

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 566**

4 (By Senators McCabe, Wells, Foster, Kessler (Acting President)  
5 and Palumbo)

6 \_\_\_\_\_  
7 [Originating in the Committee on the Judiciary;  
8 reported February 25, 2011.]  
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11  
12 A BILL to amend and reenact §5-16-5 of the Code of West Virginia,  
13 1931, as amended; to amend and reenact §5-16D-1, §5-16D-2 and  
14 §5-16D-6 of said code; to amend and reenact §11-10-5d of said  
15 code; to amend and reenact §11-17-3 of said code; and to amend  
16 and reenact §18-9A-24 of said code, all relating to other  
17 post-employment benefits generally; prohibiting Public  
18 Employees Insurance Agency Finance Board from including in the  
19 financial plans any subsidy for the cost of coverage for  
20 retired employees who were hired on or after July 1, 2010;  
21 capping the amount the finance board may include in the  
22 financial plans as subsidy for the cost of coverage for  
23 retired employees who were hired before July 1, 2010, at \$160  
24 million; escalating the funding; converting to a per member,  
25 per month equivalent; defining "contractually required  
26 contribution"; authorizing the finance board to set minimum  
27 annual required contribution below annual required

1 contribution; specifying that each participating government  
2 entity is required to remit annual contractual obligation;  
3 authorizing the Tax Commissioner to disclose certain return  
4 information to the Public Employees Insurance Agency to  
5 determine total income for premium calculation; increasing the  
6 excise tax on cigarettes from 55 cents to \$1.55 per pack;  
7 dedicating a portion of the increased tax to the West Virginia  
8 Retiree Health Benefit Trust Fund for fifteen years;  
9 specifying that the trust fund is to keep all earnings during  
10 the fifteen-year period; specifying that the foundation  
11 allowance for Public Employees Insurance Fund shall be paid  
12 directly to the West Virginia Retiree Health Benefit Trust  
13 Fund and each county board shall reflect its share of the  
14 payment as revenue on its financial statements to offset the  
15 applicable portion of its annual contractually required  
16 contribution expense; and providing that any amount of annual  
17 contractually required contribution allocated to and billed  
18 county boards of education for certain employees is a  
19 liability of the state until fully paid.

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

21 That §5-16-5 of the Code of West Virginia, 1931, as amended,  
22 be amended and reenacted; that §5-16D-1, §5-16D-2 and §5-16D-6 of  
23 said code be amended and reenacted; that §11-10-5d of said code be  
24 amended and reenacted; that §11-17-3 of said code be amended and  
25 reenacted; and that §18-9A-24 of said code be amended and  
26 reenacted, all to read as follows:

27 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**

1                   **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD**  
2                   **OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS,**  
3                   **OFFICES, PROGRAMS, ETC.**

4 **ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

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

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

16           (b) The finance board shall retain the services of an  
17 impartial, professional actuary, with demonstrated experience in  
18 analysis of large group health insurance plans, to estimate the  
19 total financial requirements of the Public Employees Insurance  
20 Agency for each fiscal year and to review and render written  
21 professional opinions as to financial plans proposed by the finance  
22 board. The actuary shall also assist in the development of  
23 alternative financing options and perform any other services  
24 requested by the finance board or the director. All reasonable  
25 fees and expenses for actuarial services shall be paid by the  
26 Public Employees Insurance Agency. Any financial plan or  
27 modifications to a financial plan approved or proposed by the

1 finance board pursuant to this section shall be submitted to and  
2 reviewed by the actuary and may not be finally approved and  
3 submitted to the Governor and to the Legislature without the  
4 actuary's written professional opinion that the plan may be  
5 reasonably expected to generate sufficient revenues to meet all  
6 estimated program and administrative costs of the agency, including  
7 incurred but unreported claims, for the fiscal year for which the  
8 plan is proposed. The actuary's opinion on the financial plan for  
9 each fiscal year shall allow for no more than thirty days of  
10 accounts payable to be carried over into the next fiscal year. The  
11 actuary's opinion for any fiscal year shall not include a  
12 requirement for establishment of a reserve fund.

13 (c) All financial plans required by this section shall  
14 establish:

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

17 (2) Any necessary cost-containment measures for implementation  
18 by the director;

19 (3) The levels of premium costs to participating employers;  
20 and

21 (4) The types and levels of cost to participating employees  
22 and retired employees.

23 The financial plans may provide for different levels of costs  
24 based on the insured's ability to pay. The finance board may  
25 establish different levels of costs to retired employees based upon  
26 length of employment with a participating employer, ability to pay  
27 or other relevant factors. The financial plans may also include

1 optional alternative benefit plans with alternative types and  
2 levels of cost. The finance board may develop policies which  
3 encourage the use of West Virginia health care providers.

4 In addition, the finance board may allocate a portion of the  
5 premium costs charged to participating employers to subsidize the  
6 cost of coverage for participating retired employees, on such terms  
7 as the finance board determines are equitable, ~~and~~ financially  
8 responsible and consistent with the following:

9 The finance board may not include in the financial plans any  
10 subsidy for the cost of coverage for retired employees who were  
11 hired on or after July 1, 2010. The finance board may include in  
12 the financial plans a subsidy for the cost of coverage for retired  
13 employees who were hired before July 1, 2010 not to exceed \$160  
14 million in the aggregate. This funding shall be escalated one  
15 percent per year for ten years and two percent per year for the  
16 next ten years. The finance board may convert this aggregate  
17 amount to a per member, per month equivalent.

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

23 (2) The finance board shall prepare a proposed financial plan  
24 designed to generate revenues sufficient to meet all estimated  
25 program and administrative costs of the Public Employees Insurance  
26 Agency for the fiscal year. The proposed financial plan shall  
27 allow for no more than thirty days of accounts payable to be

1 carried over into the next fiscal year. Before final adoption of  
2 the proposed financial plan, the finance board shall request the  
3 actuary to review the plan and to render a written professional  
4 opinion stating whether the plan will generate sufficient revenues  
5 to meet all estimated program and administrative costs of the  
6 Public Employees Insurance Agency for the fiscal year. The  
7 actuary's report shall explain the basis of its opinion. If the  
8 actuary concludes that the proposed financial plan will not  
9 generate sufficient revenues to meet all anticipated costs, then  
10 the finance board shall make necessary modifications to the  
11 proposed plan to ensure that all actuarially determined financial  
12 requirements of the agency will be met.

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

18 (4) Any financial plan shall be designed to allow thirty days  
19 or less of accounts payable to be carried over into the next fiscal  
20 year. For each fiscal year, the Governor shall provide his or her  
21 estimate of total revenues to the finance board no later than  
22 October 15, of the preceding fiscal year: *Provided, That, for the*  
23 *prospective financial plans required by this section, the Governor*  
24 *shall estimate the revenues available for each fiscal year of the*  
25 *plans based on the estimated percentage of growth in general fund*  
26 *revenues. The finance board shall submit its final, approved*  
27 *financial plan, after obtaining the necessary actuary's opinion and*

1 conducting one or more public hearings in each congressional  
2 district, to the Governor and to the Legislature no later than  
3 January 1, preceding the fiscal year. The financial plan for a  
4 fiscal year becomes effective and shall be implemented by the  
5 director on July 1, of the fiscal year. In addition to each final,  
6 approved financial plan required under this section, the finance  
7 board shall also simultaneously submit financial statements based  
8 on generally accepted accounting practices (GAAP) and the final,  
9 approved plan restated on an accrual basis of accounting, which  
10 shall include allowances for incurred but not reported claims:  
11 *Provided, however,* That the financial statements and the  
12 accrual-based financial plan restatement shall not affect the  
13 approved financial plan.

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

17 (f) By January 1, of each year the finance board shall submit  
18 to the Governor and the Legislature a prospective financial plan,  
19 for a period not to exceed five years, for the programs provided in  
20 this article. Factors that the board shall consider include, but  
21 are not limited to, the trends for the program and the industry;  
22 the medical rate of inflation; utilization patterns; cost of  
23 services; and specific information such as average age of employee  
24 population, active to retiree ratios, the service delivery system  
25 and health status of the population.

26 (g) The prospective financial plans shall be based on the  
27 estimated revenues submitted in accordance with subdivision (4),

1 subsection (d) of this section and shall include an average of the  
2 projected cost-sharing percentages of premiums and an average of  
3 the projected deductibles and copays for the various programs.  
4 Beginning in the plan year which commences on July 1, 2002, and in  
5 each plan year thereafter, until and including the plan year which  
6 commences on July 1, 2006, the prospective plans shall include  
7 incremental adjustments toward the ultimate level required in this  
8 subsection, in the aggregate cost-sharing percentages of premium  
9 between employers and employees, including the amounts of any  
10 subsidization of retired employee benefits. Effective in the plan  
11 year commencing on July 1, 2006, and in each plan year thereafter,  
12 the aggregate premium cost-sharing percentages between employers  
13 and employees, including the amounts of any subsidization of  
14 retired employee benefits, shall be at a level of not more than  
15 eighty percent for the employer and not less than twenty percent  
16 for employees, except for the employers provided in subsection (d),  
17 section eighteen of this article whose premium cost-sharing  
18 percentages shall be governed by that subsection. After the  
19 submission of the initial prospective plan, the board may not  
20 increase costs to the participating employers or change the average  
21 of the premiums, deductibles and copays for employees, except in  
22 the event of a true emergency as provided in this section:  
23 *Provided*, That if the board invokes the emergency provisions, the  
24 cost shall be borne between the employers and employees in  
25 proportion to the cost-sharing ratio for that plan year: *Provided*,  
26 *however*, That for purposes of this section, "emergency" means that  
27 the most recent projections demonstrate that plan expenses will



1 exceed plan revenues by more than one percent in any plan year:  
2 *Provided further,* That the aggregate premium cost-sharing  
3 percentages between employers and employees, including the amounts  
4 of any subsidization of retired employee benefits, may be offset,  
5 in part, by a legislative appropriation for that purpose.

6 (h) The finance board shall meet on at least a quarterly basis  
7 to review implementation of its current financial plan in light of  
8 the actual experience of the Public Employees Insurance Agency.  
9 The board shall review actual costs incurred, any revised cost  
10 estimates provided by the actuary, expenditures and any other  
11 factors affecting the fiscal stability of the plan and may make any  
12 additional modifications to the plan necessary to ensure that the  
13 total financial requirements of the agency for the current fiscal  
14 year are met. The finance board may not increase the types and  
15 levels of cost to employees during its quarterly review except in  
16 the event of a true emergency.

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

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

24 **§5-16D-1. Definitions.**

25 As used in this article, the term:

26 (a) "Actuarial accrued liability" means that portion, as  
27 determined by a particular actuarial cost method, of the actuarial

1 present value of fund obligations and administrative expenses which  
2 is not provided by future normal costs.

3 (b) "Actuarial cost method" means a method for determining the  
4 actuarial present value of the obligations and administrative  
5 expenses of the fund and for developing an actuarially equivalent  
6 allocation of the value to time periods, usually in the form of a  
7 normal cost and an actuarial accrued liability. Acceptable  
8 actuarial methods are the aggregate, attained age, entry age,  
9 frozen attained age, frozen entry age and projected unit credit  
10 methods.

11 (c) "Actuarially sound" means that calculated contributions  
12 to the fund are sufficient to pay the full actuarial cost of the  
13 fund. The full actuarial cost includes both the normal cost of  
14 providing for fund obligations as they accrue in the future and the  
15 cost of amortizing the unfunded actuarial accrued liability over a  
16 period of no more than thirty years.

17 (d) "Actuarial present value of total projected benefits"  
18 means the present value, at the valuation date, of the cost to  
19 finance benefits payable in the future, discounted to reflect the  
20 expected effects of the time value of money and the probability of  
21 payment.

22 (e) "Actuarial assumptions" means assumptions regarding the  
23 occurrence of future events affecting the fund such as mortality,  
24 withdrawal, disability and retirement; changes in compensation and  
25 offered post-employment benefits; rates of investment earnings and  
26 other asset appreciation or depreciation; procedures used to  
27 determine the actuarial value of assets; and other relevant items.

1 (f) "Actuarial valuation" means the determination, as of a  
2 valuation date, of the normal cost, actuarial accrued liability,  
3 actuarial value of assets and related actuarial present values for  
4 the fund.

5 (g) "Administrative expenses" means all expenses incurred in  
6 the operation of the fund, including all investment expenses.

7 (h) "Annual required contribution" means the amount employers  
8 must contribute in a given year to fully fund the trust, as  
9 determined by the actuarial valuation in accordance with  
10 requirements of generally accepted accounting principles. This  
11 amount shall represent a level of funding that if paid on an  
12 ongoing basis is projected to cover the normal cost each year and  
13 amortize any unfunded actuarial liabilities of the plan over a  
14 period not to exceed thirty years.

15 (i) "Board" means the Public Employees Insurance Agency  
16 Finance Board created in section four, article sixteen of this  
17 chapter.

18 (j) "Contractually required contribution" means an amount  
19 determined annually by the board to be billed to each employer,  
20 which amount shall at least equal the minimum annual employer  
21 payment and may be any amount up to, but may not exceed the  
22 employer annual required contribution.

23 ~~(j)~~ (k) "Cost-sharing multiple employer plan" means a single  
24 plan with pooling (cost-sharing) arrangements for the participating  
25 employers. All risk, rewards, and costs, including benefit costs,  
26 are shared and not attributed individually to the employers. A  
27 single actuarial valuation covers all plan members and the same

1 contribution rate applies for each employer.

2 ~~(k)~~ (l) "Covered health care expenses" means all actual health  
3 care expenses paid by the health plan on behalf of fund  
4 beneficiaries. Actual health care expenses include claims payments  
5 to providers and premiums paid to intermediary entities and health  
6 care providers by the health plan.

7 ~~(l)~~ (m) "Employer" means any employer as defined by section  
8 two, article sixteen of this chapter which has or will have retired  
9 employees in any Public Employees Insurance Agency health plan.

10 ~~(m)~~ (n) "Employer annual required contribution" means the  
11 portion of the annual required contribution which is the  
12 responsibility of that particular employer.

13 ~~(n)~~ (o) "Fund" means the West Virginia Retiree Health Benefit  
14 Trust Fund established under this article.

15 ~~(o)~~ (p) "Fund beneficiaries" means all persons receiving post-  
16 employment health care benefits through the health plan.

17 ~~(p)~~ (q) "Health plan" means the health insurance plan or plans  
18 established under article sixteen of this chapter.

19 ~~(q)~~ (r) "Minimum annual employer payment" means the annual  
20 amount paid by employers which, when combined with the retirees'  
21 contributions on their premiums that year, provide sufficient funds  
22 such that the annual finance plan of the finance board will cover  
23 all projected retiree covered health care expenses and related  
24 administrative costs for that year. The finance board shall  
25 develop the minimum annual employer payment as part of its  
26 financial plan each year as addressed in section five, article  
27 sixteen of this chapter.

1       ~~(r)~~ (s) "Normal cost" means that portion of the actuarial  
2 present value of the fund obligations and expenses which is  
3 allocated to a valuation year by the actuarial cost method used for  
4 the fund.

5       ~~(s)~~ (t) "Obligations" means the administrative expenses of the  
6 fund and the cost of covered health care expenses incurred on  
7 behalf of fund beneficiaries.

8       ~~(t)~~ (u) "Other post-employment benefits" or "retiree post-  
9 employment health care benefits" means those benefits as addressed  
10 by governmental accounting standards board statement no. 43 or any  
11 subsequent governmental standards board statement that may be  
12 applicable to the fund.

13       ~~(u)~~ (v) "Plan for other post-employment benefits" means the  
14 fiscal funding plan for retiree post-employment health care  
15 benefits as it relates to governmental accounting standards board  
16 statement no. 43 or any subsequent governmental accounting  
17 standards board statements that may be applicable to the fund.

18       ~~(v)~~ (w) "Retiree" means retired employee as defined by section  
19 two, article sixteen of this chapter.

20       ~~(w)~~ (x) "Retirement system" or "system" means the West  
21 Virginia Consolidated Public Retirement Board created and  
22 established by article ten of this chapter and includes any  
23 retirement systems or funds administered or overseen by the  
24 Consolidated Public Retirement Board.

25       ~~(x)~~ (y) "Unfunded actuarial accrued liability" means for any  
26 actuarial valuation the excess of the actuarial accrued liability  
27 over the actuarial value of the assets of the fund under an

1 actuarial cost method used by the fund for funding purposes.

2 **§5-16D-2. Creation of West Virginia Retiree Health Benefit Trust**  
3 **Fund.**

4 The Legislature declares that certain dedicated revenues  
5 should be preserved in trust for the purpose of funding other post-  
6 employment benefits.

7 There is hereby created the West Virginia Retiree Health  
8 Benefit Trust Fund for the purpose of providing for and  
9 administering retiree post-employment health care benefits, and the  
10 respective revenues and costs of those benefits as a cost-sharing  
11 multiple employer plan.

12 The fund shall be available without fiscal year limitations  
13 for covered health care expenses and administration costs. All  
14 contributions, revenues received pursuant to section three, article  
15 seventeen, chapter eleven of this code, appropriations, earnings,  
16 and reserves for the payment of obligations under this article  
17 shall be credited to the fund and are irrevocable.

18 The amounts remaining in the fund, if any, after covered  
19 health care expenses and administration costs have been paid shall  
20 be retained in the fund as a special reserve for adverse  
21 fluctuation. All assets of the fund shall be used solely for the  
22 payment of fund obligations and for no other purpose.

23 **§5-16D-6. Mandatory employer contributions.**

24 (a) The board shall annually set the total annual required  
25 contribution sufficient to maintain the fund in an actuarially  
26 sound manner in accordance with generally accepted accounting  
27 principles.

1 (b) The board shall annually allocate to the respective  
2 employers the employer's portion of the annual required  
3 contribution, which allocated amount is the "employer annual  
4 required contribution".

5 (c) The board may apportion the annual required contribution  
6 into various components. These components may include the  
7 amortized unfunded actuarial accrued liability, the total normal  
8 cost, the contractually required contributions, the employer annual  
9 required contribution and the lesser included minimum annual  
10 employer payment. In the board's annual apportionment of the  
11 annual required contribution, any amounts of the minimum annual  
12 employer payment apportioned to reduce the amortized unfunded  
13 actuarial accrued liability shall not be treated as premium by the  
14 board in the finance plan but, rather, shall be treated as  
15 contributions to prefund other post-employment benefits.

16 (d) Employers shall make annual contributions to the fund in,  
17 at least, the amount of the minimum annual employer payment rates  
18 established by the board.

19 (e) The Public Employees Insurance Agency shall bill each  
20 employer for the ~~employer annual~~ contractually required  
21 contribution and the included minimum annual employer payment. The  
22 Public Employees Insurance Agency shall annually collect the  
23 contractually required contribution and the included minimum annual  
24 employer payment. The Public Employees Insurance Agency shall, in  
25 addition to the ~~minimum annual employer payment~~ contractually  
26 required contribution, collect any amounts the employer elects to  
27 pay toward the employer annual required contribution. Subject to

1 section twenty-four, article nine-a, chapter eighteen of this code,  
2 any employer ~~annual~~ contractually required contribution amount not  
3 satisfied by the respective employer shall remain the liability of  
4 that employer until fully paid.

5 **CHAPTER 11. TAXATION.**

6 **ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**

7 **§11-10-5d. Confidentiality and disclosure of returns and return**  
8 **information.**

9 (a) *General rule.* -- Except when required in an official  
10 investigation by the Tax Commissioner into the amount of tax due  
11 under any article administered under this article or in any  
12 proceeding in which the Tax Commissioner is a party before a court  
13 of competent jurisdiction to collect or ascertain the amount of  
14 such tax and except as provided in subsections (d) through ~~(n)~~ (o),  
15 inclusive, of this section, it ~~shall be~~ is unlawful for any  
16 officer, employee or agent of this state or of any county,  
17 municipality or governmental subdivision to divulge or make known  
18 in any manner the tax return, or any part thereof, of any person or  
19 disclose information concerning the personal affairs of any  
20 individual or the business of any single firm or corporation, or  
21 disclose the amount of income, or any particulars set forth or  
22 disclosed in any report, declaration or return required to be filed  
23 with the Tax Commissioner by any article of this chapter imposing  
24 any tax administered under this article or by any rule or  
25 regulation of the Tax Commissioner issued thereunder, or disclosed  
26 in any audit or investigation conducted under this article. For  
27 purposes of this article, tax returns and return information



1 obtained from the Tax Commissioner pursuant to an exchange of  
2 information agreement or otherwise pursuant to the provisions of  
3 subsections (d) through ~~(n)~~ (o), inclusive, of this section which  
4 is in the possession of any officer, employee, agent or  
5 representative of any local or municipal governmental entity or  
6 other governmental subdivision is subject to the confidentiality  
7 and disclosure restrictions set forth in this article: *Provided,*  
8 That such officers, employees or agents may disclose the  
9 information in an official investigation, by a local or municipal  
10 governmental authority or agency charged with the duty and  
11 responsibility to administer the tax laws of the jurisdiction, into  
12 the amount of tax due under any lawful local or municipal tax  
13 administered by that authority or agency, or in any proceeding in  
14 which the local or municipal governmental subdivision, authority or  
15 agency is a party before a court of competent jurisdiction to  
16 collect or ascertain the amount of the tax. Unlawful disclosure of  
17 the information by any officer, employee or agent of any local,  
18 municipal or governmental subdivision is subject to the sanctions  
19 set forth in this article.

20 (b) *Definitions.* -- For purposes of this section:

21 (1) *Background file document.* -- The term "background file  
22 document", with respect to a written determination, includes the  
23 request for that written determination, any written material  
24 submitted in support of the request and any communication (written  
25 or otherwise) between the State Tax Department and any person  
26 outside the State Tax Department in connection with the written  
27 determination received before issuance of the written

1 determination.

2 (2) *Disclosure.* -- The term "disclosure" means making known to  
3 any person in any manner whatsoever a return or return information.

4 (3) *Inspection.* -- The terms "inspection" and "inspected"  
5 means any examination of a return or return information.

6 (4) *Return.* -- The term "return" means any tax or information  
7 return or report, declaration of estimated tax, claim or petition  
8 for refund or credit or petition for reassessment that is required  
9 by, or provided for, or permitted under the provisions of this  
10 article (or any article of this chapter administered under this  
11 article) which is filed with the Tax Commissioner by, on behalf of,  
12 or with respect to any person and any amendment or supplement  
13 thereto, including supporting schedules, attachments or lists which  
14 are supplemental to, or part of, the return so filed.

15 (5) *Return information.* -- The term "return information"  
16 means:

17 (A) A taxpayer's identity; the nature, source or amount of his  
18 or her income, payments, receipts, deductions, exemptions, credits,  
19 assets, liabilities, net worth, tax liability, tax withheld,  
20 deficiencies, over assessments or tax payments, whether the  
21 taxpayer's return was, is being, or will be examined or subject to  
22 other investigation or processing, or any other data received by,  
23 recorded by, prepared by, furnished to or collected by the Tax  
24 Commissioner with respect to a return or with respect to the  
25 determination of the existence, or possible existence, of liability  
26 (or the amount thereof) or by any person under the provisions of  
27 this article (or any article of this chapter administered under

1 this article) for any tax, additions to tax, penalty, interest,  
2 fine, forfeiture or other imposition or offense; and

3 (B) Any part of any written determination or any background  
4 file document relating to such written determination. "Return  
5 information" does not include, however, data in a form which cannot  
6 be associated with or otherwise identify, directly or indirectly,  
7 a particular taxpayer. Nothing in the preceding sentence, or in  
8 any other provision of this code, shall be construed to require the  
9 disclosure of standards used or to be used for the selection of  
10 returns for examination or data used or to be used for determining  
11 such standards.

12 (6) *Tax administration.* -- The term "tax administration"  
13 means:

14 (A) The administration, management, conduct, direction and  
15 supervision of the execution and application of the tax laws or  
16 related statutes of this state and the development and formulation  
17 of state and local tax policy relating to existing or propose date  
18 and local tax laws and related statutes of this state; and

19 (B) Includes assessment, collection, enforcement, litigation,  
20 publication and statistical gathering functions under the laws of  
21 this state and of local governments.

22 (7) *Taxpayer identity.* -- The term "taxpayer identity" means  
23 the name of a person with respect to whom a return is filed, his or  
24 her mailing address, his or her taxpayer identifying number or a  
25 combination thereof.

26 (8) *Taxpayer return information.* -- The term "taxpayer return  
27 information" means return information as defined in subdivision (5)

1 of this subsection which is filed with, or furnished to, the Tax  
2 Commissioner by or on behalf of the taxpayer to whom such return  
3 information relates.

4 (9) *Written determination.* -- The term "written determination"  
5 means a ruling, determination letter, technical advice memorandum  
6 or letter or administrative decision issued by the Tax  
7 Commissioner.

8 (c) *Criminal penalty.* -- Any officer, employee or agent (or  
9 former officer, employee or agent) of this state or of any county,  
10 municipality or governmental subdivision who violates this section  
11 ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof,  
12 shall be fined not more than \$1,000 or ~~imprisoned~~ confined in jail  
13 for not more than one year, or both fined and confined, together  
14 with costs of prosecution.

15 (d) *Disclosure to designee of taxpayer.* -- Any person  
16 protected by the provisions of this article may, in writing, waive  
17 the secrecy provisions of this section for such purpose and such  
18 period as he or she shall therein state. The Tax Commissioner may,  
19 subject to such requirements and conditions as he or she may  
20 prescribe, thereupon release to designated recipients such  
21 taxpayer's return or other particulars filed under the provisions  
22 of the tax articles administered under the provisions of this  
23 article, but only to the extent necessary to comply with a request  
24 for information or assistance made by the taxpayer to such other  
25 person. However, return information shall not be disclosed to such  
26 person or persons if the Tax Commissioner determines that such  
27 disclosure would seriously impair administration of this state's

1 tax laws.

2 (e) *Disclosure of returns and return information for use in*  
3 *criminal investigations.* -

4 (1) *In general.* -- Except as provided in subdivision (3) of  
5 this subsection, any return or return information with respect to  
6 any specified taxable period or periods shall, pursuant to and upon  
7 the grant of an ex parte order by a federal district court judge,  
8 federal magistrate or circuit court judge of this state, under  
9 subdivision (2) of this subsection, be open (but only to the extent  
10 necessary as provided in such order) to inspection by, or  
11 disclosure to, officers and employees of any federal agency, or of  
12 any agency of this state, who personally and directly engaged in:

13 (A) Preparation for any judicial or administrative proceeding  
14 pertaining to the enforcement of a specifically designated state or  
15 federal criminal statute to which this state, the United States or  
16 such agency is or may be a party;

17 (B) Any investigation which may result in such a proceeding;  
18 or

19 (C) Any state or federal grand jury proceeding pertaining to  
20 enforcement of such a criminal statute to which this state, the  
21 United States or such agency is or may be a party. Such inspection  
22 or disclosure shall be solely for the use of such officers and  
23 employees in such preparation, investigation or grand jury  
24 proceeding.

25 (2) *Application of order.* -- Any United States attorney, any  
26 special prosecutor appointed under Section 593 of Title 28, United  
27 States Code, or any attorney in charge of a United States justice

1 department criminal division organized crime strike force  
2 established pursuant to Section 510 of Title 28, United States  
3 Code, may authorize an application to a circuit court judge or  
4 magistrate, as appropriate, for the order referred to in  
5 subdivision (1) of this subsection. Any prosecuting attorney of  
6 this state may authorize an application to a circuit court judge of  
7 this state for the order referred to in said subdivision. Upon the  
8 application, the judge or magistrate may grant such order if he or  
9 she determines on the basis of the facts submitted by the applicant  
10 that:

11 (A) There is reasonable cause to believe, based upon  
12 information believed to be reliable, that a specific criminal act  
13 has been committed;

14 (B) There is reasonable cause to believe that the return or  
15 return information is or may be relevant to a matter relating to  
16 the commission of such act; and

17 (C) The return or return information is sought exclusively for  
18 use in a state or federal criminal investigation or proceeding  
19 concerning such act and the information sought to be disclosed  
20 cannot reasonably be obtained, under the circumstances, from  
21 another source.

22 (3) The Tax Commissioner may not disclose any return or return  
23 information under subdivision (1) of this subsection if he or she  
24 determines and certifies to the court that the disclosure would  
25 identify a confidential informant or seriously impair a civil or  
26 criminal tax investigation.

27 (f) *Disclosure to person having a material interest.* -- The

1 Tax Commissioner may, pursuant to legislative regulations  
2 promulgated by him or her, and upon such terms as he or she may  
3 require, disclose a return or return information to a person having  
4 a material interest therein: *Provided*, That such disclosure shall  
5 only be made if the Tax Commissioner determines, in his or her  
6 discretion, that the disclosure would not seriously impair  
7 administration of this state's tax laws.

8 (g) *Statistical use.* -- This section shall not be construed to  
9 prohibit the publication or release of statistics so classified as  
10 to prevent the identification of particular returns and the items  
11 thereof.

12 (h) *Disclosure of amount of outstanding lien.* -- If notice of  
13 lien has been recorded pursuant to section twelve of this article,  
14 the amount of the outstanding obligation secured by such lien may  
15 be disclosed to any person who furnishes written evidence  
16 satisfactory to the Tax Commissioner that such person has a right  
17 in the property subject to the lien or intends to obtain a right in  
18 such property.

19 (i) *Reciprocal exchange.* -- The Tax Commissioner may, pursuant  
20 to written agreement, permit the proper officer of the United  
21 States, or the District of Columbia or any other state, or any  
22 political subdivision of this state, or his or her authorized  
23 representative, who is charged by law with responsibility for  
24 administration of a similar tax, to inspect reports, declarations  
25 or returns filed with the Tax Commissioner or may furnish to such  
26 officer or representative a copy of any document, provided any  
27 other jurisdiction grants substantially similar privileges to the

1 Tax Commissioner or to the Attorney General of this state:  
2 *Provided*, That pursuant to written agreement the Tax Commissioner  
3 may provide to the assessor of any county, sheriff of any county,  
4 or the mayor of any West Virginia municipality the federal employer  
5 identification number of any business being carried on within the  
6 jurisdiction of the requesting assessor, sheriff or mayor. The  
7 disclosure shall be only for the purpose of, and only to the extent  
8 necessary in, the administration of tax laws: *Provided*, That the  
9 information may not be disclosed to the extent that the Tax  
10 Commissioner determines that such disclosure would identify a  
11 confidential informant or seriously impair any civil or criminal  
12 tax investigation.

13 (j) *Exchange with municipalities.* -- The Tax Commissioner  
14 shall, upon the written request of the mayor or governing body of  
15 any West Virginia municipality, allow the duly authorized agent of  
16 the municipality to inspect and make copies of the state business  
17 and occupation tax return filed by taxpayers of the municipality  
18 and any other state tax returns (including, but not limited to,  
19 consumers sales and services tax return information and health care  
20 provider tax return information) as may be reasonably requested by  
21 the municipality. Such inspection or copying shall include  
22 disclosure to the authorized agent of the municipality for tax  
23 administration purposes of all available return information from  
24 files of the tax department relating to taxpayers who transact  
25 business within the municipality. The Tax Commissioner shall be  
26 permitted to inspect or make copies of any tax return and any  
27 return information or other information related thereto in the



1 possession of any municipality or its employees, officers, agents  
2 or representatives that has been submitted to or filed with the  
3 municipality by any person for any tax including, but not limited  
4 to, the municipal business and occupation tax, public utility tax,  
5 municipal license tax, tax on purchases of intoxicating liquors,  
6 license tax on horse racing or dog racing and municipal amusement  
7 tax.

8 (k) *Release of administrative decisions.* -- The Tax  
9 Commissioner shall release to the public his or her administrative  
10 decisions, or a summary thereof: *Provided,* That unless the  
11 taxpayer appeals the administrative decision to circuit court or  
12 waives in writing his or her rights to confidentiality, any  
13 identifying characteristics or facts about the taxpayer shall be  
14 omitted or modified to an extent so as to not disclose the name or  
15 identity of the taxpayer.

16 (l) *Release of taxpayer information.* -- If the Tax  
17 Commissioner believes that enforcement of the tax laws administered  
18 under this article will be facilitated and enhanced thereby, he or  
19 she shall disclose, upon request, the names and address of persons:

- 20 (A) Who have a current business registration certificate.
- 21 (B) Who are licensed employment agencies.
- 22 (C) Who are licensed collection agencies.
- 23 (D) Who are licensed to sell drug paraphernalia.
- 24 (E) Who are distributors of gasoline or special fuel.
- 25 (F) Who are contractors.
- 26 (G) Who are transient vendors.
- 27 (H) Who are authorized by law to issue a sales or use tax

1 exemption certificate.

2 (I) Who are required by law to collect sales or use taxes.

3 (J) Who are foreign vendors authorized to collect use tax.

4 (K) Whose business registration certificate has been suspended  
5 or canceled or not renewed by the Tax Commissioner.

6 (L) Against whom a tax lien has been recorded under section  
7 twelve of this article (including any particulars stated in the  
8 recorded lien).

9 (M) Against whom criminal warrants have been issued for a  
10 criminal violation of this state's tax laws.

11 (N) Who have been convicted of a criminal violation of this  
12 state's tax laws.

13 (m) *Disclosure of return information to child support*  
14 *enforcement division. --*

15 (1) *State return information. --* The Tax Commissioner may,  
16 upon written request, disclose to the child support enforcement  
17 division created by article two, chapter forty-eight-a of this  
18 code:

19 (A) Available return information from the master files of the  
20 tax department relating to the Social Security account number,  
21 address, filing status, amounts and nature of income and the number  
22 of dependents reported on any return filed by, or with respect to,  
23 any individual with respect to whom child support obligations are  
24 sought to be enforced; and

25 (B) Available state return information reflected on any state  
26 return filed by, or with respect to, any individual described in  
27 paragraph (A) of this subdivision relating to the amount of the

1 individual's gross income, but only if such information is not  
2 reasonably available from any other source.

3       (2) *Restrictions on disclosure.* -- The Tax Commissioner shall  
4 disclose return information under subdivision (1) of this  
5 subsection only for purposes of, and to the extent necessary in,  
6 collecting child support obligations from and locating individuals  
7 owing such obligations.

8       (n) *Disclosure of names and addresses for purposes of jury*  
9 *selection.* -- The Tax Commissioner shall, at the written request of  
10 a circuit court or the chief judge thereof, provide to the circuit  
11 court within thirty calendar days a list of the names and addresses  
12 of individuals residing in the county or counties comprising the  
13 circuit who have filed a state personal income tax return for the  
14 preceding tax year. The list provided shall set forth names and  
15 addresses only. The request shall be limited to counties within  
16 the jurisdiction of the requesting court.

17       The court, upon receiving the list or lists, shall direct the  
18 jury commission of the appropriate county to merge the names and  
19 addresses with other lists used in compiling a master list of  
20 residents of the county from which prospective jurors are to be  
21 chosen. Immediately after the master list is compiled, the jury  
22 commission shall cause the list provided by the Tax Commissioner  
23 and all copies thereof to be destroyed and shall certify to the  
24 circuit court and to the Tax Commissioner that the lists have been  
25 destroyed.

26       (o) Disclosure of return information to Public Employees  
27 Insurance Agency. --

1       (1) The Tax Commissioner may, upon written request, disclose  
2 to the Public Employees Insurance Agency created by article  
3 sixteen, chapter five of this code all available return information  
4 from the master files of the tax department relating to the Social  
5 Security account number, address, filing status, amounts and nature  
6 of income and the number of dependents reported on any return filed  
7 by, or with respect to, any individual choosing family or spousal  
8 coverage through the Public Employees Insurance Agency.

9       (2) Restrictions on disclosure. -- The Tax Commissioner shall  
10 disclose return information under subdivision (1) of this  
11 subsection only for purposes of, and to the extent necessary in,  
12 establishing income for all family wage earners covered by the  
13 Public Employees Insurance Agency to determine total income sliding  
14 scale premiums.

15 **ARTICLE 17. CIGARETTE TAX ACT.**

16 **§11-17-3. Levy of tax; ratio; dedication of proceeds; funds.**

17       (a) ~~*Tax on cigarettes. -- For the purpose of providing revenue*~~  
18 ~~*for the General Revenue Fund of the state,*~~ An excise tax is hereby  
19 levied and imposed on sales of cigarettes at the rate of ~~*fifty-five*~~  
20 ~~*cents*~~ \$1.55 on each twenty cigarettes or in like ratio on any part  
21 thereof. Only one sale of the same article shall be used in  
22 computing the amount of tax due under this subsection.

23       (b) *Tax on tobacco products other than cigarettes. --*  
24 Effective January 1,2002, an excise tax is hereby levied and  
25 imposed on the sale or use of, other than cigarettes, tobacco  
26 products at a rate equal to seven percent of the wholesale price of  
27 each article or item of tobacco product other than cigarettes sold

1 by the wholesaler or subjobber dealer, whether or not sold at  
2 wholesale, or if not sold, then at the same rate upon the use by  
3 the wholesaler or dealer. Only one sale of the same article shall  
4 be used in computing the amount of tax due under this subsection.  
5 Revenues received from this tax shall be deposited into the General  
6 Revenue Fund.

7 (c) Effective date. -- ~~The changes set forth herein to this~~  
8 ~~section and section four of this article shall become effective the~~  
9 ~~first day of May two thousand three.~~ The changes to this section  
10 enacted during the 2011 Legislative session shall be effective July  
11 1, 2011.

12 (d) Of the increase in revenues collected pursuant to this  
13 section, an amount of \$50 million per year for fifteen successive  
14 years shall be deposited in the West Virginia Retiree Health  
15 Benefit Trust Fund created in section two, article sixteen-d,  
16 chapter five of this code for the purpose of funding other post-  
17 employment benefits and must be held in trust and not expended  
18 during the fifteen- year period. The remaining proceeds collected  
19 pursuant to this section shall be deposited in the General Revenue  
20 Fund.

21 **CHAPTER 18. EDUCATION.**

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

23 **§18-9A-24. Foundation allowance for public employees insurance**  
24 **fund.**

25 ~~(a) Beginning July 1, one thousand nine hundred ninety-five,~~  
26 ~~and every year thereafter,~~ The allowance to the Public Employees  
27 Insurance Agency for school employees shall be made in accordance

1 with the following: The number of individuals employed by county  
2 boards ~~of education~~ as professional educators pursuant to section  
3 four ~~or five-a~~ of this article, ~~whichever is less,~~ plus the number  
4 of individuals employed by county boards ~~of education~~ as service  
5 personnel pursuant to section five ~~or five-a~~ of this article,  
6 ~~whichever is less,~~ plus the number of individuals employed by  
7 county boards as professional student support personnel pursuant to  
8 section eight of this article, multiplied by the average premium  
9 rate for all ~~county board of education~~ employees established by the  
10 Public Employees Insurance Agency Finance Board. The average  
11 premium rate for all ~~county board of education~~ employees shall be  
12 incorporated into each financial plan developed by the finance  
13 board in accordance with section five, article sixteen, chapter  
14 five of this code. ~~Such~~ The premiums shall include any  
15 proportionate share of retirees subsidy established by the finance  
16 board and the difference, if any, between the previous year's  
17 actual premium costs and the previous year's appropriation, if the  
18 actual cost was greater than the appropriation. The amount of the  
19 allowance provided in this subsection shall be paid directly to the  
20 West Virginia Retiree Health Benefit Trust Fund. Each county board  
21 shall reflect its share of the payment as revenue on its financial  
22 statements to offset the applicable portion of its annual  
23 contractually required contribution expense.

24 (b) Notwithstanding any other provision of section six,  
25 article sixteen-d, chapter five of this code to the contrary, any  
26 amount of annual contractually required contribution allocated to  
27 and billed county boards for employees who are employed as

1 professional employees within the limits authorized by section  
2 four, article nine-a, chapter eighteen of this code, employees who  
3 are employed as service personnel within the limits authorized by  
4 section five, article nine-a, chapter eighteen of this code and  
5 employees who are employed as professional student support  
6 personnel within the limits authorized by section eight, article  
7 nine-a, chapter eighteen of this code is a liability of the state  
8 until fully paid: *Provided*, That nothing in this subsection  
9 requires any specific level of funding by the Legislature in any  
10 particular year.

11 ~~(b)~~ (c) County boards ~~of education shall be~~ are responsible  
12 liable for payments to the Public Employees Insurance Agency the  
13 annual contractually required contribution for individuals who are  
14 employed as professional employees above and beyond those  
15 authorized by section four of this article, ~~or five-a, whichever is~~  
16 ~~less and~~ individuals who are employed as service personnel above  
17 and beyond those authorized by section five of this article and  
18 individuals who are employed as professional student support  
19 personnel above and beyond those authorized by section eight of  
20 this article. ~~and five-a whichever is less~~ For each such  
21 employee, the county board ~~of education~~ shall forward to the Public  
22 Employees Insurance Agency an amount equal to the average premium  
23 rate established by the finance board in accordance with subsection  
24 (a) of this section: *Provided*, That the county board shall pay the  
25 actual employer premium costs for any county board employee paid  
26 from special revenues, federal or state grants, or sources other  
27 than state general revenue or county funds.

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

NOTE: The purpose of this bill is to deal with other post-employment benefits generally. It prohibits the Public Employees Insurance Agency finance board from including in the financial plans any subsidy for the cost of coverage for retired employees who were hired on or after July 1, 2010. It caps the amount the finance board may include in the financial plans as subsidy for the cost of coverage for retired employees who were hired before July 1, 2010 at \$150 million. The bill defines "contractually required contribution" and authorizes the finance board to set minimum annual required contribution below the annual required contribution. The bill specifies that each participating government entity is required to remit annual contractual obligation. It authorizes the Tax Commissioner to disclose certain return information to the Public Employees Insurance Agency to determine total income for premium calculation. The bill increases the excise tax on cigarettes from 55 cents to \$1.55 per pack and dedicates a portion of the increased tax to the West Virginia Retiree Health Benefit Trust Fund for ten years. The bill specifies that the trust fund is to keep all earnings during the ten-year period. It specifies that the foundation allowance for Public Employees Insurance Fund shall be paid directly to the West Virginia Retiree Health Benefit Trust Fund and each county board shall reflect its share of the payment as revenue on its financial statements to offset the applicable portion of its annual contractually required contribution expense. It provides that any amount of annual contractually required contribution allocated to and billed county boards of education for certain employees is a liability of the state until fully paid.

Strike-throughs indicate language that would be stricken from



the present law, and underscoring indicates new language that would be added.