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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4021

(By Mr. Speaker, Mr. Kiss and Delegate Trump)
[By Request of the Executive]



Passed March 9, 2002

In Effect from Passage

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FOR

H. B. 4021

(BY MR. SPEAKER, MR. KISS AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

[Passed March 9, 2002; in effect from passage.]

AN ACT to repeal section fifteen, article eight, chapter twelve of the code of West Virginia nineteen hundred thirty-one, as amended, to amend and reenact section four, article eight, chapter twelve of said code; to amend and reenact section five of said article, all relating to repealing the requirement for a judicial determination that the issuance of bonds under the pension liability redemption act and the provisions of the act are in compliance with the constitution of West Virginia.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article eight, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section four, article eight, chapter twelve be amended

and reenacted; and that section five of said article be amended and reenacted, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 8. PENSION LIABILITY REDEMPTION.

§12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.

1 (a) Notwithstanding any other provision of this code and
2 pursuant to section four, article ten of the constitution of West
3 Virginia, the governor shall have the power, as provided by this
4 article, to issue the bonds authorized in this section at a time or
5 times as provided by a resolution adopted by the Legislature to
6 redeem a previous liability of the state by funding all or a
7 portion of the unfunded actuarial accrued liability, such bonds
8 to be payable from and secured by moneys deposited in the
9 pension liability redemption fund. Any bonds issued pursuant
10 to this article, other than refunding bonds, shall be issued no
11 later than five years after the date of adoption of the resolution
12 of the Legislature authorizing the issuance of the bonds referred
13 to in this section.

14 (b) The aggregate principal amount of bonds issued
15 pursuant to the provisions of this article is limited to no more
16 than the lesser of the following: (1) The principal amount
17 necessary, after deduction of costs, underwriter's discount and
18 original issue discount, if any, to fund not in excess of one
19 hundred percent of the unfunded actuarial accrued liability of
20 the death, disability and retirement fund of the department of
21 public safety established in article two, chapter fifteen of this
22 code, one hundred percent of the unfunded actuarial accrued
23 liability of the judges' retirement system established in article
24 nine, chapter fifty-one of this code, and ninety-five percent of
25 the unfunded actuarial accrued liability of the teachers retire-
26 ment system established in article seven-a, chapter eighteen of

27 this code, as certified by the consolidated public retirement
28 board to the department of administration pursuant to subsec-
29 tion (e) of this section; or (2) three billion nine hundred million
30 dollars; but in no event shall the aggregate principal amount of
31 bonds issued exceed the principal amount necessary, after
32 deduction of costs, underwriter's discount and original issue
33 discount, if any, to fund not in excess of the total unfunded
34 actuarial accrued liability, as certified by the consolidated
35 public retirement board to the department of administration
36 pursuant to subsection (e) of this section.

37 (c) The costs of issuance, excluding fees for bond insur-
38 ance, credit enhancements and liquidity facilities, plus under-
39 writer's discount and any other costs associated with the
40 issuance shall not exceed, in the aggregate, the sum of one
41 percent of the aggregate principal amount of bonds issued. All
42 such costs shall be subject to the review and approval of a
43 majority of the members of a review committee. The review
44 committee shall consist of two members appointed by the
45 governor from a list of three persons submitted by the president
46 of the Senate; two members appointed by the governor from a
47 list of three persons submitted by the speaker of the House of
48 Delegates; the state treasurer; and four persons having skill and
49 experience in bond issuance, appointed by the governor.

50 (d) The limitation on the aggregate principal amount of
51 bonds provided in this section shall not preclude the issuance of
52 bonds from time to time or in one or more series.

53 (e) No later than ten days after receipt of a request from the
54 department of administration, the consolidated public retire-
55 ment board shall provide the department of administration with
56 a certified statement of the amount of each pension system's
57 unfunded actuarial accrued liability calculated in an actuarial
58 valuation report that establishes the amount of the unfunded
59 actuarial accrued liability as of a date specified by the depart-

60 ment of administration, based upon each pension system's most
61 recent actuarial valuation.

62 (f) No later than fifteen days after receipt of a request from
63 the governor, the department of administration shall provide the
64 governor with a certification of the maximum aggregate
65 principal amount of bonds that may be issued at that time
66 pursuant to subsection (b) of this section.

67 (g) Prior to any request of the governor that the Legislature
68 prepare and consider a resolution authorizing the issuance of
69 bonds, the bonds shall be authorized by a majority of the
70 members of the review committee described in subsection (c)
71 of this section.

ARTICLE 8. PENSION LIABILITY REDEMPTION

§12-8-5. Method of bond issuance; manner of sale of bonds; authority of department of administration.

1 (a) The governor shall, by executive message, request the
2 Legislature prepare and consider a resolution authorizing the
3 issuance of bonds described in section four of this article. The
4 executive message shall specify the maximum costs associated
5 with the issue. Upon the adoption of a resolution by the
6 Legislature authorizing the issuance of the bonds in the amount
7 and upon the terms specified in the resolution, the bonds shall
8 be authorized by an executive order issued by the governor. The
9 executive order shall be received by the secretary of state and
10 filed in the state register pursuant to section three, article two,
11 chapter twenty-nine-a of this code. The governor, either in the
12 executive order authorizing the issuance of the bonds or by the
13 execution and delivery by the governor of a trust indenture or
14 agreement authorized in such executive order, shall stipulate the
15 form of the bonds, whether the bonds are to be issued in one or
16 more series, the date or dates of issue, the time or times of
17 maturity, which shall not exceed the longest remaining term of

18 the current amortization schedules for the unfunded actuarial
19 accrued liability, the rate or rates of interest payable on the
20 bonds, which may be at fixed rates or variable rates and which
21 interest may be current interest or may accrue, the denomina-
22 tion or denominations in which the bonds are issued, the
23 conversion or registration privileges applicable to some or all
24 of the bonds, the sources and medium of payment and place or
25 places of payment, the terms of redemption, any privileges of
26 exchangeability or interchangeability applicable to the bonds,
27 and the entitlement of obligation holders to priorities of
28 payment or security in the amounts deposited in the pension
29 liability redemption fund. Bonds shall be signed by the gover-
30 nor and attested by the secretary of state, by either manual or
31 facsimile signatures. The governor shall not sign the bonds
32 unless he shall first make a written finding, which shall be
33 transmitted to the state treasurer, the secretary of state, the
34 speaker of the House of Delegates and the president of the
35 Senate, that: (i) The true interest cost of the bonds is at least
36 thirty basis points less than the assumed actuarial interest rate
37 used to calculate the unfunded actuarial accrued liability; and
38 (ii) that the issuance of the bonds will not in any manner cause
39 a down grade or reduction in the state's general obligation
40 credit rating by standard bond rating agencies.

41 (b) The bonds may be sold at public or private sale at a
42 price or prices determined by the governor. The governor is
43 authorized to enter into any agreements necessary or desirable
44 to effectuate the purposes of this section, including agreements
45 to sell bonds to any person and to comply with the laws of any
46 jurisdiction relating thereto.

47 (c) The governor, in the executive order authorizing the
48 issuance of bonds or by the execution and delivery by the
49 governor of a trust indenture or agreement authorized in such
50 executive order, may covenant as to the use and disposition of
51 or pledge of funds made available for pension liability redemp-

52 tion payments or any reserve funds established pursuant to such
53 executive order or established pursuant to any indenture
54 authorized by such executive order. All costs may be paid by or
55 upon the order of the governor from amounts received from the
56 proceeds of the bonds and from amounts received pursuant to
57 section eight of this article.

58 (d) Bonds may be issued by the governor upon resolution
59 adopted by the Legislature authorizing the same.

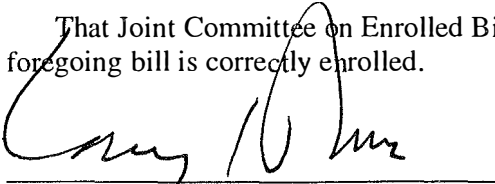
60 (e) Neither the governor, the secretary of state, nor any
61 other person executing or attesting the bonds or any agreement
62 authorized in this article shall be personally liable with respect
63 to payment of any pension liability redemption payments.

64 (f) Notwithstanding any other provision of this code, and
65 subject to the approval of the review committee, the department
66 of administration, in the department's discretion: (i) Shall
67 select, employ and compensate one or more persons or firms to
68 serve as bond counsel or cobond counsel who shall be responsi-
69 ble for the issuance of a final approving opinion regarding the
70 legality of the bonds issued pursuant to this article; (ii) may
71 select, employ and compensate one or more persons or firms to
72 serve as underwriter or counderwriter for any issuance of bonds
73 pursuant to this article; and (iii) may select, employ and
74 compensate one or more fiduciaries, financial advisors and
75 experts, other legal counsel, placement agents, appraisers,
76 actuaries and such other advisors, consultants and agents as
77 may be necessary to effectuate the purposes of this article.
78 Notwithstanding the provisions of article three, chapter five of
79 this code, bond counsel may represent the state in court, render
80 advice and provide other legal services as may be requested by
81 the governor or the department of administration regarding any
82 bond issuance pursuant to this article and all other matters
83 relating to the bonds.

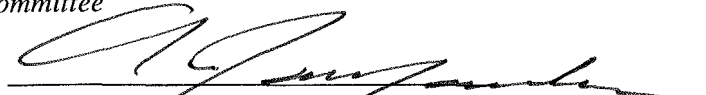
84 (g) Notwithstanding any other provision of this code, and
85 subject to the approval of the review committee, the state
86 treasurer, in the state treasurer's discretion shall select, employ
87 and compensate an independent person or firm to serve as
88 special counsel to the state treasurer to advise the state treasurer
89 with respect to the state treasurer's duties pursuant to this
90 article.

Enr. Com. Sub. for H. B. 4021] 8

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



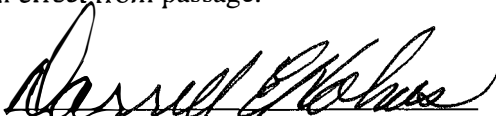
Chairman Senate Committee



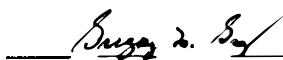
Chairman House Committee

Originating in the House.

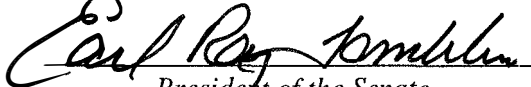
In effect from passage.




Clerk of the Senate



Clerk of the House of Delegates

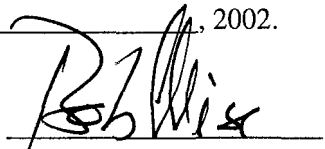


President of the Senate



Speaker of the House of Delegates

The within is approved this the 2nd day of April, 2002.



Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/02

Time 10:05 AM