WEST VIRGINIA LEGISLATURE
3rd Extraordinary Session, 2005

ENROLLED
Committee Substitute for
SENATE BILL NO. 2009

(By Senators Tomblin, Mr. President, and Sprouse)

PASSED May 17, 2005

In Effect July 1, 2005
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 3009
(By Senators Tomblin, Mr. President, and Sprouse,
By Request of the Executive)

[Passed May 17, 2005; to take effect July 1, 2005.]

AN ACT to repeal §5A-10-1, §5A-10-2 and §5A-10-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-10D-1 of said code; to amend and reenact §5-16-3 and §5-16-4 of said code; to amend and reenact §5A-1-2 of said code; and to amend and reenact §29-6-5 and §29-6-6 of said code, all relating generally to the elimination of the Employee and Insurance Services Division of the Department of Administration and reassigning certain duties; reinstating the Secretary of the Department of Administration as a member of the Consolidated Public Retirement Board, the Public Employees Insurance Agency Finance Board and the State Personnel Board; providing that the Governor shall appoint the Director of the Public Employees Insurance Agency; providing that the Division of Personnel is continued within the Department of Administration; clarifying board member compensation and expense reimbursement; and making technical changes.

Be it enacted by the Legislature of West Virginia:
That §5A-10-1, §5A-10-2 and §5A-10-3 of the Code of West Virginia, 1931, as amended, be repealed; that §5-10D-1 of said code be amended and reenacted; that §5-16-3 and §5-16-4 of said code be amended and reenacted; that §5A-1-2 of said code be amended and reenacted; 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.

(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 Deputy Sheriff Death, Disability and Retirement Fund 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 Secretary of the Department of Administration or his or her designee;

(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 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 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 may 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 West Virginia State Police Retirement System created by article two-a of said chapter; the Deputy Sheriff Death, Disability and Retirement Fund 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.

(e) The Consolidated Public Retirement Board may propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, necessary to effectuate its powers, duties and responsibilities: Provided, That the Board may adopt any or all of the rules, previously promulgated, of a retirement system which it administers.

(f) 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.

(g) 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 is a trustee for all public retirement plans, except with regard to the investment of funds: Provided, That the Consolidated Public Retirement Board is a trustee with regard to the investments of the Teachers Defined Contri-
(h) 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.

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.

(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 Governor, with the advice and consent of the Senate, and serves at the will and pleasure of the Governor. 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 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 programs provided 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) Except for the Director, his or her personal secretary, the Deputy Director and the Chief Financial Officer, all positions in the Agency shall be included in the classified
service of the civil service system pursuant to article six,
chapter twenty-nine of this code.

(c) The Director is responsible for the administration and
management of the Public Employees Insurance Agency as
provided 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 provi-
sions 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 coordi-
nation of benefits and subrogation or any other actions
which would serve to implement the plan or plans de-
signed 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 Secretary of the
Department of Administration or his or her designee 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 Secretary of the Department of
Administration, may be of the same political party.

(b) Of the eight members appointed by the Governor, one
member shall represent the interests of education employ-
ees, 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 Secretary of the Department of Administration 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 contri-
butions 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.

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 is 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 serves 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, Division of Personnel 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. In addition to the divisions enumerated in this subsection, there shall also be in the
22 Department of Administration those agencies, boards, commissions and councils specified in section one, article two, chapter five-f of this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

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

1 (a) The Division of Personnel is continued within the Department of Administration.

3 (b) The Division of Personnel shall perform the following functions:

5 (1) Applicant services;

6 (2) Classification and compensation;

7 (3) Management development and training;

8 (4) Program evaluation and payroll;

9 (5) Employee services;

10 (6) Employee relations; and

11 (7) Administrative and staff services.

12 (c) 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. The Director may establish additional sections necessary to carry out the purposes of this article.

§29-6-6. State Personnel Board continued; members; term; quorum; vacancies; powers and duties.

1 (a) There is continued within the Division a State Personnel Board consisting of the Secretary of the Department of Administration or his or her designee who serves as an ex officio nonvoting member and five members
appointed by the Governor, with the advice and consent of
the Senate, for terms of four years and until the appoint-
ment 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 compen-
sated for attending official meetings or engaging in official
duties not to exceed the amount paid to members of the
Legislature for their interim duties, as recommended by
the Citizens Legislative Compensation Commission as
authorized by law, and may be reimbursed actual and
necessary expenses incurred for each day or portion
thereof engaged in the discharge of official duties in a
manner consistent with guidelines of the Travel Manage-
ment Office of the Department of Administration.

(d) The Secretary of the Department of Administration
or his or her designee serves 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 legislative approval, 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2005.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 26th Day of May, 2005.

Governor