial care for any person for any purpose whatsoever shall establish resident trustee accounts for all persons resident at the institution who request such accounts or who are unable to manage their own funds. The administrator in charge of the institution shall take possession of all money or other valuables on the person of or sent to each resident for whom a trustee account has been established: Provided, That this article shall not apply to state institutions under the control of the department of corrections or where there is a legal representative appointed for such person.

The administrator shall credit such money and valuables to the resident entitled thereto and shall keep an accurate record of all moneys and valuables received or disbursed. This account is subject to examination by the head of the department which controls the institution. The administrator shall deposit such fiduciary funds received into federally insured account approved by the director of the department except for those funds required to be kept locally. The local funds shall be deposited in one or more responsible banks. The accounts shall be designated "resident trustee account."

The administrator shall ensure that proper disbursements are made from the "resident trustee account" when required for the maintenance of the resident or when agreed to by the resident.

The administrator shall deliver to the resident, or to the resident's responsible representative payee when applicable, at the time the resident leaves the institution all valuables or moneys then credited to the resident or, in the case of the death of a resident before leaving the institution, the administrator shall deliver such property to the resident's representative.

The administrator of the institution shall submit a monthly report to the head of the department controlling the institution. This report shall provide a reconciliation of each resident trustee account or other fiduciary account maintained by the institution.

The director of any department who receives these monthly reports shall submit each month to the Legislative Auditor a record of the reconciliations for each institution.

WV Legislature

§5-25-2. Management accounting system required.

(a) The commissioner of finance and administration shall within ninety days after this article initially goes into effect develop a system of management accounting for all bank accounts held by each state institution where funds are held in a fiduciary capacity for residents of the institution. The management accounting system shall include a method of internal management accounting control for funds held in a fiduciary capacity for residents of public institutions.

(b) The commissioner of finance and administration shall deliver proper instructions for instituting the system of management accounting to the heads of all departments which control state institutions where funds are held in a fiduciary capacity for residents. The department heads shall institute the system of management accounting at each institution under their control.

WV Legislature

§5-25-3. Money not part of state fund.

Money held in a fiduciary capacity for residents in state institutions in resident trustee accounts shall not be credited to the state fund nor treated by the State Auditor or State Treasurer as part of the General Revenue Fund of the state.

WV Legislature

§5-25-4. Resident trustee accounts claim against the state.

Any money held in a resident trustee account in any state institution which is in any manner misappropriated from that account may be recovered by the resident or the resident's legal representative under the provisions of article two, chapter fourteen of this code and such money is hereby specifically made a claim against the state for the purposes of such article.

WV Legislature

§5-26-1. Herbert Henderson Office of Minority Affairs; duties and responsibilities.

(a) The Herbert Henderson Office of Minority Affairs within the Office of the Governor is continued. The office shall:

(1) Provide a forum for discussion of issues that affect the state's minorities;

(2) Identify and promote best practices in the provision of programs and services to minorities;

(3) Review information and research that can inform state policy as to the delivery of programs and services to minorities;

(4) Make recommendations in areas of policy and allocation of resources;

(5) Apply for grants, and accept gifts from private and public sources for research to improve and enhance minority affairs;

(6) Integrate and coordinate state grant and loan programs established specifically for minority related issues;

(7) Award grants, loans and loan guaranties for minority affairs programs and activities in this state if such funds are available from grants or gifts from public or private sources;

(8) Identify other state and local agencies and programs that provide services or assistance to minorities;

(9) Establish the appropriate program linkages with related federal, state and local agencies and programs including, but not limited to, the Office of Minority Health located within the Department of Health and the Economic Development Authority established pursuant to article fifteen, chapter 31 of this code; and

(10) Provide recommendations to the Governor and the Legislature regarding the most appropriate means to provide programs and services to support minority groups in the state.

(b) On or before January 1 of each year, the office shall submit a report to the Governor and the Joint Committee on Government and Finance. The report may include, but is not limited to, findings and recommendations regarding:

(1) The extent to which programs and services for minorities are available in the state, and to which funding for providing those programs and services is available;

(2) The most appropriate means for the planning, delivery and evaluation of existing and needed programs and services for minority groups in the manner that best promotes diversity and regional, cultural and ethnic sensitivity;

WV Legislature

(3) Recommendations for the coordination of programs and services to minority groups throughout the state and with those of other states and the federal government;

(4) Identifications of governmental and private agencies, offices, departments or other entities in existence or recommended for creation that would, alone or in concert, most effectively improve the delivery of programs and services to minority groups throughout the state;

(5) Recommendations for changes to law that would facilitate the achievement of the objectives of the office; and

(6) Other matters as the office may determine appropriate to its purposes.

(c) The Governor shall appoint an executive director of the office to carry out its functions, and shall provide funding and offices for those purposes. The executive director shall serve at the will and pleasure of the Governor.

(d) The executive director may hire one administrative assistant to assist in carrying out the functions of the office.

(e) On or before January 1 of each year, the office shall report to the Select Committee on Minority Affairs Interim Committee on the efforts and progress of the office.

(f) The executive director shall review and consider any recommendations of the Select Committee on Minority Affairs Interim Committee's report and recommendations.

WV Legislature

§5-26-2. Minority Affairs Fund created; purpose.

There is continued in the State Treasury a Special Revenue Fund to be known as the "Minority Affairs Fund," shall consist of all gifts, grants, bequests, transfers, appropriations or other donations or payments received by the Herbert Henderson Office of Minority Affairs from any governmental entity or unit or any person, firm, foundation or corporation for the purposes of this article and all interest or other return earned from investment of the fund. Expenditures from the fund shall be made by the Executive Director of the Herbert Henderson Office of Minority Affairs to provide matching funds to obtain federal funds for the delivery of programs and services to minorities in this state, to award grants, loans and loan guaranties for minority affairs programs and activities and for performance of the duties of the office prescribed in this article. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions of article two, chapter eleven-b of this code.

WV Legislature

§5-26-2a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 9.

WV Legislature

§5-26-2b.

Repealed.

Acts, 2007 Reg. Sess., Ch. 9.

WV Legislature

§5-26-3. Establishment of a community-based pilot project.

(a) The office shall establish a community-based pilot project. The pilot expires on July 1, 2021. The pilot shall develop a model to promote public health through comprehensive community development in communities across West Virginia. This model shall address poverty, substance abuse and other social determinants of health; improve community and populations' health; improve labor force participation; and support economic development through comprehensive community development in rural, suburban and urban communities.

(b) As selected by the executive director, the pilot shall include a collaborative of nonprofit organizations.

(c) The pilot shall be funded by coordinating existing funded projects. The pilot shall leverage existing resources, including housing and urban development services provided by the federal government and any youth, education and family services offered by the state government or other local organizations. If funds are available, the pilot project may receive funding from the office.

(d) The office shall report to the Select Committee on Minority Affairs Interim Committee on the efforts and progress of the pilot program.

WV Legislature

§5-26-4.

Repealed.

Acts, 2007 Reg. Sess., Ch. 9.

WV Legislature

§5-26-5.

Repealed.

Acts, 2007 Reg. Sess., Ch. 9.

WV Legislature

§5-26-6.

Repealed.

Acts, 2007 Reg. Sess., Ch. 9.

WV Legislature

§5-26-7.

Repealed.

Acts, 2004 Reg. Sess., Ch. 126.

WV Legislature

§5-26-8.

Repealed.

Acts, 2007 Reg. Sess., Ch. 9.

WV Legislature

§5-26-9.

Repealed.

Acts, 2004 Reg. Sess., Ch. 126.

WV Legislature

§5-26A-1. Findings, purposes and intent.

The Legislature hereby finds and declares:

(a) The National and Community Service Trust Act of 1993, P. L. 103-82, was enacted to foster civic responsibility and to enable the citizens of the various states to participate in, for the benefit of their communities, various volunteer and other service programs including, but not limited to, community corps programs, youth corps programs, school and campus-based programs, professional corps programs, AmeriCorps programs, national senior service corps programs and VISTA programs.

(b) The National and Community Service Trust Act of 1993, P. L. 103-82, created the corporation for national and community service for the purpose of assisting the various states in the creation and operation of a statewide commission that would have as its purpose the encouragement, coordination and assistance of the efforts of individuals or other entities from both the public and private sectors to create or participate in local community service programs.

(c) The corporation for national and community service assists a state's commission by and through a grant to the commission that is equal to a percentage of the commission's administrative costs.

(d) The deadline for the creation of a state commission was January 1, 1994, if the state commission was to receive an administrative grant in the corporation for national and community service's fiscal year beginning in the calendar year 1994.

(e) The West Virginia commission for national and community service was created by an executive order of the Governor of the State of West Virginia made on January 28, 1994, but the executive order contemplated the enactment of legislation continuing the state commission in the next session of the Legislature.

(f) The West Virginia commission for national and community service has striven to develop a coordinated, unified plan in response to the National and Community Service Trust Act of 1993, P. L. 103-82, and to meet the social, environmental, educational and public safety needs of the State of West Virginia by instilling in its citizens a greater sense of pride in, and responsibility for, their communities.

(g) The Legislature intends to continue the West Virginia commission for national and community service for the purpose of complying with the provisions of the National and Community Service Trust Act of 1993, P. L. 103-82, and for the purpose of meeting the social, environmental, educational and public safety needs of the State of West Virginia by and through promotion and coordination of community outreach initiatives.

WV Legislature

§5-26A-2. Continuation of West Virginia commission for national and community service; support and assistance to commission.

(a) The West Virginia commission for national and community service is hereby continued as a state commission within the meaning of, and in accordance with, the provisions of the National and Community Service Act of 1990, as amended by the National and Community Service Trust Act of 1993, and the provisions of any rules or regulations promulgated under the act.

(b) By executive order, the Governor shall provide for any administrative support to the West Virginia commission for national and community service as the Governor may deem to be necessary.

(c) All agencies of the state shall provide such assistance and information to the West Virginia commission for national and community service as is necessary to ensure a fully coordinated effort throughout the state relating to the promotion of national and community volunteer service.

WV Legislature

§5-26A-3. Members.

(a) The West Virginia commission for national and community service shall have no fewer than fifteen and no more than twenty-five voting members to be appointed by the Governor.

(b) The voting membership of the West Virginia commission for national and community service shall include:

(1) At least one individual with expertise in the educational and developmental needs of the state's disadvantaged youth;

(2) At least one individual with experience in promoting the involvement of older adults in national or community service and volunteer programs;

(3) A representative of a community-based agency operating within the state;

(4) The State Superintendent of Schools or a designee;

(5) A representative of a county or municipal government;

(6) A representative of a local labor organization;

(7) A representative of a for-profit business operating within the state;

(8) An individual whose age is between the age of sixteen years and twenty-five years, inclusive, who has been, or remains, a participant or a supervisor in a volunteer or service program; and

(9) A representative of an arts or crafts organization.

(c) The membership of the West Virginia Commission for National and Community Service shall include a representative of the corporation for national and community service who shall serve as a member in a nonvoting, ex officio capacity.

(d) No more than twenty-five percent of the voting membership of the West Virginia commission for national and community service may be individuals who are employed by the state or its agencies, except that the membership may include additional employees of the state or its agencies in a nonvoting, ex officio capacity.

(e) No member of the West Virginia Commission for National and Community Service may vote on an issue affecting organizations for which the member has served as a staff person or as a volunteer at any time during the twelve-month period before the member's appointment to the commission.

(f) No more than fifty percent plus one of the members of the West Virginia Commission for National and Community Service may be members of the same political party.

WV Legislature

(g) To the extent possible, the membership of the West Virginia Commission for National and Community Service shall reflect the diversity of the state's population.

(h) Members of the West Virginia Commission for National and Community Service who were appointed under the executive order of the Governor entered on January 28, 1994, shall continue as members of the commission for a term of three years, except that the Governor shall designate eight members who shall serve for a term of two years and shall also designate an additional eight members who shall serve for a term of one year. Additional appointments by the Governor under the provisions of this section and appointments by the Governor upon the expiration of a member's term shall be made for a term of three years. Appointments of members by the Governor to serve for an unexpired term shall be for the remainder of the unexpired term. Members may be reappointed.

(i) The voting members of the West Virginia Commission for National and Community Service shall annually elect a voting member to serve as the chair of the commission.

(j) The members of the West Virginia Commission for National and Community Service shall meet at the call of the chair, who shall be obligated to call a meeting at the request of a simple majority of the members or as necessary to ensure that the members have met at least twice in each calendar year of the commission's operation.

(k) The members of the West Virginia Commission for National and Community Service shall serve without compensation, except that the members of the commission who are not state employees shall be reimbursed for their actual and necessary expenses incurred in discharging their duties and responsibilities as members of the commission.

WV Legislature

§5-26A-4. Duties and responsibilities.

The West Virginia commission for national and community service shall have the duties and responsibilities set forth in the provisions of the National and Community Service Act of 1990, as amended by the National and Community Service Trust Act of 1993, and the provisions of any rules or regulations promulgated under the act. The duties and responsibilities include:

(a) Advising and assisting the Governor in the development and implementation of a comprehensive statewide plan for promoting volunteer involvement and citizen participation in programs which are designed to serve the needs of the citizens of the state and its communities;

(b) Fulfilling federal program administration requirements, including the provision of health care and child care for program participants;

(c) Submitting annual state applications for the federal funding of the americorps programs that are selected by the commission;

(d) Integrating americorps programs, existing VISTA and national senior service corps programs, and K-12 learn and serve programs into the state's strategic service plan;

(e) Conducting local outreach to develop a comprehensive and inclusive state service plan;

(f) Coordinating with existing programs for service and volunteerism in order to prevent unnecessary competition for private sources of funding;

(g) Providing technical assistance to service and volunteer programs, including the development of training methods and curriculum materials;

(h) Developing a statewide recruitment and placement system for individuals who are interested in community service opportunities;

(i) Preparing quarterly reports on progress for submission to the Governor and preparing an annual report for submission to the Governor and the Legislature on or before January 1, of each year which shall detail the commission's activities for the preceding year; and

(j) Serving as the state's liaison to national and state entities or other organizations which also promote national and community service and volunteerism.

WV Legislature

§5-26A-5. Powers.

(a) The West Virginia commission for national and community service may apply for and accept funds, grants, gifts and services from local government, the state or the federal government, or any of their agencies, or from any other public or private source and is authorized to use funds derived from these sources to defray administrative costs and implement programs to fulfill the commission's duties and responsibilities.

(b) The West Virginia commission for national and community service shall accept on behalf of the Governor any reports that relate to community service and volunteerism issues and that are required to be submitted to the Governor by the provisions of the Code of West Virginia.

WV Legislature

§5-26A-6.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5-27-1. Severability.

Pursuant to section ten, article two, chapter two of this code, if any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the chapter, and to this end the provisions of this chapter are declared to be severable.

WV Legislature

§5-28-1. Legislative findings.

The Legislature finds and declares:

(1) That the holocaust perpetrated by the Nazis during the period between one thousand nine hundred thirty-three and one thousand nine hundred forty-five resulted in the genocide of six million Jews and millions of nonJews as part of a carefully orchestrated central government program;

(2) That the holocaust stands as a grim reminder and warning to all generations of genocidal crimes and atrocities committed by man based on ignorance and fear and that all people should rededicate themselves to the principles of human rights and equal protection under the laws of a democratic society;

(3) That education can ensure that citizens are knowledgeable about the events leading up to the holocaust and about the organizations and facilities that were created and used purposefully for the systematic destruction of human beings and that the lessons of holistic trust and respect for peoples of various cultures are important for the citizens of West Virginia as they enter the global marketplace and economy;

(4) That programs, workshops, institutes, seminars, exhibits and other teacher training and public awareness activities for the study of the holocaust have taken place during recent years, but a central resource for schools, churches and communities studying the holocaust is needed;

(5) That, toward that end, the Governor, by executive order No. 2-98, dated April 16, one thousand nine hundred ninety-eight, created and established the West Virginia holocaust commission on education; and

(6) That, in furtherance of the intent and purposes of the aforesaid executive order, it is the intent of the Legislature to create a permanent state commission which, as an organized body and on a continuous basis, will survey, design, encourage and promote implementation of holocaust education and awareness programs in West Virginia and will be responsible for organizing and promoting the memorialization of the holocaust on a regular basis throughout the state.

WV Legislature

§5-28-2. Commission on holocaust education; compensation.

(a) Effective July 1, 2001, there is created the West Virginia commission on holocaust education.

(b) The commission is composed of eleven members: Two members currently serving on the state Board of Education, selected by the board; the state Superintendent of Schools or his or her designee; the director of the division of veterans' affairs; one attorney from the Attorney General's office, civil rights division; one teacher who has completed professional development related to holocaust education teaching at the high-school level and one teacher who has completed professional development related to holocaust education teaching at the junior-high or middle-school level, each appointed by the Governor with the advice and consent of the Senate; and four state residents, appointed by the Governor, with the advice and consent of the Senate, who shall be: Individuals who are holocaust scholars or individuals experienced in the field of holocaust education or survivors, second generation, eye-witness/liberators or individuals recommended by the chair of the present holocaust education commission, created by executive order, who, by virtue of their interest, education or long-term involvement in human rights, prejudice reduction and holocaust education have demonstrated, through their past commitment and cooperation with the existing holocaust commission on education, their willingness to work for holocaust awareness and education in West Virginia.

(c) Members of the commission shall be appointed for terms of three years or until their prospective successors are appointed and qualified. Members are eligible for reappointment. Any member of the commission who fails to attend more than two consecutive meetings without an excuse approved by the commission may be removed from the commission. All vacancies shall be filled by appointment in the same manner as the original appointment and the individual appointed to fill the vacancy serves for the remainder of the unexpired term.

(d) The Governor shall appoint a chairperson for the commission for a term of three years and until his or her successor is appointed and qualified.

(e) The Speaker of the House of Delegates shall appoint a member of the House of Delegates and the President of the Senate shall appoint a member of the Senate to serve as advisors to the commission.

(f) Members of the commission are not entitled to compensation for services performed as members but may be reimbursed for actual and necessary expenses incurred for each day engaged in the performance of their official commission duties in a manner consistent with the guidelines of the travel management office of the Department of Administration.

WV Legislature

§5-28-3. Commission powers and duties.

(a) The commission shall:

(1) Provide, based upon the collective knowledge and experience of its members, assistance and advice to public and private schools, colleges and universities with respect to the implementation of holocaust education and awareness programs;

(2) Meet with appropriate education officials and other interested public and private organizations, including service organizations, for the purpose of providing information, planning, coordination or modification of courses of study or programs dealing with the subject of the holocaust;

(3) Compile a roster of individual volunteers who are willing to share their verifiable knowledge and experiences in classrooms, seminars and workshops on the subject of the holocaust. The volunteers may be survivors of the holocaust, liberators of concentration camps, scholars, members of the clergy, community relations professionals or other persons who, by virtue of their experience, education or interest, have experience with the holocaust;

(4) Coordinate events memorializing the holocaust and seek volunteers who are willing and able to participate in commemorative events that will enhance public awareness of the significance of the holocaust; and

(5) Prepare annual reports for the Governor and the Legislature regarding its findings and recommendations to facilitate the inclusion of holocaust studies and special programs memorializing the holocaust in educational systems in this state.

(b) The commission may accept and use for the benefit of the people of West Virginia any gift or devise of any property or thing which is lawfully given and is authorized to accept state funds as the same may be appropriated by the Legislature.

WV Legislature

§5-28-4.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5-29-1. Purpose of article.

The purpose of this article is to provide for more expeditious and efficient issuance of permits, licenses or certificates by state regulatory agencies to business entities that are in good standing in the payment of taxes and other obligations to the state. For the purposes of this article, a business entity in good standing is one that:

(1) Has conducted commercial activities in this state for at least two years;

(2) Has paid any business tax, workers' compensation or unemployment compensation premiums due in the preceding two years; and

(3) Has not engaged in activities for which any claim of a substantial violation of any statute or rule has occurred in the previous two years.

WV Legislature

§5-29-2. Regulatory agencies to study expedited permits, licenses and certificates; reports to the Legislature.

(a) The following regulatory agencies shall study, review and develop a plan for expediting the issuance and renewal of permits, licenses and certificates for business entities in good standing:

(1) Division of labor;

(2) The office of miners' health, safety and training;

(3) The Division of Forestry;

(4) The Office of Health Facilities Licensure and Certification; and

(5) The Department of Environmental Protection excepting the oil and gas inspectors' examining board.

(b) On or before December 1, 2004, each agency to which this article applies shall file a report with the joint standing committee on government organization, setting forth the findings of its study, its plan to expedite the issuance and renewal of permits, licenses and certificates to business entities in good standing, and its recommendations for any legislation required to meet the purposes of this article.

WV Legislature

§5-30-1. Purpose of article.

The purpose of this article is to ensure and increase public confidence in state regulation of professions, occupations, and trades by making lists of all individuals who have obtained approval to practice in the state available to the public upon request and electronically.

WV Legislature

§5-30-2. Roster of licensed, registered, or certified practitioners to be made available to the public; exception.

The secretary or director of every board, commission, agency, or entity that issues licenses, registrations, or certificates, or otherwise authorizes individuals to practice a profession, occupation, or trade in this state, except for those subject to the provisions of §30-1-13 of this code, shall prepare and maintain a complete roster of the names of all persons licensed, registered, certified, or otherwise authorized to practice in this state the profession, occupation, or trade to which such board, commission, agency, or entity relates, arranged alphabetically by name. Each such board, commission, agency, or entity shall make the roster available upon request to any member of the public and shall also place and maintain the roster on its website if it maintains one.

WV Legislature

§5-31-1. Legislative findings.

(a) The citizens of West Virginia, its local governments, and its communities have entered into a memorandum of understanding. The memorandum of understanding known as the West Virginia First Memorandum of Understanding was filed in the Circuit Court of Kanawha County, calling for, inter alia, the creation of the West Virginia First Foundation.

(b) The citizens of West Virginia, its local governments, its communities, and the Legislature are committed to ensure that all opioid funds received in settlement of litigation in the cases which are the subject of the memorandum of understanding are used in a manner consistent with evidence-based strategies, programming, and services used to expand the availability of treatment for individuals affected by substance use disorders and addiction; to develop, promote, and provide evidence-based substance use prevention strategies; to provide substance use avoidance and awareness education; to engage in enforcement to curtail the sale, distribution, and promotion or use of opioids and other drugs; to decrease the oversupply of illicit opioids; and to support recovery from addiction performed by qualified providers.

(c) The creation of a private foundation will advance the goal of abating the opioid epidemic by providing a long-term steady stream of money to fund the efforts by both private and governmental entities.

(d) All 55 counties and virtually all participating municipalities, representing 99.6 percent of the population of West Virginia, have executed the memorandum of understanding.

(e) The circuit court of Kanawha County in Civil Action No. 19-C-9000, has adopted and approved the memorandum of understanding and the abatement structure created in the memorandum of understanding, including, but not limited to, the creation of a private foundation for the purposes set forth in the memorandum of understanding.

WV Legislature

§5-31-2. Definitions.

"Approved purposes" means those purposes set forth in Appendix A of the memorandum of understanding for which expenditures are authorized.

"Expert panel" means the group of individuals, appointed by the governing board, having substantive expertise in the fields of substance abuse, mental health, law enforcement, finance, health care policy, and management to assist the foundation.

"Foundation" means the West Virginia First Foundation created under the memorandum of understanding.

"Governing board" means the board of directors for the non-profit foundation recognized in §5-31-3 of this code.

"Local governments" means the counties and municipalities that are parties to the memorandum of understanding.

"Memorandum of understanding" means the West Virginia First Memorandum of Understanding approved by order and entered by the circuit court of Kanawha County as referenced in §5-31-1 *et seq*. of this code.

"Opioid funds" means funds that are obligated to be transferred or are transferred to the foundation from any source, including, but not limited to, those settlements subject to the terms of the memorandum of understanding.

"Order" means the order of the circuit court of Kanawha County referenced in §5-31-1 *et seq*. of this code adopting and approving the memorandum of understanding and the abatement structure created in the memorandum of understanding, including, but not limited to, the creation of a private foundation for the purposes set forth in the memorandum of understanding.

"Region" means any of the six geographic regions established pursuant to the order and Exhibit B of the memorandum of understanding.

WV Legislature

§5-31-3. West Virginia First Foundation.

A private foundation in keeping with the order, known as the West Virginia First Foundation, that qualifies under Internal Revenue Code Section 501(c)(3), and created by the parties to the memorandum of understanding is recognized. The foundation shall have a governing board, an expert panel, and other additional and regional entities necessary for the purpose of receiving and disbursing opioid funds and other purposes set forth in the order and the memorandum of understanding. The operation of the West Virginia First Foundation shall be governed by its articles of incorporation and any by-laws adopted consistent with the provisions of the memorandum of understanding and the order.

WV Legislature

§5-31-4. West Virginia First Foundation Board composition; executive director.

(a) The governing board shall consist of 11 members representing:

(1) The interests of the State of West Virginia. The Governor shall appoint five members to the governing board with the advice and consent of the Senate. The Governor may not appoint more than one member from a region, unless authorized by a vote of four of the six governing board members selected by the regions; and

(2) The interests of local government. The local governments in each of the six regions shall make the selection of the governing board member to represent their region.

(b) The terms for governing board members shall be staggered three-year terms. Governing board members may be reappointed.

(c) Governing board members shall serve as fiduciaries of the West Virginia First Foundation separate and apart from any representational capacity of the entity approving the governing board member. Members of any regional governing structure shall also serve as fiduciaries of their region separate and distinct from any representational capacity of the entity appointing the member.

(d) Governing board members should have expertise in a variety of disciplines, such as substance abuse treatment, mental health, law enforcement, pharmacology, finance, and health care policy and management. Drawing governing board members from these disciplines will help to ensure that the governing board makes appropriate and prudent investments in order to meet short-term and long-term goals and ensure that expenditures by the governing board are consistent with the mission and purpose of the foundation.

(e) The Attorney General shall appoint an executive director after consultation with the board. The governing board may reject the Attorney General's selection of the executive director only on the affirmative vote of eight members of the governing board. The executive director shall have at least six years of experience in health care, finance, and management and is responsible for the management, organization, and preservation of the public/private partnership's records. The executive director may be removed by the governing board upon the concurrence of the votes of three fourths of the members of the governing board.

WV Legislature

§5-31-5. Audits and annual reports.

(a) The operations of the foundation and the entities it supervises are subject to audit and review by the Attorney General.

(b) Each local government shall submit an annual financial report to the foundation no later than April 30 of each year specifying the amounts spent on approved purposes within the region during the previous fiscal year. A report for each region shall be prepared no later than 30 days thereafter. Each region's report shall incorporate the information disclosed in each local government's annual report. Each region's report shall specify: (1) The amount of opioid funds received; (2) the amount of opioid funds disbursed or applied during the previous fiscal year, broken down by categories of approved uses; and (3) impact information measuring or describing the progress of the approved use strategies. The foundation shall publish a consolidated report detailing annual financial expenditures within 15 days of the last day of the state fiscal year covered by the report.

WV Legislature

§5-32-1. Purpose and general application.

(a) The purpose of this article is to:

(1) Reaffirm the longstanding meaning of sex, male, and female in state law.

(2) Preserve women's restrooms, multiple occupancy restrooms or changing rooms, and sleeping quarters for women in facilities where women have been traditionally afforded privacy and safety from acts of abuse, harassment, sexual assault, and violence committed by men.

(3) Bring clarity, certainty, and uniformity to the laws of the state regarding sex discrimination, privacy, equality of the sexes, and benefits or services specifically provided to men and women.

(b) This article shall apply wherever the state or an instrumentality of the state classifies people on the basis of sex or otherwise defines people as being female or male, women or men, girls or boys.

(c) This article shall not be enforced in any manner inconsistent with or in violation of the ruling in Grimm v. Gloucester School Board, 972 F.3d. 586 (4th Cir. 2020). If a decision by the Supreme Court of the United States or by the United States Court of Appeals for the Fourth Circuit overrule or otherwise render the Grimm decision ineffective, then the limitations on enforcement imposed by this subsection shall be considered repealed.

WV Legislature

§5-32-2. Findings.

(a) Males and females are legally equal, but they are not biologically the same.

(b) Males and females possess unique and immutable biological differences that manifest prior to birth and increase as they age and experience puberty.

(c) These unique and immutable biological differences mean that females and males are not similarly situated in all circumstances and are not interchangeable.

(d) Inconsistencies in court rulings and policy initiatives regarding sex discrimination and common sex-based words have endangered women's rights and resources and have put the existence of private, single-sex spaces in jeopardy, thereby necessitating clarification of certain terms used in this code.

(e) The hard-earned legal equality between men and women is enshrined in the Fourteenth Amendment to the U.S. Constitution, federal laws including Title IX of the Education Amendments of 1972, and Article III, Section 10 of the West Virginia Constitution.

(f) In describing equality for women under the Fourteenth Amendment, the U.S. Supreme Court has explained that laws and governmental policies may account for the "enduring" physical differences between the sexes as set forth in United States v. Virginia, 518 U.S. 515, 533 (1996).

(g) These physical differences include differences in reproductive anatomy, the basis for separate-sex facilities designed to protect the safety and personal privacy of women and girls. Personal privacy is a natural instinct rooted in biological realities, including the facts that males alone have the biological capability to impregnate women and that males are, on average, physically larger and stronger than women. The state should protect spaces where women have been traditionally afforded privacy and safety from acts of abuse, harassment, sexual assault, and violence committed by men, just as the state should protect women and girls' natural desire to avoid exposing their bodies to males with whom they have limited, if any, relationships.

WVLegislature

§5-32-3. Definitions of terms used in the code and Code of State Rules.

As used in this code and/or any administrative rules, regulations, or public policies adopted by the state or its instrumentalities:

(1) A "woman" is an adult human of the female sex, and a "man" is an adult human of the male sex.

(2) A "girl" is a human female who is a legal minor, and a "boy" is a human male who is a legal minor: *Provided*, That the use of the term "girl" or "boy" in reference to the participation of a high school-aged individual in a school or extracurricular program in accordance with the laws of the state shall not be understood to exclude the participation of a student who is legally an adult.

(3) A "mother" is a female parent of a child or children.

(4) A "father" is a male parent of a child or children.

(5) A "female", when this term is used in reference to a natural person, is an individual who naturally has, had, will have through the course of normal development, or would have but for a developmental anomaly, genetic anomaly, or accident, the reproductive system that at some point produces, transports, and utilizes ova for fertilization.

(6) A "male", when this term is used in reference to a natural person, is an individual who naturally has, had, will have through the course of normal development, or would have but for a developmental anomaly, genetic anomaly, or accident, the reproductive system that at some point produces, transports, and utilizes sperm for fertilization.

(7) "Sex", when this term is used to classify or describe a natural person, means the state of being either male or female as observed or clinically verified at birth. There are only two sexes, and every individual is either male or female: *Provided*, That individuals with congenital and medically verifiable "DSD conditions" (sometimes referred to as "differences in sex development", "disorders in sex development", or "intersex conditions") are not members of a third sex and must be accommodated consistent with state and federal law.

(8) "Domestic violence shelter" means a residential service offered by a licensed domestic violence program on a temporary basis, to persons who are victims of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children, as established by §48-26-214 of this code, and that receives funding from the West Virginia Department of Human Services.

(9) "Public school" means any school under the general supervision of the West Virginia Board of Education pursuant to Article XII, Section 2 of the Constitution of West Virginia.

(10) "State institution of higher education" means any university, college, or community and technical college under the jurisdiction of a governing board as defined in §18B-1-2 of this

WV Legislature

code.

(11) "Multiple occupancy restroom or changing room" means an area designed or designated to be used by more than one individual at the same time and in which one or more individuals may be in various stages of undress in the presence of other individuals. Such term includes, but shall not be limited to, the following:

(A) Restrooms;

(B) Locker rooms; and

(C) Shower rooms.

(12) "Changing area" means an area designed or designated to be used by one or more individuals at the same time and in which one or more individuals may be in various stages of undress. Such term includes, but shall not be limited to, restrooms.

(13) "Sleeping quarters" means a room with more than one bed and in which more than one individual is housed overnight.

WV Legislature

§5-32-4. Sex-based protections permitted and standard of review.

Notwithstanding any other provision of law to the contrary, no state or local governmental agency may prohibit distinctions between the sexes with respect to domestic violence shelters, or other accommodation where biology, safety, or privacy are implicated and that result in separate accommodations that are substantially related to the important government interest of protecting the health, safety, and privacy of individuals in such circumstances: *Provided*, That nothing in this article shall be construed as authorizing an examination of a minor for purposes of determining the minor's biological sex. The biological sex of a minor is determined by reference to the minor's biological sex recorded at the minor's time of birth.

WV Legislature

§5-32-5. Safety and privacy in domestic violence shelters.

(a) To ensure the privacy and safety of women in domestic violence shelters, each such shelter shall:

(1) Designate sleeping quarters and multiple occupancy restrooms or changing rooms:

(A) For the exclusive use of females; or

(B) For the exclusive use of males; and

(2) Provide a reasonable accommodation to an individual who is unwilling or unable to use sleeping quarters or a multiple occupancy restroom or changing room designated for such individual's sex.

(A) A reasonable accommodation under this paragraph may include, but shall not necessarily be limited to, allowing such individual to access a single-occupancy sleeping area, restroom, or changing area.

(B) A reasonable accommodation under this paragraph shall not include allowing such individual to access a single-occupancy sleeping area or sleeping quarters, restroom, or changing area that is designated for use by members of the opposite sex while members of the opposite sex of the individual are present or may be present in the single-occupancy sleeping area or sleeping quarters, restroom, or changing area.

(b) This section shall not be construed or applied to prohibit an individual from entering a multiple occupancy restroom or changing room or sleeping quarters designated for the opposite sex when he or she enters such area for one of the following reasons:

(1) For authorized custodial, maintenance, or inspection purposes;

(2) To render medical assistance;

(3) To render assistance by law enforcement;

(4) To provide services or render aid during a natural disaster, a declared emergency, or when necessary to prevent a serious threat to good order or safety; or

(5) For young children, to accompany an adult caretaker.

(c) Nothing in this section shall be construed to prohibit a domestic violence shelter from adopting policies necessary to accommodate persons protected under the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, as amended.

WV Legislature

§5-32-6. Safety and privacy in restrooms of public schools and state institutions of higher education.

(a) To ensure the privacy and safety of students, each public school system in this state and each state institution of higher education shall:

(1) Designate multiple occupancy restrooms or changing rooms:

(A) For the exclusive use of females;

(B) For the exclusive use of males; and

(2) Provide a reasonable accommodation to an individual who is unwilling or unable to use a multiple occupancy restroom or changing area designated for such individual's sex.

(A) A reasonable accommodation under this paragraph may include, but shall not necessarily be limited to, allowing such individual to access a single-occupancy restroom or changing area.

(B) A reasonable accommodation under this paragraph shall not include allowing such individual to access a restroom or changing area that is designated for use by members of the opposite sex while members of the opposite sex of the individual are present or may be present in the restroom or changing area.

(b) A public school that sponsors or supervises an overnight trip involving public school students or state institution of higher education that sponsors or supervises an overnight trip involving students shall ensure that any student attending the overnight trip either:

(1) Shares sleeping quarters with a member or, if necessary, multiple members, of the same sex; or

(2) Is provided single-occupancy sleeping quarters.

Notwithstanding the foregoing, a public school student attending an overnight trip may share sleeping quarters with a member of the opposite sex if the member of the opposite sex is a member of such student's immediate family. Additionally, a state institution of higher education student may share sleeping quarters with a member of the opposite sex if the state institution of higher education student and the person of opposite sex both agree to shared sleeping quarters in advance of the sponsored or supervised overnight trip.

(c) This section shall not be construed or applied to prohibit an individual from entering a multiple occupancy restroom or changing room designated for the opposite sex when he or she enters such area for one of the following reasons:

(1) For authorized custodial, maintenance, or inspection purposes;

WV Legislature

(2) To render medical assistance;

(3) To render assistance by law enforcement;

(4) To provide services or render aid during a natural disaster, a declared emergency, or when necessary to prevent a serious threat to good order or safety; or

(5) For young children, to accompany an adult caretaker.

(d) Nothing in this section shall be construed to prohibit a public system or a state institution of higher education from adopting policies necessary to accommodate persons protected under the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq*., as amended, or the West Virginia Human Rights Act, West Virginia Code §16B-17-1 *et seq*.

WV Legislature

§5-32-7. Safety and privacy in correctional institutions.

(a) To ensure the privacy and safety of women in the custody of the Commissioner of the Division of Corrections and Rehabilitation, each institution managed by the Commissioner of Corrections and Rehabilitation shall designate sleeping quarters, multiple occupancy restrooms, and shower facilities:

(1) For the exclusive use of females; or

(2) For the exclusive use of males.

(b) This section shall not be construed or applied to prohibit an individual who is not an inmate from entering sleeping quarters, multiple occupancy restrooms, or shower facilities designated for the opposite sex when he or she enters such area for one of the following reasons:

(1) For authorized custodial, maintenance, or inspection purposes;

(2) To render medical assistance;

(3) To render assistance by law enforcement;

(4) To provide services or render aid during a natural disaster, a declared emergency, or when necessary to prevent a serious threat to good order or safety; or

(5) For the operational needs of the institution.

(c) Nothing in this section shall be construed to prohibit the Division of Corrections and Rehabilitation from adopting policies necessary to comply with the Prison Rape Elimination Act of 2003, 42 U.S.C §15602, as amended, to accommodate persons protected under the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq*., as amended, or to comply with any other applicable state or federal law.

WV Legislature

§5-32-8. Promoting accuracy in sex-based data collection.

(a) Males and females possess unique and immutable biological differences that can manifest in unique risks, harms, or sex-based discrimination, including crime victimhood, access to pregnancy and nursing-related resources, and substance abuse.

(b) To understand and address sex-based differences particularly, data must be accurately collected on the basis of sex. Failure to do so risks improper identification and alleviation of trends and harms affecting citizens of the state.

(c) Any public school, public school district, state institution of higher education, state agency, or subdivision of the state that directly collects vital statistics related to sex or the categories of male and female for the purpose of complying with anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic, or other data shall identify each natural person who is part of the collected data set as either male or female as defined in this article.

(d) Compliance with this section shall not require the collection of data related to sex unless otherwise required by law, nor shall it prevent the collection of additional data points other than sex.

WV Legislature

§5-32-9. Severability.

If any provision of this article or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this article are severable and their application to any person or circumstance shall not be affected thereby.

WV Legislature

§5-33-1. Legislative findings.

The purpose of this article is to ensure that the various departments, divisions, agencies, and boards of the State of West Virginia are treating individuals as equals under the law with respect to recruitment, hiring, promotion, and training.

WV Legislature

§5-33-2. Definitions.

As used in this article:

(1) "Diversity, equity, and inclusion" means any action, attempt, or effort to:

(A) Influence hiring or employment practices with respect to race, color, sex, ethnicity, or national origin, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal anti-discrimination laws;

(B) Promote or provide special benefits to individuals on the basis of race, color, ethnicity, or national origin;

(C) Promote policies or procedures designed or implemented in reference to race, color, ethnicity, or national origin, other than to ensure compliance with an applicable court order or state or federal law; or

(D) Conduct trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, or national origin, other than trainings, programs, or activities developed for the sole purpose of ensuring compliance with an applicable court order or state or federal law;

(2) "Ethnic group" means a category of population that is set apart and bound together by common ties of race, language, nationality, or culture;

(3) "Race" means any one of the groups that humans are often divided into based on physical traits regarded as common among people of shared ancestry; and

(4) "Sex", when this term is used to classify or describe a natural person, means the state of being either male or female as observed or clinically verified at birth. There are only two sexes, and every individual is either male or female: *Provided*, That individuals with congenital and medically verifiable "DSD conditions" (sometimes referred to as "differences in sex development", "disorders in sex development", or "intersex conditions") are not members of a third sex and must be accommodated consistent with state and federal law.

WV Legislature

§5-33-3. Prohibition.

(a) No department, division, agency, or board of this state may:

(1) Establish or maintain an office or division or other unit by any name whose purpose, in whole or in part, is the promotion of diversity, equity, and inclusion;

(2) Hire or assign an employee or contract with a third party to promote diversity, equity, and inclusion;

(3) Compel, require, induce, or solicit any person to provide a diversity, equity, and inclusion statement or give preferential consideration to any person based on the provision of a diversity, equity, and inclusion statement;

(4) Give preference on the basis of diversity, equity, and inclusion to an applicant for employment, an employee, or a participant in any function of the office or department; or

(5) Requiring as a condition of employment that an employee participate in diversity, equity, and inclusion training.

(b) Nothing in this article may be construed to abrogate individuals' rights and causes of action under the West Virginia Human Rights Act.

WV Legislature