

FILED

2001 JUN 15 P 4:48

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

3rd Extraordinary Session, 2001

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

FILED

2001 JUN 15 P 4: 49

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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.]

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
- 2 retirement board to administer all public retirement plans
- 3 in this state. It shall administer the public employees
- 4 retirement system established in article ten of this chapter;
- 5 the teachers retirement system established in article
- 6 seven-a, chapter eighteen of this code; the teachers' defined
- 7 contribution retirement system created by article seven-b,
- 8 chapter eighteen of this code; the West Virginia state police

9 death, disability and retirement fund created by article
10 two, chapter fifteen of this code; the West Virginia state
11 police retirement system created by article two-a, chapter
12 fifteen of this code; the death, disability and retirement
13 fund for deputy sheriffs created by article fourteen-d,
14 chapter seven of this code; and the judges' retirement
15 system created under article nine, chapter fifty-one of this
16 code.

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

22 (c) The membership of the consolidated public retirement
23 board consists of:

24 (1) The governor or his or her designee;

25 (2) The state treasurer or his or her designee;

26 (3) The state auditor or his or her designee;

27 (4) The secretary of the department of administration or
28 his or her designee;

29 (5) Four residents of the state, who are not members,
30 retirants or beneficiaries of any of the public retirement
31 systems, to be appointed by the governor, with the advice
32 and consent of the Senate; and

33 (6) A member, annuitant or retirant of the public em-
34 ployees retirement system who is or was a state employee;
35 a member, annuitant or retirant of the public employees
36 retirement system who is not or was not a state employee;
37 a member, annuitant or retirant of the teachers retirement
38 system; a member, annuitant or retirant of the West
39 Virginia state police death, disability and retirement fund;
40 a member, annuitant or retirant of the deputy sheriff's
41 death, disability and retirement fund; and a member,
42 annuitant or retirant of the teachers' defined contribution

43 retirement system, all to be appointed by the governor,
44 with the advice and consent of the Senate.

45 (d) The appointed members of the board shall serve
46 five-year terms. The governor shall appoint the member
47 representing the deputy sheriff's death, disability and
48 retirement fund by the first day of July, one thousand nine
49 hundred ninety-eight to a five-year term. A member
50 appointed pursuant to subdivision (6), subsection (c) of this
51 section ceases to be a member of the board if he or she
52 ceases to be a member of the represented system. If a
53 vacancy occurs in the appointed membership, the governor,
54 within sixty days, shall fill the vacancy by appointment for
55 the unexpired term. No more than five appointees shall be
56 of the same political party.

57 (e) The consolidated public retirement board has all the
58 powers, duties, responsibilities and liabilities of the public
59 employees retirement system established pursuant to
60 article ten of this chapter; the teachers retirement system
61 established pursuant to article seven-a, chapter eighteen of
62 this code; the teachers' defined contribution system
63 established pursuant to article seven-b of said chapter; the
64 West Virginia state police death, disability and retirement
65 fund created pursuant to article two, chapter fifteen of this
66 code; the death, disability and retirement fund for deputy
67 sheriffs created pursuant to article fourteen-d, chapter
68 seven of this code; and the judges' retirement system
69 created pursuant to article nine, chapter fifty-one of this
70 code and their appropriate governing boards. The consoli-
71 dated public retirement board may propose for promulga-
72 tion all rules necessary to effectuate its powers, duties and
73 responsibilities pursuant to article three, chapter
74 twenty-nine-a of this code: *Provided*, That the board may
75 adopt any or all of the rules, previously promulgated, of a
76 retirement system which it administers.

77 (f) Effective on the first day of July, one thousand nine
78 hundred ninety-six, the consolidated public retirement
79 board shall, within two business days of receipt, transfer

80 all funds received by the consolidated public retirement
81 board for the benefit of the retirement systems within the
82 consolidated pension plan as defined in section three-c,
83 article six-b, chapter forty-four of this code, including, but
84 not limited to, all employer and employee contributions, to
85 the West Virginia investment management board: *Pro-*
86 *vided*, That the employer and employee contributions of
87 the teachers' defined contribution system, established in
88 section three, article seven-b, chapter eighteen of this code,
89 and voluntary deferred compensation funds invested by the
90 West Virginia consolidated public retirement board
91 pursuant to section five, article ten-b of this chapter may
92 not be transferred to the West Virginia investment manage-
93 ment board.

94 (g) Notwithstanding any provision of this code or any
95 legislative rule to the contrary, all assets of the public
96 retirement plans set forth in subsection (a) of this section
97 shall be held in trust. The consolidated public retirement
98 board shall be a trustee for all public retirement plans,
99 except with regard to the investment of funds: *Provided*,
100 That the consolidated public retirement board shall be a
101 trustee with regard to the investments of the teachers'
102 defined contribution system, the voluntary deferred
103 compensation funds invested pursuant to section five,
104 article ten-b of this chapter and any other assets of the
105 public retirement plans administered by the consolidated
106 public retirement board as set forth in subsection (a) of this
107 section for which no trustee has been expressly designated
108 in this code.

109 (h) The board may employ the West Virginia investment
110 management board to provide investment management
111 consulting services for the investment of funds in the
112 teachers' defined contribution system.

**§5-10D-2. Chairman and vice chairman; executive director;
employees; legal advisor; actuary.**

1 (a) The board shall elect from its own number a chair-
2 man and vice chairman.

3 (b) The board shall appoint an executive director of the
4 retirement systems. The executive director shall be the
5 chief administrative officer of all the systems and he or she
6 shall not be a member of the board. He or she shall perform
7 such duties as are required of him or her in this article and
8 as the board from time to time delegates to him or her. The
9 compensation of the executive director shall be fixed by
10 the board subject to the approval of the governor. The
11 executive director shall, with the approval of the board of
12 trustees, employ such administrative, technical and clerical
13 employees as are required in the proper operation of the
14 systems.

15 (c) Notwithstanding the provisions of section two, article
16 three of this chapter, the board shall employ and be
17 represented by an attorney licensed to practice law in the
18 state of West Virginia who is not a member of any of the
19 retirement systems administered by the board.

20 (d) An actuary, employed by the state or the board
21 pursuant to section four of this article, shall be the actuar-
22 ial consultant to the board.

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

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

1 (a) Effective for plan years beginning after the thirty-
2 first day of December, one thousand nine hundred ninety-
3 five, the annual compensation of a participant taken into
4 account in determining benefits or contributions under any
5 of the public retirement plans administered by the board
6 and which are qualified plans under Section 401(a)(17) of

7 the Internal Revenue Code may not exceed one hundred
8 fifty thousand dollars, as indexed in accordance

9 with the provisions of Section 401(a)(17) of the Internal
10 Revenue Code. This provision shall apply notwithstanding
11 any other provision to the contrary in this code and
12 notwithstanding any provisions of any legislative rule.

13 (b) In applying the limitations of subsection (a) of this
14 section, the consolidated public retirement board is
15 authorized to (1) Adopt policies or procedures that may be
16 necessary or appropriate in applying the compensation
17 limitations of Section 401(a)(17) to participants, including,
18 without limitation, the adoption and application of any
19 transitional rules to implement the compensation limita-
20 tions; and (2) to take any actions that may at any time be
21 required by the Internal Revenue Service regarding
22 compliance with the requirements of Section 401(a)(17),
23 including, without limitation, distributions, credits, set-
24 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 Legisla- ture.

1 (a) There is hereby created a public employee leave
2 benefit analysis board. The initial and primary purpose of
3 the board is to analyze the fiscal impact on the state, and
4 on theseveral county boards of education whose employees
5 participate in the public employees insurance agency plan,
6 the ability of participating employees upon retirement to
7 convert accrued annual and sick leave benefits for ex-
8 tended insurance coverage through the public employees
9 insurance agency or for enhanced retirement benefits
10 pursuant to section thirteen, article sixteen, chapter five of
11 this code. The board shall determine the feasibility of

12 instituting a voluntary leave benefit buy-back program
13 under which employers would pay participating employees
14 to buy back their accrued leave benefits. The board shall
15 focus first on employees subject to subsection (c), section
16 thirteen, article sixteen, chapter five of this code. If the
17 board determines such a program would be feasible and
18 cost effective, in comparison to the projected costs of
19 continuing to maintain the conversion of accrued leave for
20 extended insurance coverage and/or enhanced retirement
21 benefits, the board shall also develop rules for the imple-
22 mentation and administration of such a buy-back program.
23 The board shall complete its analysis and report its find-
24 ings and recommendations with regard to this subject to
25 the Legislature on or before the first day of September, two
26 thousand one. If, upon receipt of such report, the Legisla-
27 ture determines that the buy-back program should be
28 implemented, it shall adopt the report of the board by
29 concurrent resolution and no further action of the Legisla-
30 ture shall be required to authorize implementation of the
31 board's recommendations.

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

45 (c) The expenses incurred by the board in studying the
46 feasibility of a voluntary buy-back program and develop-
47 ing rules for implementation, if any, may not exceed one
48 hundred thousand dollars and shall be paid out of funds

49 appropriated therefor by the Legislature to the department
50 of administration.

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

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

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

80 (3) In order to be considered feasible or cost effective, the
81 leave benefit buy-back program must assure a monetary
82 savings to the state, in comparison to maintaining the
83 conversion of leave benefits upon retirement;

84 (4) Any leave benefit buy-back program shall be based
85 on the voluntary participation of affected employees;

86 (5) The design of any leave benefit buy-back program
87 shall anticipate payroll tax implications for public employ-
88 ers, in addition to taking into consideration possible tax
89 implications for employees who might choose to partici-
90 pate;

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

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

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

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

114 (f) In addition to the factors to be included in the analy-
115 sis of a leave benefit buy-back program enumerated above,
116 the board created in this section shall also consider the
117 salient issues surrounding the provision of long-term
118 disability insurance coverage in lieu of certain benefits

119 currently provided, retirement disability and employee
120 donation of leave benefits, as authorized by section twenty-
121 seven, article six, chapter twenty-nine of this code, includ-
122 ing the potential cost and benefit thereof relative to the
123 total benefit/compensation package made available to state
124 employees and employees of county boards of education.

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

133 (h) It is the intention of the Legislature that the provi-
134 sions of this section shall supersede and govern any other
135 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.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

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

The within *is approved* this the *15th*
Day of *June*, 2001.
[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 6/13/01

Time 2:55 pm