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2006 MAR 31 P 2:43

OFFICE WEST VIRGINIA
SECRETARY OF STATE

HB 4654

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006

ENROLLED

House Bill No. 4654

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

Passed March 11, 2006

In Effect Ninety Days from Passage

ENROLLED

H. B. 4654

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)
[BY REQUEST OF THE EXECUTIVE]

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §5-16-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5-16D-1, §5-16D-2,§5-16D-3, §5-16D-4, §5-16D-5 and §5-16D-6, all relating to the Public Employees Insurance Agency, establishing the West Virginia Retiree health Benefit Trust fund, providing for post-employment health care benefits, operation and funding and establishing that the eighty-twenty split between employer and employee for the scheduled increase in health care costs for employees may be partially offset by a legislative appropriation.

Be it enacted by the Legislature of West Virginia:

That §5-16-5 of the Code of West Virginia, 1931, as amended, be amended; and that said code be amended by adding thereto a new article, designated §5-16D-1, §5-16D-2,§5-16D-3, §5-16D-4, §5-16D-5 and §5-16D-6, all to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

(a) The purpose of the finance board created by this article is to bring fiscal stability to the Public Employees Insurance Agency through development of annual financial plans and long-range plans designed to meet the Agency's estimated total financial requirements, taking into account all revenues projected to be made available to the Agency and apportioning necessary costs equitably among participating employers, employees and retired employees and providers of health care services.

(b) The finance board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the Public Employees Insurance Agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by the finance board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the finance board or the director. All reasonable fees and expenses for actuarial services shall be paid by the Public Employees Insurance Agency. Any financial plan or modifications to a financial plan approved or proposed by the finance board pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the Governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the agency, including incurred but unreported claims, for the fiscal year for which the plan is proposed. The actuary's opinion on the financial plan for each fiscal year shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year. The actuary's opinion for any fiscal year shall not include a requirement for establishment of a reserve fund.

(c) All financial plans required by this section shall establish:

(1) Maximum levels of reimbursement which the Public Employees Insurance Agency makes to categories of health care providers;

(2) Any necessary cost containment measures for implementation by the director;

(3) The levels of premium costs to participating employers; and

(4) The types and levels of cost to participating employees and retired employees.

The financial plans may provide for different levels of costs based on the insureds' ability to pay. The finance board may establish different levels of costs to retired employees based upon length of employment with a participating employer, ability to pay or other relevant factors. The financial plans may also include optional alternative benefit plans with alternative types and levels of cost. The finance board may develop policies which encourage the use of West Virginia health care providers.

In addition, the finance board may allocate a portion of the premium costs charged to participating employers to subsidize the cost of coverage for participating retired employees, on such terms as the finance board determines are equitable and financially responsible.

(d)(1) The finance board shall prepare an annual financial plan for each fiscal year during which the finance board remains in existence. The finance board Chairman shall request the actuary to estimate the total financial requirements of the Public Employees Insurance Agency for the fiscal year.

(2) The finance board shall prepare a proposed financial plan designed to generate revenues sufficient to meet all estimated program and administrative costs of the Public Employees Insurance Agency for the fiscal year. The proposed financial plan shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year. Before final adoption of the proposed financial plan, the finance board shall request the actuary to review the plan and to render a written professional opinion stating whether the plan will generate sufficient revenues to meet all estimated program and administrative costs of the Public Employees Insurance Agency for the fiscal year. The actuary' s report shall explain the basis of its opinion. If the actuary concludes that the proposed financial plan will not generate sufficient revenues to meet all anticipated costs, then the finance board shall make necessary modifications to the proposed plan to ensure that all actuarially determined financial requirements of the agency will be met.

(3) Upon obtaining the actuary' s opinion, the finance board shall conduct one or more public hearings in each congressional district to receive public comment on the proposed financial plan, shall review the comments and shall finalize and approve the financial plan.

(4) Any financial plan shall be designed to allow thirty days or less of accounts payable to be carried over into the next fiscal year. For each fiscal year, the Governor shall provide his or her estimate of total revenues to the finance board no later than the fifteenth day of October of the preceding fiscal year: *Provided,* That, for the prospective financial plans required by this section, the Governor shall estimate the revenues available for each fiscal year of the plans based on the estimated percent-

age of growth in general fund revenues. The finance board shall submit its final, approved financial plan, after obtaining the necessary actuary's opinion and conducting one or more public hearings in each congressional district, to the Governor and to the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the director on the first day of July of the fiscal year. In addition to each final, approved financial plan required under this section, the finance board shall also simultaneously submit financial statements based on generally accepted accounting practices (GAAP) and the final, approved plan restated on an accrual basis of accounting, which shall include allowances for incurred but not reported claims: *Provided, however,* That the financial statements and the accrual-based financial plan restatement shall not affect the approved financial plan.

(e) The provisions of chapter twenty-nine-a of this code shall not apply to the preparation, approval and implementation of the financial plans required by this section.

(f) By the first day of January of each year the finance board shall submit to the Governor and the Legislature a prospective financial plan, for a period not to exceed five years, for the programs provided in this article. Factors that the board shall consider include, but are not limited to, the trends for the program and the industry; the medical rate of inflation; utilization patterns; cost of services; and specific information such as average age of employee population, active to retiree ratios, the service delivery system and health status of the population.

(g) The prospective financial plans shall be based on the estimated revenues submitted in accordance with subdivision (4), subsection (d) of this section and shall include an average of the projected cost-sharing percentages of premiums and an average of the projected deductibles and copays for the various programs. Beginning in the plan year which commences on the first day of July, two thousand two, and in each plan year thereafter, until and including the plan year which commences on the first day of July, two thousand six, the prospective plans shall include incremental adjustments toward the ultimate level required in this subsection, in the aggregate cost-sharing percentages of premium between employers and employees, including the amounts of any subsidization of retired employee benefits: *Provided,* That for the period beginning the first day of July, two thousand five, through the thirty-first day of December, two thousand five, the portion of the policy surcharge collected from certain fire and casualty insurers and transferred into the fund in the State Treasury of the Public Employees Insurance Agency pursuant to the provisions of section thirty-three, article three, chapter thirty-three of this code shall be used, in lieu of an increase in costs to active state pool employees, to subsidize any incremental adjustment in those employees' portion of the aggregate cost-sharing percentages of premium between employers and employees. The foregoing does not prohibit any premium increase occasioned by an employee' s increase in salary: *Provided, however,* That for the period beginning the first day of July, two thousand five, through the thirty-first day of December, two thousand five, in lieu of an increase in costs to retired state pool employees, such funds as are necessary to subsidize any increase in costs to retired state pool employees shall be transferred from the reserve fund established in section twenty-five of this article into the fund in the State Treasury of the Public Employees Insurance Agency. Effective in the plan year commencing on the first day of July, two thousand six, and in each plan year thereafter, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, shall be at a level of eighty percent for the employer and twenty percent for employees, except for the employers provided in subsection (d), section eighteen of this article whose premium cost-sharing percentages shall be governed by that subsection. After the submission of the initial prospective plan, the board may not increase costs to the participating employers or change the average of the premiums, deductibles and copays for employees, except in the event of a true emergency as provided in this section: *Provided further,* That if the board invokes the emergency provisions, the cost shall be borne between the employers and employees in proportion to the cost-sharing ratio for that plan year: *And provided further,* That for purposes of this section, "emergency" means that the most recent projections demonstrate that plan expenses will exceed plan revenues by more than one percent in any plan year: *And provided further,* That the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, scheduled to be at a level of twenty percent for employees by the first day of July two-thousand six may be offset, in part, by a legislative appropriation for that purpose, prior to the first day of July two-thousand six.

(h) The finance board shall meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the Public Employees Insurance Agency. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures and any other factors affecting the fiscal stability of the plan and may make any additional modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met. The finance board may not increase the types and levels of cost to employees during its quarterly review except in the event of a true emergency.

(i) For any fiscal year in which legislative appropriations differ from the Governor' s estimate of general and special revenues available to the Agency, the finance board shall, within thirty days after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

ARTICLE 16D. WEST VIRGINIA RETIREMENT HEALTH BENEFIT TRUST FUND.

§5-16D-1. Definitions.

As used in this article, the term:

(a) "Actuarial accrued liability" means that portion, as determined by a particular actuarial cost method, of the actuarial present value of fund obligations and administrative expenses which is not provided by future normal costs.

(b) "Actuarial cost method" means a method for determining the actuarial present value of the obligations and administrative expenses of the fund and for developing an actuarially equivalent allocation of the value to time periods, usually in the form of a normal cost and an actuarial accrued liability. Acceptable actuarial methods are the aggregate, attained age, entry age, frozen attained age, frozen entry age, and projected unit credit methods.

(c) "Actuarially sound" means that calculated contributions to the fund are sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing for fund obligations as they accrue in the future and the cost of amortizing the unfunded actuarial accrued liability over a period of no more than 30 years.

(d) "Actuarial present value of total projected benefits" means the present value, at the valuation date, of the cost to finance benefits payable in the future, discounted to reflect the expected effects of the time value of money and the probability of payment.

(e) "Actuarial assumptions" means assumptions regarding the occurrence of future events affecting the fund such as mortality, withdrawal, disability, and retirement; changes in compensation and offered post-employment benefits; rates of investment earnings and other asset appreciation or depreciation; procedures used to determine the actuarial value of assets; and other relevant items.

(f) "Actuarial valuation" means the determination, as of a valuation date, of the normal cost, actuarial accrued liability, actuarial value of assets, and related actuarial present values for the fund.

(g) "Administrative expenses" means all expenses incurred in the operation of the fund, including all investment expenses.

(h) "Annual required contribution" means the amount employers must contribute in a given year to fully fund the trust, as determined by the actuarial valuation in accordance with requirements of generally accepted accounting principles. This amount shall represent a level of funding that if paid on an ongoing basis is projected to cover the normal cost each year and amortize any unfunded actuarial liabilities of the plan over a period not to exceed thirty years.

(i) "Board" means the Public Employees Insurance Agency Finance Board created in section four, article sixteen of this chapter.

(j) "Cost sharing multiple employer plan" means a single plan with pooling (cost-sharing) arrangements for the participating employers. All risk, rewards, and costs, including benefit costs, are shared and not attributed individually to the employers. A single actuarial valuation covers all plan members and the same contribution rate(s) applies for each employer.

(k) "Covered health care expenses" means all actual health care expenses paid by the health plan on behalf, of fund beneficiaries. Actual health care expenses include claims payments to providers and premiums paid to intermediary entities and health care providers by the health plan.

(l) "Employer" means any employer as defined by section two, article sixteen, of this chapter, which has or will have retired employees in any Public Employees Insurance Agency health plan.

(m) "Employer annual required contribution" means the portion of the annual required contribution which is the responsibility of that particular employer.

(n) "Fund" means the West Virginia Retiree Health Benefit Trust Fund established under this article.

(o) "Fund beneficiaries" means all persons receiving post-employment health care benefits through the health plan.

(p) "Health plan" means the health insurance plan or plans established under article sixteen of this chapter.

(q) "Minimum annual employer premium payment" means the annual amount paid by employers toward retiree premiums, which, when combined with the retirees' contributions on their premiums that year, provide sufficient funds to cover all projected retiree covered health care expenses and related administrative costs for that year. The finance board shall develop the minimum annual employer premium payment as part of its financial plan each year as addressed in section five, article sixteen, of this chapter.

(r) "Normal cost" means that portion of the actuarial present value of the fund obligations and expenses which is allocated to a valuation year by the actuarial cost method used for the fund.

(s) "Obligations" means the administrative expenses of the fund and the cost of covered health care expenses incurred on behalf of fund beneficiaries.

(t) "Other post-employment benefits" or "retiree post-employment health care benefits" means those benefits as addressed by governmental accounting standards board statement no. 43, or any subsequent governmental standards board statement that may be applicable to the fund.

(u) "Plan for other post-employment benefits" means the fiscal funding plan for retiree post-employment health care benefits as it relates to governmental accounting standards board statement no. 43, or any subsequent governmental accounting standards board statements that may be applicable to the fund.

(v) "Retiree" means retired employee as defined by section two, article sixteen, of this chapter.

(w) "Retirement system" or "system" means the West Virginia Consolidated Public Retirement Board created and established by article ten of this chapter and includes any retirement systems or funds administered or overseen by the Consolidated Public Retirement Board.

(x) "Unfunded actuarial accrued liability" means for any actuarial valuation the excess of the actuarial accrued liability over the actuarial value of the assets of the fund under an actuarial cost method used by the fund for funding purposes.

§5-16D-2. Creation of West Virginia Retiree Health Benefit Trust Fund.

The legislature declares that certain dedicated revenues should be preserved in trust for the purpose of funding other post-employment benefits.

There is hereby created the West Virginia Retiree Health Benefit Trust Fund for the purpose of providing for and administering retiree post-employment health care benefits, and the respective revenues and costs of those benefits as a cost sharing multiple employer plan.

The fund shall be available without fiscal year limitations for covered health care expenses and administration costs. All contributions, appropriations, earnings, and reserves for the payment of obligations under this article shall be credited to the fund and are irrevocable.

The amounts remaining in the fund, if any, after covered health care expenses and administration costs have been paid shall be retained in the fund as a special reserve for adverse fluctuation. All assets of the fund shall be used solely for the payment of fund obligations and for no other purpose.

§5-16D-3. Operation of trust fund.

(a) Responsibility for the rules and policies for the proper operation of the fund is vested in the board.

(b) The board shall adopt actuarial assumptions as it deems necessary and prudent.

(c) The board shall determine the annual required contribution rates sufficient to maintain the fund in accordance with the state plan for other post-employment benefits.

(d) The board may promulgate, in accordance with chapter twenty-nine-a of this code, any rules it finds necessary to properly administer the fund. The board may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

(e) The Public Employees Insurance Agency shall furnish reports to the board at each of the board' s regularly scheduled meetings. The reports shall contain the most recent information reasonably available to the Public Employees Insurance Agency reflecting the obligations of the fund, earnings on investments, and such other information as the board deems necessary and appropriate.

(f) The Secretary of the Department of Administration, as chairman of the board, shall cause to be employed within the Public Employees Insurance Agency such personnel as may be needed to carry out the provisions of this article. The pro rata share of the costs to the Public Employees Insurance Agency of operating the fund shall be part of the administrative costs of the fund and shall be reimbursed to the Public Employees Insurance Agency.

(g) The Public Employees Insurance Agency, on the board' s behalf, shall be responsible for the day-to-day operation of the fund and may employ or contract for the services of actuaries and other professionals as required to carry out the duties established by this article.

(h) The board shall contract with the West Virginia Investment Management Board for any necessary services with respect to fund investments.

(i) The Public Employees Insurance Agency, on the board' s behalf, shall maintain all necessary records regarding the fund in accordance with generally accepted accounting principles.

(j) The Public Employees Insurance Agency, on the board' s behalf, shall collect all moneys due to the fund and shall pay current post-employment healthcare costs and any administrative expenses necessary and appropriate for the operation of the fund from the fund. The fund' s assets shall be maintained and accounted for in state funds. The state funds shall be: (1) The Other Post-Employment Benefit Contribution Accumulation Fund; (2) the Other Post-Employment Benefit Investment Fund; and (3) the Other Post-Employment Benefit Expense Fund. These funds will be maintained by the Public Employees Insurance Agency on the board' s behalf.

(k) The Public Employees Insurance Agency, on the board' s behalf, shall prepare an annual report of fund activities. Such report shall include, but not be limited to, independently audited financial statements in accordance with generally accepted accounting principles. The financial statements must be independently audited in accordance with auditing standards generally accepted in the United States and the standards applicable to financial audits contained in government auditing standards as issued by the Comptroller General of the United States.

(l) Notwithstanding any other provision of law to the contrary, the Public Employees Insurance Agency shall be entitled to request and receive any information that it deems necessary and appropriate from any relevant retirement system in order that the provisions of this article may be carried out.

§5-16D-4. Actuary.

(a) The actuary employed or retained by the Public Employees Insurance Agency shall provide technical advice to the Public Employees Insurance Agency and to the board regarding the operation of the fund.

(b) Using the actuarial assumptions most recently adopted by the board, the actuary shall, on a biannual basis, or as frequently as the board determines necessary, set actuarial valuations of normal cost, actuarial liability, actuarial value of assets, and related actuarial present values for the state plan for other post-employment benefits.

§5-16D-5. Operational control of trust fund.

(a) The Public Employees Insurance Agency shall have operational control over the fund. The obligations provided in this article and all related administrative expenses shall be paid from the fund. The Public Employees Insurance Agency may expend moneys from the fund for any purpose authorized by this article.

(b) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the fund shall be held in Trust. The Public Employees Insurance Agency, on behalf of the board, shall have full power to invest and reinvest the fund' s assets via the West Virginia Investment Management Board, subject to all of the terms, conditions, limitations, and restrictions imposed by article six, chapter twelve, of this code. Subject to the terms, conditions, limitations and restrictions, and consistent with this article, the Public Employees Insurance Agency shall have full power to hold, purchase, sell, assign, transfer, and dispose of any securities and investments in which any of the moneys are invested, including the proceeds of any investments and other moneys belonging to the fund.

(c) Except as otherwise provided in this chapter, no member of the board or employee of the Public Employees Insurance Agency shall have any personal interest in the gains or profits from any investment made by the board or use the assets of the fund in any manner, except to make such payments as may be authorized by the board or by the secretary of the department of administration as the chairman of the board in accordance with this article.

§ 5-16D-6. Mandatory employer contributions.

(a) The board shall annually set the total annual required contribution sufficient to maintain the fund in an actuarially sound manner in accordance with generally accepted accounting principles.

(b) The board shall annually allocate to the respective employers the employer' s portion of the annual required contribution, which allocated amount is the "employer annual required contribution".

(c) The board may apportion the annual required contribution into various components. These components may include the amortized unfunded actuarial accrued liability, the total normal cost, the employer annual required contribution and the lesser included minimum annual employer premium payment.

(d) It shall be the mandatory responsibility of employers to make annual contributions to the fund in, at least, the amount of the minimum annual employer premium payment rates established by the board.

(e) It shall be the responsibility of the Public Employees Insurance Agency to bill each employer for the employer annual required contribution and the included minimum annual employer premium payment. It shall be the responsibility of the Public Employees Insurance Agency to annually collect the minimum annual employer premium payment. The Public Employees Insurance Agency shall, in addition to the minimum annual employer premium payment, collect any amounts the employer elects to pay toward the employer annual required contribution. Any employer annual required contribution amount not satisfied by the respective employer shall remain the liability of that employer until fully paid.

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 ninety days 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 3/8th

day of March, 2006.

Governor

PRESENTED TO THE
GOVERNOR

MAR 27 2006

Time 4:15pm