

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-30-82

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982

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# ENROLLED

HOUSE BILL No. 1768

(By Mr. Tompkins)

— ● —

Passed March 12, 1982

In Effect Ninety Days From Passage

**ENROLLED**

**H. B. 1768**

(By MR. TOMPKINS)

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[Passed March 12, 1982; 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-b, authorizing employees of the state of West Virginia and its political subdivisions to participate in voluntary tax-sheltered income deferral 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; specifying how deferred compensation plans are to be administered; specifying the manner in which salary reductions are to be made; and establishing the extent of liability of the state of West Virginia and its political subdivisions.

*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-b, to read as follows:

**ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.**

**§5-10B-1. Legislative purpose.**

1 The legislative purpose of this enactment is to enable em-  
2 ployees of the state, its agencies, counties, municipalities and

3 political subdivisions of such governmental bodies to partici-  
4 pate in voluntary deferred compensation plans authorized by  
5 the United States Internal Revenue Code as interpreted by  
6 the internal revenue service, thereby permitting such employees  
7 to obtain the advantages inherent in such plans relative to  
8 the income tax treatment of the contributions and disburse-  
9 ments made pursuant to such voluntary income deferment  
10 plans. It is further the purpose of this enactment to authorize  
11 the establishment of separate plans for the state and its agencies  
12 and for counties, municipalities and political subdivisions  
13 within the state.

**§5-10B-2. Definitions.**

1 Unless the context in which used clearly indicates a different  
2 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  
5 for in article ten of this chapter.

6 (b) "Deferred compensation plan" means an arrangement  
7 whereby the state of West Virginia, as the public employer,  
8 or a public employer agrees with an employee for the volun-  
9 tary reduction in employee compensation for the payment of  
10 benefits by the state employer or the public employer to the  
11 employee at a later date pursuant to this article and the federal  
12 laws and regulations relating to eligible state deferred com-  
13 pensation plans as described in Internal Revenue Code Sec-  
14 tion 457.

15 (c) "Employee" means any person, whether appointed, elec-  
16 ted, or under contract, providing services for the state em-  
17 ployer or public employer, for which compensation is paid.

18 (d) "Public employer" means counties, municipalities or  
19 political subdivisions of such governmental bodies which meet  
20 the definition of "state" as described in Internal Revenue  
21 Code Section 457 (d) (1), but which do not meet the definition  
22 of "state employer" as used in this article.

23 (e) "State employer" means the state of West Virginia and  
24 any state agency or instrumentality of the state.

**§5-10B-3. Contracts for deferred compensation plans—approval of plans—approval of companies providing investments.**

1 The state employer or any public employer may, by contract,  
2 agree with any of its employees to defer any portion of that em-  
3 ployee's compensation and may subsequently purchase or ac-  
4 quire from any company licensed to do business in the state of  
5 West Virginia fixed or variable annuities, insurance, endow-  
6 ment, or savings account for the purpose of carrying out the  
7 objectives of the deferred compensation plan as described in  
8 this article.

**§5-10B-4. Responsibility for implementing plans—payroll reductions—billing and administration.**

1 The responsibility for implementing the deferred compensa-  
2 tion plan for employees of the state employer shall be delegated  
3 to the board of trustees. The responsibility for implementing  
4 the deferred compensation plan for employees of a public  
5 employer, as defined hereunder, shall be delegated to the  
6 county commission of a county or tribunal in lieu thereof, the  
7 governing body of a municipality, as that term is defined in  
8 section two, article one, chapter eight of this code, and, in the  
9 case of any other political subdivision, the board, commission,  
10 or other similar body responsible for determining the policy of  
11 such political subdivision. If the governing body has adopted  
12 more than one plan, an employee electing to participate shall  
13 also elect the plan in which he desires to participate. Payroll  
14 reductions shall be made, in each instance, by the appropriate  
15 payroll officer. The board of trustees or appropriately desig-  
16 nated local officer, board or committee of such deferred  
17 compensation plan may contract with a private corporation,  
18 institution and/or custodial bank to provide consolidated bill-  
19 ing and all or any other administrative services deemed  
20 necessary, in order that any such deferred compensation plan  
21 adopted shall operate without cost to or contribution from  
22 the state employer or public employer except for the inci-  
23 dental expense of administering the payroll-salary reductions  
24 and the remittance thereof.

**§5-10B-5. Investment of funds.**

1 Notwithstanding any other provision of law to the contrary,

2 the board of trustees, as well as the appropriate local officer,  
3 board or committee, designated as responsible for implemen-  
4 ting a deferred compensation plan, is hereby authorized to  
5 invest compensation held pursuant to any such deferred com-  
6 pensation plan in fixed and variable annuities, insurance, en-  
7 dowment or savings accounts from any company duly autho-  
8 rized to contract such business in the state.

**§5-10B-6. Program supplemental.**

1 The deferred compensation plan or plans established pur-  
2 suant to this article shall exist and serve in addition to other  
3 retirement, pension or benefit systems established by the state  
4 employer and any public employer. The deferred compensation  
5 plan or plans established by this article shall not supersede,  
6 make inoperative or reduce any benefits provided by the con-  
7 solidated retirement system or programs established by the  
8 state employer or any public employer, or any other retire-  
9 ment, pension or benefit program established by law for the  
10 benefit of employees.

**§5-10B-7. Other benefits unaffected by deferred compensation plan.**

1 Notwithstanding any other provision of law to the con-  
2 trary, any compensation deferred under this article shall be  
3 considered part of an employee's compensation for purposes  
4 of any other employee retirement, pension or benefit pro-  
5 gram. No deferral of compensation under any deferred com-  
6 pensation plan shall effect a reduction of any retirement,  
7 pension or other benefit program provided by law.

**§5-10B-8. Federal and state income tax.**

1 Notwithstanding any other provision of this article or any  
2 other provision of law to the contrary, any compensation de-  
3 ferred under any deferred compensation plan shall not be sub-  
4 ject to any federal, state or municipal income tax nor shall any  
5 amount of compensation deferred be included for the purposes  
6 of computation of any such income tax withheld on behalf of  
7 any employee.

**§5-10B-9. Liabilities of state of West Virginia or political sub-  
divisions.**

1 The financial liability of the state employer or public em-

2 ployer under any deferred compensation plan shall be limited  
3 in each instance to the value of the particular fixed or variable  
4 annuity, insurance, endowment or savings account acquired  
5 pursuant to the terms and provisions of this article, and the  
6 state employer or public employer shall not be liable for any  
7 change in value of such investment at the time of distribution  
8 to an employee.

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

*R. P. Bayle*  
Chairman Senate Committee

*Jimmy E. Whitlow*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Todd C. Huetli*  
Clerk of the Senate

*VA Blankenship*  
Clerk of the House of Delegates

*Warren R. McNew*  
President of the Senate

*Alfred M. See, Jr.*  
Speaker House of Delegates

The within is approved this the 30  
day of March, 1982.

*John A. Blumenthal*  
Governor

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SECY. OF STATE