WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1949

ENROLLED
SENATE BILL No. 250

(By Mr. Johnston, Mr. President)

PASSED March 10, 1949

In Effect 90 days from Passage
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AN ACT to amend chapter five of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, by adding
thereunto a new article, to be designated article seven, pro-
viding for the coverage of officers and employees of the
state and local governments under the old-age and sur-
vivors insurance provisions of title II of the federal social
security act.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, be amended by adding
thereunto a new article, to be designated article seven, to read as
follows:
Article 7. Social Security Agency.

Section 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 act, 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.

Sec. 2. Definitions.—For the purposes of this act:

(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 such term shall not include that part of such 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.
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 such employer, except service which in the absence of an agreement entered into under this act would constitute "employment" as defined in section two hundred nine of the social security act.

The term "employee" includes an officer of the state, or one of its political subdivisions or instrumentalities.

The term "state agency" means the state auditor.

The term "federal agency" means in each case such 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 act in connection with such term.

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

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 such subdivision and whose employees are not by virtue of their relation to such entity employees of the state or such subdivisions.

(h) The term "applicable federal law" refers to such provisions of federal law, including federal regulations and requirements issued pursuant thereto, if and when enacted, as provide 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 fourteenth, one thousand nine hundred thirty-five, chapter five hundred thirty-one, forty-nine statutes six hundred twenty, officially cited as the "social security act", as such act has been and may from time to time be amended.

(j) The term "federal insurance contributions act" means sub-chapter A of chapter nine of the federal internal revenue code as such code has been and may from time to time be amended.

Sec. 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 act, 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 act. 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 serv-
ices 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 fed-
eral law or by regulation of the federal agency, contribu-
tions with respect to wages, as defined in section two of
this act, 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 con-
tributions 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 performed after a date specified therein but
shall in no event cover (a), in the case of state employees,
any service performed prior to the beginning of the first
calendar month after the date on which such agreement
is entered into, or (b), in the case of employees of a po-
itical subdivision or of an instrumentality of either the
state or a political subdivision, any service performed
prior to the beginning of the first calendar month after
the approval of the plan submitted under section five.
(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 act, 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.
Sec. 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 act, 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 act.

(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 re-
fund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

Sec. 5. Plans for Coverage of Employees of Political Subdivisions and of State and Local Instrumentalities.—

(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 act, 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 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 act, 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 act, 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 act, 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 instru-
mentality under paragraph (1) of this subsection. Fail-
ure 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.

Sec. 6. Contribution Fund.—(a) There is hereby estab-
lished a special fund to be known as the contribution fund. Such fund shall consist of and there shall be deposited in such fund: (1) All contributions, interest, and penalties collected under sections four and five. (2) All moneys appropriated thereto under this act. (3) All moneys paid to the state pursuant to any agreement entered into under section three (b) of this act. (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. (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 act, 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 act.
(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 act. Withdrawals from such fund shall be made for, and solely for (A) payment of amounts required to be paid to the federal agency pursuant to an agreement entered into under section three; (B) payment of refunds provided for in section four (c) of this act; and (C) 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 and applicable federal law.

(d) The treasurer of the state shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this act 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 appropri-
ated biennially 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 section six (b) and (c) 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.

(2) The state agency shall submit to the board of pub-
lic works, 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 contri-
bution fund by paragraph (1) of this subsection for the
next appropriation period.

Sec. 7. Rules and Regulations.—The state agency shall
make and publish such rules and regulations, not incon-
sistent with the provisions of this act, as it finds necessary
or appropriate to the efficient administration of the functions with which it is charged under this act.

Sec. 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 act and shall submit a report to the Legislature at the beginning of each regular session, covering the administration and operation of this act during the preceding biennium, including such recommendations for amendments to this act as it considers proper.

Sec. 9. Separability.—If any provision of this act, or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Sec. 10. Repeal.—All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 15th day of March, 1949.

Governor.

Filed in the Office of the Secretary of State of West Virginia MAR 16, 1949

D. Pitt O'Brien,
SECRETARY OF STATE