

76: 2022



WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986



ENROLLED

HOUSE BILL No. 2022

(By Mr. Speaker, Mr. Albright, + Del. Swann)
[By request of the Executive.]



Passed March 7, 1986

In Effect July 1, 1986 Passage

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 heretofore 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
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
15 department of public safety death, disability and
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 in
31 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
35 who are members of the West Virginia public employees
36 retirement system; the contributions required by section
37 twenty-six, article two, chapter fifteen of this code, from
38 employees who are members of the West Virginia
39 department of public safety death, disability and
40 retirement fund; the contributions required by section

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
52 West Virginia, any board, commission, department,
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
58 respect to teachers employed by them; and any political
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.

76 (8) "Retirement system" means, as appropriate: The
77 West Virginia public employees retirement system
78 created in article ten, chapter five of this code; the West
79 Virginia department of public safety death, disability
80 and retirement fund created in sections twenty-six
81 through thirty-eight, article two, chapter fifteen of this

82 code; the state teachers retirement system created in
83 article seven-a, chapter eighteen of this code; the West
84 Virginia board of regents retirement plans created in
85 section fourteen-a, article seven-a, chapter eighteen and
86 section four-a, article twenty-three, chapter eighteen of
87 this code; or the judges' retirement system created in
88 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 partici-
pating 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.

24 (b) If the participating public employer does not pick-
25 up the contributions of its member employees, the
26 employer shall continue to deduct from the compensa-
27 tion paid to the member employee.

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

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
45 a combination of reduction in gross salary and off-set
46 against future salary increases.

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

53 (e) The amount of employee contributions picked up
54 by the participating public employer shall be paid to the
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.

1 In enacting this article, it is the intent of the
2 Legislature that the retirement plan created pursuant
3 to this article and article ten, chapter five; article two,
4 chapter fifteen; article seven-a, chapter eighteen and
5 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
10 of 1954, as amended. Should the United States Internal
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
15 trustees, in the adoption of the deferred compensation
16 plan, shall adopt such terminology with respect to such
17 sections as will comply therewith.

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

Bruce G. Wilson

Chairman Senate Committee

Floyd Fuller

Chairman House Committee

Originating in the House.

Takes effect July 1, 1986.

Todd C. Walker

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Don Tomkins

President of the Senate

Joseph P. Allright

Speaker of the House of Delegates

The within *appears* this the *25th*
March
day of _____, 1986.

Archa Shroyer Jr.

Governor

PRESENTED TO THE
GOVERNOR

Date 3/21/86

Time 5:06 p.m.

RECEIVED
1996 MAR 26 PM 4:25
OFFICE OF THE
SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA
THIS DATE 3/26/86