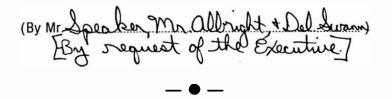


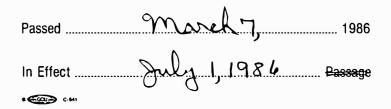
## WEST VIRGINIA LEGISLATURE

**REGULAR SESSION. 1986** 

## ENROLLED

### HOUSE BILL No. 2022





# ENROLLED H. B. 2022

(By Mr. Speaker, Mr. Albright, and Delegate Swann) [By request of the Executive]

[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 Enr. H. B. 2022]

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
- 2 this state, its agencies and political subdivisions, and
- 3 political subdivisions of counties and municipalities to
- 4 pick-up and pay the contributions which their employees
- 5 are by law required to make to the respective retirement
- 6 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 2 employees sponsored by any public employer in this 3 state. This article shall, on and after the first day of 4 July, one thousand nine hundred eighty-six, be read in 5 pari materia and harmonized with the provisions of this 6 code creating any retirement system for public em-7 ployees.

**§5-10C-3.** Definitions.

1 The following words and phrases as used in this 2 article, unless a different meaning is clearly indicated 3 by the context, shall have the following meanings:

4 (1) "Accumulated contributions" means the sum of all 5 amounts credited to a member's individual account in 6 the members' deposit fund and includes both contribu-7 tions deducted from the compensation of a member and 8 contributions of a member picked up and paid by the 9 member's participating public employer, plus applica-10 ble interest thereon.

11 (2) "Board of trustees" means, as appropriate: The 12 board of trustees of the West Virginia public employees 13 retirement system created in article ten, chapter five of 14 this code; the retirement board of the West Virginia department of public safety death, disability and 15 16 retirement fund created in section twenty-six, article 17 two, chapter fifteen of this code; the retirement board 18 of the state teachers and board of regents retirement 19 system created in article seven-a, chapter eighteen of 20 this code; the governing board of the board of regents 21 supplemental and additional retirement plans created in 22 section four-a, article twenty-three, chapter eighteen of 23 this code; or the retirement board of the judges' 24 retirement system created in article nine, chapter fifty-25 one of this code.

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

30 (4) "Member" means any employee who is included in31 a retirement system.

32 (5) "Member contributions" means, as appropriate: 33 the contributions required by section twenty-nine, 34 article ten, chapter five of this code, from employees who are members of the West Virginia public employees 35 retirement system; the contributions required by section 36 37 twenty-six, article two, chapter fifteen of this code, from 38 employees who are members of the West Virginia department of public safety death, disability and 39 retirement fund; the contributions required by section 40

41 fourteen, article seven-a, chapter eighteen of this code, 42 from employees who are members of the state teachers 43 retirements system; the contributions authorized by 44 section fourteen-a, article seven-a, chapter eighteen or 45 by section four-a, article twenty-three, chapter eighteen. 46 from employees who are members of the West Virginia 47 board of regents retirement plans; or the contributions 48 required by section four, article nine, chapter fifty-one 49 of this code, from employees who are members of the 50 judges' retirement system.

51 (6) "Participating public employer" means the state of West Virginia, any board, commission, department, 52 53 institution or spending unit, and shall include any 54 agency created by rule of the supreme court of appeals 55 having full-time employees, which for the purpose of 56 this article shall be deemed a department of state 57 government, and county boards of education with respect to teachers employed by them; and any political 58 59 subdivision in the state which has elected to cover its 60 employees, as defined in this article, under the West 61 Virginia public employees retirement system.

62 (7) "Political subdivision" means the state of West 63 Virginia, a county, city or town in the state; a school 64 corporation or corporate unit; any separate corporation 65 or instrumentality established by one or more counties, 66 cities or towns, as permitted by law; any corporation or 67 instrumentality supported in most part by counties, 68 cities or towns: any public corporation charged by law 69 with the performance of a governmental function and 70 whose jurisdiction is coextensive with one or more 71 counties, cities or towns, any agency or organization 72 established by, or approved by the department of health 73 for the provision of community health or mental 74 retardation services, and which is supported in part by 75 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.

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

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

1 (a) The state of West Virginia for its public employees 2 and county board of education for its teachers shall pick-3 up and pay the contributions which such employees are 4 required by law to make to the retirement system in 5 which they are a member for all compensation earned 6 by its member employees after the thirtieth day of June, 7 one thousand nine hundred eighty-six. Any other 8 political subdivision that is a participating public 9 employer in the West Virginia public employees 10 retirement system may, by a majority vote of its 11 governing body, elect to pick-up and pay the contribu-12 tions of their employees required by section twenty-nine, 13 article ten of this chapter, for all compensation earned 14 by its member employees after the thirtieth day of June, 15 one thousand nine hundred eighty-six, or such later date 16 specified by the governing body. It shall be the duty of 17 the clerk or secretary of each such political subdivision 18 electing to pick-up and pay the employee contributions 19 of its members, to certify the determination of the 20 political subdivision to the board of trustees within ten 21 days from and after the vote of the governing body. Once 22 the governing body elects to pick up the contributions 23 of its member employees, it may not change its election.

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

28 (c) If the participating public employer picks up and

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29 pays the contributions of its member employees, such 30 contributions shall be treated as employer contributions 31 in determining the tax treatment thereof under article 32 twenty-one, chapter eleven of this code, and the federal 33 Internal Revenue Code of 1954, as amended, and such 34 contributions shall not be included in the gross income 35 of the employee in determining his or her tax treatment 36 under article twenty-one, chapter eleven of this code, 37 and the federal Internal Revenue Code of 1954, as 38 amended, until they are distributed or made available 39 to the employee or his or her beneficiary. The partic-40 ipating public employer shall pay these employee 41 contributions from the same source of funds used in 42 paying compensation to the employee, by effecting an 43 equal cash reduction in the gross salary of the employee, 44 or by an off-set against future salary increases, or by a combination of reduction in gross salary and off-set 45 46 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.

53 (e) The amount of employee contributions picked up by the participating public employer shall be paid to the 54 55 retirement system in such manner and form, and in 56 such frequency, as the board of trustees may require. 57 and shall be accompanied by such supporting data, as 58 the board of trustees shall from time to time prescribe. 59 When paid to the retirement system, each of said 60 amounts shall be credited to the deposit fund account 61 of the member for whom the contribution was picked 62 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

6 under section 401 of the Internal Revenue Code of 1954, 7 as amended, and that the member contributions picked 8 up by the participating public employer qualify under 9 subsection (h), section 414 of the Internal Revenue Code of 1954, as amended. Should the United States Internal 10 11 Revenue Service not approve of certain sections or 12 phraseology of certain sections of this article as being 13 in compliance with the statutes or rules governing the 14 Internal Revenue Service, the respective boards of trustees, in the adoption of the deferred compensation 15 16 plan, shall adopt such terminology with respect to such 17 sections as will comply therewith.

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

Chairman Senate Committee

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Originating in the House.

Takes effect July 1, 1986.

Willes Clerk of the Senate

Clerk of the House of Delegate

President of the Senate

Speaker of the House Delegates

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FILED IN THE OFFICE OF SECRETARY OF STATE OF WEST VIRGINIA

THIS DATE 3/26/86