WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

ENROLLED

HOUSE BILL No. 2637

Hutchins, L. White, Givens, Ennis, Anderson and Manuel
(By Delegates)

Passed April 12, 1997

In Effect July 1, 1997
AN ACT to amend and reenact section two, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirteen, article five, chapter eighteen of said code; and to amend and reenact section one, article one, chapter eighteen-a of said code, all relating to insurance benefits for county board of education employees who job-share.

Be it enacted by the Legislature of West Virginia:

That section two, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section thirteen, article five, chapter eighteen be amended and reenacted; and that section one, article one, chapter eighteen-a be amended and reenacted to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. 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:

(1) "Advisory board" means the public employees insurance agency advisory board created by this article.

(2) "Agency" means the public employees insurance agency created by this article.

(3) "Director" means the director of the public employees insurance agency, created by this article.

(4) "Employee" means any person, including elected officers, 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 elected officers, who works regularly full time in the service of a county board of education; 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 comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven 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 university of West Virginia board of trustees or the board of directors of the state college system; and any person who works regularly full time in the service of a combined city-county health department created pursuant to article two, chapter sixteen of this code. On and after the first day of January, one thousand nine hundred ninety-four, 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 deemed to be an "employee" during the term of office.
of the elected member: *Provided,* That the elected member shall pay the entire cost of the premium if he or she elects to be covered under this act. 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 the first day of July, one thousand nine hundred ninety-seven, a person shall be considered an “employee” if that person meets the following criteria:

(i) Participates in a job-sharing arrangement as defined in section one, article one, chapter eighteen-a of this code;

(ii) Has been designated, in writing, by all other participants in that job-sharing arrangement as the “employee” for purposes of this section; and

(iii) Works at least one third of the time required for a full-time employee.

(5) “Employer” means the state of West Virginia, its boards, agencies, commissions, departments, institutions or spending units; a county board of education; 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 comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven 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 article two, chapter sixteen of this code. 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.
(6) "Finance board" means the public employees insurance agency finance board created by this article.

(7) "Plan" means the medical indemnity plan or a managed care plan option offered by the agency.

(8) "Retired employee" means an employee of the state who retired after the twenty-ninth day of April, one thousand nine hundred seventy-one, and an employee of the university of West Virginia board of trustees or the board of directors of the state college system or a county board of education who retires on or after the twenty-first day of April, one thousand nine hundred seventy-two, and all additional eligible employees who retire on or after the effective date of this article and meet the minimum eligibility requirements for their respective state retirement system: Provided, That for the purposes of this article, the employees who are not covered by a state retirement system 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.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.


The boards, subject to the provisions of this chapter and the rules of the state board, have authority:

(i) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection with the schools and school interests, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit the records and to conserve the funds,
which shall be considered quasi-public moneys, including securing surety bonds by expenditure of board moneys;

(2) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools and programs, or both, for post high school instruction, subject to approval of the state board of education;

(3) To close any school which is unnecessary and to assign the pupils of the school to other schools: Provided, That the closing shall be officially acted upon and teachers and service personnel involved notified on or before the first Monday in April, in the same manner as provided in section four of this article, except in an emergency, subject to the approval of the state superintendent, or under subdivision (5) of this section;

(4) To consolidate schools;

(5) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month's salary;

(6) (a) To provide at public expense adequate means of transportation, including transportation across county lines, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense and according to such rules as the board may establish, adequate means of transportation for school children participating in board-approved curricular and extracurricular activities; and to provide in addition thereto at public expense, by rules and within the available revenues, transportation for those within two miles distance; to provide in addition thereto, at no cost to the board and according to rules established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging: Provided, That all costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne
by the commission, or the local or county chapter of the commission: Provided, however, That in all cases the school buses owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided further, That the county board may provide, under rules established by the state board, for the certification of professional employees as drivers of board-owned vehicles with a seating capacity of less than ten passengers used for the transportation of pupils for school-sponsored activities other than transporting students between school and home: And provided further, That the use of the vehicles shall be limited to one for each school-sponsored activity: And provided further, That buses shall be used for extracurricular activities as provided in this section only when the insurance provided for by this section is in effect;

(b) To enter into agreements with one another to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of subdivisions (6) and (8) of this section;

(7) (a) To lease school buses operated only by drivers regularly employed by the board to public and private nonprofit organizations or private corporations to transport school-age children to and from camps or educational activities in accordance with rules established by the board. All costs and expenses incurred by or incidental to the transportation of the children shall be borne by the lessee;

(b) To contract with any college or university or officially recognized campus organizations to provide transportation for college or university students, faculty or staff to and from the college or university: Provided, That only college and university students, faculty and staff are being transported. The contract shall include consideration and compensation for bus operators, repairs and other costs of service, insurance and any rules concerning student behavior;
(8) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils is contracted, then the contract for the transportation shall provide that the contractor shall carry insurance against negligence in an amount specified by the board;

(9) To provide solely from county funds for all regular full-time employees of the board all or any part of the cost of a group plan or plans of insurance coverage not provided or available under the West Virginia public employees insurance act.

(10) To employ teacher aides, to provide in-service training for teacher aides, the training to be in accordance with rules of the state board and, in the case of service personnel assuming duties as teacher aides in exceptional children programs, to provide a four-clock-hour program of training prior to the assignment which shall, in accordance with rules of the state board, consist of training in areas specifically related to the education of exceptional children;

(11) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach in the high school or post high school program;

(12) To employ legal counsel;

(13) To provide appropriate uniforms for school service personnel;

(14) To provide at public expense and under rules as established by any county board of education for the payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board of education;

(15) To allow or disallow their designated employees to use publicly provided carriage to travel from their residences to their workplace and return: Provided, That the usage is subject to the supervision of the board and is
directly connected with and required by the nature and in
the performance of the employee's duties and
responsibilities;

(16) To provide, at public expense, adequate public
liability insurance, including professional liability
insurance for board employees;

(17) To enter into agreements with one another to
provide, on a cooperative basis, improvements to the
instructional needs of each county. The cooperative
agreements may be used to employ specialists in a field of
academic study or support functions or services, for the
academic study. The agreements are subject to approval
by the state board of education;

(18) To provide information about vocational or
higher education opportunities to students with
handicapping conditions. The board shall provide in
writing to the students and their parents or guardians
information relating to programs of vocational education
and to programs available at state funded institutions of
higher education. The information may include sources
of available funding, including grants, mentorships and
loans for students who wish to attend classes at institutions
of higher education; and

(19) To enter into agreements with one another, with
the approval of the state board, for the transfer and receipt
of any and all funds determined to be fair when students
are permitted or required to attend school in a county
other than the county of their residence.

(20) To enter into job sharing arrangements, as
defined in section one, article one, chapter eighteen-a of
this code, with its professional employees: Provided, That
a job sharing arrangement shall meet all the requirements
relating to posting, qualifications and seniority, as
provided for in article four, chapter eighteen-a of this
code: Provided, however, That, notwithstanding any
provisions of this code to the contrary, a county board
which enters into a job-sharing arrangement wherein two
or more professional employees voluntarily share an
authorized full-time position shall provide the mutually
agreed upon employee coverage but shall not offer insurance coverage to more than one of the job sharing employees, including any group plan or group plans available under the state public employees insurance act: Provided, further, That all employees involved in the job sharing agreement meet the requirements of subdivision four, section two, article sixteen, chapter five of this code.

"Quasi-public funds" as used in this section means any money received by any principal, teacher, student or other person for the benefit of the school system as a result of curricular or noncurricular activities.

The board of each county shall expend under rules it establishes for each child an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

CHAPTER 18A. SCHOOL PERSONNEL.

§18A-1-1. Definitions.

The definitions contained in section one, article one, chapter eighteen shall be applicable to this chapter. In addition, the following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "School personnel" means all personnel employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. School personnel shall be comprised of two categories: Professional personnel and service personnel.

(b) "Professional personnel" means persons who meet the certification and/or licensing requirements of the state, and shall include the professional educator and other professional employees.

(c) "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as
defined in section one, article one, chapter eighteen of this
code. Professional educators shall be classified as:

(1) "Classroom teacher" — The professional
educator who has direct instructional or counseling
relationship with pupils, spending the majority of his time
in this capacity.

(2) "Principal" — The professional educator who as
agent of the board has responsibility for the supervision,
management and control of a school or schools within the
guidelines established by said board. The major area of
such responsibility shall be the general supervision of all
the schools and all school activities involving pupils,
teachers and other school personnel.

(3) "Supervisor" — The professional educator who,
whether by this or other appropriate title, is responsible for
working primarily in the field with professional and/or
other personnel in instructional and other school
improvement.

(4) "Central office administrator" — The
superintendent, associate superintendent, assistant
superintendent and other professional educators, whether
by these or other appropriate titles, who are charged with
the administering and supervising of the whole or some
assigned part of the total program of the county-wide
school system.

(d) "Other professional employee" means that
person from another profession who is properly licensed
and is employed to serve the public schools and shall
include a registered professional nurse, licensed by the
West Virginia board of examiners for registered
professional nurses and employed by a county board of
education, who has completed either a two-year (sixty-
four semester hours) or a three-year (ninety-six semester
hours) nursing program.

(e) "Service personnel" means those who serve the
school or schools as a whole, in a nonprofessional
capacity, including such areas as secretarial, custodial,
maintenance, transportation, school lunch and as aides.
(f) "Principals academy" or "academy" means the academy created pursuant to section two-b, article three-a of this chapter.

(g) "Center for professional development" means the center created pursuant to section one, article three-a of this chapter.

(h) "Job-sharing arrangement" means a formal, written agreement voluntarily entered into by a county board with two or more of its professional employees who wish to divide between them the duties and responsibilities of one authorized full-time position.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee
Nick Fantasia
Chairman House Committee

Originating in the House.
Takes effect July 1, 1997.

Clerk of the Senate
Marcella A. Kenney

Clerk of the House of Delegates
Earl Ray Tomblin
President of the Senate

Speaker of the House of Delegates

The within is approved this the __ day of ___, 1997.

Governor