

FILED

2005 MAY 26 P 4: 18

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

3rd Extraordinary Session, 2005

ENROLLED

Committee Substitute for

SENATE BILL NO. 3009

(By Senators Tomblin, Mr. President, and Sprouse,)
By Request of the Executive)

PASSED May 17, 2005

In Effect July 1, 2005 ~~Passage~~

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 3009

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed May 17, 2005; to take effect July 1, 2005.]

AN ACT to repeal §5A-10-1, §5A-10-2 and §5A-10-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-10D-1 of said code; to amend and reenact §5-16-3 and §5-16-4 of said code; to amend and reenact §5A-1-2 of said code; and to amend and reenact §29-6-5 and §29-6-6 of said code, all relating generally to the elimination of the Employee and Insurance Services Division of the Department of Administration and reassigning certain duties; reinstating the Secretary of the Department of Administration as a member of the Consolidated Public Retirement Board, the Public Employees Insurance Agency Finance Board and the State Personnel Board; providing that the Governor shall appoint the Director of the Public Employees Insurance Agency; providing that the Division of Personnel is continued within the Department of Administration; clarifying board member compensation and expense reimbursement; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §5A-10-1, §5A-10-2 and §5A-10-3 of the Code of West Virginia, 1931, as amended, be repealed; that §5-10D-1 of said code be amended and reenacted; that §5-16-3 and §5-16-4 of said code be amended and reenacted; that §5A-1-2 of said code be amended and reenacted; and that §29-6-5 and §29-6-6 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 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

**§5-10D-1. Consolidated Public Retirement Board continued;
members; vacancies; investment of plan funds.**

1 (a) The Consolidated Public Retirement Board is contin-
2 ued to administer all public retirement plans in this state.
3 It shall administer the Public Employees Retirement
4 System established in article ten of this chapter; the
5 Teachers Retirement System established in article seven-a,
6 chapter eighteen of this code; the Teachers Defined
7 Contribution Retirement System created by article seven-b
8 of said chapter; the West Virginia State Police Death,
9 Disability and Retirement Fund created by article two,
10 chapter fifteen of this code; the West Virginia State Police
11 Retirement System created by article two-a of said
12 chapter; the Deputy Sheriff Death, Disability and Retire-
13 ment Fund created by article fourteen-d, chapter seven of
14 this code; and the Judges' Retirement System created
15 under article nine, chapter fifty-one of this code.

16 (b) The membership of the Consolidated Public Retire-
17 ment Board consists of:

18 (1) The Governor or his or her designee;

19 (2) The State Treasurer or his or her designee;

20 (3) The State Auditor or his or her designee;

21 (4) The Secretary of the Department of Administration
22 or his or her designee;

23 (5) Four residents of the state, who are not members,
24 retirants or beneficiaries of any of the public retirement
25 systems, to be appointed by the Governor, with the advice
26 and consent of the Senate; and

27 (6) A member, annuitant or retirant of the Public
28 Employees Retirement System who is or was a state
29 employee; a member, annuitant or retirant of the Public
30 Employees Retirement System who is not or was not a
31 state employee; a member, annuitant or retirant of the
32 Teachers Retirement System; a member, annuitant or
33 retirant of the West Virginia State Police Death, Disability
34 and Retirement Fund; a member, annuitant or retirant of
35 the Deputy Sheriff Death, Disability and Retirement Fund;
36 and a member, annuitant or retirant of the Teachers
37 Defined Contribution Retirement System all to be ap-
38 pointed by the Governor, with the advice and consent of
39 the Senate.

40 (c) The appointed members of the Board serve five-year
41 terms. A member appointed pursuant to subdivision (6),
42 subsection (b) of this section ceases to be a member of the
43 Board if he or she ceases to be a member of the represented
44 system. If a vacancy occurs in the appointed membership,
45 the Governor, within sixty days, shall fill the vacancy by
46 appointment for the unexpired term. No more than five
47 appointees may be of the same political party.

48 (d) The Consolidated Public Retirement Board has all the
49 powers, duties, responsibilities and liabilities of the Public
50 Employees Retirement System established pursuant to
51 article ten of this chapter; the Teachers Retirement System
52 established pursuant to article seven-a, chapter eighteen
53 of this code; the Teachers Defined Contribution System
54 established pursuant to article seven-b of said chapter; the
55 West Virginia State Police Death, Disability and Retire-
56 ment Fund created pursuant to article two, chapter fifteen

57 of this code; the West Virginia State Police Retirement
58 System created by article two-a of said chapter; the
59 Deputy Sheriff Death, Disability and Retirement Fund
60 created pursuant to article fourteen-d, chapter seven of
61 this code; and the Judges' Retirement System created
62 pursuant to article nine, chapter fifty-one of this code and
63 their appropriate governing boards.

64 (e) The Consolidated Public Retirement Board may
65 propose rules for legislative approval, in accordance with
66 article three, chapter twenty-nine-a of this code, necessary
67 to effectuate its powers, duties and responsibilities:
68 *Provided*, That the Board may adopt any or all of the rules,
69 previously promulgated, of a retirement system which it
70 administers.

71 (f) The Consolidated Public Retirement Board shall
72 continue to transfer all funds received for the benefit of
73 the retirement systems within the consolidated pension
74 plan as defined in section three-c, article six-b, chapter
75 forty-four of this code, including, but not limited to, all
76 employer and employee contributions, to the West Virginia
77 Investment Management Board: *Provided*, That the
78 employer and employee contributions of the Teachers
79 Defined Contribution System, established in section three,
80 article seven-b, chapter eighteen of this code, and volun-
81 tary deferred compensation funds invested by the West
82 Virginia Consolidated Public Retirement Board pursuant
83 to section five, article ten-b of this chapter may not be
84 transferred to the West Virginia Investment Management
85 Board.

86 (g) Notwithstanding any provision of this code or any
87 legislative rule to the contrary, all assets of the public
88 retirement plans set forth in subsection (a) of this section
89 shall be held in trust. The Consolidated Public Retirement
90 Board is a trustee for all public retirement plans, except
91 with regard to the investment of funds: *Provided*, That the
92 Consolidated Public Retirement Board is a trustee with
93 regard to the investments of the Teachers Defined Contri-

94 bution System, the voluntary deferred compensation funds
95 invested pursuant to section five, article ten-b of this
96 chapter and any other assets of the public retirement plans
97 administered by the Consolidated Public Retirement Board
98 as set forth in subsection (a) of this section for which no
99 trustee has been expressly designated in this code.

100 (h) The Board may employ the West Virginia Investment
101 Management Board to provide investment management
102 consulting services for the investment of funds in the
103 Teachers Defined Contribution System.

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

19 (b) Except for the Director, his or her personal secretary,
20 the Deputy Director and the Chief Financial Officer, all
21 positions in the Agency shall be included in the classified

22 service of the civil service system pursuant to article six,
23 chapter twenty-nine of this code.

24 (c) The Director is responsible for the administration and
25 management of the Public Employees Insurance Agency as
26 provided in this article and in connection with his or her
27 responsibility may make all rules necessary to effectuate
28 the provisions of this article. Nothing in section four or
29 five of this article limits the Director's ability to manage
30 on a day-to-day basis the group insurance plans required
31 or authorized by this article, including, but not limited to,
32 administrative contracting, studies, analyses and audits,
33 eligibility determinations, utilization management provi-
34 sions and incentives, provider negotiations, provider
35 contracting and payment, designation of covered and
36 noncovered services, offering of additional coverage
37 options or cost containment incentives, pursuit of coordi-
38 nation of benefits and subrogation or any other actions
39 which would serve to implement the plan or plans de-
40 signed by the Finance Board. The Director is to function
41 as a benefits management professional and should avoid
42 political involvement in managing the affairs of the Public
43 Employees Insurance Agency.

**§5-16-4. Public Employees Insurance Agency Finance Board
continued; qualifications, terms and removal of
members; quorum; compensation and expenses;
termination date.**

1 (a) The Public Employees Insurance Agency Finance
2 Board is continued and consists of the Secretary of the
3 Department of Administration or his or her designee and
4 eight members appointed by the Governor, with the advice
5 and consent of the Senate, for terms of four years and until
6 the appointment of their successors. Members may be
7 reappointed for successive terms. No more than five
8 members, including the Secretary of the Department of
9 Administration, may be of the same political party.

10 (b) Of the eight members appointed by the Governor, one
11 member shall represent the interests of education employ-

12 ees, one shall represent the interests of public employees,
13 one shall represent the interests of retired employees, one
14 shall represent the interests of organized labor and four
15 shall be selected from the public at large. The Governor
16 shall appoint the member representing the interests of
17 education employees from a list of three names submitted
18 by the largest organization of education employees in this
19 state. The Governor shall appoint the member represent-
20 ing the interests of organized labor from a list of three
21 names submitted by the state's largest organization
22 representing labor affiliates. The four members appointed
23 from the public shall each have experience in the financ-
24 ing, development or management of employee benefit
25 programs. All appointments shall be selected to represent
26 the different geographical areas within the state and all
27 members shall be residents of West Virginia. No member
28 may be removed from office by the Governor except for
29 official misconduct, incompetence, neglect of duty, neglect
30 of fiduciary duty or other specific responsibility imposed
31 by this article or gross immorality.

32 (c) The Secretary of the Department of Administration
33 shall serve as Chair of the Finance Board, which shall meet
34 at times and places specified by the call of the Chair or
35 upon the written request to the Chair of at least two
36 members. The Director of the Public Employees Insurance
37 Agency shall serve as staff to the Board. Notice of each
38 meeting shall be given in writing to each member by the
39 Director at least three days in advance of the meeting.
40 Five members constitute a quorum. The Board shall pay
41 each member the same compensation and expense reim-
42 bursement that is paid to members of the Legislature for
43 their interim duties, as recommended by the Citizens
44 Legislative Compensation Commission and authorized by
45 law, for each day or portion of a day engaged in the
46 discharge of official duties.

47 (d) Upon termination of the Board and notwithstanding
48 any provisions in this article to the contrary, the Director
49 is authorized to assess monthly employee premium contri-

50 butions and to change the types and levels of costs to
51 employees only in accordance with this subsection. Any
52 assessments or changes in costs imposed pursuant to this
53 subsection shall be implemented by legislative rule
54 proposed by the Director for promulgation pursuant to the
55 provisions of article three, chapter twenty-nine-a of this
56 code. Any employee assessments or costs previously
57 authorized by the Finance Board shall then remain in
58 effect until amended by rule of the Director promulgated
59 pursuant to this subsection.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-2. Department of Administration and Office of Secretary; Secretary; divisions; directors.

1 (a) The Department of Administration and the Office of
2 Secretary of Administration are continued in the executive
3 branch of state government. The Secretary is the Chief
4 Executive Officer of the Department and shall be ap-
5 pointed by the Governor, by and with the advice and
6 consent of the Senate, for a term not exceeding the term of
7 the Governor.

8 (b) The Department of Administration may receive
9 federal funds.

10 (c) The Secretary serves at the will and pleasure of the
11 Governor. The annual compensation of the Secretary shall
12 be as specified in section two-a, article seven, chapter six
13 of this code.

14 (d) There shall be in the Department of Administration
15 a Finance Division, a General Services Division, an
16 Information Services and Communications Division,
17 Division of Personnel and a Purchasing Division. Each
18 division shall be headed by a director who may also head
19 any and all sections within that division and who shall be
20 appointed by the Secretary. In addition to the divisions
21 enumerated in this subsection, there shall also be in the

22 Department of Administration those agencies, boards,
23 commissions and councils specified in section one, article
24 two, chapter five-f of this code.

**CHAPTER 29. MISCELLANEOUS BOARDS
AND OFFICERS.**

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-5. Division of Personnel continued; sections.

1 (a) The Division of Personnel is continued within the
2 Department of Administration.

3 (b) The Division of Personnel shall perform the following
4 functions:

5 (1) Applicant services;

6 (2) Classification and compensation;

7 (3) Management development and training;

8 (4) Program evaluation and payroll;

9 (5) Employee services;

10 (6) Employee relations; and

11 (7) Administrative and staff services.

12 (c) Each section shall be under the control of a section
13 chief to be appointed by the Director who shall be quali-
14 fied by reason of exceptional training and experience in
15 the field of activities of the respective section. The
16 Director may establish additional sections necessary to
17 carry out the purposes of this article.

**§29-6-6. State Personnel Board continued; members; term;
quorum; vacancies; powers and duties.**

1 (a) There is continued within the Division a State
2 Personnel Board consisting of the Secretary of the Depart-
3 ment of Administration or his or her designee who serves
4 as an ex officio nonvoting member and five members

5 appointed by the Governor, with the advice and consent of
6 the Senate, for terms of four years and until the appoint-
7 ment of their successors. No more than four members may
8 be of the same political party. Four members of the Board
9 constitute a quorum.

10 (b) A member of the Board may not be removed from
11 office except for official misconduct, incompetence,
12 neglect of duty, gross immorality or malfeasance and then
13 only in the manner prescribed in article six, chapter six of
14 this code for the removal by the Governor of state elected
15 officers.

16 (c) Citizen members of the Board shall each be compen-
17 sated for attending official meetings or engaging in official
18 duties not to exceed the amount paid to members of the
19 Legislature for their interim duties, as recommended by
20 the Citizens Legislative Compensation Commission as
21 authorized by law, and may be reimbursed actual and
22 necessary expenses incurred for each day or portion
23 thereof engaged in the discharge of official duties in a
24 manner consistent with guidelines of the Travel Manage-
25 ment Office of the Department of Administration.

26 (d) The Secretary of the Department of Administration
27 or his or her designee serves as Chair of the Board. The
28 Board shall meet at the time and place specified by the call
29 of the Chair. At least one meeting shall be held in each
30 month. All meetings shall be open to the public. Notice of
31 each meeting shall be given in writing to each member by
32 the Director at least three days in advance of the meeting
33 period.

34 (e) In addition to other powers and duties invested in it
35 by this article or by any other law, the Board shall:

36 (1) Propose rules for legislative approval, in accordance
37 with chapter twenty-nine-a of this code, to implement the
38 provisions of this article;

39 (2) Interpret the application of this article to any public
40 body or entity; and

41 (3) Authorize and conduct any studies, inquiries, investi-
42 gations or hearings in the operation of this article it
43 considers necessary.

44 (f) The Director or the Board may subpoena and require
45 the attendance of witnesses in the production of evidence
46 or documents relevant to any proceeding under this article.

Enr. Com. Sub. for S. B. No. 3009] 12

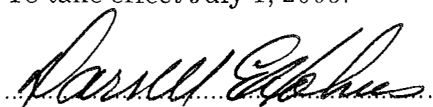
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

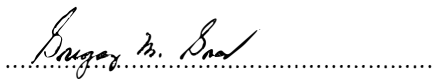

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Chairman Senate Committee


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Chairman House Committee

Originated in the Senate.

To take effect July 1, 2005.

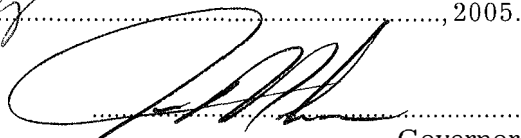

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 26th
Day of May, 2005.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 25 2005

Time

4:05 pm