WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED

HOUSE BILL No. 2022

(By Mr. Speaker, Mr. Albright, and Delcour)

[By request of the Executive]

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Passed March 7, 1986

In Effect July 1, 1986
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-c, relating to contributions paid on behalf of public employees who are members of the West Virginia public employees retirement system, the West Virginia department of public safety death, disability and retirement fund, the state teachers retirement system, the West Virginia board of regents retirement plans and the judges' retirement system; requiring the state and county boards of education to pick up and pay the contributions of its employees who are members of such retirement systems and authorizing other participating public employers to pick up and pay member contributions heretofor required to be deducted from the compensation of employees who participate in a West Virginia retirement system; stating a legislative purpose; providing for construction and effect of article; defining terms; authorizing a participating public employer to reduce the gross salary of member employees or offset future salary increases (or a combination of both) for the amount of member contributions paid by the participating public employers; providing for member contributions paid by the participating public employer to not be included in gross income for federal or state income tax purposes or for purposes of
employer withholding taxes; providing for member contributions paid by the participating employer to be treated by each retirement system or fund as member contributions; providing for retirement benefits to be calculated on the sum of gross salary plus member contributions paid by the participating public employer; stating legislative intent to create retirement plans that qualify under section 401 of the Internal Revenue Code of 1954, as amended, and for member contributions picked up and paid by participating public employers to qualify under subsection (h), section 414 of said Internal Revenue Code; and authorizing the boards of trustees to adopt a deferred compensation plan that qualifies under section 401 of the Internal Revenue Code of 1954, as amended.

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-c, all to read as follows:

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-1. Legislative purpose.

1 The legislative purpose for this enactment is to enable this state, its agencies and political subdivisions, and political subdivisions of counties and municipalities to pick-up and pay the contributions which their employees are by law required to make to the respective retirement system in which the public employee is a member.

§5-10C-2. Construction and effect of article.

1 This article shall apply to all retirement plans for employees sponsored by any public employer in this state. This article shall, on and after the first day of July, one thousand nine hundred eighty-six, be read in pari materia and harmonized with the provisions of this code creating any retirement system for public employees.

§5-10C-3. Definitions.
The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts credited to a member's individual account in the members' deposit fund and includes both contributions deducted from the compensation of a member and contributions of a member picked up and paid by the member's participating public employer, plus applicable interest thereon.

(2) "Board of trustees" means, as appropriate: The board of trustees of the West Virginia public employees retirement system created in article ten, chapter five of this code; the retirement board of the West Virginia department of public safety death, disability and retirement fund created in section twenty-six, article two, chapter fifteen of this code; the retirement board of the state teachers and board of regents retirement system created in article seven-a, chapter eighteen of this code; the governing board of the board of regents supplemental and additional retirement plans created in section four-a, article twenty-three, chapter eighteen of this code; or the retirement board of the judges' retirement system created in article nine, chapter fifty-one of this code.

(3) "Employee" means any person, whether appointed, elected, or under contract, providing services for a public employer, for which compensation is paid and who is a member of the retirement system.

(4) "Member" means any employee who is included in a retirement system.

(5) "Member contributions" means, as appropriate: the contributions required by section twenty-nine, article ten, chapter five of this code, from employees who are members of the West Virginia public employees retirement system; the contributions required by section twenty-six, article two, chapter fifteen of this code, from employees who are members of the West Virginia department of public safety death, disability and retirement fund; the contributions required by section...
fourteen, article seven-a, chapter eighteen of this code, from employees who are members of the state teachers retirements system; the contributions authorized by section fourteen-a, article seven-a, chapter eighteen or by section four-a, article twenty-three, chapter eighteen, from employees who are members of the West Virginia board of regents retirement plans; or the contributions required by section four, article nine, chapter fifty-one of this code, from employees who are members of the judges' retirement system.

(6) “Participating public employer” means the state of West Virginia, any board, commission, department, institution or spending unit, and shall include any agency created by rule of the supreme court of appeals having full-time employees, which for the purpose of this article shall be deemed a department of state government, and county boards of education with respect to teachers employed by them; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia public employees retirement system.

(7) “Political subdivision” means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns, any agency or organization established by, or approved by the department of health for the provision of community health or mental retardation services, and which is supported in part by state, county or municipal funds.

(8) “Retirement system” means, as appropriate: The West Virginia public employees retirement system created in article ten, chapter five of this code; the West Virginia department of public safety death, disability and retirement fund created in sections twenty-six through thirty-eight, article two, chapter fifteen of this
code; the state teachers retirement system created in article seven-a, chapter eighteen of this code; the West Virginia board of regents retirement plans created in section fourteen-a, article seven-a, chapter eighteen and section four-a, article twenty-three, chapter eighteen of this code; or the judges' retirement system created in article nine, chapter fifty-one of this code.

(9) "Teacher" shall have the meaning ascribed to it in section three, article seven-a, chapter eighteen of this code.

§5-10C-4. Pick-up of members' contributions by participating public employers.

(a) The state of West Virginia for its public employees and county board of education for its teachers shall pick-up and pay the contributions which such employees are required by law to make to the retirement system in which they are a member for all compensation earned by its member employees after the thirtieth day of June, one thousand nine hundred eighty-six. Any other political subdivision that is a participating public employer in the West Virginia public employees retirement system may, by a majority vote of its governing body, elect to pick-up and pay the contributions of their employees required by section twenty-nine, article ten of this chapter, for all compensation earned by its member employees after the thirtieth day of June, one thousand nine hundred eighty-six, or such later date specified by the governing body. It shall be the duty of the clerk or secretary of each such political subdivision electing to pick-up and pay the employee contributions of its members, to certify the determination of the political subdivision to the board of trustees within ten days from and after the vote of the governing body. Once the governing body elects to pick up the contributions of its member employees, it may not change its election.

(b) If the participating public employer does not pick-up the contributions of its member employees, the employer shall continue to deduct from the compensation paid to the member employee.

(c) If the participating public employer picks up and
pays the contributions of its member employees, such contributions shall be treated as employer contributions in determining the tax treatment thereof under article twenty-one, chapter eleven of this code, and the federal Internal Revenue Code of 1954, as amended, and such contributions shall not be included in the gross income of the employee in determining his or her tax treatment under article twenty-one, chapter eleven of this code, and the federal Internal Revenue Code of 1954, as amended, until they are distributed or made available to the employee or his or her beneficiary. The participating public employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee, by effecting an equal cash reduction in the gross salary of the employee, or by an off-set against future salary increases, or by a combination of reduction in gross salary and off-set against future salary increases.

(d) If employee contributions are picked up and paid by the participating public employer, they shall be treated by the board of trustees in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions are picked up by the participating public employer.

(e) The amount of employee contributions picked up by the participating public employer shall be paid to the retirement system in such manner and form, and in such frequency, as the board of trustees may require, and shall be accompanied by such supporting data, as the board of trustees shall from time to time prescribe. When paid to the retirement system, each of said amounts shall be credited to the deposit fund account of the member for whom the contribution was picked up and paid by the participating public employer.

§5-10C-5. Savings clause.

In enacting this article, it is the intent of the Legislature that the retirement plan created pursuant to this article and article ten, chapter five; article two, chapter fifteen; article seven-a, chapter eighteen and article nine, chapter fifty-one of this code shall qualify
under section 401 of the Internal Revenue Code of 1954, as amended, and that the member contributions picked up by the participating public employer qualify under subsection (h), section 414 of the Internal Revenue Code of 1954, as amended. Should the United States Internal Revenue Service not approve of certain sections or phraseology of certain sections of this article as being in compliance with the statutes or rules governing the Internal Revenue Service, the respective boards of trustees, in the adoption of the deferred compensation plan, shall adopt such terminology with respect to such sections as will comply therewith.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originating in the House.

Takes effect July 1, 1986.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within .. appears this the 25th
day of ........................................ , 1986.
PRESENTED TO THE
GOVERNOR
Date 3/21/86
Time 5:06pm