

5/14/49

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1949

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# ENROLLED

SENATE BILL No. 250

(By Mr. John S. ... Mr. President)

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PASSED March 10 ..... 1949

In Effect 90 days from ..... Passage



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**ENROLLED**

**Senate Bill No. 250**

(By MR. JOHNSTON, MR. PRESIDENT)

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[Passed March 10, 1949; in effect ninety 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 thereto a new article, to be designated article seven, providing for the coverage of officers and employees of the state and local governments under the old-age and survivors 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 thereto 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  
2 to employees of the state and its political subdivisions and  
3 of the instrumentalities of either, and to the dependents  
4 and survivors of such employees, the basic protection ac-  
5 corded to others by the old-age and survivors insurance  
6 system embodied in the social security act, it is hereby  
7 declared to be the policy of the Legislature, subject to the  
8 limitation<sup>S</sup> of this act, that such steps be taken as to pro-  
9 vide such protection to employees of the state and local  
10 governments on as broad a basis as is permitted under ap-  
11 plicable federal law.

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

2 (a) The term “wages” means all remuneration for em-  
3 ployment as defined herein, including the cash value of  
4 all remuneration paid in any medium other than cash,  
5 except that such term shall not include that part of such  
6 remuneration which, even if it were paid for “employ-  
7 ment” within the meaning of the federal insurance con-  
8 tributions act, would not constitute “wages” within the  
9 meaning of that act.

10 (b) The term "employment" means any service per-  
11 formed by an employee in the employ of the state, or any  
12 political subdivision thereof, or any instrumentality of  
13 either, for such employer, except service which in the ab-  
14 sence of an agreement entered into under this act would  
15 constitute "employment" as defined in section two hun-  
16 dred nine of the social security act.

17 (c) The term "employee" includes an officer of the  
18 state, or one of its political subdivisions or instrumental-  
19 ities.

20 (d) The term "state agency" means the state auditor.

21 (e) The term "federal agency" means in each case such  
22 federal officer, department, or agency as is charged on be-  
23 half of the federal government, by or under the applicable  
24 federal law, with the particular federal functions referred  
25 to in this act in connection with such term.

26 (f) The term "political subdivision" includes any coun-  
27 ty, municipal corporation, or school district.

28 (g) The term "instrumentality", when referring to an  
29 instrumentality of a state or political subdivision, includes  
30 only a legal entity which is separate and distinct from

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

34 (h) The term "applicable federal law" refers to such  
35 provisions of federal law, including federal regulations  
36 and requirements issued pursuant thereto, if and when  
37 enacted, as provide for extending the benefits of title II  
38 of the social security act to employees of states, political  
39 subdivisions, and their instrumentalities.

40 (i) The term "social security act" means the act of Con-  
41 gress approved August fourteenth, one thousand nine hun-  
42 dred thirty-five, chapter five hundred thirty-one, forty-  
43 nine statutes six hundred twenty, officially cited as the  
44 "social security act", as such act has been and may from  
45 time to time be amended.

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

Sec. 3. *Federal-State Agreement; Interstate Agree-*

2 *ments.*—(a) The state agency, with the approval of the

3 governor, is hereby authorized upon enactment of ap-  
4 plicable federal law, to enter on behalf of the state into an  
5 agreement with the federal agency, consistent with the  
6 terms and provisions of this act, for the purpose of ex-  
7 tending the benefits of the federal old-age and survivors  
8 insurance system to employees of the state or any po-  
9 litical subdivision thereof, or of any instrumentality  
10 of any one or more of the foregoing, with respect to  
11 services specified in such agreement, which constitute  
12 "employment" as defined in section two of this act.  
13 Such agreement may contain such provisions relat-  
14 ing to coverage, benefits, contributions, effective date,  
15 modification and termination of the agreement, admin-  
16 istration, and other appropriate provisions as the state  
17 agency and federal agency shall agree upon, but, except  
18 as may be otherwise required by or under applicable  
19 federal law as to the services to be covered, such agree-  
20 ment shall provide in effect that:

21 (1) Benefits will be provided for employees whose  
22 services are covered by the agreement, and their depend-  
23 ents and survivors, on the same basis as though such serv-

24 ices constituted employment within the meaning of title  
25 II of the social security act.

26 (2) The state will pay to the federal agency, at such  
27 time or times as may be prescribed by the applicable fed-  
28 eral law or by regulation of the federal agency, contribu-  
29 tions with respect to wages, as defined in section two of  
30 this act, equal to the sum of the taxes which would be  
31 imposed by sections one thousand four hundred and one  
32 thousand four hundred ten of the federal insurance con-  
33 tributions act if the services covered by the agreement  
34 constituted employment within the meaning of that act.

35 (3) Such agreement shall be effective with respect to  
36 services performed after a date specified therein but  
37 shall in no event cover (a), in the case of state employees,  
38 any service performed prior to the beginning of the first  
39 calendar month after the date on which such agreement  
40 is entered into, or (b), in the case of employees of a po-  
41 litical subdivision or of an instrumentality of either the  
42 state or a political subdivision, any service performed  
43 prior to the beginning of the first calendar month after  
44 the approval of the plan submitted under section five.

45 (4) All services which constitute employment as de-  
46 fined in section two and are performed in the employ of  
47 the state by employees of the state, shall be covered by  
48 the agreement.

49 (5) All services which (a) constitute employment as  
50 defined in section two, (b) are performed in the employ  
51 of a political subdivision or in the employ of an instru-  
52 mentality of either the state or a political subdivision,  
53 and (c) are covered by a plan which is in conformity with  
54 the terms of the agreement and has been approved by  
55 the state agency under section five, shall be covered by  
56 the agreement.

57 (b) The state agency is hereby authorized to enter on  
58 behalf of the state into an agreement, consistent to the  
59 extent practicable with the terms and provisions of this  
60 act, with the appropriate agency or agencies of any other  
61 state or states and with the federal agency, whereby the  
62 benefits of the federal old-age and survivors insurance  
63 system shall be extended to employees of any instru-  
64 mentality jointly created by this state and such other  
65 state or states.

Sec. 4. *Contributions by State Employees.*—(a) Every  
2 employee of the state whose services are covered by an  
3 agreement entered into under section three shall be re-  
4 quired to pay for the period of such coverage, into the  
5 contribution fund established by section six, contribu-  
6 tions, with respect to wages, as defined in section two of  
7 this act, equal to the amount of tax which would be im-  
8 posed by section one thousand four hundred of the fed-  
9 eral insurance contributions act if such services consti-  
10 tuted employment within the meaning of that act. Such  
11 liability shall arise in consideration of the employee's re-  
12 tention in the service, or his entry upon such service, after  
13 the enactment of this act.

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

19 (c) If more or less than the correct amount of the con-  
20 tribution imposed by this section is paid or deducted with  
21 respect to any remuneration, proper adjustments, or re-

22 fund if adjustment is impracticable, shall be made, with-  
23 out interest, in such manner and at such times as the state  
24 agency shall prescribe.

Sec. 5. *Plans for Coverage of Employees of Political*  
2 *Subdivisions and of State and Local Instrumentalities.*—  
3 (a) Each political subdivision of the state and each in-  
4 strumentality of the state or of a political subdivision is  
5 hereby authorized to submit for approval by the state  
6 agency a plan for extending the benefits of title II of  
7 the social security act, in conformity with applicable  
8 federal law, to employees of any such political sub-  
9 division or instrumentality. If not precluded by applic-  
10 able federal law and under such conditions as the state  
11 agency may by regulation prescribe, two or more such  
12 political subdivisions or instrumentalities may, for the  
13 purposes of this act, form a joint coverage unit and as  
14 such submit for approval a joint plan if otherwise, because  
15 of the requirements of the agreement entered into pur-  
16 suant to section three or because of the requirements  
17 imposed by or under applicable federal law, any sub-  
18 division or instrumentality included in such unit would

19 be unable to submit an approvable plan. Each such plan  
20 or any amendment thereof shall be approved by the  
21 state agency if it finds that such plan, or such plan as  
22 amended, is in conformity with such requirements as are  
23 provided in regulations of the state agency, except that  
24 no such plan shall be approved unless:

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

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

34 (3) It specifies the source or sources from which the  
35 funds necessary to make the payments required by para-  
36 graph (1) of subsection (c) and by subsection (d) are  
37 expected to be derived and contains reasonable assur-  
38 ance that such sources will be adequate for such pur-  
39 pose.

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

45 (5) It provides that the political subdivision or instru-  
46 mentality or members of the joint coverage unit will  
47 make such reports, in such form and containing such  
48 information, as the state agency may from time to time  
49 require, and comply with such provisions as the state  
50 agency or the federal agency may from time to time  
51 find necessary to assure the correctness and verification  
52 of such reports.

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

60 state agency and be consistent with applicable federal  
61 law.

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

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

75 (2) Every political subdivision or instrumentality re-  
76 quired to make payments under paragraph (1) of this  
77 subsection is authorized, in consideration of the em-  
78 ployee's retention in, or entry upon, employment after  
79 enactment of this act, to impose upon its employees, as  
80 to services which are covered by an approved plan, a

81 contribution with respect to wages, as defined in section  
82 two of this act, not exceeding the amount of tax which  
83 would be imposed by section one thousand four hundred  
84 of the federal insurance contributions act if such services  
85 constituted employment within the meaning of that act,  
86 and to deduct the amount of such contribution from the  
87 wages as and when paid. Contributions so collected shall  
88 be paid into the contribution fund in partial discharge  
89 of the liability of such political subdivision or instru-  
90 mentality under paragraph (1) of this subsection. Fail-  
91 ure to deduct such contribution shall not relieve the  
92 employee or employer of liability therefor.

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

Sec. 6. *Contribution Fund.*—(a) There is hereby estab-

2 lished a special fund to be known as the contribution  
3 fund. Such fund shall consist of and there shall be de-  
4 posited in such fund: (1) All contributions, interest, and  
5 penalties collected under sections four and five. (2) All  
6 moneys appropriated thereto under this act. (3) All  
7 moneys paid to the state pursuant to any agreement  
8 entered into under section three (b) of this act. (4) Any  
9 property or securities and earnings thereof acquired  
10 through the use of moneys belonging to the fund. (5)  
11 Interest earned upon any moneys in the fund. (6) All  
12 sums recovered upon the bond of the custodian or other-  
13 wise for losses sustained by the fund and all other  
14 moneys received for the fund from any other source.  
15 All moneys in the fund shall be mingled and undivided.  
16 Subject to the provisions of this act, the state agency  
17 is vested with full power, authority and jurisdiction over  
18 the fund, including all moneys and property or securi-  
19 ties belonging thereto, and may perform any and all  
20 acts whether or not specifically designated, which are  
21 necessary to the administration thereof consistent with  
22 the provisions of this act.

23 (b) The contribution fund shall be established and held  
24 separate and apart from any other funds or moneys of  
25 the state and shall be used and administered exclusively  
26 for the purpose of this act. Withdrawals from such fund  
27 shall be made for, and solely for (A) payment of  
28 amounts required to be paid to the federal agency pur-  
29 suant to an agreement entered into under section three;  
30 (B) payment of refunds provided for in section four (c)  
31 of this act; and (C) refunds of overpayments, not other-  
32 wise adjustable, made by a political subdivision or in-  
33 strumentality.

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

39 (d) The treasurer of the state shall be ex officio treas-  
40 urer and custodian of the contribution fund and shall ad-  
41 minister such fund in accordance with the provisions of  
42 this act and the directions of the state agency and shall  
43 pay all warrants drawn upon it in accordance with the

44 provisions of this section and with such regulations as the  
45 state agency may prescribe pursuant thereto.

46 (e) (1) There are hereby authorized to be appropri-  
47 ated biennially to the contribution fund, in addition to  
48 the contributions collected and paid into the contribution  
49 fund under sections four and five, to be available for the  
50 purposes of section six (b) and (c) until expended, such  
51 additional sums as are found to be necessary in order to  
52 make the payments to the federal agency which the state  
53 is obligated to make pursuant to an agreement entered  
54 into under section three.

55 (2) The state agency shall submit to the board of pub-  
56 lic works, at least ninety days in advance of the beginning  
57 of each regular session of the Legislature, an estimate of  
58 the amounts authorized to be appropriated to the contri-  
59 bution fund by paragraph (1) of this subsection for the  
60 next appropriation period.

Sec. 7. *Rules and Regulations.*—The state agency shall  
2 make and publish such rules and regulations, not incon-  
3 sistent with the provisions of this act, as it finds necessary

4 or appropriate to the efficient administration of the func-  
5 tions with which it is charged under this act.

Sec. 8. *Studies and Reports.*—The state agency shall  
2 make studies concerning the problem of old-age and sur-  
3 vivors insurance protection for employees of the state  
4 and local governments and their instrumentalities and  
5 concerning the operation of agreements made and plans  
6 approved under this act and shall submit a report to the  
7 Legislature at the beginning of each regular session, cov-  
8 ering the administration and operation of this act during  
9 the preceding biennium, including such recommendations  
10 for amendments to this act as it considers proper.

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

Sec. 10. *Repeal.*—All acts or parts of acts which are  
2 inconsistent with the provisions of this act are hereby  
3 repealed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*James L. McNear*  
Chairman Senate Committee

*W. Matthews*  
Chairman House Committee

Originated in the Senate.

Takes effect 90 days from passage.

*Howard Meyer*  
Clerk of the Senate

*J. Aliff*  
Clerk of the House of Delegates

*Franklin Sherman*  
President of the Senate

*W. E. Hamner*  
Speaker House of Delegates

The within APPROVED this the 15<sup>th</sup>  
day of MARCH, 1949.

*Okey L. Patton*  
Governor.



Filed in the Office of the Secretary of State  
of West Virginia **MAR 16 1949**  
D. PITT O'BRIEN,  
SECRETARY OF STATE