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article eight, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section four, article eight, chapter twelve be amended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

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

(b) The aggregate principal amount of bonds issued pursuant to the provisions of this article is limited to no more than the lesser of the following: (1) The principal amount necessary, after deduction of costs, underwriter’s discount and original issue discount, if any, to fund not in excess of one hundred percent of the unfunded actuarial accrued liability of the death, disability and retirement fund of the department of public safety established in article two, chapter fifteen of this code, one hundred percent of the unfunded actuarial accrued liability of the judges’ retirement system established in article nine, chapter fifty-one of this code, and ninety-five percent of the unfunded actuarial accrued liability of the teachers retirement system established in article seven-a, chapter eighteen of
this code, as certified by the consolidated public retirement board to the department of administration pursuant to subsection (e) of this section; or (2) three billion nine hundred million dollars; but in no event shall the aggregate principal amount of bonds issued exceed the principal amount necessary, after deduction of costs, underwriter’s discount and original issue discount, if any, to fund not in excess of the total unfunded actuarial accrued liability, as certified by the consolidated public retirement board to the department of administration pursuant to subsection (e) of this section.

(c) The costs of issuance, excluding fees for bond insurance, credit enhancements and liquidity facilities, plus underwriter’s discount and any other costs associated with the issuance shall not exceed, in the aggregate, the sum of one percent of the aggregate principal amount of bonds issued. All such costs shall be subject to the review and approval of a majority of the members of a review committee. The review committee shall consist of two members appointed by the governor from a list of three persons submitted by the president of the Senate; two members appointed by the governor from a list of three persons submitted by the speaker of the House of Delegates; the state treasurer; and four persons having skill and experience in bond issuance, appointed by the governor.

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

(e) No later than ten days after receipt of a request from the department of administration, the consolidated public retirement board shall provide the department of administration with a certified statement of the amount of each pension system’s unfunded actuarial accrued liability calculated in an actuarial valuation report that establishes the amount of the unfunded actuarial accrued liability as of a date specified by the depart-
ment of administration, based upon each pension system’s most recent actuarial valuation.

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

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

(a) The governor shall, by executive message, request the Legislature prepare and consider a resolution authorizing the issuance of bonds described in section four of this article. The executive message shall specify the maximum costs associated with the issue. Upon the adoption of a resolution by the Legislature authorizing the issuance of the bonds in the amount and upon the terms specified in the resolution, the bonds shall be authorized by an executive order issued by the governor. The executive order shall be received by the secretary of state and filed in the state register pursuant to section three, article two, chapter twenty-nine-a of this code. The governor, either in the executive order authorizing the issuance of the bonds or by the execution and delivery by the governor of a trust indenture or agreement authorized in such executive order, shall stipulate the form of the bonds, whether the bonds are to be issued in one or more series, the date or dates of issue, the time or times of maturity, which shall not exceed the longest remaining term of
the current amortization schedules for the unfunded actuarial accrued liability, the rate or rates of interest payable on the bonds, which may be at fixed rates or variable rates and which interest may be current interest or may accrue, the denomination or denominations in which the bonds are issued, the conversion or registration privileges applicable to some or all of the bonds, the sources and medium of payment and place or places of payment, the terms of redemption, any privileges of exchangeability or interchangeability applicable to the bonds, and the entitlement of obligation holders to priorities of payment or security in the amounts deposited in the pension liability redemption fund. Bonds shall be signed by the governor and attested by the secretary of state, by either manual or facsimile signatures. The governor shall not sign the bonds unless he shall first make a written finding, which shall be transmitted to the state treasurer, the secretary of state, the speaker of the House of Delegates and the president of the Senate, that: (i) The true interest cost of the bonds is at least thirty basis points less than the assumed actuarial interest rate used to calculate the unfunded actuarial accrued liability; and (ii) that the issuance of the bonds will not in any manner cause a down grade or reduction in the state's general obligation credit rating by standard bond rating agencies.

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

(c) The governor, in the executive order authorizing the issuance of bonds or by the execution and delivery by the governor of a trust indenture or agreement authorized in such executive order, may covenant as to the use and disposition of or pledge of funds made available for pension liability redemp-
tion payments or any reserve funds established pursuant to such executive order or established pursuant to any indenture authorized by such executive order. All costs may be paid by or upon the order of the governor from amounts received from the proceeds of the bonds and from amounts received pursuant to section eight of this article.

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

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

(f) Notwithstanding any other provision of this code, and subject to the approval of the review committee, the department of administration, in the department’s discretion: (i) Shall select, employ and compensate one or more persons or firms to serve as bond counsel or co-bond counsel who shall be responsible for the issuance of a final approving opinion regarding the legality of the bonds issued pursuant to this article; (ii) may select, employ and compensate one or more persons or firms to serve as underwriter or co-underwriter for any issuance of bonds pursuant to this article; and (iii) may select, employ and compensate one or more fiduciaries, financial advisors and experts, other legal counsel, placement agents, appraisers, actuaries and such other advisors, consultants and agents as may be necessary to effectuate the purposes of this article. Notwithstanding the provisions of article three, chapter five of this code, bond counsel may represent the state in court, render advice and provide other legal services as may be requested by the governor or the department of administration regarding any bond issuance pursuant to this article and all other matters relating to the bonds.
(g) Notwithstanding any other provision of this code, and subject to the approval of the review committee, the state treasurer, in the state treasurer’s discretion shall select, employ and compensate an independent person or firm to serve as special counsel to the state treasurer to advise the state treasurer with respect to the state treasurer’s duties pursuant to this article.
Enr. Com. Sub. for H. B. 4021  8

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

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Chairman Senate Committee

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Chairman House Committee

Originating in the House.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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

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Governor