

West Virginia Legislature
Joint Standing Committee on Finance
2007 - 2008 Interims

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FINAL REPORT OF

THE JOINT STANDING COMMITTEE ON FINANCE

TO THE JOINT COMMITTEE ON GOVERNMENT AND FINANCE

January 8, 2008


Your Joint Standing Committee on Finance was assigned the interim study of the following topics during the 2007-2008 legislative interim period:

- ***HCR 70- Requesting the Joint Committee on Government and Finance to study the necessity for additional public defender corporations for the delivery of indigent defense services.***

- *HCR 89- Requesting that the Joint Committee on Government and Finance authorize the study of a monetary incentive program to recruit and retain qualified workers to critically understaffed classifications.*
- *SB 459 & HB 2280 - Relating to providing that correctional officers may retire with full benefits after 20 years of service.*
- *Tax Issues Generally*
- *HCR 50 (Study of the Soft Drink Tax)*
- *HCR 87 (Study of insurance coverage on public buildings and property)*
- *Long term funding of the Special Reclamation fund and the creation of a Water Trust Fund*
- *HCR 62 Requesting the Joint Committee on Government and Finance study large land holdings, county by county, to determine the value taxation of deed holders of lands in excess of 1,000 acres.*
- *GASB Implementation generally*

Your Committee reports that it has received and adopted the reports and recommendations of its subcommittees on those matters. All of those reports and recommendations are submitted with this report to the Joint Committee on Government and Finance for its consideration.

Respectfully Submitted,


 Senator Walt Helmick
 Co-Chairman


 Delegate Harry Keith White
 Co-Chairman

West Virginia Legislature
Joint Standing Committee on Finance
2007 - 2008 Interims
Subcommittee A

Senate Members:

Senator Ed Bowman, Chair
Senator Roman Prezioso
Senator John Unger
Senator Karen Facemyer
Senator JesseGuills
Senator Walt Helmick, *Ex Officio*

House Members:

Delegate Brent Boggs, Chair
Delegate Larry Barker
Delegate Craig Blair
Delegate Richard Iaquina
Delegate Don Perdue
Delegate Doug Reynolds
Delegate Bob Ashley
Delegate Larry Border
Delegate Harry Keith White, *Ex Officio*

FINAL REPORT OF

SUBCOMMITTEE A

TO THE JOINT STANDING COMMITTEE ON FINANCE
January 6, 2008

Your Subcommittee A was appointed following the 2007 Regular Session of the 78th Legislature and assigned the following topics for study during the interim period:

HCR 70 - Requesting the Joint Committee on Government and Finance to study the necessity for additional public defender corporations for the delivery of indigent defense services,

HCR 89 - Requesting the Joint Committee on Government and Finance authorize the study of a monetary incentive program to recruit and retain qualified workers to critically understaffed classification,

SB 459 & HB 2280 - Relating to providing that correctional officers may retire with full benefits after 20 years of service.

During the 2007-2008 legislative interim period, Subcommittee A met and received information on these topics of study from state agencies and other sources. Subcommittee A **REPORTS** as follows:

On the issue of the necessity for additional public defender corporations, the committee heard from representatives from the West Virginia Public Defender Services, the Department of Administration, William Summers and Joshua P. Strum, Attorneys and Nancy Stephens of Tri-S Investigations.

Your Subcommittee **RECOMMENDS** that the Legislature support legislation that provides a time limit on submission of claims.

Your Subcommittee A **DOES NOT RECOMMEND** that the Legislature continue to study the issue of public defenders .

On the issue of allowing correctional officers full retirement after 20 years of service, a motion was made during the interims to not fully study this issue until a fiscal note could be provided. No fiscal note has been provided at this time. Subcommittee A **DOES NOT RECOMMEND** that the legislature continue to study this issue since a fiscal note will be required during the session if the issue is forthcoming.

On the issue of a monetary incentive program to recruit and retain qualified workers to critically understaffed classifications, The Division of Personnel reported that no program had yet requested the monetary incentive since it is such a new program and that they were working with a consultant to further establish ways to improve recruitment and retention of employees. The Joint Standing Committee on Finance, Subcommittee A **RECOMMENDS** that this issue be continued

next year to give the committee an opportunity to more fully review the consultants recommendations and any useage by programs to provide a monetary incentive.

Respectfully Submitted,



Senator Edwin Bowman
Co-Chair



Delegate Brent Boggs
Vice-Chair

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Bill No.

(By _____)

[Originating in the Committee on Finance, Subcommittee A;
2007.]

A BILL to amend and reenact §29-21-13a of the Code of West Virginia, 1931, as amended; relating to Public Defender Services generally; clarifying panel attorney compensation and expenses; and providing a limit on submission of claims.

Be it enacted by the Legislature of West Virginia:

That §29-21-13a of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-13a. Compensation and expenses for panel attorneys.

(a) All panel attorneys shall maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients, and upon completion of each case, exclusive of appeal, shall submit to the appointing court a voucher for services. Claims for fees and expense reimbursements shall be submitted to the appointing court on forms approved by the executive director. Claims submitted more than ~~four years~~ ninety days after the last date of service shall be rejected beginning

1 with all cases completed after the last day of June, two thousand
2 eight.

3 The appointing court shall review the voucher to determine if
4 the time and expense claims are reasonable, necessary and valid,
5 and shall forward the voucher to the agency with an order approving
6 payment of the claimed amount or of a lesser sum the court
7 considers appropriate.

8 (b) Notwithstanding any other provision of this section to the
9 contrary, public defender services may pay by direct bill, prior to
10 the completion of the case, litigation expenses incurred by
11 attorneys appointed under this article.

12 (c) Notwithstanding any other provision of this section to the
13 contrary, a panel attorney may be compensated for services rendered
14 and reimbursed for expenses incurred prior to the completion of the
15 case where: (1) More than six months have expired since the
16 commencement of the panel attorney's representation in the case;
17 and (2) no prior payment of attorney fees has been made to the
18 panel attorney by public defender services during the case. The
19 amounts of any fees or expenses paid to the panel attorney on an
20 interim basis, when combined with any amounts paid to the panel
21 attorney at the conclusion of the case, shall not exceed the
22 limitations on fees and expenses imposed by this section.

23 (d) In each case in which a panel attorney provides legal
24 representation under this article, and in each appeal after
25 conviction in circuit court, the panel attorney shall be
26 compensated at the following rates for actual and necessary time

1 expended for services performed and expenses incurred subsequent to
2 the effective date of this article:

3 (1) For attorney's work performed out of court, compensation
4 shall be at the rate of forty-five dollars per hour. For
5 paralegal's work performed out of court for the attorney,
6 compensation shall be at the rate of the paralegal's regular
7 compensation on an hourly basis or, if salaried, at the hourly rate
8 of compensation which would produce the paralegal's current salary,
9 but in no event shall the compensation exceed twenty dollars per
10 hour. Out-of-court work includes, but is not limited to, travel,
11 interviews of clients or witnesses, preparation of pleadings and
12 prehearing or pretrial research.

13 (2) For attorney's work performed in court, compensation shall
14 be at the rate of sixty-five dollars per hour. No compensation for
15 paralegal's work performed in court shall be allowed. In-court
16 work includes, but is not limited to, all time spent awaiting
17 hearing or trial ~~if the presence of the attorney is required~~ before
18 a judge, magistrate, special master or other judicial officer.

19 (3) The maximum amount of compensation for out-of-court and
20 in-court work under this subsection is as follows: For proceedings
21 of any kind involving felonies for which a penalty of life
22 imprisonment may be imposed, the amount as the court may approve;
23 for all other eligible proceedings, three thousand dollars unless
24 the court, for good cause shown, approves payment of a larger sum.

25 (e) Actual and necessary expenses incurred in providing legal
26 representation for proceedings of any kind involving felonies for

1 which a penalty of life imprisonment may be imposed, including, but
2 not limited to, expenses for travel, transcripts, salaried or
3 contracted investigative services and expert witnesses, shall be
4 reimbursed in an amount as the court may approve. For all other
5 eligible proceedings, actual and necessary expenses incurred in
6 providing legal representation, including, but not limited to,
7 expenses for travel, transcripts, salaried or contracted
8 investigative services and expert witnesses, shall be reimbursed to
9 a maximum of ~~fifteen hundred~~ one thousand five hundred dollars
10 unless the court, for good cause shown, approves reimbursement of
11 a larger sum.

12 Expense vouchers shall specifically set forth the nature,
13 amount and purpose of expenses incurred and shall provide receipts,
14 invoices or other documentation required by the executive director
15 and the State Auditor:

16 (1) (A) Reimbursement of expenses for production of
17 transcripts of proceedings reported by a court reporter is limited
18 to the cost per original page and per copy page as set forth in
19 section four, article seven, chapter fifty-one of this code.
20 ~~Reimbursement of the cost of copies of such transcripts is limited~~
21 ~~to the cost per copy page as provided for under said section. It~~
22 ~~is the duty of the executive director of public defender services~~
23 ~~to maintain computer records of all transcripts, including~~
24 ~~originals and copies, for which payment has been made.~~

25 (B) (i) There shall be no reimbursement of expenses for or
26 production of a transcript of a preliminary hearing before a

1 magistrate or juvenile referee, or of a magistrate court jury
2 trial, ~~which has been reported by a court reporter at the request~~
3 ~~of the attorney,~~ where the preliminary such hearing or jury trial
4 has also been recorded electronically in accordance with the
5 provisions of section eight, article five, chapter fifty of this
6 code or court rule.

7 (ii) Reimbursement of the expense of an appearance fee for a
8 court reporter who reports a proceeding other than one described in
9 subparagraph (i) of this paragraph ~~or who reports a proceeding~~
10 ~~which is not reported by an official court reporter acting in his~~
11 ~~or her official capacity for the court,~~ is limited to twenty-five
12 dollars. Where a transcript of a proceeding is produced, there
13 shall be no reimbursement for the expense of any appearance fee.
14 ~~Where a transcript is requested by the attorney after an appearance~~
15 ~~fee has been paid, reimbursement of the expense incurred to obtain~~
16 ~~the transcript is limited to the cost of producing the transcript,~~
17 ~~within the prescribed limitations of paragraph (a) of this~~
18 ~~subdivision, less the amount of the paid appearance fee.~~

19 (iii) ~~Reimbursement of travel expenses incurred for travel by~~
20 ~~a court reporter is subject to the limitations provided by~~
21 ~~subdivision (2) of this subsection.~~

22 (iv) Except for the appearance fees provided in this
23 paragraph, there shall be no reimbursement for hourly court
24 reporters' fees or fees for other time expended by the court
25 reporter, either at the proceeding or traveling to or from the
26 proceeding.

1 (C) Reimbursement of the cost of transcription of tapes
2 electronically recorded during preliminary hearings or magistrate
3 court jury trials is limited to ~~the rates established by the~~
4 ~~supreme court of appeals for the reimbursement of transcriptions of~~
5 ~~electronically recorded hearings and trial~~ one dollar per page.

6 (2) Reimbursement for any travel expense incurred in an
7 eligible proceeding is limited to the rates for the reimbursement
8 of travel expenses established by rules promulgated by the Governor
9 pursuant to the provisions of section eleven, article eight,
10 chapter twelve of this code and administered by the Secretary of
11 the Department of Administration pursuant to the provisions of
12 section forty-eight, article three, chapter five-a of this code.

13 (3) Reimbursement for investigative services is limited to a
14 rate of thirty dollars per hour for work performed by an
15 investigator.

16 (f) For purposes of compensation under this section, an appeal
17 from a final order of the circuit court or a proceeding seeking an
18 extraordinary remedy made to the Supreme Court of Appeals shall be
19 considered a separate case.

20 (g) Vouchers submitted under this section shall specifically
21 set forth the nature of the service rendered, the stage of
22 proceeding or type of hearing involved, the date and place the
23 service was rendered and the amount of time expended in each
24 instance. All time claimed on the vouchers shall be itemized to
25 the nearest tenth of an hour. If the charge against the eligible
26 client for which services were rendered is one of several charges

1 involving multiple warrants or indictments, the voucher shall
2 indicate the fact and sufficiently identify the several charges so
3 as to enable the court to avoid a duplication of compensation for
4 services rendered. The executive director shall refuse to
5 requisition payment for any voucher which is not in conformity with
6 the recordkeeping, compensation or other provisions of this article
7 and in such circumstance shall return the voucher to the court or
8 to the service provider for further review or correction.

(NOTE: The purpose of the bill is to modify the time frame
for submitted claims for reimbursement.)

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.)

West Virginia Legislature
Joint Standing Committee on Finance
2007 - 2008 Interims
Subcommittee B

Senate Members:

Senator Walt Helmick, *Chair*
Senator Jon Pat Fanning
Senator Brooks McCabe
Senator Bob Plymale
Senator Bill Sharpe
Senator Donna Boley
Senator Vic Sprouse

House Members:

Delegate Tom Campbell, *Chair*
Delegate John Doyle
Delegate Charlene Marshall
Delegate Sharon Spencer
Delegate Kenneth Tucker
Delegate Mitch Carmichael
Delegate Allen Evans
Delegate Kevin Craig
Delegate Harry Keith White, *Ex Officio*

FINAL REPORT OF

SUBCOMMITTEE B

TO THE JOINT STANDING COMMITTEE ON FINANCE
January 8, 2008

Your Subcommittee B was appointed following the 2007 Regular Session of the 78th Legislature and assigned the following topics for study during the interim period:

Topic 1: Insurance coverage on public buildings and property generally

Topic 2: Tax issues generally

Topic 3: Evaluation of long-term funding for the Special Reclamation Fund and creation of a Water Trust Fund

Topic 4: HCR 50 - Requesting the Joint Committee on Government and Finance study the soft drink tax

During the 2007-2008 legislative interim period, Subcommittee B met and received information on these topics of study from state agencies, political subdivisions and other sources.

Subcommittee B **REPORTS** as follows:

On **TOPIC 1: Insurance coverage on public buildings and property generally**, the Subcommittee received information on the extent of property insurance coverage on the Morgan County Courthouse when it burned on August 8, 2006, and more broadly, information on the recent property and liability self-insurance pool formed July 1, 2007, by 20 counties in West Virginia pursuant to legislative authorization (§29-12A-16, §114 CSR 65). The Subcommittee also received information on the incidental effect the pool's formation has had on private sector insurance providers and on the state provider, the West Virginia Board of Risk and Insurance Management (BRIM), which had previously provided this insurance for many of those counties. The Subcommittee further received information on the benefits of participation in the pool anticipated by its members on the one hand, and information suggesting the coverage and services provided by the pool is not as reliable as could be obtained from the private insurance sector and/or BRIM and portending fiscal problems for the State if BRIM is compelled to insure only those counties with the highest risk. On these issues, the Subcommittee was addressed by various County Officials from Morgan, Berkeley, Greenbrier, Wayne and Upshur counties, representatives of BRIM, the West Virginia Association of Counties, the County Commissioners' Association of West Virginia, the West Virginia Counties Risk Pool (WVCoRP) and its third-party administrator, VACo Risk Management Programs, various private insurance agents licensed in the state, and representatives of the Professional Independent Insurance Agents of West Virginia.

On **TOPIC 1**, your Subcommittee **RECOMMENDS** that during its 2008 Regular Session, the Legislature continue to monitor the experience of the West Virginia Counties Risk Pool (WVCoRP) and its third-party administrator, as well as the current ongoing efforts of BRIM to ensure that all county properties are adequately insured either through the pool, private insurers or

through BRIM, and at the conclusion of the Regular Session, if circumstances warrant, that these issues be designated for continued formal study during the ensuing Interim Meetings of the Legislature.

On **TOPIC 2: Tax issues generally**, the Subcommittee received information on the results of the 3 month tax amnesty period authorized by HB2775 (07RS). The bill eliminated the 5% privilege tax imposed on new resident motor vehicle registrations effective June 7, 2007, and the amnesty period allowed those who moved into the state prior to that date without timely registering their motor vehicles an amnesty period during which they could register without paying the 5% tax. On this issue, the Subcommittee was addressed by a representative of the West Virginia Division of Motor Vehicles, who reported a significant increase in motor vehicle registrations during the amnesty period over the number of registrations occurring during the same period in the prior year.

On **TOPIC 2**, your Subcommittee **RECOMMENDS** that the Legislature continue to seek means to enforce current law requiring that residents of this State maintain West Virginia registration of their motor vehicles located in this State.

On **TOPIC 3: Evaluation of long-term funding for the Special Reclamation Fund and creation of a Water Trust Fund**, the Subcommittee received information on efforts of the Special Reclamation Fund Advisory Council to find an adequate and fairly derived funding source for the cost of fully reclaiming mining sites where bonds given to cover those costs and then forfeited were insufficient to complete the treatment of the acid mine drainage in the water flowing from these mining sites. On this issue, the Subcommittee was addressed by the Division of Land Restoration of the West Virginia Department of Environmental Protection, who reviewed the history of this State's efforts to address the Special Reclamation Fund issue, as well as by the Center for Business

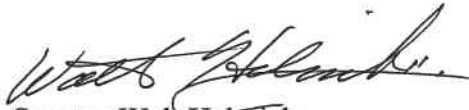
and Economic Research at Marshall University, which was commissioned by the Advisory Council to assess the expected cost of providing treatment of the acid mine drainage in the water flowing from these forfeited mining sites and make recommendations to the Legislature for funding these costs. The Center's report found that the current 7¢ per ton of coal tax currently imposed on the coal industry will be insufficient to cover all future costs of this water treatment. The report recommends that while full-cost bonding by mining operations be required to cover costs for sites needing land reclamation, the State establish a special "Water Trust Fund" to cover the costs of existing and unexpected future acid mine drainage water treatment at forfeited sites, some of which could require treatment in perpetuity, and provides some options for funding the Water Trust Funding, including a direct appropriation of the necessary funds, or a further temporary increase in coal tonnage taxation.

On **TOPIC 3**, your Subcommittee B **RECOMMENDS** that the Legislature consider the report of the Marshall University Center for Business and Economic Research and the full 2006 Annual Report Special Reclamation Fund Advisory Council which recommended, with the exception of the industry representative on the Council, that the Legislature establish a water trust fund and fund it with Coal Severance Tax revenues and an additional tax on clean coal. It is **FURTHER RECOMMENDED** that the Legislature consider any budgetary and general law proposals that the Executive may submit on the issue in response to the United States District Court's recent decision to hold in abeyance a motion to reopen a case pending before it seeking federal action to compel adequate funding of these water treatment costs until the Legislature has the opportunity to consider the Advisory Council's recommendations during the 2008 Regular Session.

On **TOPIC 4**: HCR 50 - Requesting the Joint Committee on Government and Finance study the soft drink tax, your Subcommittee B **RECOMMENDS** that the Legislature continue to examine

this issue during the 2008 Regular Session and at the conclusion of the Regular Session, if circumstances warrant, that this issue be designated for continued formal study during the ensuing Interim Meetings of the Legislature.

Respectfully Submitted,



Senator Walt Helmick
Co-Chair



Delegate Tom Campbell
Co-Chair

West Virginia Legislature
Joint Committee on Finance
2007-2008 Interims
Subcommittee C

Senate Members:

Senator Bailey, Chair
Senator Chafin
Senator Edgell
Senator Love
Senator Sypolt
Senator Helmick, Ex Officio

House Members:

Delegate Kominar, Chair
Delegate Anderson
Delegate Klempa
Delegate Manchin
Delegate M. Poling
Delegate Stalnaker
Delegate Walters
Delegate Yost
Delegate White, Ex Officio

Final Report of

SUBCOMMITTEE C

TO THE JOINT STANDING COMMITTEE ON FINANCE

January 8, 2008

Your Subcommittee C was appointed following the 2007 regular Session of the 78th Legislature and assigned the following topics for study during the interim period:

- Topic 1: HCR62- Requesting the Joint Committee on Government and Finance study large land holdings, county by county, to determine value taxation of deed holders of lands in excess of one thousand acres.*
- Topic 2: The PEIA Other Post Employment Benefits (OPEB) liability and GASB reporting requirements, generally.*
- Topic 3: SB 496 & HB 2916- Establishing a pay plan for all members for the classified-exempt service of the state.*

During the 2007-2008 legislative interim period, Subcommittee C met and received information on these topics of study from state agencies, political subdivisions and other sources. Subcommittee C

REPORTS as follows:

On **TOPIC 1: Property taxation of large land holdings**, your Subcommittee received information from Wade Thompson, Director, Property Tax Division of the West Virginia Department of Revenue on value assessment and taxation of real property statewide. The Honorable Preston B. Gooden, Berkley County Assessor presented property tax assessment proposals which would provide property tax relief to senior citizens.

On **TOPIC 1**, your Subcommittee **RECOMMENDS** that during its 2008 Regular Session, the staff analyze state constitutional issues which impede the State from discriminating between property owners on the basis of the size of their property holdings.

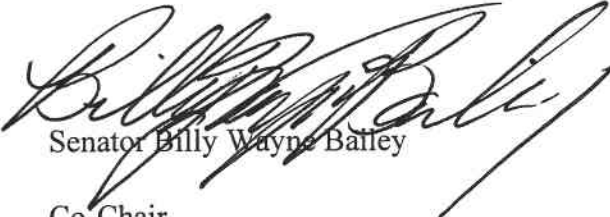
On **TOPIC 2: PEIA Other Post Employment Benefits (OPEB) liability and GASB reporting requirements**, the Subcommittee received extensive information on the valuation of the liability; plan invoicing; employer reporting; and, implications and issues for state spending units, county school boards, counties, municipalities and other political subdivisions and their perspectives.

On **TOPIC 2**, your Subcommittee **FINDS** there to be 1.) Significant uncertainty regarding which entities and funding sources are responsible for what parts of the plan's liability; 2.) Significant uncertainty regarding what the "defined benefits" that have been "promised" to retirees actually are; 3.) Common misunderstandings among PEIA employer participants regarding invoiced-optional amounts supporting the OPEB unfunded liability; 4.) A need for a sufficient OPEB funding and/or liability reduction/elimination plan; 5.) A need for more sophisticated accounting for individual employer contributions toward the optional, unfunded amounts, which recognizes the time-value of contributions, credits the Trust Fund amounts to individual employers and eliminates current disincentives to prefunding; 6.) A need for greater self-determination among political subdivisions regarding benefits provided to their retirees; and, 7.) A need for greater recognition of differences among the benefit structures of the various political subdivisions of the State and corresponding valuations of their


liabilities. Your Subcommittee C **RECOMMENDS** that the Legislature continue to study the OPEB unfunded liability during its 2008 Regular Session and in the subsequent interim period. Regarding a legislative proposal presented to the Subcommittee by the West Virginia Municipal League and endorsed by the West Virginia Association of Counties, your Subcommittee C **REPORTS** it as attached hereto, and submits it to the Joint Standing Committee on Finance without recommendation.

On **TOPIC 3: Establishing a pay plan for all members for the classified-exempt service of the state.** your Subcommittee made no progress due to its efforts on its other important topics of study.

Respectfully Submitted,



Senator Billy Wayne Bailey
Co-Chair



Delegate K. Steven Kominar
Co-Chair

§5-16-22. Permissive participation; exemptions.

The provisions of this article are not mandatory upon any employee or employer who is not an employee of or is not the state of West Virginia, its boards, agencies, commissions, departments, institutions or spending units or a county board of education, and nothing contained in this article shall be construed so as to compel any employee or employer to enroll in or subscribe to any insurance plan authorized by the provisions of this article.

Those employees enrolled in the insurance program authorized under the provisions of article two-b, chapter twenty-one-a of this code shall not be required to enroll in or subscribe to an insurance plan or plans authorized by the provisions of this article, and the employees of any department which has an existing insurance program for its employees to which the government of the United States contributes any part or all of the premium or cost of the premium may be exempted from the provisions of this article. Any employee or employer exempted under the provisions of this paragraph may enroll in any insurance program authorized by the provisions of this article at any time, to the same extent as any other qualified employee or employer, but employee or employer shall not remain enrolled in both programs. The provisions of articles fourteen, fifteen and sixteen, chapter thirty-three of this code, relating to group life insurance, accident and sickness insurance, and group accident and sickness insurance, are not applicable to the provisions of this article whenever the provisions of articles fourteen, fifteen and sixteen, chapter thirty-three of this code are in conflict with or contrary to any provision set forth in this article or to any plan or plans established by the public employees insurance agency.

Employers, other than the state of West Virginia, its boards, agencies, commissions, departments, institutions, spending units or a county board of education are exempt from participating in the insurance program provided for by the provisions of this article unless participation by the employer has been approved by a majority vote of the employer's governing body. It is the duty of the clerk or secretary of the governing body of an employer who by majority vote becomes a participant in the

insurance program or offers post retirement benefits to its employees to notify the director not later than ten days after the vote.

Any employer, who is a non-state agency and elects by majority vote of its governing body to offer health care coverage to its retirees, and ~~whether the employer participates in the public employees insurance agency insurance program as a group may or not, which has retired employees, their dependents or surviving dependents of deceased retired employees who participate in the public employees insurance agency insurance program as authorized by this article,~~ and shall pay to the agency the same contribution toward the cost of coverage for its retired employees, their dependents or surviving dependents of deceased retired employees as the state of West Virginia, its boards, agencies, commissions, departments, institutions, spending units or a county board of education pay for their retired employees, their dependents and surviving dependents of deceased retired employees, as determined by the finance board: *Provided*, That after the thirtieth day of June, one thousand nine hundred ninety-six, an employer who is a non-state agency is only required to pay a contribution toward the cost of coverage for its retired employees, their dependents or the surviving dependents of deceased retired employees who elect coverage when the retired employee participated in the plan as an active employee of the employer for at least five years only if the governing body approves the same by ordinance or order. Once approved by the participating employer's governing body, Each employer is hereby authorized and required to budget for and make such payments as are required by this section. A non-state agency's participation in the consolidated public retirement system is not an election to other post retirement benefits to its employees or retirees.