WEST VIRGINIA CODE CHAPTER 5 ARTICLE 7

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§5-7-1. Declaration of policy.

In order to extend to employees of the state and its political subdivisions and of the instrumentalities of either, and to the dependents and survivors of such employees, the basic protection accorded to others by the old-age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the Legislature, subject to the limitation of this article, that such steps be taken as to provide such protection to employees of the state and local governments on as broad a basis as is permitted under applicable federal law.

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§5-7-2. Definitions.

For the purposes of this article:

(a) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that the term may not include that part of the remuneration which, even if it were paid for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act.

(b) The term "employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, or any instrumentality of either, for the employer, except service which in the absence of an agreement entered into under this article would constitute "employment" as defined in section two hundred nine of the Social Security Act.

(c) The term "employee" includes an officer of the state, or one of its political subdivisions or instrumentalities, or members of the State Legislature and part-time employees of the State Legislature.

(d) The term "state agency" means the State Auditor.

(e) The term "federal agency" means in each case a federal officer, department or agency as is charged on behalf of the federal government, by or under the applicable federal law, with the particular federal functions referred to in this article in connection with that term.

(f) The term "political subdivision" includes any county, municipal corporation or school district.

(g) The term "instrumentality", when referring to an instrumentality of a state or political subdivision, includes only a legal entity which is separate and distinct from the state or the subdivision and whose employees are not by virtue of their relation to the entity employees of the state or such subdivisions.

(h) The term "applicable federal law" refers to provisions of federal law, including federal regulations and requirements issued pursuant thereto, if and when enacted, as provided for extending the benefits of Title II of the Social Security Act to employees of states, political subdivisions and their instrumentalities.

(i) The term "Social Security Act" means the act of Congress approved August 14, 1935, chapter five hundred thirty-one, forty-nine statutes six hundred twenty, officially cited as the "Social Security Act", as the act has been and may, from time to time, be amended.

(j) The term "Federal Insurance Contributions Act" means subchapter A, chapter nine of the federal Internal Revenue Code as the code has been and may, from time to time, be amended.

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§5-7-3. Federal-state agreement; interstate agreements.

(a) The state agency, with the approval of the Governor, is hereby authorized upon enactment of applicable federal law, to enter on behalf of the state into an agreement with the federal agency, consistent with the terms and provisions of this article, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing, with respect to services specified in such agreement, which constitute "employment" as defined in section two of this article. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and federal agency shall agree upon, but, except as may be otherwise required by or under applicable federal law as to the services to be covered, such agreement shall provide in effect that:

(1) Benefits will be provided for employees whose services are covered by the agreement, and their dependents and survivors, on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act.

(2) The state will pay to the federal agency, at such time or times as may be prescribed by the applicable federal law or by regulation of the federal agency, contributions with respect to wages, as defined in section two of this article, equal to the sum of the taxes which would be imposed by sections one thousand four hundred and one thousand four hundred ten of the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act.

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but shall in no event cover any such services performed prior to January first, 1951.

(4) All services which constitute employment as defined in section two and are performed in the employ of the state by employees of the state, shall be covered by the agreement.

(5) All services which (a) constitute employment as defined in section two (b) are performed in the employ of a political subdivision or in the employ of an instrumentality of either the state or a political subdivision, and (c) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under section five, shall be covered by the agreement.

(b) The state agency is hereby authorized to enter on behalf of the state into an agreement, consistent to the extent practicable with the terms and provisions of this article, with the appropriate agency or agencies of any other state or states and with the federal agency, whereby the benefits of the federal old-age and survivors insurance system shall be extended to employees of any instrumentality jointly created by this state and such other state or states.

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§5-7-4. Contributions by state employees.

(a) Every employee of the state whose services are covered by an agreement entered into under section three shall be required to pay for the period of such coverage, into the contribution fund established by section six, contributions, with respect to wages, as defined in section two of this article, equal to the amount of tax which would be imposed by section one thousand four hundred of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service, or his entry upon such service, after the enactment of this article.

(b) The contribution imposed by this section shall be collected by the state by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(c) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

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§5-7-5. Plans for coverage of employees of political subdivisions and of state and local instrumentalities; payments by subdivisions or instrumentalities; contributions by such employees.

(a) Each political subdivision of the state and each instrumentality of the state or of a political subdivision is hereby authorized to submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable federal law, to employees of any such political subdivision or instrumentality. If not precluded by applicable federal law and under such conditions as the state agency may by regulation prescribe, two or more such political subdivisions or instrumentalities may, for the purposes of this article, form a joint coverage unit and as such submit for approval a joint plan if otherwise, because of the requirements of the agreement entered into pursuant to section three or because of the requirements imposed by or under applicable federal law, any subdivision or instrumentality included in such unit would be unable to submit an approvable plan. Each such plan or any amendment thereof shall be approved by the state agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless:

(1) It is in conformity with the requirements of the applicable federal law and with the agreement entered into under section three.

(2) It provides that all services which constitute employment as defined in section two and are performed in the employ of the political subdivision or instrumentality, or in the employ of any member of a joint coverage unit submitting the plan, by any employees thereof, shall be covered by the plan.

(3) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) and by subsection (d) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose.

(4) It provides for such methods of administration of the plan by the political subdivision or instrumentality or members of the joint coverage unit as are found by the state agency to be necessary for the proper and efficient administration of the plan.

(5) It provides that the political subdivision or instrumentality or members of the joint coverage unit will make such reports, in such form and containing such information, as the state agency may from time to time require, and comply with such provisions as the state agency or the federal agency may from time to time find necessary to assure the correctness and verification of such reports.

(6) It authorizes the state agency to terminate the plan in its entirety or, in the discretion of the state agency, as to any member of a joint coverage unit, if it finds that there has been a failure to comply substantially with any provisions contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by

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regulations of the state agency and be consistent with applicable federal law.

(b) The state agency shall not finally refuse to approve a plan submitted under subsection (a), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to each political subdivision or instrumentality affected thereby.

(c) (1) Each political subdivision or instrumentality as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages, as defined in section two of this article, at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under section three.

(2) Every political subdivision or instrumentality required to make payments under paragraph (1) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this article, to impose upon its employees, as to services which are covered by an approved plan, a contribution with respect to wages, as defined in section two of this article, not exceeding the amount of tax which would be imposed by section one thousand four hundred of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from the wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under paragraph (1) of subsection (c) may, with interest at the rate of six per centum per annum, be recovered by action in a court of competent jurisdiction against the political subdivision or instrumentality liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to such subdivision or instrumentality by any department or agency of the state.

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§5-7-6. Contribution fund; appropriations thereto.

(a) There is hereby established a special fund to be known as the contribution fund. The fund shall consist of and there shall be deposited in the fund: (1) All contributions, interest and penalties collected under sections four and five of this article; (2) all moneys appropriated to the fund under this article; (3) all moneys paid to the state pursuant to any agreement entered into under subsection (b), section three of this article; (4) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (5) interest earned upon any moneys in the fund; and (6) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of this article, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof consistent with the provisions of this article.

(b) The contribution fund shall be established and held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purpose of this article: Provided, That amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature: Provided, however, That any other withdrawals from the fund shall be made for, and solely for (1) payment of amounts required to be paid to the federal agency pursuant to an agreement entered into under section three; (2) payment of refunds provided for in subsection (c), section four of this article; and (3) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution fund the custodian of the fund shall pay to the federal agency such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section three of this article and applicable federal law.

(d) The treasurer of the state shall be ex officio treasurer and custodian of the contribution fund and shall administer the fund in accordance with the provisions of this article and the directions of the state agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(e) (1) There are hereby authorized to be appropriated annually to the contribution fund, in addition to the contributions collected and paid into the contribution fund under sections four and five, to be available for the purposes of subsections (b) and (c) of this section until expended, such additional sums as are found to be necessary in order to make the payments to the federal agency which the state is obligated to make pursuant to an agreement entered into under section three of this article.

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(2) The state agency shall submit to the Governor, at least ninety days in advance of the beginning of each regular session of the Legislature, an estimate of the amounts authorized to be appropriated to the contribution fund by paragraph (1) of this subsection for the next appropriation period.

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§5-7-7. Rules and regulations.

The state agency shall make and publish such rules and regulations, not inconsistent with the provisions of this article, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this article.

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§5-7-8. Studies and reports.

The state agency shall make studies concerning the problem of old-age and survivors insurance protection for employees of the state and local governments and their instrumentalities and concerning the operation of agreements made and plans approved under this article and shall submit a report to the Legislature at the beginning of each regular session, covering the administration and operation of this article during the preceding biennium, including such recommendations for amendments to this article as it considers proper.

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§5-7-9. Separability.

If any provision of this article, or the application thereof to any person or circumstance is held invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

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§5-7-10. Acts repealed.

All acts or parts of acts which are inconsistent with the provisions of this article are hereby repealed.

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