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2001 MAY -2 P 10: 23

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

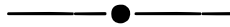
FIRST REGULAR SESSION, 2001



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2852**

(By Delegates Staton, J. Smith and Keener)



Passed April 13, 2001

In Effect from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 2852

(BY DELEGATES STATON, J. SMITH AND KEENER)

[Passed April 13, 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, 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

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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 in this
3 state. It shall administer the public employees retirement
4 system established in article ten of this chapter; the teachers
5 retirement system established in article seven-a, chapter
6 eighteen of this code; the teachers' defined contribution

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

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

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

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

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

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

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

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

32 (6) A member, annuitant or retirant of the public employees
33 retirement system who is or was a state employee; a member,
34 annuitant or retirant of the public employees retirement system
35 who is not or was not a state employee; a member, annuitant or

36 retirant of the teachers retirement system; a member, annuitant
37 or retirant of the West Virginia state police death, disability and
38 retirement fund; a member, annuitant or retirant of the deputy
39 sheriff's death, disability and retirement fund; and a member,
40 annuitant or retirant of the teachers' defined contribution
41 retirement system, all to be appointed by the governor, with the
42 advice and consent of the Senate.

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

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

71 any or all of the rules, previously promulgated, of a retirement
72 system which it administers.

73 (f) Effective on the first day of July, one thousand nine
74 hundred ninety-six, the consolidated public retirement board
75 shall, within two business days of receipt, transfer all funds
76 received by the consolidated public retirement board for the
77 benefit of the retirement systems within the consolidated
78 pension plan as defined in section three-c, article six-b, chapter
79 forty-four of this code, including, but not limited to, all em-
80 ployer and employee contributions, to the West Virginia
81 investment management board: *Provided*, That the employer
82 and employee contributions of the teachers' defined contribu-
83 tion system, established in section three, article seven-b, chapter
84 eighteen of this code, and voluntary deferred compensation
85 funds invested by the West Virginia consolidated public
86 retirement board pursuant to section five, article ten-b of this
87 chapter, may not be transferred to the West Virginia investment
88 management board.

89 (g) Notwithstanding any provision of this code or any
90 legislative rule to the contrary, all assets of the public retire-
91 ment plans set forth in subdivision (a) of this section shall be
92 held in trust. The consolidated public retirement board shall be
93 a trustee for all public retirement plans, except with regard to
94 the investment of funds: *Provided*, That the consolidated public
95 retirement board shall be a trustee with regard to the invest-
96 ments of the teachers' defined contribution system, the volun-
97 tary deferred compensation funds invested pursuant to section
98 five, article ten-b of this chapter and any other assets of the
99 public retirement plans administered by the consolidated public
100 retirement board as set forth in subdivision (a) of this section
101 for which no trustee has been expressly designated in this code.

102 (h) The board may employ the West Virginia investment
103 management board to provide investment management consult-

104 ing services for the investment funds in the teachers' defined
105 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 chairman
2 and vice chairman.

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

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

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

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

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

1 (a) Effective for plan years beginning after the thirty-first
2 day of December, one thousand nine hundred ninety-five, the
3 annual compensation of a participant taken into account in
4 determining benefits or contributions under any of the public
5 retirement plans administered by the board and which are
6 qualified plans under section 401(a) of the Internal Revenue
7 Code may not exceed one hundred fifty thousand dollars, as
8 indexed in accordance with the provisions of section 401(a)(17)
9 of the Internal Revenue Code. This provision shall apply
10 notwithstanding any other provision to the contrary in this code
11 and notwithstanding any provisions of any legislative rule.

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

1 (a) There is hereby created a public employee leave benefit
2 analysis board. The initial and primary purpose of the board is

3 to analyze the fiscal impact on the state and on the several
4 county boards of education whose employees participate in the
5 public employees insurance agency plan the ability of partici-
6 pating employees upon retirement to convert accrued annual
7 and sick leave benefits for extended insurance coverage through
8 the public employees insurance agency or for enhanced
9 retirement benefits, pursuant to section thirteen, article sixteen,
10 chapter five of this code. The board shall determine the
11 feasibility of instituting a voluntary leave benefit buy-back
12 program under which employers would pay participating
13 employees to buy back their accrued leave benefits. The board
14 shall focus first on employees subject to subsection (c), section
15 thirteen, article sixteen, chapter five of this code. If the board
16 determines such a program would be feasible and cost-effec-
17 tive, in comparison to the projected costs of continuing to
18 maintain the conversion of accrued leave for extended insur-
19 ance coverage and/or enhanced retirement benefits, the board
20 shall also develop rules for the implementation and administra-
21 tion of such a buy-back program. The board shall complete its
22 analysis and report its findings and recommendations with
23 regard to this subject to the Legislature on or before the first
24 day of September, two thousand one. If, upon receipt of such
25 report, the Legislature determines that the buy-back program
26 should be implemented, it shall adopt the report of the board by
27 concurrent resolution and no further action of the Legislature
28 shall be required to authorize implementation of the board's
29 recommendations.

30 (b) The board created in this section shall consist of five
31 voting members as follows: The secretary of the department of
32 administration, who shall serve as its chair; the executive
33 director of the consolidated public retirement board; the
34 director of the public employees insurance agency; the director
35 of the division of personnel; and the state superintendent of
36 schools, or the superintendent's designee. Four members of the
37 Legislature, two appointed by the president of the Senate and

38 two appointed by the speaker of the House of Delegates, shall
39 also serve as non-voting members, *ex officio*. It shall meet upon
40 the call of the chair and a simple majority of the members shall
41 constitute a quorum for the transaction of business.

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

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

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

61 (2) The analysis shall be based on detailed actuarial
62 assumptions in order to assure that cost projections are as
63 accurate as possible: Assumptions shall be developed using data
64 provided by the public employees insurance agency, the
65 division of personnel and the consolidated public retirement
66 board and shall be based on individual employee and partici-
67 pant data rather than summary data; actual experience for
68 employees and retirees shall be considered as well as an
69 actuarially appropriate range of assumptions for projecting

70 future costs; all calculations of future costs shall take into
71 account projected increases in medical and prescription drug
72 costs; and all assumptions used for any calculation shall be
73 clearly stated, along with their bases.

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

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

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

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

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

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

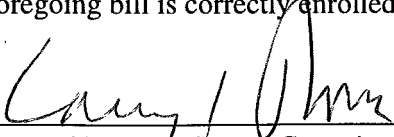
100 (e) Any rule developed by the board for implementing or
101 administering a leave benefit buy-back program as provided in
102 this section, including the rate of exchange to be offered to
103 employees who elect to participate, shall be considered inter-
104 pretative or procedural in nature and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

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

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

125 (h) It is the intention of the Legislature that the provisions
126 of this section shall supersede and govern any other provision
127 of this code or legislative rule to the contrary.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



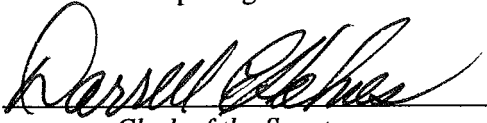
Chairwoman Senate Committee



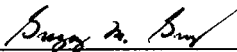
Chairman House Committee

Originating in the House.

In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates

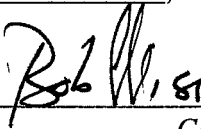


President of the Senate



Speaker of the House of Delegates

The within disapproved bill this the 2
day of May, 2001.



Governor

PRESENTED TO THE

GOVERNOR

Date 4/27/01

Time 11:45am