WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 208

(Senators Foster and Plymale, original sponsors)

[Passed March 6, 2008; in effect ninety days from passage.]
AN ACT to amend and reenact §5-10C-3, §5-10C-4 and §5-10C-5 of the Code of West Virginia, 1931, as amended, all relating to government employees retirement plans; adding the West Virginia Emergency Medical Services Retirement System to, and clarifying that all other retirement systems administered by the Consolidated Public Retirement Board are included in, the definition of “retirement systems” for purposes of the employer pick-up provisions; clarifying that all participating public employers in retirement
systems covered by this article are included in the definition of “participating public employer”; and setting forth requirements for member contributions to be picked up for federal tax purposes by participating public employers in retirement systems covered by this article in accordance with revised guidance relating to same from the Internal Revenue Service.

Be it enacted by the Legislature of West Virginia:

That §5-10C-3, §5-10C-4 and §5-10C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-3. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, 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 Consolidated Public Retirement Board created in article ten-d of this chapter; the Higher Education Policy Commission; the West Virginia Council for Community and Technical College Education; the institutional governing boards responsible for the higher education
(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 applicable retirement system.

(4) “Member” means any person who has accumulated contributions standing to his or her credit in a retirement system.

(5) “Member contributions” means, as appropriate: The contributions required by section twenty-nine, article ten of this chapter five 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 State Police Death, Disability and Retirement Fund; the contributions required by section seven, article fourteen-d, chapter seven of this code from employees who are members of the Deputy Sheriff's Retirement System; the contributions required by section fourteen, article seven-a, chapter eighteen of this code from employees who are members of the State Teachers Retirement System; the contributions authorized or required by section fourteen-a, article seven-a of said chapter or by section four-a, article twenty-three of said chapter from employees who are members of the West Virginia higher education retirement plan and supplemental retirement plan; the contributions required by section four, article nine,
chapter fifty-one of this code from employees who are members of the Judges’ Retirement System; the contributions required by section nineteen, article twenty-two, chapter eight of this code from employees who are members of municipal firemen’s and policemen’s pension and relief funds; the contributions required by section nine, article seven-b, chapter eighteen of this code from employees who are members of the Teachers’ Defined Contribution Retirement System; the contributions required by section five, article two-a, chapter fifteen of this code from the employees who are members of the West Virginia State Police Retirement System; or the contributions required by section eight, article five-v, chapter sixteen of this code from employees who are members of the West Virginia Emergency Medical Services Retirement System.

(6) “Participating public employer” means the State of West Virginia, any board, commission, department, institution or spending unit and includes any agency with full-time employees, created by rule of the Supreme Court of Appeals, which for the purpose of this article shall be considered a department of state government and county boards of education with respect to teachers employed by them; 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; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the Deputy Sheriff Retirement System; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Emergency Medical Services 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 and Human Resources 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 of this chapter; the West Virginia State Police Death, Disability and Retirement Fund created in sections twenty-six through thirty-eight, inclusive, article two, chapter fifteen of this code; the West Virginia Deputy Sheriff Retirement System created in article fourteen-d, chapter seven of this code; the State Teachers Retirement System created in article seven-a, chapter eighteen of this code; the West Virginia higher education retirement plan and supplemental retirement plan created in section fourteen-a, article seven-a of said chapter and section four-a, article twenty-three of said chapter; the Judges’ Retirement System created in article nine, chapter fifty-one of this code; the firemen’s or policemen’s pension and relief
funds created in section sixteen, article twenty-two, chapter eight of this code; the Teachers' Defined Contribution Retirement System created in article seven-b, chapter eighteen of this code; the West Virginia State Police Retirement System created in article two-a, chapter fifteen of this code; or the West Virginia Emergency Medical Services Retirement System created in article five-v, chapter sixteen of this code.

(9) "Teacher" has 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 boards of education for its teachers shall pick-up and pay the contributions which the 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 political subdivision that is a participating public employer in the West Virginia Public Employees Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are members for all compensation earned by its member employees after the first day of January, one thousand nine hundred ninety-five. Counties shall pick-up and pay the contributions which the employees are required by law to make to the Deputy Sheriff Retirement System in which they are members for all compensation earned by its member employees after the thirtieth day of June, one thousand nine hundred ninety-eight. Any election made by a
political subdivision to pick-up and pay employee contributions prior to the first day of January, one thousand nine hundred ninety-five, remains in effect and is not altered or amended by the amendments made to this section during the regular legislative session, one thousand nine hundred ninety-five. Unless a different commencement date for pick-up is specifically stated in this section, all participating public employers under this article, with respect to retirement systems subject to this article, shall pick-up and pay the contributions which their employees are required by law to make to the retirement system in which they are a member from and after the commencement of the required employee contributions.

(b) When the participating public employer picks up and pays the contributions of its member employees, the contributions, although designated by statute as employee 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 1986, as amended, and the contributions shall not be included in the gross income of the employee in determining his or her tax treatment under those provisions 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. In no event shall any employee of a participating public employer have the right to opt out of pick-up or to elect
to receive the picked-up and contributed amounts
directly instead of having them paid by the
participating public employer into the retirement
system pursuant to this article.

(c) When 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.

(d) The amount of employee contributions picked up
by the participating public employer shall be paid to the
retirement system in the manner and form and in the
frequency required by the board of trustees and shall be
accompanied by supporting data that the board of
trustees may prescribe. When paid to the retirement
system, each of these 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 those created pursuant to article ten of
this chapter; article fourteen-d, chapter seven of this
code; article two, chapter fifteen of this code; article
seven-a, chapter eighteen of this code; article nine,
chapter fifty-one of this code; section four-a, article
twenty-three, chapter eighteen of this code; section
sixteen, article twenty-two, chapter eight of this code;
average seven-b, chapter eighteen of this code; article
two-a, chapter fifteen of this code; and article five-v, chapter sixteen of this code qualify under Section 401 of the Internal Revenue Code of 1986, 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 1986, as amended. If the United States Internal Revenue Service does not approve of certain sections or phraseology of certain sections of this article as being in compliance with the statutes or regulations governing the Internal Revenue Service, the respective boards of trustees, in the adoption of the deferred compensation plan, shall adopt the terminology with respect to those sections that comply with the statutes or regulations governing the Internal Revenue Service.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In 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 is approved this 29th Day of March, 2003.

Governor