WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

ENROLLED

House Bill No. 4008
(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

Passed March 13, 2004

In Effect Ninety Days from Passage
AN ACT to amend and reenact §5-10D-1, §5-10D-2 and §5-10D-3 of the code of West Virginia, 1931, as amended; to amend and reenact §5-16-3 and §5-16-4 of said code; to amend said code by adding thereto a new section, designated §5-16-4a; to amend and reenact §5A-1-2 of said code; to amend said code by adding thereto a new article, designated §5A-10-1, §5A-10-2 and §5A-10-3; and to amend and reenact §29-6-5 and §29-6-6 of said code, all relating to creating a new employee and insurance services division within the department of administration and revising the law governing its component agencies and boards; providing that the division incorporate the consolidated public retirement board, the public employees insurance agency, the board of risk and insurance management, the children’s health insurance agency, the education and state employees grievance board and the personnel division; creating the office of commissioner of the division; providing for the powers and duties of the commissioner; authorizing the commissioner to consolidate or reorganize certain internal functions and operations, transfer funds within the agencies and assess agencies with costs; providing that the commissioner chair certain boards and appoint directors of
component state agencies within the division; providing for sunset review of division and office of commissioner; establishing employment requirements for director of public employees insurance agency; and adding members to public employees insurance agency finance board.

Be it enacted by the Legislature of West Virginia:

That §5-10D-1, §5-10D-2 and §5-10D-3 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §5-16-3 and §5-16-4 of said code be amended and reenacted; that said code be further amended by adding thereto a new section, designated §5-16-4a; that §5A-1-2 of said code be amended and reenacted; that said code be further amended by adding thereto a new article, designated §5A-10-1, §5A-10-2 and §5A-10-3; and that §29-6-5 and §29-6-6 of said code be amended and reenacted, 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 continued; members; vacancies; investment of plan funds.

1 (a) The consolidated public retirement board is continued 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 of said chapter; 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 of said chapter; 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 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 commissioner of the employee and insurance
services division of the department of administration;

(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,
anuitant 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,
anuitant or retirant of the teachers’ defined contribution
retirement system, all to be appointed by the governor, with the
advice and consent of the Senate.

(c) The appointed members of the board shall serve
five-year terms. A member appointed pursuant to subdivision
(6), subsection (b) of this section ceases to be a member of 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 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 commissioner of the employee and insurance
services division of the department of administration;

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

(c) The appointed members of the board shall serve
five-year terms. A member appointed pursuant to subdivision
(6), subsection (b) 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.

(d) 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.

(e) The consolidated public retirement board shall continue to transfer all funds received 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.

(f) 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.

(g) 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 any administrative, technical and clerical employees 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 an active 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.

§5-10D-3. Board meetings; quorum; vote; proceedings; compensation.

(a) The board shall hold a meeting at least once each three months, and shall designate the time and place of the meeting. Seven voting trustees constitute a quorum at any meeting of the board. Each member is entitled to one vote on each question before the board. The board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the board shall be public.

(b) The members shall serve as members without compensation for their services as such: Provided, That each member shall be reimbursed, upon approval of the board, for any necessary expenses actually incurred by him or her in carrying out his or her duties. No public employee member may suffer any loss of salary or wages on account of his or her service as trustee.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-3. Composition of public employees insurance agency; appointment, qualification, compensation and duties of director of agency; employees; civil
service coverage; director vested after specified date with powers of public employees insurance board.

(a) The public employees insurance agency consists of the director, the finance board, the advisory board and any employees who may be authorized by law. The director shall be appointed by the commissioner of the employee and insurance services division of the department of administration. The director shall have at least three years' experience in health or governmental health benefit administration as his or her primary employment duty prior to appointment as director. The director shall be employed pursuant to an employment contract which may have a multi-year term, not to exceed five years per contract. Notwithstanding any other provision of this code to the contrary, the director's salary shall be set by the commissioner of the employee and insurance services division, with the approval of the secretary of the department of administration. The current director shall continue to be eligible to serve as director through the thirtieth day of June, two thousand four. The director shall receive actual expenses incurred in the performance of official business. The director shall employ any administrative, technical and clerical employees required for the proper administration of the insurance programs provided for in this article. The director shall perform the duties that are required of him or her under the provisions of this article and is the chief administrative officer of the public employees insurance agency. The director may employ a deputy director.

(b) All positions in the agency, except for the director, his or her personal secretary, the deputy director and the chief financial officer shall be included in the classified service of the civil service system pursuant to article six, chapter twenty-nine of this code. Any person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection on
or after the effective date of this article shall not be required to take and pass qualifying or competitive examinations upon or as a condition to being added to the classified service: Provided, That no person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection as of the effective date of this section shall be thereafter severed, removed or terminated in his or her employment prior to his or her entry into the classified service except for cause as if the person had been in the classified service when severed, removed or terminated.

(c) The director is responsible for the administration and management of the public employees insurance agency as provided for in this article and in connection with his or her responsibility may make all rules necessary to effectuate the provisions of this article. Nothing in section four or five of this article limits the director's ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations, provider contracting and payment, designation of covered and noncovered services, offering of additional coverage options or cost containment incentives, pursuit of coordination of benefits and subrogation, or any other actions which would serve to implement the plan or plans designed by the finance board. The director is to function as a benefits management professional and should avoid political involvement in managing the affairs of the public employees insurance agency.

§5-16-4. Public employees insurance agency finance board continued; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.
(a) The public employees insurance agency finance board, is continued and consists of the commissioner of the employee and insurance services division of the department of administration and eight members appointed by the governor with the advice and consent of the Senate for terms of four years and until the appointment of their successors. Members may be reappointed for successive terms. No more than five members (including the commissioner) may be of the same political party.

(b) Of the eight members appointed by the governor, one member shall represent the interests of education employees, one shall represent the interests of public employees, one shall represent the interests of retired employees, one shall represent the interests of organized labor and four shall be selected from the public at large. The governor shall appoint the member representing the interests of education employees from a list of three names submitted by the largest organization of education employees in this state. The governor shall appoint the member representing the interests of organized labor from a list of three names submitted by the state's largest organization representing labor affiliates. The four members appointed from the public shall each have experience in the financing, development or management of employee benefit programs. All appointments shall be selected to represent the different geographical areas within the state and all members shall be residents of West Virginia. No member may be removed from office by the governor except for official misconduct, incompetence, neglect of duty, neglect of fiduciary duty or other specific responsibility imposed by this article, or gross immorality.

(c) The commissioner of the employee and insurance services division shall serve as chair of the finance board, which shall meet at times and places specified by the call of the chair or upon the written request to the chair of at least two members. The director of the public employees insurance
agency shall serve as staff to the board. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Five members constitute a quorum. The board shall pay each member the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties, as recommended by the citizens legislative compensation commission and authorized by law for each day or portion of a day engaged in the discharge of official duties.

(d) Upon termination of the board and notwithstanding any provisions in this article to the contrary, the director is authorized to assess monthly employee premium contributions and to change the types and levels of costs to employees only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by legislative rule proposed by the director for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code; any employee assessments or costs previously authorized by the finance board shall then remain in effect until amended by rule of the director promulgated pursuant to this subsection.

§5-16-4a. Continuation of the public employees insurance agency finance board.

The public employees insurance agency finance board shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.
§5A-1-2. Department of administration and office of secretary; secretary; divisions; directors.

(a) The department of administration and the office of secretary of administration are continued in the executive branch of state government. The secretary shall be the chief executive officer of the department and shall be appointed by the governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the governor.

(b) The department of administration may receive federal funds.

(c) The secretary shall serve at the will and pleasure of the governor. The annual compensation of the secretary shall be as specified in section two-a, article seven, chapter six of this code.

(d) There shall be in the department of administration a finance division, a general services division, an information services and communications division, an employee and insurance services division and a purchasing division. Each division shall be headed by a director who may also head any and all sections within that division and who shall be appointed by the secretary, except that the commissioner of the employee and insurance services division shall be appointed by the governor with the advice and consent of the Senate as provided in article ten of this chapter. In addition to the divisions enumerated in this subsection, there shall also be in the department of administration those agencies, boards, commissions and councils specified in section one, article two, chapter five-f of this code.

ARTICLE 10. Employee and insurance services division.

§5A-10-1. Division created; purpose and functions; cooperation.
(a) There is created within the department of administration, an employee and insurance services division. The following agencies of the department of administration are incorporated within the employee and insurance services division:

(1) The consolidated public retirement board provided for in article ten-d, chapter five of this code and the retirement programs administered by the board;

(2) The public employees insurance agency and associated boards provided for in article sixteen, chapter five of this code;

(3) The division of personnel provided for in article six, chapter twenty-nine of this code;

(4) The board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;

(5) The childrens health insurance agency and associated boards provided for in article sixteen-b, chapter five of this code; and

(6) The education and state employees grievance board provided for in article six-a, chapter twenty-nine of this code.

(b) The purpose and function of the division of employee and insurance services is to preserve the integrity of a system of personnel administration for state agencies based on merit principles; to provide to the state employees who are stakeholders, fairness, confidence and security in the administration of state insurance and retirement benefit plans; to provide for long-term fiscal security and enhance the state’s ability to assure its fiscal obligations under its insurance, risk and benefit plans; to promote loss control in state programs and agencies; and to coordinate and consolidate technical functions of the component agencies while preserving inviolate their separate trust responsibilities.
(c) The director of the purchasing division and the chief technology officer within the office of the governor shall cooperate and provide assistance in the consolidation, reorganization and integration of functions of the division and its component agencies and programs, and shall expedite all reasonable requests in order to assure efficient and adequate systems support.

(d) Any agency or board incorporated into the division pursuant to subsection (a) of this section which disagrees with an action of the commissioner may refer the disagreement to the secretary for review.

§5A-10-2. Creation of office of commissioner of the employee and insurance services division; qualifications; powers and duties.

(a) The office of commissioner of the employee and insurance services division is created. On the effective date of this section, the director of the former insurance and retirement division shall serve as acting commissioner of the employee and insurance services division and shall immediately assume the duties of the office. Not later than the thirtieth day of January, two thousand five, the governor shall appoint the commissioner with the advice and consent of the Senate, to serve at the will and pleasure of the governor, at a salary to be established by the governor. The commissioner shall have knowledge in the areas of self-insured risk pools and employee benefit program administration, knowledge of the special trust requirements of benefit programs with respect to stakeholders, and an understanding of the special demands upon government with respect to budgetary constraints, the protection of public funds, and federal and state standards of accountability.

(b) The commissioner may:

(1) Coordinate overall policy within the division;
Propose comprehensive budgets for consideration by the secretary of the department of administration and the governor;

(3) Develop and provide to the governor, the speaker of the House of Delegates and the president of the Senate, on an annual basis, long-range financial forecasts for the insurance and benefit programs administered by the division, which shall include cash-flow projections for future budget years, based on known facts and reasonable, clearly stated actuarial assumptions;

(4) Interact with stakeholders, staff of the component agencies and outside agencies to develop long-term strategies for delivering quality services, reducing unfunded liabilities, and assuring the fiscal viability of programs;

(5) Propose and provide to the governor, the speaker of the House of Delegates and the president of the Senate, on an annual basis, long-term strategic plans to provide for the fiscal security of the programs administered by the agencies within the division and minimize the fiscal burden upon limited state resources;

(6) Employ and discharge, with the approval of the secretary of the department of administration, employees within the office of the commissioner, to serve at the will and pleasure of the commissioner;

(7) Eliminate or consolidate positions, with the approval of the secretary of the department of administration, other than positions of administrators or positions of board members, and name a person to fill more than one position;

(8) Delegate, assign, transfer or combine responsibilities or duties to or among employees, other than administrators or board members;
(9) Reorganize internal functions or operations;

(10) Transfer within the division, with the approval of the secretary of the department of administration, funds appropriated to the various agencies of the division: Provided, That no funds may be transferred from a claims payment account, retiree benefit account, trust account or any other account or funds specifically exempted by the Legislature from transfer: Provided, however, That authority to transfer funds pursuant to this section expires on the thirtieth day of June, two thousand five;

(11) Enter into contracts or agreements requiring the expenditure of public funds, and authorize the expenditure or obligating of public funds as authorized by law;

(12) Acquire by lease or purchase property of whatever kind or character, and convey or dispose of any property of whatever kind or character as authorized by law;

(13) Conduct internal audits;

(14) Supervise internal management;

(15) Recommend to the secretary the promulgation of rules to implement and make effective the powers, authority and duties granted and imposed by the provisions of this article. The rules, unless specifically exempted in accordance with the provisions of this code, shall be proposed in accordance with the provisions of chapter twenty-nine-a of this code;

(16) Delegate duties to administrators in order to facilitate execution of the powers, authority and duties of the commissioner;
(17) Consolidate data, accounting and claims administration systems and propose to the secretary of the department of administration the termination or renegotiation of contracts;

(18) Take any other action involving or relating to internal management not otherwise prohibited by law;

(19) With approval of the secretary of the department of administration, assess all agencies within the employee and insurance services division a reasonable amount to cover the costs of the division; and

(20) Promote combined purchasing of components within the division.

(c) The commissioner shall work cooperatively with the consolidated public retirement board and the public employees insurance agency to acquire and implement combined data systems for the retirement and health plans administered by the consolidated public retirement board and the public employees insurance agency. Beginning on the first day of January, two thousand five, and continuing until the combined data system is fully implemented, the commissioner shall provide to the joint committee on government and finance, or any other committee as the Legislature directs, monthly updates on the development and implementation of the system.

(d) Nothing contained in this section may be construed to limit the powers of the secretary of the department of administration pursuant to chapter five-f of this code, or to enlarge the power and authority granted to any agency or administrator within the division. Nothing contained in this section may be construed to limit the rights of any beneficiary of a retirement or benefit program arising by operation of law or any trust instrument. No power granted to the commissioner may be exercised if to do so would violate or be inconsistent with the separate fiduciary responsibilities with respect to the respective
funds under the commissioners’ authority, or with the provisions of any federal law or regulation, any federal-state program or federally delegated program, or jeopardize the approval, existence or funding of any program. The powers granted to the commissioner to enter into contracts or agreements and to make expenditures or obligations of public funds under this provision may not exceed or be interpreted as authority to exceed the powers previously granted by the Legislature to the various administrators or board members of the various agencies or boards that comprise and are incorporated into the division. Nothing contained in this section may be construed to limit the rights of employees within the classified service of the state as provided in subsection (d), section two, article two, chapter five-f of this code.

§5A-10-3. Continuation of division.

The division of employee and insurance services and the office of commissioner of the division of employee and insurance services shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE COMMISSION.

§29-6-5. Division of personnel continued; sections.

(a) The division of personnel is continued within the employee and insurance services division of the department of administration.
(b) The division of personnel shall perform the following functions:

(1) Applicant services;
(2) Classification and compensation;
(3) Management development and training;
(4) Program evaluation and payroll;
(5) Employee services;
(6) Employee relations; and
(7) Administrative and staff services.

(c) The commissioner of the employee and insurance services division shall establish any sections of the division that are necessary to carry out the functions of the division and the purposes of this article. Each section shall be under the control of a section chief to be appointed by the director who shall be qualified by reason of exceptional training and experience in the field of activities of the respective section.

§29-6-6. State personnel board continued; members; term; quorum; vacancies; powers and duties.

(a) There is continued within the division a state personnel board which consists of the commissioner of the employee and insurance services division or his or her designee, who shall serve as an ex officio member and five members appointed by the governor with the advice and consent of the Senate for terms of four years and until the appointment of their successors. No more than four members may be of the same political party. Four members of the board constitute a quorum.
(b) A member of the board may not be removed from office except for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance, and then only in the manner prescribed in article six, chapter six of this code for the removal by the governor of state elected officers.

(c) Citizen members of the board shall each be paid one hundred dollars for each day devoted to the work of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the state.

(d) The commissioner of the employee and insurance services division of the department of administration or his or her designee shall serve as chair of the board. The board shall meet at the time and place specified by the call of the chair. At least one meeting shall be held in each month. All meetings shall be open to the public. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting period.

(e) In addition to other powers and duties invested in it by this article or by any other law, the board shall:

(1) Propose rules for promulgation in accordance with chapter twenty-nine-a of this code to implement the provisions of this article;

(2) Interpret the application of this article to any public body or entity; and

(3) Authorize and conduct any studies, inquiries, investigations or hearings in the operation of this article it considers necessary.
(f) The director or the board may subpoena and require the attendance of witnesses in the production of evidence or documents relevant to any proceeding under this article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker of the House of Delegates

[Signature]

The within is approved this the 6th day of April, 2004.

Governor

[Signature]