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Senate Bill No. 616

(By Senators Prezioso, D. Facemire, Unger, Plymale, McCabe,
Laird, Wells, Green, Chafin, Yost, Edgell, Stollings, Miller,
Hall, Boley and Sypolt)

[Originating in the Committee on Finance; reported March 2,
2011.]

A BILL to amend and reenact §5-16-5 of the Code of West Virginia,
1931, as amended; to amend and reenact §5-16D-1, §5-16D-2 and
§5-16D-6 of said code; to amend and reenact §11-10-5d of said
code; and to amend and reenact §18-9A-24 of said code, all
relating to other post-employment benefits generally;
prohibiting 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; capping 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 \$160
million; escalating the funding; converting to a per member,
per month equivalent; requiring the identification of a
funding source; defining "contractually required
contribution"; authorizing the finance board to set minimum

1 annual required contribution below annual required
2 contribution; specifying that each participating government
3 entity is required to remit annual contractual obligation;
4 authorizing the Tax Commissioner to disclose certain return
5 information to the Public Employees Insurance Agency to
6 determine total income for premium calculation; specifying
7 that the foundation allowance for Public Employees Insurance
8 Fund shall be paid directly to the West Virginia Retiree
9 Health Benefit Trust Fund and each county board shall reflect
10 its share of the payment as revenue on its financial
11 statements to offset the applicable portion of its annual
12 contractually required contribution expense; and providing
13 that any amount of annual contractually required contribution
14 allocated to and billed county boards of education for certain
15 employees is a liability of the state until fully paid.

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

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

22 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**
23 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD**
24 **OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS,**
25 **OFFICES, PROGRAMS, ETC.**

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

2 **§5-16-5. Purpose, powers and duties of the finance board; initial**
3 **financial plan; financial plan for following year; and**
4 **annual financial plans.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and health status of the population.

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

1 and employees in proportion to the cost-sharing ratio for that plan
2 year: *Provided, however,* That for purposes of this section,
3 "emergency" means that the most recent projections demonstrate that
4 plan expenses will exceed plan revenues by more than one percent in
5 any plan year: *Provided further,* That the aggregate premium cost-
6 sharing percentages between employers and employees, including the
7 amounts of any subsidization of retired employee benefits, may be
8 offset, in part, by a legislative appropriation for that purpose.

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

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

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

1 **§5-16D-1. Definitions.**

2 As used in this article, the term:

3 (a) "Actuarial accrued liability" means that portion, as
4 determined by a particular actuarial cost method, of the actuarial
5 present value of fund obligations and administrative expenses which
6 is not provided by future normal costs.

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

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

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

26 (e) "Actuarial assumptions" means assumptions regarding the

1 occurrence of future events affecting the fund such as mortality,
2 withdrawal, disability and retirement; changes in compensation and
3 offered post-employment benefits; rates of investment earnings and
4 other asset appreciation or depreciation; procedures used to
5 determine the actuarial value of assets; and other relevant items.

6 (f) "Actuarial valuation" means the determination, as of a
7 valuation date, of the normal cost, actuarial accrued liability,
8 actuarial value of assets and related actuarial present values for
9 the fund.

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

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

20 (i) "Board" means the Public Employees Insurance Agency
21 Finance Board created in section four, article sixteen of this
22 chapter.

23 (j) "Contractually required contribution" means an amount
24 determined annually by the board to be billed to each employer,
25 which amount shall at least equal the minimum annual employer
26 payment and may be any amount up to, but may not exceed, the

1 employer annual required contribution.

2 ~~(j)~~ (k) "Cost-sharing multiple employer plan" means a single
3 plan with pooling (cost-sharing) arrangements for the participating
4 employers. All risk, rewards, and costs, including benefit costs,
5 are shared and not attributed individually to the employers. A
6 single actuarial valuation covers all plan members and the same
7 contribution rate applies for each employer.

8 ~~(k)~~ (l) "Covered health care expenses" means all actual health
9 care expenses paid by the health plan on behalf of fund
10 beneficiaries. Actual health care expenses include claims payments
11 to providers and premiums paid to intermediary entities and health
12 care providers by the health plan.

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

16 ~~(m)~~ (n) "Employer annual required contribution" means the
17 portion of the annual required contribution which is the
18 responsibility of that particular employer.

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

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

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

25 ~~(q)~~ (r) "Minimum annual employer payment" means the annual
26 amount paid by employers which, when combined with the retirees'

1 contributions on their premiums that year, provide sufficient funds
2 such that the annual finance plan of the finance board will cover
3 all projected retiree covered health care expenses and related
4 administrative costs for that year. The finance board shall
5 develop the minimum annual employer payment as part of its
6 financial plan each year as addressed in section five, article
7 sixteen of this chapter.

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

12 ~~(s)~~ (t) "Obligations" means the administrative expenses of the
13 fund and the cost of covered health care expenses incurred on
14 behalf of fund beneficiaries.

15 ~~(t)~~ (u) "Other post-employment benefits" or "retiree post-
16 employment health care benefits" means those benefits as addressed
17 by governmental accounting standards board statement no. 43 or any
18 subsequent governmental standards board statement that may be
19 applicable to the fund.

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

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

1 ~~(w)~~ (x) "Retirement system" or "system" means the West
2 Virginia Consolidated Public Retirement Board created and
3 established by article ten of this chapter and includes any
4 retirement systems or funds administered or overseen by the
5 Consolidated Public Retirement Board.

6 ~~(x)~~ (y) "Unfunded actuarial accrued liability" means for any
7 actuarial valuation the excess of the actuarial accrued liability
8 over the actuarial value of the assets of the fund under an
9 actuarial cost method used by the fund for funding purposes.

10 **§5-16D-2. Creation of West Virginia Retiree Health Benefit Trust**
11 **Fund.**

12 The Legislature declares that certain dedicated revenues
13 should be preserved in trust for the purpose of funding other post-
14 employment benefits.

15 There is hereby created the West Virginia Retiree Health
16 Benefit Trust Fund for the purpose of providing for and
17 administering retiree post-employment health care benefits, and the
18 respective revenues and costs of those benefits as a cost-sharing
19 multiple employer plan.

20 (a) The fund shall be available without fiscal year
21 limitations for covered health care expenses and administration
22 costs. All contributions, appropriations, earnings, and reserves
23 for the payment of obligations under this article shall be credited
24 to the fund and are irrevocable.

25 (b) The amounts remaining in the fund, if any, after covered
26 health care expenses and administration costs have been paid shall

1 be retained in the fund as a special reserve for adverse
2 fluctuation. All assets of the fund shall be used solely for the
3 payment of fund obligations and for no other purpose.

4 (c) A designated source for deposit of moneys into the fund to
5 be used for the purpose of funding other post-employment benefits
6 shall be identified by July 1, 2012.

7 **§5-16D-6. Mandatory employer contributions.**

8 (a) The board shall annually set the total annual required
9 contribution sufficient to maintain the fund in an actuarially
10 sound manner in accordance with generally accepted accounting
11 principles.

12 (b) The board shall annually allocate to the respective
13 employers the employer's portion of the annual required
14 contribution, which allocated amount is the "employer annual
15 required contribution".

16 (c) The board may apportion the annual required contribution
17 into various components. These components may include the
18 amortized unfunded actuarial accrued liability, the total normal
19 cost, the contractually required contributions, the employer annual
20 required contribution and the lesser included minimum annual
21 employer payment. In the board's annual apportionment of the
22 annual required contribution, any amounts of the minimum annual
23 employer payment apportioned to reduce the amortized unfunded
24 actuarial accrued liability shall not be treated as premium by the
25 board in the finance plan but, rather, shall be treated as
26 contributions to prefund other post-employment benefits.

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

4 (e) The Public Employees Insurance Agency shall bill each
5 employer for the ~~employer annual~~ contractually required
6 contribution and the included minimum annual employer payment. The
7 Public Employees Insurance Agency shall annually collect the
8 contractually required contribution and the included minimum annual
9 employer payment. The Public Employees Insurance Agency shall, in
10 addition to the ~~minimum annual employer payment~~ contractually
11 required contribution, collect any amounts the employer elects to
12 pay toward the employer annual required contribution. Subject to
13 section twenty-four, article nine-a, chapter eighteen of this code,
14 any employer ~~annual~~ contractually required contribution amount not
15 satisfied by the respective employer shall remain the liability of
16 that employer until fully paid.

17 **CHAPTER 11. TAXATION.**

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

19 **§11-10-5d. Confidentiality and disclosure of returns and return**
20 **information.**

21 (a) *General rule.* -- Except when required in an official
22 investigation by the Tax Commissioner into the amount of tax due
23 under any article administered under this article or in any
24 proceeding in which the Tax Commissioner is a party before a court
25 of competent jurisdiction to collect or ascertain the amount of

1 such tax and except as provided in subsections (d) through ~~(n)~~ (o),
2 inclusive, of this section, it ~~shall be~~ is unlawful for any
3 officer, employee or agent of this state or of any county,
4 municipality or governmental subdivision to divulge or make known
5 in any manner the tax return, or any part thereof, of any person or
6 disclose information concerning the personal affairs of any
7 individual or the business of any single firm or corporation, or
8 disclose the amount of income, or any particulars set forth or
9 disclosed in any report, declaration or return required to be filed
10 with the Tax Commissioner by any article of this chapter imposing
11 any tax administered under this article or by any rule or
12 regulation of the Tax Commissioner issued thereunder, or disclosed
13 in any audit or investigation conducted under this article. For
14 purposes of this article, tax returns and return information
15 obtained from the Tax Commissioner pursuant to an exchange of
16 information agreement or otherwise pursuant to the provisions of
17 subsections (d) through ~~(n)~~ (o), inclusive, of this section which
18 is in the possession of any officer, employee, agent or
19 representative of any local or municipal governmental entity or
20 other governmental subdivision is subject to the confidentiality
21 and disclosure restrictions set forth in this article: *Provided,*
22 That such officers, employees or agents may disclose the
23 information in an official investigation, by a local or municipal
24 governmental authority or agency charged with the duty and
25 responsibility to administer the tax laws of the jurisdiction, into
26 the amount of tax due under any lawful local or municipal tax

1 administered by that authority or agency, or in any proceeding in
2 which the local or municipal governmental subdivision, authority or
3 agency is a party before a court of competent jurisdiction to
4 collect or ascertain the amount of the tax. Unlawful disclosure of
5 the information by any officer, employee or agent of any local,
6 municipal or governmental subdivision is subject to the sanctions
7 set forth in this article.

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

9 (1) *Background file document.* -- The term "background file
10 document", with respect to a written determination, includes the
11 request for that written determination, any written material
12 submitted in support of the request and any communication (written
13 or otherwise) between the State Tax Department and any person
14 outside the State Tax Department in connection with the written
15 determination received before issuance of the written
16 determination.

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

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

21 (4) *Return.* -- The term "return" means any tax or information
22 return or report, declaration of estimated tax, claim or petition
23 for refund or credit or petition for reassessment that is required
24 by, or provided for, or permitted under the provisions of this
25 article (or any article of this chapter administered under this
26 article) which is filed with the Tax Commissioner by, on behalf of,

1 or with respect to any person and any amendment or supplement
2 thereto, including supporting schedules, attachments or lists which
3 are supplemental to, or part of, the return so filed.

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

6 (A) A taxpayer's identity; the nature, source or amount of his
7 or her income, payments, receipts, deductions, exemptions, credits,
8 assets, liabilities, net worth, tax liability, tax withheld,
9 deficiencies, over assessments or tax payments, whether the
10 taxpayer's return was, is being, or will be examined or subject to
11 other investigation or processing, or any other data received by,
12 recorded by, prepared by, furnished to or collected by the Tax
13 Commissioner with respect to a return or with respect to the
14 determination of the existence, or possible existence, of liability
15 (or the amount thereof) or by any person under the provisions of
16 this article (or any article of this chapter administered under
17 this article) for any tax, additions to tax, penalty, interest,
18 fine, forfeiture or other imposition or offense; and

19 (B) Any part of any written determination or any background
20 file document relating to such written determination. "Return
21 information" does not include, however, data in a form which cannot
22 be associated with or otherwise identify, directly or indirectly,
23 a particular taxpayer. Nothing in the preceding sentence, or in
24 any other provision of this code, shall be construed to require the
25 disclosure of standards used or to be used for the selection of
26 returns for examination or data used or to be used for determining

1 such standards.

2 (6) *Tax administration.* -- The term "tax administration"
3 means:

4 (A) The administration, management, conduct, direction and
5 supervision of the execution and application of the tax laws or
6 related statutes of this state and the development and formulation
7 of state and local tax policy relating to existing or propose date
8 and local tax laws and related statutes of this state; and

9 (B) Includes assessment, collection, enforcement, litigation,
10 publication and statistical gathering functions under the laws of
11 this state and of local governments.

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

16 (8) *Taxpayer return information.* -- The term "taxpayer return
17 information" means return information as defined in subdivision (5)
18 of this subsection which is filed with, or furnished to, the Tax
19 Commissioner by or on behalf of the taxpayer to whom such return
20 information relates.

21 (9) *Written determination.* -- The term "written determination"
22 means a ruling, determination letter, technical advice memorandum
23 or letter or administrative decision issued by the Tax
24 Commissioner.

25 (c) *Criminal penalty.* -- Any officer, employee or agent (or
26 former officer, employee or agent) of this state or of any county,

1 municipality or governmental subdivision who violates this section
2 ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof,
3 shall be fined not more than \$1,000 or ~~imprisoned~~ confined in jail
4 for not more than one year, or both fined and confined, together
5 with costs of prosecution.

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

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

22 (1) *In general.* -- Except as provided in subdivision (3) of
23 this subsection, any return or return information with respect to
24 any specified taxable period or periods shall, pursuant to and upon
25 the grant of an ex parte order by a federal district court judge,
26 federal magistrate or circuit court judge of this state, under

1 subdivision (2) of this subsection, be open (but only to the extent
2 necessary as provided in such order) to inspection by, or
3 disclosure to, officers and employees of any federal agency, or of
4 any agency of this state, who personally and directly engaged in:

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

9 (B) Any investigation which may result in such a proceeding;
10 or

11 (C) Any state or federal grand jury proceeding pertaining to
12 enforcement of such a criminal statute to which this state, the
13 United States or such agency is or may be a party. Such inspection
14 or disclosure shall be solely for the use of such officers and
15 employees in such preparation, investigation or grand jury
16 proceeding.

17 (2) *Application of order.* -- Any United States attorney, any
18 special prosecutor appointed under Section 593 of Title 28, United
19 States Code, or any attorney in charge of a United States justice
20 department criminal division organized crime strike force
21 established pursuant to Section 510 of Title 28, United States
22 Code, may authorize an application to a circuit court judge or
23 magistrate, as appropriate, for the order referred to in
24 subdivision (1) of this subsection. Any prosecuting attorney of
25 this state may authorize an application to a circuit court judge of
26 this state for the order referred to in said subdivision. Upon the

1 application, the judge or magistrate may grant such order if he or
2 she determines on the basis of the facts submitted by the applicant
3 that:

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

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

10 (C) The return or return information is sought exclusively for
11 use in a state or federal criminal investigation or proceeding
12 concerning such act and the information sought to be disclosed
13 cannot reasonably be obtained, under the circumstances, from
14 another source.

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

20 (f) *Disclosure to person having a material interest.* -- The
21 Tax Commissioner may, pursuant to legislative regulations
22 promulgated by him or her, and upon such terms as he or she may
23 require, disclose a return or return information to a person having
24 a material interest therein: *Provided,* That such disclosure shall
25 only be made if the Tax Commissioner determines, in his or her
26 discretion, that the disclosure would not seriously impair

1 administration of this state's tax laws.

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

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

13 (i) *Reciprocal exchange.* -- The Tax Commissioner may, pursuant
14 to written agreement, permit the proper officer of the United
15 States, or the District of Columbia or any other state, or any
16 political subdivision of this state, or his or her authorized
17 representative, who is charged by law with responsibility for
18 administration of a similar tax, to inspect reports, declarations
19 or returns filed with the Tax Commissioner or may furnish to such
20 officer or representative a copy of any document, provided any
21 other jurisdiction grants substantially similar privileges to the
22 Tax Commissioner or to the Attorney General of this state:
23 *Provided,* That pursuant to written agreement the Tax Commissioner
24 may provide to the assessor of any county, sheriff of any county,
25 or the mayor of any West Virginia municipality the federal employer
26 identification number of any business being carried on within the

1 jurisdiction of the requesting assessor, sheriff or mayor. The
2 disclosure shall be only for the purpose of, and only to the extent
3 necessary in, the administration of tax laws: *Provided*, That the
4 information may not be disclosed to the extent that the Tax
5 Commissioner determines that such disclosure would identify a
6 confidential informant or seriously impair any civil or criminal
7 tax investigation.

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

1 municipal license tax, tax on purchases of intoxicating liquors,
2 license tax on horse racing or dog racing and municipal amusement
3 tax.

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

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

16 (A) Who have a current business registration certificate.

17 (B) Who are licensed employment agencies.

18 (C) Who are licensed collection agencies.

19 (D) Who are licensed to sell drug paraphernalia.

20 (E) Who are distributors of gasoline or special fuel.

21 (F) Who are contractors.

22 (G) Who are transient vendors.

23 (H) Who are authorized by law to issue a sales or use tax
24 exemption certificate.

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

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

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

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

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

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

10 (m) *Disclosure of return information to child support*
11 *enforcement division. --*

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

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

22 (B) Available state return information reflected on any state
23 return filed by, or with respect to, any individual described in
24 paragraph (A) of this subdivision relating to the amount of the
25 individual's gross income, but only if such information is not
26 reasonably available from any other source.

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

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

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

24 (o) Disclosure of return information to Public Employees
25 Insurance Agency. --

26 (1) The Tax Commissioner may, upon written request, disclose

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

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

14 **CHAPTER 18. EDUCATION.**

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

16 **§18-9A-24. Foundation allowance for public employees insurance**
17 **fund.**

18 ~~(a) Beginning July 1, one thousand nine hundred ninety-five,~~
19 ~~and every year thereafter,~~ The allowance to the Public Employees
20 Insurance Agency for school employees shall be made in accordance
21 with the following: The number of individuals employed by county
22 boards ~~of education~~ as professional educators pursuant to section
23 four ~~or five-a~~ of this article, ~~whichever is less,~~ plus the number
24 of individuals employed by county boards ~~of education~~ as service
25 personnel pursuant to section five ~~or five-a~~ of this article,

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

19 (b) Notwithstanding any other provision of section six,
20 article sixteen-d, chapter five of this code to the contrary, any
21 amount of annual contractually required contribution allocated to
22 and billed county boards for employees who are employed as
23 professional employees within the limits authorized by section four
24 of this article, employees who are employed as service personnel
25 within the limits authorized by section five of this article, and
26 employees who are employed as professional student support

1 personnel within the limits authorized by section eight of this
2 article, is a liability of the state until fully paid: *Provided,*
3 That nothing in this subsection requires any specific level of
4 funding by the Legislature in any particular year.

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

22 ~~(c)~~ (d) Prior to July 1, 1995, nothing in this article shall
23 be construed to limit the ability of county boards ~~of education~~ to
24 use funds appropriated to county boards ~~of education~~ pursuant to
25 this article to pay employer premiums to the Public Employees
26 Insurance Agency for employees whose positions are funded pursuant

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