WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

ENROLLED

HOUSE BILL No. 1768

(By Mr. Tompkins)

Passed March 12, 1982

In Effect Ninety Days From Passage

APPROVED AND SIGNED BY THE GOVERNOR
Date 3-30-82
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 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; 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 employees of the state, its agencies, counties, municipalities and
political subdivisions of such governmental bodies to participate in voluntary deferred compensation plans authorized by the United States Internal Revenue Code as interpreted by the internal revenue service, thereby permitting such employees to obtain the advantages inherent in such plans relative to the income tax treatment of the contributions and disbursements made pursuant to such voluntary income deferment plans. It is further the purpose of this enactment to authorize the establishment of separate plans for the state and its agencies and for counties, municipalities and political subdivisions within the state.

§5-10B-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) "Deferred compensation plan" means an arrangement whereby the state of West Virginia, as the public employer, or a public employer agrees with an employee for the voluntary reduction in employee compensation for the payment of benefits by the state employer or the public employer to the employee at a later date pursuant to this article and the federal laws and regulations relating to eligible state deferred compensation plans as described in Internal Revenue Code Section 457.

(c) "Employee" means any person, whether appointed, elected, or under contract, providing services for the state employer or public employer, for which compensation is paid.

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

(e) "State employer" means the state of West Virginia and any state agency or instrumentality of the state.
§5-10B-3. Contracts for deferred compensation plans—approval of plans—approval of companies providing investments.

The state employer or any public employer may, by contract, agree with any of its employees to defer any portion of that employee's compensation and may subsequently purchase or acquire from any company licensed to do business in the state of West Virginia fixed or variable annuities, insurance, endowment, or savings account for the purpose of carrying out the objectives of the deferred compensation plan as described in this article.

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

The responsibility for implementing the deferred compensation plan for employees of the state employer shall be delegated to the board of trustees. The responsibility for implementing the deferred compensation plan for employees of a public employer, as defined hereunder, shall be delegated to the county commission of a county or tribunal in lieu thereof, the governing body of a municipality, as that term is defined in section two, article one, chapter eight of this code, and, in the case of any other political subdivision, the board, commission, or other similar body responsible for determining the policy of such political subdivision. If the governing body has adopted more than one plan, an employee electing to participate shall also elect the plan in which he desires to participate. Payroll reductions shall be made, in each instance, by the appropriate payroll officer. The board of trustees or appropriately designated local officer, board or committee of such deferred compensation plan may contract with a private corporation, institution and/or custodial bank to provide consolidated billing and all or any other administrative services deemed necessary, in order that any such deferred compensation plan adopted shall operate without cost to or contribution from the state employer or public employer except for the incidental expense of administering the payroll-salary reductions and the remittance thereof.

§5-10B-5. Investment of funds.

Notwithstanding any other provision of law to the contrary,
the board of trustees, as well as the appropriate local officer, board or committee, designated as responsible for implementing a deferred compensation plan, is hereby authorized to invest compensation held pursuant to any such deferred compensation plan in fixed and variable annuities, insurance, endowment or savings accounts from any company duly authorized to contract such business in the state.

§5-10B-6. Program supplemental.

The deferred compensation plan or plans established pursuant to this article shall exist and serve in addition to other retirement, pension or benefit systems established by the state employer and any public employer. The deferred compensation plan or plans established by this article shall not supersede, make inoperative or reduce any benefits provided by the consolidated retirement system or programs established by the state employer or any public employer, or any other retirement, pension or benefit program established by law for the benefit of employees.

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

Notwithstanding any other provision of law to the contrary, any compensation deferred under this article shall be considered part of an employee's compensation for purposes of any other employee retirement, pension or benefit program. No deferral of compensation under any deferred compensation plan shall effect a reduction of any retirement, pension or other benefit program provided by law.

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

Notwithstanding any other provision of this article or any other provision of law to the contrary, any compensation deferred under any deferred compensation plan shall not be subject to any federal, state or municipal income tax nor shall any amount of compensation deferred be included for the purposes of computation of any such income tax withheld on behalf of any employee.

§5-10B-9. Liabilities of state of West Virginia or political subdivisions.

The financial liability of the state employer or public em-
ployer under any deferred compensation plan shall be limited
in each instance to the value of the particular fixed or variable
annuity, insurance, endowment or savings account acquired
pursuant to the terms and provisions of this article, and the
state employer or public employer shall not be liable for any
change in value of such investment at the time of distribution
to an employee.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originating in the House.

Takes effect ninety 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 ______ day of ________, 1982.

Governor