

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1974

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ENROLLED

HOUSE BILL No. 1319

(By Mr. Speaker, Mr. McManus &  
Mr. Siebert)

— • —

PASSED March 9 1974

In Effect 90 days Passage



FILED IN THE OFFICE  
EDGAR F. WHEELER III  
SECRETARY OF STATE  
THIS DATE 3/29/74

1319 - VETO

**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 thereto 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-

2 ployees of the state and its political subdivisions to participate  
3 in voluntary tax-sheltered income deferment plans recognized  
4 under the United States Internal Revenue Code of 1954, as  
5 amended, and thereby to permit such employees to obtain the  
6 advantages inherent in such plans relative to the income tax  
7 treatment of contributions and disbursements made pursuant  
8 to such tax-sheltered income deferment plans.

**§5-10A-2. Definitions.**

1 Unless the context in which used clearly indicates a differ-  
2 ent meaning, as used in this article:

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

6 (b) "Compensation" means the remuneration paid by the  
7 state or a political subdivision to an eligible employee for per-  
8 sonal services rendered.

9 (c) "Deferred compensation plan" means one or more plans  
10 of the state or a political subdivision whereby eligible em-  
11 ployees may elect to defer a portion of their compensation.

12 (d) "Deferred compensation plan agreement" means an  
13 agreement or agreements between the state or a political sub-  
14 division and an eligible employee whereby an eligible employee  
15 elects to participate in a deferred compensation plan.

16 (e) "Eligible employee" means any person who serves regu-  
17 larly as an officer or employee, full time, on a salary basis, and  
18 whose tenure is not restricted to temporary or provisional ap-  
19 pointment, in the service of, and whose compensation is pay-  
20 able in whole or in part by, the state or any political subdi-  
21 vision thereof. The term "eligible employee" includes, but is  
22 not limited to, those persons who are considered employees  
23 within the meaning of the West Virginia public employees  
24 retirement act and those persons who are members of the jud-  
25 ges' retirement system, the retirement system of the depart-  
26 ment of public safety or any municipal retirement system for  
27 either, or both, policemen or firemen.

28 (f) "Governing body" means the county court of a county  
29 or tribunal in lieu thereof, the governing body of a municipal-

30 ity, as that term is defined in section two, article one, chapter  
31 eight of this code, and, in the case of any other political sub-  
32 division, the board, commission, or other similar body respon-  
33 sible for determining the policy of such political subdivision.

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

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

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

**§5-10A-3. Deferred compensation plan.**

1 The board of trustees acting on behalf of the state or any  
2 political subdivision may adopt a deferred compensation plan  
3 and any eligible employee may elect to defer all or any portion  
4 of that employee's compensation. After an eligible employee  
5 elects to participate in such deferred compensation plan by  
6 executing such agreement as is required in the deferred com-  
7 pensation plan, the board of trustees may contract for, pur-  
8 chase or otherwise procure an insurance contract or contracts  
9 for the purpose of providing a sinking fund for a deferred  
10 compensation plan for such employee from any broker or  
11 agent duly licensed by this state who represents an insurance  
12 company licensed to transact insurance in this state. The board  
13 of trustees may adopt a deferred compensation plan on behalf  
14 of a political subdivision only after the governing body of such  
15 political subdivision has notified the board of trustees of its  
16 consent for its employees to participate in a deferred compensa-  
17 tion plan.

18 In no event shall the total of the premiums paid for the  
19 purchase of an insurance contract and the employee's non-  
20 deferred compensation for the year exceed the total annual  
21 compensation to which such employee would otherwise be  
22 entitled. A deferred compensation plan shall be in addition to  
23 any retirement or pension program provided for such em-  
24 ployee. Compensation deferred under a deferred compensation  
25 plan shall continue to be included as regular compensation  
26 of such employee for the purpose of any retirement or pension  
27 program of the state or political subdivision of which such  
28 employee is a member and for the purpose of computing a-  
29 mounts to be deducted for any applicable social security taxes.  
30 Compensation deferred under such deferred compensation plan  
31 shall not be included in the computation of any federal or  
32 state income taxes withheld on behalf of such employee.

**§5-10A-4. Contributions.**

1 The officer or officers responsible for preparing the pay-  
2 rolls for payroll units of the state and the officers or officers  
3 responsible for preparing the payrolls of any political subdi-  
4 vision which has consented to its employees participating in  
5 a deferred compensation plan shall, upon notice from the  
6 board of trustees that an eligible employee has entered into a  
7 deferred compensation plan agreement, reduce the compen-  
8 sation of such employee on each and every payroll, for each  
9 and every payroll period, by the amount set forth in such notice  
10 to such payroll officer or officers from the board of trustees and  
11 remit such amount to the board of trustees. Any amount so  
12 reduced shall not be reported as taxable income for either  
13 federal or state income tax purposes.

**§5-10A-5. Liabilities of state of West Virginia or political sub-  
divisions.**

1 Any insurance contract purchased by the board of trustees  
2 may be cancelled by the state or any political subdivision, as  
3 the case may be, at the end of any fiscal year, and, if so can-  
4 celled, the state and the political subdivision, as the case may  
5 be, shall have no further obligation of any kind or character  
6 concerning any such insurance contract to the insurance com-  
7 pany or to the employee whose compensation was deferred.

8 The state and the political subdivision, as the case may be,  
9 may also terminate a deferred compensation plan at any time  
10 and any employee participating in such plan shall not have  
11 any rights or be entitled to any benefits except as to such  
12 rights and benefits as are provided under the deferred com-  
13 pensation plan.

**§5-10A-6. Ownership of policy.**

1 The state or the political subdivision in the event the board  
2 of trustees adopts a plan on behalf of a political subdivision, as  
3 the case may be, shall be considered the owner of any insur-  
4 ance contract purchased pursuant to a deferred compensation  
5 plan. No employee or heir, distributee, legatee, personal rep-  
6 resentative, executor or administrator of any such employee  
7 shall have any rights of ownership in said insurance contract  
8 and shall not be named as a beneficiary in any such insurance  
9 contract.

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

H. Daniel Darby  
Chairman Senate Committee

Clarence L. Chestnut Jr.  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Harward Wilson  
Clerk of the Senate

C. Blankenship  
Clerk of the House of Delegates

St. T. Brotherton, Jr.  
President of the Senate

Louis J. McManus  
Speaker House of Delegates

The within disapproved this the 26th  
day of March, 1974.

Ann A. Shaver, Jr.  
Governor



PRESENTED TO THE  
GOVERNOR

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