

1 **ENROLLED**

2 **Senate Bill No. 469**

3 (BY SENATORS KESSLER (MR. PRESIDENT) AND HALL,

4 BY REQUEST OF THE EXECUTIVE)

5 \_\_\_\_\_  
6 [Passed February 10, 2012; in effect from passage.]  
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9  
10 AN ACT to amend and reenact §5-16-3 of the Code of West Virginia,  
11 1931, as amended; to amend said code by adding thereto two new  
12 sections, designated §5-16-5a and §5-16-5b; to amend said code  
13 by adding thereto a new section, designated §5-16D-7; to amend  
14 and reenact §11-21-96 of said code; and to amend and reenact  
15 §18-9A-24 of said code, all relating to other post-employment  
16 benefits generally; directing the Director of the Public  
17 Employees Insurance Agency to evaluate and administer programs  
18 that ensure the long-term effectiveness of the agency;  
19 requiring the director to issue annual progress reports to the  
20 Legislature; prohibiting the Public Employees Insurance Agency  
21 Finance Board from including in the financial plans any  
22 subsidy from the Retiree Health Benefit Trust for the cost of  
23 coverage for retired employees who were hired on or after July

1 1, 2010; creating the Post-July 1, 2010 Employee Trust;  
2 allowing appointment of a joint committee; directing a certain  
3 amount of personal income tax into the West Virginia Retiree  
4 Health Benefit Trust Fund until Governor certifies that trust  
5 fund is fully funded or July 1, 2037, whichever date is later;  
6 directing an amount of personal income tax into the Post-July  
7 1, 2010 Employee Trust Fund; and specifying that portions of  
8 the employer annual required contribution of county boards of  
9 education shall be billed to and be a responsibility of the  
10 state.

11 *Be it enacted by the Legislature of West Virginia:*

12 That §5-16-3 of the Code of West Virginia, 1931, as amended,  
13 be amended and reenacted; that said code be amended by adding  
14 thereto two new sections, designated §5-16-5a and §5-16-5b; that  
15 said code be amended by adding thereto a new section, designated  
16 §5-16D-7; that §11-21-96 of said code be amended and reenacted; and  
17 that §18-9A-24 of said code be amended and reenacted, all to read  
18 as follows:

19 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**  
20 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;**  
21 **MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**  
22 **ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**  
23 **§5-16-3. Composition of Public Employees Insurance Agency;**

1                   **appointment, qualification, compensation and duties**  
2                   **of Director of Agency; employees; civil service**  
3                   **coverage.**

4           (a) The Public Employees Insurance Agency consists of the  
5 Director, the Finance Board, the Advisory Board and any employees  
6 who may be authorized by law. The Director shall be appointed by  
7 the Governor, with the advice and consent of the Senate, and serves  
8 at the will and pleasure of the Governor. The Director shall have  
9 at least three years' experience in health or governmental health  
10 benefit administration as his or her primary employment duty prior  
11 to appointment as director. The Director shall receive actual  
12 expenses incurred in the performance of official business. The  
13 Director shall employ any administrative, technical and clerical  
14 employees required for the proper administration of the programs  
15 provided in this article. The Director shall perform the duties  
16 that are required of him or her under the provisions of this  
17 article and is the Chief Administrative Officer of the Public  
18 Employees Insurance Agency. The Director may employ a deputy  
19 director.

20           (b) Except for the Director, his or her personal secretary,  
21 the Deputy Director and the Chief Financial Officer, all positions  
22 in the agency shall be included in the classified service of the  
23 civil service system pursuant to article six, chapter twenty-nine

1 of this code.

2 (c) The Director is responsible for the administration and  
3 management of the Public Employees Insurance Agency as provided in  
4 this article and in connection with his or her responsibility may  
5 make all rules necessary to effectuate the provisions of this  
6 article. Nothing in section four or five of this article limits  
7 the Director's ability to manage on a day-to-day basis the group  
8 insurance plans required or authorized by this article, including,  
9 but not limited to, administrative contracting, studies, analyses  
10 and audits, eligibility determinations, utilization management  
11 provisions and incentives, provider negotiations, provider  
12 contracting and payment, designation of covered and noncovered  
13 services, offering of additional coverage options or cost  
14 containment incentives, pursuit of coordination of benefits and  
15 subrogation or any other actions which would serve to implement the  
16 plan or plans designed by the Finance Board. The Director is to  
17 function as a benefits management professional and should avoid  
18 political involvement in managing the affairs of the Public  
19 Employees Insurance Agency.

20 (d) The Director should make every effort to evaluate and  
21 administer programs to improve quality, improve health status of  
22 members, develop innovative payment methodologies, manage health  
23 care delivery costs, evaluate effective benefit designs, evaluate

1 cost sharing and benefit based programs, and adopt effective  
2 industry programs that can manage the long-term effectiveness and  
3 costs for the programs at the Public Employees Insurance Agency to  
4 include, but not be limited to:

5 (1) Increasing generic fill rates;

6 (2) Managing specialty pharmacy costs;

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

9 (4) Coordinating with providers, private insurance carriers  
10 and to the extent possible Medicare to encourage the establishment  
11 of cost effective accountable care organizations;

12 (5) Exploring and developing advanced payment methodologies  
13 for care delivery such as case rates, capitation and other  
14 potential risk-sharing models and partial risk-sharing models for  
15 accountable care organizations and/or medical homes;

16 (6) Adopting measures identified by the Centers for Medicare  
17 and Medicaid Services to reduce cost and enhance quality;

18 (7) Evaluating the expenditures to reduce excessive use of  
19 emergency room visits, imaging services and other drivers of the  
20 agency's medical rate of inflation;

21 (8) Recommending cutting-edge benefit designs to the Finance  
22 Board to drive behavior and control costs for the plans;

23 (9) Implementing programs to encourage the use of the most

1 efficient and high-quality providers by employees and retired  
2 employees;

3 (10) Identifying employees and retired employees who have  
4 multiple chronic illnesses and initiating programs to coordinate  
5 the care of these patients;

6 (11) Initiating steps by the agency to adjust payment by the  
7 agency for the treatment of hospital acquired infections and  
8 related events consistent with the payment policies, operational  
9 guidelines and implementation timetable established by the Centers  
10 of Medicare and Medicaid Services. The agency shall protect  
11 employees and retired employees from any adjustment in payment for  
12 hospital acquired infections; and

13 (12) Initiating steps by the agency to reduce the number of  
14 employees and retired employees who experience avoidable  
15 readmissions to a hospital for the same diagnosis related group  
16 illness within thirty days of being discharged by a hospital in  
17 this state or another state consistent with the payment policies,  
18 operational guidelines and implementation timetable established by  
19 the Centers of Medicare and Medicaid Services.

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

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

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

8    **§5-16-5b.    Creation of trust for retirees hired on or after July 1,**  
9                   **2010.**

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

1 **ARTICLE 16D. RETIREMENT HEALTH BENEFIT TRUST FUND.**

2 **§5-16D-7. Select Committee on Other Post-Employment Benefits.**

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

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

19 **CHAPTER 11. TAXATION.**

20 **ARTICLE 21. PERSONAL INCOME TAX.**

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

22 (a) There is hereby dedicated an annual amount of \$45 million  
23 from annual collections of the tax imposed by this article for



1 payment of the unfunded liability of the current Workers'  
2 Compensation Fund. No portion of this amount may be pledged for  
3 payment of debt service on revenue bonds issued pursuant to article  
4 two-d, chapter twenty-three of this code.

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

15 (c) The transfers required by subsection (b) of this section  
16 shall continue to be made until the Governor certifies to the  
17 Legislature that an independent actuarial study determined that the  
18 unfunded liability of the old fund, as defined in chapter twenty-  
19 three of this code, has been paid or provided for in its entirety.  
20 Thereafter, an annual amount of \$35 million from annual collections  
21 of the tax imposed by this article and which were previously  
22 dedicated by this section for payment of the unfunded liability of  
23 the Workers Compensation Fund shall be dedicated for payment of the  
24 unfunded liability of the West Virginia Retiree Health Benefit

1 Trust Fund and to provide funding for the Post-July 1, 2010,  
2 Employee Trust Fund created by section five-b, article sixteen,  
3 chapter five of this code. The \$35 million transferred pursuant to  
4 this subsection shall be transferred in accordance with the  
5 following:

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

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

22 **CHAPTER 18. EDUCATION.**

23 **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

1    **§18-9A-24.    Foundation allowance for Public Employees Insurance**  
2           **Fund.**

3           (a) The allowance to the Public Employees Insurance Agency for  
4 school employees shall be made in accordance with the following:  
5 The number of individuals employed by county boards as professional  
6 educators pursuant to section four of this article, plus the number  
7 of individuals employed by county boards as service personnel  
8 pursuant to section five of this article, plus the number of  
9 individuals employed by county boards as professional student  
10 support personnel pursuant to section eight of this article,  
11 multiplied by the average premium rate for all county board of  
12 education employees established by the Public Employees Insurance  
13 Agency Finance Board. The average premium rate for all county  
14 board of education employees shall be incorporated into each  
15 financial plan developed by the Finance Board in accordance with  
16 section five, article sixteen, chapter five of this code. The  
17 premiums shall include any proportionate share of retirees subsidy  
18 established by the Finance Board and the difference, if any,  
19 between the previous year's actual premium costs and the previous  
20 year's appropriation, if the actual cost was greater than the  
21 appropriation. The amount of the allowance provided in this  
22 subsection shall be paid directly to the West Virginia Public  
23 Employees Insurance Agency. Each county board shall reflect its

1 share of the payment as revenue on its financial statements to  
2 offset its expense for the employer annual required contribution,  
3 as defined in article sixteen-d, chapter five of this code.

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

22 (c) County boards are liable for the employer annual required  
23 contribution allocated and billed to the county boards on or after

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

17 (d) Prior to July 1, 1995, nothing in this article shall be  
18 construed to limit the ability of county boards to use funds  
19 appropriated to county boards pursuant to this article to pay  
20 employer premiums to the Public Employees Insurance Agency for  
21 employees whose positions are funded pursuant to this article.  
22 Funds appropriated to county boards pursuant to this article shall  
23 not be used to pay employer premiums for employees of such boards

1 whose positions are not, or will not be within twenty months,  
2 funded by funds appropriated pursuant to this article.