

H. B. 2445

(By Delegates Sobonya, C. Miller, Azinger,
Sumner, Rowan and Barker)
[Introduced January 13, 2011; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §5-16-4 and §5-16-5 of the Code of West Virginia, 1931, as amended, all relating to requiring the Legislature to approve changes in costs imposed by the Public Employees Insurance Agency Finance Board instead of being approved by promulgation of new rules proposed by the board's director.

Be it enacted by the Legislature of West Virginia:

That §5-16-4 and §5-16-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§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

1 Administration or his or her designee and eight members appointed
2 by the Governor, with the advice and consent of the Senate, for
3 terms of four years and until the appointment of their successors.
4 Members may be reappointed for successive terms. No more than five
5 members, including the Secretary of the Department of
6 Administration, may be of the same political party.

7 (b) Of the eight members appointed by the Governor, one member
8 shall represent the interests of education employees, one shall
9 represent the interests of public employees, one shall represent
10 the interests of retired employees, one shall represent the
11 interests of organized labor and four shall be selected from the
12 public at large. The Governor shall appoint the member
13 representing the interests of education employees from a list of
14 three names submitted by the largest organization of education
15 employees in this state. The Governor shall appoint the member
16 representing the interests of organized labor from a list of three
17 names submitted by the state's largest organization representing
18 labor affiliates. The four members appointed from the public shall
19 each have experience in the financing, development or management of
20 employee benefit programs. All appointments shall be selected to
21 represent the different geographical areas within the state and all
22 members shall be residents of West Virginia. No member may be
23 removed from office by the Governor except for official misconduct,
24 incompetence, neglect of duty, neglect of fiduciary duty or other

1 specific responsibility imposed by this article or gross
2 immorality.

3 (c) The Secretary of the Department of Administration shall
4 serve as chair of the finance board, which shall meet at times and
5 places specified by the call of the chair or upon the written
6 request to the chair of at least two members. The Director of the
7 Public Employees Insurance Agency shall serve as staff to the
8 board. Notice of each meeting shall be given in writing to each
9 member by the director at least three days in advance of the
10 meeting. Five members constitute a quorum. The board shall pay
11 each member the same compensation and expense reimbursement that is
12 paid to members of the Legislature for their interim duties, as
13 recommended by the Citizens Legislative Compensation Commission and
14 authorized by law, for each day or portion of a day engaged in the
15 discharge of official duties.

16 (d) Upon termination of the board and notwithstanding any
17 provisions in this article to the contrary, the director is
18 authorized to assess monthly employee premium contributions and to
19 change the types and levels of costs to employees only in
20 accordance with this subsection. Any assessments or changes in
21 costs imposed pursuant to this subsection shall ~~be implemented by~~
22 ~~legislative rule proposed~~ recommended by the director ~~for~~
23 ~~promulgation pursuant to the provisions of article three, chapter~~
24 ~~twenty-nine-a of this code~~ to the Legislature prior to January 1 of

1 each year in the form of an official finding and then shall be
2 reviewed and either approved, amended or disapproved by the
3 Legislature. Any employee assessments or costs previously
4 authorized by the finance board prior to adoption of this statute
5 shall then remain in effect until amended by ~~rule of the Director~~
6 ~~promulgated~~ Act of the Legislature pursuant to this subsection.

7 **§5-16-5. Purpose, powers and duties of the finance board; initial**
8 **financial plan; financial plan for following year; and**
9 **annual financial plans.**

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

18 (b) The finance board shall retain the services of an
19 impartial, professional actuary, with demonstrated experience in
20 analysis of large group health insurance plans, to estimate the
21 total financial requirements of the Public Employees Insurance
22 Agency for each fiscal year and to review and render written
23 professional opinions as to financial plans proposed by the finance
24 board. The actuary shall also assist in the development of

1 alternative financing options and perform any other services
2 requested by the finance board or the director. All reasonable
3 fees and expenses for actuarial services shall be paid by the
4 Public Employees Insurance Agency. Any financial plan or
5 modifications to a financial plan approved or proposed by the
6 finance board pursuant to this section shall be submitted to and
7 reviewed by the actuary and may not be finally approved and
8 submitted to the Governor and to the Legislature without the
9 actuary's written professional opinion that the plan may be
10 reasonably expected to generate sufficient revenues to meet all
11 estimated program and administrative costs of the agency, including
12 incurred but unreported claims, for the fiscal year for which the
13 plan is proposed. The actuary's opinion on the financial plan for
14 each fiscal year shall allow for no more than thirty days of
15 accounts payable to be carried over into the next fiscal year. The
16 actuary's opinion for any fiscal year shall not include a
17 requirement for establishment of a reserve fund.

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

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

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

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

1 and

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

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

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

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

22 (2) The finance board shall prepare a proposed financial plan
23 designed to generate revenues sufficient to meet all estimated
24 program and administrative costs of the Public Employees Insurance

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

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

20 (4) Any financial plan shall be designed to allow thirty days
21 or less of accounts payable to be carried over into the next fiscal
22 year. For each fiscal year, the Governor shall provide his or her
23 estimate of total revenues to the finance board no later than
24 October 15, of the preceding fiscal year: *Provided*, That for the

1 prospective financial plans required by this section, the Governor
2 shall estimate the revenues available for each fiscal year of the
3 plans based on the estimated percentage of growth in general fund
4 revenues. The finance board shall submit its final, ~~approved~~
5 financial plan, after obtaining the necessary actuary's opinion and
6 conducting one or more public hearings in each congressional
7 district, to the Governor and to the Legislature no later than
8 January 1, preceding the fiscal year. The financial plan for a
9 fiscal year becomes effective and shall be implemented ~~by the~~
10 ~~director~~ only after review, any needed amendment, and approval by
11 the Legislature, on July 1 of the fiscal year. In addition to each
12 final, approved financial plan required under this section, the
13 finance board shall also simultaneously submit financial statements
14 based on generally accepted accounting practices (GAAP) and the
15 final, approved plan restated on an accrual basis of accounting,
16 which shall include allowances for incurred but not reported
17 claims: *Provided, however,* That the financial statements and the
18 accrual-based financial plan restatement shall not affect the
19 approved financial plan.

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

23 (f) By January 1, of each year the finance board shall submit
24 to the Governor and the Legislature a prospective financial plan,

1 for a period not to exceed five years, for the programs provided in
2 this article. Factors that the board shall consider include, but
3 are not limited to, the trends for the program and the industry;
4 the medical rate of inflation; utilization patterns; cost of
5 services; and specific information such as average age of employee
6 population, active to retiree ratios, the service delivery system
7 and health status of the population.

8 (g) The prospective financial plans shall be based on the
9 estimated revenues submitted in accordance with subdivision (4),
10 subsection (d) of this section and shall include an average of the
11 projected cost-sharing percentages of premiums and an average of
12 the projected deductibles and copays for the various programs.
13 Beginning in the plan year which commences on July 1, 2002, and in
14 each plan year thereafter, until and including the plan year which
15 commences on July 1, 2006, the prospective plans shall include
16 incremental adjustments toward the ultimate level required in this
17 subsection, in the aggregate cost-sharing percentages of premium
18 between employers and employees, including the amounts of any
19 subsidization of retired employee benefits. Effective in the plan
20 year commencing on July 1, 2006, and in each plan year thereafter,
21 the aggregate premium cost-sharing percentages between employers
22 and employees, including the amounts of any subsidization of
23 retired employee benefits, shall be at a level of eighty percent
24 for the employer and twenty percent for employees, except for the

1 employers provided in subsection (d), section eighteen of this
2 article whose premium cost-sharing percentages shall be governed by
3 that subsection. After the submission of the initial prospective
4 plan, the board may not increase costs to the participating
5 employers or change the average of the premiums, deductibles and
6 copays for employees, except in the event of a true emergency as
7 provided in this section: *Provided*, That if the board invokes the
8 emergency provisions, the cost shall be borne between the employers
9 and employees in proportion to the cost-sharing ratio for that plan
10 year: *Provided, however*, That for purposes of this section,
11 "emergency" means that the most recent projections demonstrate that
12 plan expenses will exceed plan revenues by more than one percent in
13 any plan year: *Provided further*, That the aggregate premium cost-
14 sharing percentages between employers and employees, including the
15 amounts of any subsidization of retired employee benefits, may be
16 offset, in part, by a legislative appropriation for that purpose.

17 (h) The finance board shall meet on at least a quarterly basis
18 to review implementation of its current financial plan in light of
19 the actual experience of the Public Employees Insurance Agency.
20 The board shall review actual costs incurred, any revised cost
21 estimates provided by the actuary, expenditures and any other
22 factors affecting the fiscal stability of the plan and may make any
23 additional modifications to the plan necessary to ensure that the
24 total financial requirements of the agency for the current fiscal

1 year are met. The finance board may not increase the types and
2 levels of cost to employees during its quarterly review except in
3 the event of a true emergency.

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

NOTE: The purpose of this bill is to require the Legislature
to approve changes in costs imposed by the Public Employees
Insurance Agency Finance Board instead of being approved by
promulgation of new rules proposed by the board's director.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.