WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2011

ENROLLED

Senate Bill No. 469

(By Senators Kessler (Mr. President) and Hall,
By Request of the Executive)

[Passed February 10, 2012; in effect from passage.]
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AN ACT to amend and reenact §5-16-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §5-16-5a and §5-16-5b; to amend said code by adding thereto a new section, designated §5-16D-7; to amend and reenact §11-21-96 of said code; and to amend and reenact §18-9A-24 of said code, all relating to other post-employment benefits generally; directing the Director of the Public Employees Insurance Agency to evaluate and administer programs that ensure the long-term effectiveness of the agency; requiring the director to issue annual progress reports to the Legislature; prohibiting the Public Employees Insurance Agency Finance Board from including in the financial plans any subsidy from the Retiree Health Benefit Trust for the cost of coverage for retired employees who were hired on or after July 1, 2010; creating the Post-July 1, 2010 Employee Trust; allowing appointment of a joint committee; directing a certain amount of personal income tax into the West Virginia Retiree Health Benefit Trust Fund until Governor certifies that trust fund is fully funded or July 1, 2037, whichever date is later; directing an amount of personal income tax into the Post-July 1, 2010 Employee Trust Fund; and specifying that portions of the employer annual required contribution of county boards of education shall be billed to and be a responsibility of the state.
Be it enacted by the Legislature of West Virginia:

That §5-16-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto two new sections, designated §5-16-5a and §5-16-5b; that said code be amended by adding thereto a new section, designated §5-16D-7; that §11-21-96 of said code be amended and reenacted; and that §18-9A-24 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 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.

1 (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 author-
ized by this article, including, but not limited to, adminis-
trative 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.

(d) The Director should make every effort to evaluate and
administer programs to improve quality, improve health
status of members, develop innovative payment methodolo-
gies, manage health care delivery costs, evaluate effective
benefit designs, evaluate cost sharing and benefit based
programs, and adopt effective industry programs that can
manage the long-term effectiveness and costs for the pro-
grams at the Public Employees Insurance Agency to include,
but not be limited to:

(1) Increasing generic fill rates;

(2) Managing specialty pharmacy costs;

(3) Implementing and evaluating medical home models
and health care delivery;

(4) Coordinating with providers, private insurance
carriers and to the extent possible Medicare to encourage the
58 establishment of cost effective accountable care organizations;
59
60 (5) Exploring and developing advanced payment methodologies for care delivery such as case rates, capitation and
61 other potential risk-sharing models and partial risk-sharing
62 models for accountable care organizations and/or medical
63 homes;
64
65 (6) Adopting measures identified by the Centers for
66 Medicare and Medicaid Services to reduce cost and enhance
67 quality;
68
69 (7) Evaluating the expenditures to reduce excessive use
70 of emergency room visits, imaging services and other drivers
71 of the agency's medical rate of inflation;
72
73 (8) Recommending cutting-edge benefit designs to the
74 Finance Board to drive behavior and control costs for the
75 plans;
76
77 (9) Implementing programs to encourage the use of the
78 most efficient and high-quality providers by employees and
79 retired employees;
80
81 (10) Identifying employees and retired employees who
82 have multiple chronic illnesses and initiating programs to
83 coordinate the care of these patients;
84
85 (11) Initiating steps by the agency to adjust payment by
86 the agency for the treatment of hospital acquired infections
87 and related events consistent with the payment policies,
88 operational guidelines and implementation timetable
89 established by the Centers of Medicare and Medicaid
90 Services. The agency shall protect employees and retired
91 employees from any adjustment in payment for hospital
92 acquired infections; and
93
94 (12) Initiating steps by the agency to reduce the number
95 of employees and retired employees who experience avoid-
96 able readmissions to a hospital for the same diagnosis related
97 group illness within thirty days of being discharged by a
hospital in this state or another state consistent with the
payment policies, operational guidelines and implementation
timetable established by the Centers of Medicare and
Medicaid Services.

(e) The Director shall issue an annual progress report to
the Joint Committee on Government and Finance on the
implementation of any reforms initiated pursuant to this
section and other initiatives developed by the agency.

§5-16-5a. Retiree premium subsidy from Retiree Health Benefit
Trust for hires prior to July 1, 2010.

The Finance Board may include in its financial plans a
subsidy from the Retiree Health Benefit Trust Fund created
by article sixteen-d of this chapter for the cost of coverage
under the major health care benefits plans, only for retired
employees who were hired before July 1, 2010.

§5-16-5b. Creation of trust for retirees hired on or after July 1,
2010.

There is hereby created a special revenue account in the
state treasury, designated the Post-July 1, 2010, Employee
Trust Fund, which shall be an interest-bearing account and
may be invested in accordance with the provisions of article
six, chapter twelve of this code, with the interest income a
proper credit to the fund. The fund shall consist of moneys
appropriated by the Legislature and moneys transferred
pursuant to section ninety-six, article twenty-one, chapter
eleven of this code. Expenditures from the fund shall be for
the purposes set forth by the Legislature in furtherance of an
incentive contingent on future legislative directives for
retirees who were hired on or after July 1, 2010, to be
received upon their retirement. Such incentive may be
determined by the Legislature in accordance with section
seven, article sixteen-d of this chapter.

ARTICLE 16D. RETIREMENT HEALTH BENEFIT TRUST FUND

§5-16D-7. Select Committee on Other Post-Employment Benefits.
(a) Pursuant to the authority contained in section one, article one, chapter four of this code, the presiding officers of each house of the Legislature may appoint a joint committee to be known at the Select Committee on Other Post-Employment Benefits to study other post-employment benefits, including the effects of the amendments to this code relating to other post-employment benefits made during the 2012 regular session of the Legislature.

(b) The Select Committee on Other Post-Employment Benefits in consultation with the Director of the Public Employees Insurance Agency and the Finance Board of the Public Employees Insurance Agency is also authorized to study and propose to the Joint Committee on Government and Finance an incentive for those retirees who were hired on or after July 1, 2010. The committee shall consider the funding available in the Post-July 1, 2010, Employee Trust Fund created pursuant to section five-b, article sixteen of this chapter.

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-96. Dedication of personal income tax proceeds.

(a) There is hereby dedicated an annual amount of $45 million from annual collections of the tax imposed by this article for payment of the unfunded liability of the current Workers' Compensation Fund. No portion of this amount may be pledged for payment of debt service on revenue bonds issued pursuant to article two-d, chapter twenty-three of this code.

(b) Notwithstanding any other provision of this code to the contrary, beginning in January of 2006, $45 million from collections of the tax imposed by this article shall be deposited each calendar year to the credit of the old fund created in article two-c, chapter twenty-three of this code, in accordance with the following schedule. Each calendar month, except for July, August and September each year, $5
million shall be transferred, on or before the twenty-eighth
day of the month, to the Workers' Compensation Debt
Reduction Fund created in article two-d, chapter twenty-
three of this code.

(c) The transfers required by subsection (b) of this section
shall continue to be made until the Governor certifies to the
Legislature that an independent actuarial study determined
that the unfunded liability of the old fund, as defined in
chapter twenty-three of this code, has been paid or provided
for in its entirety. Thereafter, an annual amount of $35
million from annual collections of the tax imposed by this
article and which were previously dedicated by this section
for payment of the unfunded liability of the Workers Com-
pensation Fund shall be dedicated for payment of the
unfunded liability of the West Virginia Retiree Health
Benefit Trust Fund and to provide funding for the Post-July
1, 2010, Employee Trust Fund created by section five-b,
article sixteen, chapter five of this code. The $35 million
transferred pursuant to this subsection shall be transferred
in accordance with the following:

(1) The annual amount of $30 million shall be transferred
into the West Virginia Retiree Health Benefit Trust Fund, by
transferring $5 million each month for the following months
of each year: October, November, December, January,
February and March, until the Governor certifies to the
Legislature that an independent actuarial study has deter-
mined that the unfunded liability of West Virginia Retiree
Health Benefit Trust Fund, as created in section two, article
sixteen-d, chapter five of this code, has been provided for in
its entirety or July 1, 2037, whichever date is later. No
transfer into the West Virginia Retiree Health Benefit Trust
Fund pursuant to this subdivision shall be made thereafter;
and

(2) An annual amount of $5 million shall be transferred
into the Post-July 1, 2010, Employee Trust Fund created by
section five-b, article sixteen, chapter five of this code in
April of each year.
CHAPTER 18. EDUCATION

ARTICLE 9A. PUBLIC SCHOOL SUPPORT


(a) The allowance to the Public Employees Insurance Agency for school employees shall be made in accordance with the following: The number of individuals employed by county boards as professional educators pursuant to section four of this article, plus the number of individuals employed by county boards as service personnel pursuant to section five of this article, plus the number of individuals employed by county boards as professional student support personnel pursuant to section eight of this article, multiplied by the average premium rate for all county board of education employees established by the Public Employees Insurance Agency Finance Board. The average premium rate for all county board of education employees shall be incorporated into each financial plan developed by the Finance Board in accordance with section five, article sixteen, chapter five of this code. The premiums shall include any proportionate share of retirees subsidy established by the Finance Board and the difference, if any, between the previous year's actual premium costs and the previous year's appropriation, if the actual cost was greater than the appropriation. The amount of the allowance provided in this subsection shall be paid directly to the West Virginia Public Employees Insurance Agency. Each county board shall reflect its share of the payment as revenue on its financial statements to offset its expense for the employer annual required contribution, as defined in article sixteen-d, chapter five of this code.

(b) Notwithstanding any other provision of section six, article sixteen-d, chapter five of this code to the contrary, any amount of employer annual required contribution allocated and billed to county boards on or after July 1, 2012, and any amount of the employer annual required contribution allocated and billed to the county boards prior to that date for employees who are employed as professional
employees within the limits authorized by section four of this article, employees who are employed as service personnel within the limits authorized by section five of this article, and employees who are employed as professional student support personnel within the limits authorized by section eight of this article, shall be charged to the state: Provided, That nothing in this subsection requires any specific level of funding by the Legislature in any particular year: Provided, however, That charging specified amounts to the state pursuant to this section is not to be construed as creating an employer employee relationship between the State of West Virginia and any employee under the employ of a county board or as creating a liability of the state.

(c) County boards are liable for the employer annual required contribution allocated and billed to the county boards on or after July 1, 2012, and any amount of the employer annual required contribution allocated and billed to the county boards prior to that date for individuals who are employed as professional employees above and beyond those authorized by section four of this article, individuals who are employed as service personnel above and beyond those authorized by section five of this article and individuals who are employed as professional student support personnel above and beyond those authorized by section eight of this article. For each such employee, the county board shall forward to the Public Employees Insurance Agency an amount equal to the average premium rate established by the finance board in accordance with subsection (a) of this section: Provided, That the county board shall pay the actual employer premium costs for any county board employee paid from special revenues, federal or state grants, or sources other than state general revenue or county funds.

(d) Prior to July 1, 1995, nothing in this article shall be construed to limit the ability of county boards to use funds appropriated to county boards pursuant to this article to pay employer premiums to the Public Employees Insurance Agency for employees whose positions are funded pursuant to this article. Funds appropriated to county boards pursuant
to this article shall not be used to pay employer premiums for
employees of such boards whose positions are not, or will not
be within twenty months, funded by funds appropriated
pursuant to 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.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ... approved this the 20th

Day of ... February ..., 2012.

Governor
PRESENTED TO THE GOVERNOR

FEB 14 2012

Time 3:07 PM