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ENGROSSED

**Senate Bill No. 469**

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

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[Introduced January 31, 2012; referred to the Committee on  
Finance.]

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A BILL 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

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

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

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

20 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**  
21 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;**  
22 **MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**  
23 **ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

1    **§5-16-3.    Composition of Public Employees Insurance Agency;**  
2                   **appointment, qualification, compensation and duties**  
3                   **of Director of Agency; employees; civil service**  
4                   **coverage.**

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

21           (b) Except for the Director, his or her personal secretary,  
22 the Deputy Director and the Chief Financial Officer, all positions  
23 in the agency shall be included in the classified service of the

1 civil service system pursuant to article six, chapter twenty-nine  
2 of this code.

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

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

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

6 (1) Increasing generic fill rates;

7 (2) Managing specialty pharmacy costs;

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

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

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

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

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

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

1       (9) Implementing programs to encourage the use of the most  
2 efficient and high-quality providers by employees and retired  
3 employees;

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

7       (11) Initiating steps by the agency to limit or eliminate the  
8 payment by the agency for treating hospital acquired infections and  
9 related events; and

10       (12) Initiating steps by the agency to limit or eliminate the  
11 number of employees and retired employees who are re-admitted to a  
12 hospital for the same diagnosis related group illness within thirty  
13 days of being discharged by a hospital in this state or another  
14 state.

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

19 **§5-16-5a. Retiree premium subsidy from Retiree Health Benefit**  
20 **Trust for hires prior to July 1, 2010.**

21       The Finance Board may include in its financial plans a subsidy  
22 from the Retiree Health Benefit Trust Fund created by article  
23 sixteen-d of this chapter for the cost of coverage under the major

1 health care benefits plans, only for retired employees who were  
2 hired before July 1, 2010.

3 **§5-16-5b. Creation of trust for retirees hired on or after July 1,**  
4 **2010.**

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

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

20 **§5-16D-7. Select Committee on Other Post-Employment Benefits.**

21 (a) Pursuant to the authority contained in section one,  
22 article one, chapter four of this code, the presiding officers of  
23 each house of the Legislature may appoint a joint committee to be

1 known at the Select Committee on Other Post-Employment Benefits to  
2 study other post-employment benefits, including the effects of the  
3 amendments to this code relating to other post-employment benefits  
4 made during the 2012 regular session of the Legislature.

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

14 **CHAPTER 11. TAXATION.**

15 **ARTICLE 21. PERSONAL INCOME TAX.**

16 **§11-21-96. Dedication of personal income tax proceeds.**

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

23 (b) Notwithstanding any other provision of this code to the



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

10 (c) ~~Expiration.~~ The transfers required by subsection (b) of  
11 this section shall continue to be made until the Governor certifies  
12 to the Legislature that an independent ~~actuary~~ actuarial study  
13 determined that the unfunded liability of the old fund, as defined  
14 in chapter twenty-three of this code, has been paid or provided for  
15 in its entirety. ~~No transfer pursuant to this section shall be made~~  
16 thereafter. Thereafter, an annual amount of \$35 million from  
17 annual collections of the tax imposed by this article and which  
18 were previously dedicated by this section for payment of the  
19 unfunded liability of the Workers Compensation Fund shall be  
20 dedicated for payment of the unfunded liability of the West  
21 Virginia Retiree Health Benefit Trust Fund and to provide funding  
22 for the Post-July 1, 2010, Employee Trust Fund created by section  
23 five-b, article sixteen, chapter five of this code. The \$35

1 million transferred pursuant to this subsection shall be  
2 transferred in accordance with the following:

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

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

19 **CHAPTER 18. EDUCATION**

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

21 **§18-9A-24. Foundation allowance for Public Employees Insurance**  
22 **Fund.**

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

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

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

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

21            (d) ~~(c)~~ Prior to July 1, 1995, nothing in this article shall  
22 be construed to limit the ability of county boards ~~of education~~ to  
23 use funds appropriated to county boards ~~of education~~ pursuant to

1 this article to pay employer premiums to the Public Employees  
2 Insurance Agency for employees whose positions are funded pursuant  
3 to this article. Funds appropriated to county boards ~~of education~~  
4 pursuant to this article shall not be used to pay employer premiums  
5 for employees of such boards whose positions are not, or will not  
6 be within twenty months, funded by funds appropriated pursuant to  
7 this article.