ENROLLED

SENATE BILL NO. 3002

(By Senators Tomblin, Mr. President, and Sprouse, by request of the Executive)

PASSED June 10, 2001

In Effect from Passage
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AN ACT to amend and reenact sections one, two and seven, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article one, chapter five-a of said code by adding thereto a new section, designated section ten, all relating to certain benefits attendant to employment with the state and county boards of education; clarifying that assets of the public retirement systems administered by the consolidated public retirement board are held in trust; clarifying application of certain rules under the Internal Revenue Code to contributions and benefits under the qualified retirement plans administered by the consolidated public retirement board; authorizing the board to adopt policies and procedures and take other actions to comply with Internal Revenue Code requirements; providing for investment management consulting services for the teachers’ defined contribution system; creating a public employee leave benefit analysis board; stating purpose, membership and duties of same; authorizing
a study of the feasibility of instituting an employee leave benefit buy-back program; setting limit on expenditures for same; specifying mandatory factors to be considered and additional areas of study; authorizing department of administration and superintendent of state board of education to require certain data collection, etc., by spending units and county boards of education; requiring report to the Legislature by date certain; authorizing implementation of said board’s recommendations by concurrent resolution; exempting certain rules from legislative rule-making review; making technical revisions; and deleting obsolete language and provisions.

Be it enacted by the Legislature of West Virginia:

That sections one, two and seven, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article one, chapter five-a of said code be amended by adding thereto a new section, designated section ten, all to read as follows:

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

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-1. Consolidated public retirement board created; transition; members; vacancies; investment of plan funds.

1 (a) There is hereby continued a consolidated public retirement board to administer all public retirement plans in this state. It shall administer the public employees retirement system established in article ten of this chapter; the teachers retirement system established in article seven-a, chapter eighteen of this code; the teachers' defined contribution retirement system created by article seven-b, chapter eighteen of this code; the West Virginia state police
death, disability and retirement fund created by article two, chapter fifteen of this code; the West Virginia state police retirement system created by article two-a, chapter fifteen of this code; the death, disability and retirement fund for deputy sheriffs created by article fourteen-d, chapter seven of this code; and the judges' retirement system created under article nine, chapter fifty-one of this code.

(b) The consolidated public retirement board shall begin administration of the death, disability and retirement fund for deputy sheriffs established in article fourteen-d, chapter seven of this code on the first day of July, one thousand nine hundred ninety-eight.

(c) 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 deputy sheriff's death, disability and retirement fund; and a member, annuitant or retirant of the teachers' defined contribution
(d) The appointed members of the board shall serve five-year terms. The governor shall appoint the member representing the deputy sheriff's death, disability and retirement fund by the first day of July, one thousand nine hundred ninety-eight to a five-year term. A member appointed pursuant to subdivision (6), subsection (c) 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 sixty days, shall fill the vacancy by appointment for the unexpired term. No more than five appointees shall be of the same political party.

(e) The consolidated public retirement board has all the powers, duties, responsibilities and liabilities of the public employees retirement system established pursuant to article ten of this chapter; the teachers retirement system established pursuant to article seven-a, chapter eighteen of this code; the teachers' defined contribution system established pursuant to article seven-b of said chapter; the West Virginia state police death, disability and retirement fund created pursuant to article two, chapter fifteen of this code; the death, disability and retirement fund for deputy sheriffs created pursuant to article fourteen-d, chapter seven of this code; and the judges' retirement system created pursuant to article nine, chapter fifty-one of this code and their appropriate governing boards. The consolidated public retirement board may propose for promulgation all rules necessary to effectuate its powers, duties and responsibilities pursuant to article three, chapter twenty-nine-a of this code: Provided, That the board may adopt any or all of the rules, previously promulgated, of a retirement system which it administers.

(f) Effective on the first day of July, one thousand nine hundred ninety-six, the consolidated public retirement board shall, within two business days of receipt, transfer...
all funds received by the consolidated public retirement board for the benefit of the retirement systems within the consolidated pension plan as defined in section three-c, article six-b, chapter forty-four of this code, including, but not limited to, all employer and employee contributions, to the West Virginia investment management board: Provided, That the employer and employee contributions of the teachers' defined contribution system, established in section three, article seven-b, chapter eighteen of this code, and voluntary deferred compensation funds invested by the West Virginia consolidated public retirement board pursuant to section five, article ten-b of this chapter may not be transferred to the West Virginia investment management board.

(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 shall be a trustee for all public retirement plans, except with regard to the investment of funds: Provided, That the consolidated public retirement board shall be a trustee with regard to the investments of the teachers' defined contribution system, the voluntary deferred compensation funds invested pursuant to section five, article ten-b of this chapter 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 system.

§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 such administrative, technical and clerical employees as are 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 a 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.

(e) Prior to the first day of July, one thousand nine hundred ninety-one, the expenses of the board for the administration of the teachers' defined contribution retirement system created pursuant to article seven-b, chapter eighteen of this code shall be paid by the teachers retirement system created pursuant to article seven-a of said chapter.

§5-10D-7. Compensation limitations; effective dates.

(a) Effective for plan years beginning after the thirty-first day of December, one thousand nine hundred ninety-five, 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)(17) of
the Internal Revenue Code may not exceed one hundred fifty thousand dollars, as indexed in accordance with the provisions of Section 401(a)(17) of the Internal Revenue Code. This provision shall apply 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 is authorized to (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.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-10. Public employee leave benefit analysis board created; purpose; leave benefit buy-back study authorized; factors to be considered; and report to the Legislature.

(a) There is hereby created a public employee leave benefit analysis board. The initial and primary purpose of the board is to analyze the fiscal impact on the state, and on the several county boards of education whose employees participate in the public employees insurance agency plan, the ability of participating employees upon retirement to convert accrued annual and sick leave benefits for extended insurance coverage through the public employees insurance agency or for enhanced retirement benefits pursuant to section thirteen, article sixteen, chapter five of this code. The board shall determine the feasibility of
instituting a voluntary leave benefit buy-back program under which employers would pay participating employees to buy back their accrued leave benefits. The board shall focus first on employees subject to subsection (c), section thirteen, article sixteen, chapter five of this code. If the board determines such a program would be feasible and cost effective, in comparison to the projected costs of continuing to maintain the conversion of accrued leave for extended insurance coverage and/or enhanced retirement benefits, the board shall also develop rules for the implementation and administration of such a buy-back program.

The board shall complete its analysis and report its findings and recommendations with regard to this subject to the Legislature on or before the first day of September, two thousand one. If, upon receipt of such report, the Legislature determines that the buy-back program should be implemented, it shall adopt the report of the board by concurrent resolution and no further action of the Legislature shall be required to authorize implementation of the board's recommendations.

(b) The board created in this section shall consist of five voting members as follows: The secretary of the department of administration, who shall serve as its chair; the executive director of the consolidated public retirement board; the director of the public employees insurance agency; the director of the division of personnel; and the state superintendent of schools or the superintendent's designee. Four members of the Legislature, two appointed by the president of the Senate and two appointed by the speaker of the House of Delegates, shall also serve as nonvoting members, ex officio. It shall meet upon the call of the chair and a simple majority of the members shall constitute a quorum for the transaction of business.

(c) The expenses incurred by the board in studying the feasibility of a voluntary buy-back program and developing rules for implementation, if any, may not exceed one hundred thousand dollars and shall be paid out of funds
appropriated therefor by the Legislature to the department of administration.

(d) The board's analysis of a voluntary leave benefit buy-back program shall be based upon an appropriate actuarial study, as determined by the board, and shall include at a minimum the following:

(1) A full cost/benefit analysis which takes into account the costs for the current sick and annual leave conversion for the premium offset for extended insurance coverage as well as for enhanced retirement benefits and projections for future costs associated with such leave benefit conversion, stated in terms of present value and as amortized over an appropriate period, as determined by the board. This analysis shall also take into account the ways in which the leave conversion programs affect employees' use of sick and annual leave benefits during active employment, as well as upon retirement;

(2) The analysis shall be based on detailed actuarial assumptions in order to assure that cost projections are as accurate as possible: Assumptions shall be developed using data provided by the public employees insurance agency, the division of personnel and the consolidated public retirement board and shall be based on individual employee and participant data rather than summary data; actual experience for employees and retirees shall be considered, as well as an actuarially appropriate range of assumptions for projecting future costs; all calculations of future costs shall take into account projected increases in medical and prescription drug costs; and all assumptions used for any calculation shall be clearly stated, along with their basis;

(3) In order to be considered feasible or cost effective, the leave benefit buy-back program must assure a monetary savings to the state, in comparison to maintaining the conversion of leave benefits upon retirement;
(4) Any leave benefit buy-back program shall be based on the voluntary participation of affected employees;

(5) The design of any leave benefit buy-back program shall anticipate payroll tax implications for public employers, in addition to taking into consideration possible tax implications for employees who might choose to participate;

(6) The design of any leave benefit buy-back program shall provide that if employee demand exceeds revenues appropriated by the Legislature for the program in any fiscal year, eligibility for participation shall be based on seniority, as measured by total years or parts thereof of credited service with a participating employer;

(7) The design of any leave benefit buy-back program shall provide that any employee who elects to participate may not thereafter file an employee grievance or maintain a civil action relating to participation in the program or the benefits derived therefrom; and

(8) The design of any leave benefit buy-back program shall presume limitations on the future accrual of leave benefits which may be converted for extended insurance coverage or enhanced retirement benefits by employees who elect to participate in the program.

(e) Any rule developed by the board for implementing or administering a leave benefit buy-back program as provided in this section, including the rate of exchange to be offered to employees who elect to participate, shall be considered interpretative or procedural in nature and is not subject to rule-making review by the Legislature, as provided in chapter twenty-nine-a of this code.

(f) In addition to the factors to be included in the analysis of a leave benefit buy-back program enumerated above, the board created in this section shall also consider the salient issues surrounding the provision of long-term disability insurance coverage in lieu of certain benefits.
currently provided, retirement disability and employee
donation of leave benefits, as authorized by section twenty-
seven, article six, chapter twenty-nine of this code, includ-
ing the potential cost and benefit thereof relative to the
total benefit/compensation package made available to state
employees and employees of county boards of education.

(g) In furtherance of the board's purposes as stated in
this section, the department of administration is hereby
authorized to require all state spending units to collect,
compile, maintain and report data regarding employee sick
and annual leave use, balances, accrual and conversion.
The superintendent of the state board of education is
hereby granted the same authority with respect to the
several county boards of education.

(h) It is the intention of the Legislature that the provi-
sions of this section shall supersede and govern any other
provision of this code or legislative rule to the contrary.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originated in the Senate.

In effect from passage.

[Signature]

Assistant Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker House of Delegates

[Signature]


[Signature]

Governor

[Signature]