WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

ENROLLED

HOUSE BILL No. 1319

PASSED March 9, 1974

In Effect 90 days

FILED IN THE OFFICE
EDGAR F. HEISKELL XII
SECRETARY OF STATE
THIS DATE 3/29/74
ENROLLED

H. B. 1319

(By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 9, 1974; in effect ninety days from passage.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding there-to a new article, designated article ten-a, authorizing employees of the state of West Virginia and its political subdivisions to participate in voluntary tax-sheltered income deferment plans; providing definitions; authorizing the board of trustees of the West Virginia public employees retirement system to adopt deferred compensation plans; specifying the manner in which eligible employees may elect to participate in a deferred compensation plan; authorizing the board of trustees to purchase insurance contracts; specifying the manner in which salary reductions are to be made; establishing the extent of liability of the state of West Virginia and its political subdivisions; and providing that the state of West Virginia and its political subdivisions shall be the owners of any such insurance contracts so purchased.

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, designated article ten-a, to read as follows:

ARTICLE 10A. TAX-SHELTERED INCOME DEFERMENT PLANS.

§5-10A-1. Legislative purpose.

1 The Legislative purpose of this enactment is to enable em-
employees of the state and its political subdivisions to participate in voluntary tax-sheltered income deferment plans recognized under the United States Internal Revenue Code of 1954, as amended, and thereby to permit such employees to obtain the advantages inherent in such plans relative to the income tax treatment of contributions and disbursements made pursuant to such tax-sheltered income deferment plans.

§5-10A-2. Definitions.

Unless the context in which used clearly indicates a different meaning, as used in this article:

(a) "Board of trustees" means the board of trustees of the West Virginia public employees retirement system provided for in article ten of this chapter.

(b) "Compensation" means the remuneration paid by the state or a political subdivision to an eligible employee for personal services rendered.

(c) "Deferred compensation plan" means one or more plans of the state or a political subdivision whereby eligible employees may elect to defer a portion of their compensation.

(d) "Deferred compensation plan agreement" means an agreement or agreements between the state or a political subdivision and an eligible employee whereby an eligible employee elects to participate in a deferred compensation plan.

(e) "Eligible employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, and whose tenure is not restricted to temporary or provisional appointment, in the service of, and whose compensation is payable in whole or in part by, the state or any political subdivision thereof. The term "eligible employee" includes, but is not limited to, those persons who are considered employees within the meaning of the West Virginia public employees retirement act and those persons who are members of the judges' retirement system, the retirement system of the department of public safety or any municipal retirement system for either, or both, policemen or firemen.

(f) "Governing body" means the county court of a county or tribunal in lieu thereof, the governing body of a municipal-
ity, as that term is defined in section two, article one, chapter
eight of this code, and, in the case of any other political sub-
division, the board, commission, or other similar body respon-
sible for determining the policy of such political subdivision.

(g) "Insurance contract" means a regular or variable life
insurance policy or a fixed or variable annuity contract, or
any combination of the same.

(h) "Political subdivision" means a county or municipality
in the state; any separate corporation or instrumentality es-
tablished by one or more counties or municipalities or any
combination thereof; any corporation or instrumentality sup-
ported primarily by counties or municipalities; or any public
corporation charged by law with the performance of a govern-
mental function, the jurisdiction of which corporation is not
statewide but is coextensive with one or more counties or
municipalities.

(i) "State" means the state of West Virginia, or any de-
partment, agency, board, commission, institution or spending
unit thereof, and shall include any agency created by rule of
the supreme court of appeals having full-time employees.


The board of trustees acting on behalf of the state or any
political subdivision may adopt a deferred compensation plan
and any eligible employee may elect to defer all or any portion
of that employee's compensation. After an eligible employee
elects to participate in such deferred compensation plan by
executing such agreement as is required in the deferred com-
pensation plan, the board of trustees may contract for, pur-
chase or otherwise procure an insurance contract or contracts
for the purpose of providing a sinking fund for a deferred
compensation plan for such employee from any broker or
agent duly licensed by this state who represents an insurance
company licensed to transact insurance in this state. The board
of trustees may adopt a deferred compensation plan on behalf
of a political subdivision only after the governing body of such
political subdivision has notified the board of trustees of its
consent for its employees to participate in a deferred compensa-
tion plan.
In no event shall the total of the premiums paid for the purchase of an insurance contract and the employee’s non-deferred compensation for the year exceed the total annual compensation to which such employee would otherwise be entitled. A deferred compensation plan shall be in addition to any retirement or pension program provided for such employee. Compensation deferred under a deferred compensation plan shall continue to be included as regular compensation of such employee for the purpose of any retirement or pension program of the state or political subdivision of which such employee is a member and for the purpose of computing amounts to be deducted for any applicable social security taxes. Compensation deferred under such deferred compensation plan shall not be included in the computation of any federal or state income taxes withheld on behalf of such employee.

§5-10A-4. Contributions.

The officer or officers responsible for preparing the payrolls for payroll units of the state and the officers or officers responsible for preparing the payrolls of any political subdivision which has consented to its employees participating in a deferred compensation plan shall, upon notice from the board of trustees that an eligible employee has entered into a deferred compensation plan agreement, reduce the compensation of such employee on each and every payroll, for each and every payroll period, by the amount set forth in such notice to such payroll officer or officers from the board of trustees and remit such amount to the board of trustees. Any amount so reduced shall not be reported as taxable income for either federal or state income tax purposes.

§5-10A-5. Liabilities of state of West Virginia or political subdivisions.

Any insurance contract purchased by the board of trustees may be cancelled by the state or any political subdivision, as the case may be, at the end of any fiscal year, and, if so cancelled, the state and the political subdivision, as the case may be, shall have no further obligation of any kind or character concerning any such insurance contract to the insurance company or to the employee whose compensation was deferred.
The state and the political subdivision, as the case may be, may also terminate a deferred compensation plan at any time and any employee participating in such plan shall not have any rights or be entitled to any benefits except as to such rights and benefits as are provided under the deferred compensation plan.

§5-10A-6. Ownership of policy.

The state or the political subdivision in the event the board of trustees adopts a plan on behalf of a political subdivision, as the case may be, shall be considered the owner of any insurance contract purchased pursuant to a deferred compensation plan. No employee or heir, distributee, legatee, personal representative, executor or administrator of any such employee shall have any rights of ownership in said insurance contract and shall not be named as a beneficiary in any such insurance contract.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Daniel Daly
Chairman Senate Committee

Clyde C. Cox
Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

Howard W. Carson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

J. T. Brathterin, Jr.
President of the Senate

Lewis F. Broome
Speaker House of Delegates

The within _______________ this the ____________th day of ______________, 1974.

Anthony S. Wayne, Jr.
Governor
PRESENTED TO THE
GOVERNOR

Date  3/21/74
Time  10:30 a.m.