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**WEST VIRGINIA LEGISLATURE**

**SEVENTY-EIGHTH LEGISLATURE**

**REGULAR SESSION, 2008**

SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

**ENROLLED**

**Senate Bill No. 208**

(SENATORS FOSTER AND PLYMALE, *original sponsors*)

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[Passed March 6, 2008; in effect ninety days from passage.]

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[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.**

1 The following words and phrases as used in this  
2 article, unless a different meaning is clearly indicated  
3 by the context, 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  
7 contributions deducted from the compensation of a  
8 member and contributions of a member picked up and  
9 paid by the member’s participating public employer,  
10 plus applicable interest thereon.

11 (2) “Board of trustees” means, as appropriate: The  
12 Consolidated Public Retirement Board created in article  
13 ten-d of this chapter; the Higher Education Policy  
14 Commission; the West Virginia Council for Community  
15 and Technical College Education; the institutional  
16 governing boards responsible for the higher education

17 retirement plan and supplemental retirement plan; or  
18 the boards of trustees of the firemen's and policemen's  
19 pension and relief funds created in article twenty-two,  
20 chapter eight of this code.

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

25 (4) "Member" means any person who has accumulated  
26 contributions standing to his or her credit in a  
27 retirement system.

28 (5) "Member contributions" means, as appropriate:  
29 The contributions required by section twenty-nine,  
30 article ten of this chapter five from employees who are  
31 members of the West Virginia Public Employees  
32 Retirement System; the contributions required by  
33 section twenty-six, article two, chapter fifteen of this  
34 code from employees who are members of the West  
35 Virginia State Police Death, Disability and Retirement  
36 Fund; the contributions required by section seven,  
37 article fourteen-d, chapter seven of this code from  
38 employees who are members of the Deputy Sheriff's  
39 Retirement System; the contributions required by  
40 section fourteen, article seven-a, chapter eighteen of this  
41 code from employees who are members of the State  
42 Teachers Retirement System; the contributions  
43 authorized or required by section fourteen-a, article  
44 seven-a of said chapter or by section four-a, article  
45 twenty-three of said chapter from employees who are  
46 members of the West Virginia higher education  
47 retirement plan and supplemental retirement plan; the  
48 contributions required by section four, article nine,

49 chapter fifty-one of this code from employees who are  
50 members of the Judges' Retirement System; the  
51 contributions required by section nineteen, article  
52 twenty-two, chapter eight of this code from employees  
53 who are members of municipal firemen's and  
54 policemen's pension and relief funds; the contributions  
55 required by section nine, article seven-b, chapter  
56 eighteen of this code from employees who are members  
57 of the Teachers' Defined Contribution Retirement  
58 System; the contributions required by section five,  
59 article two-a, chapter fifteen of this code from the  
60 employees who are members of the West Virginia State  
61 Police Retirement System; or the contributions required  
62 by section eight, article five-v, chapter sixteen of this  
63 code from employees who are members of the West  
64 Virginia Emergency Medical Services Retirement  
65 System.

66 (6) "Participating public employer" means the State of  
67 West Virginia, any board, commission, department,  
68 institution or spending unit and includes any agency  
69 with full-time employees, created by rule of the  
70 Supreme Court of Appeals, which for the purpose of this  
71 article shall be considered a department of state  
72 government and county boards of education with  
73 respect to teachers employed by them; any political  
74 subdivision in the state which has elected to cover its  
75 employees, as defined in this article, under the West  
76 Virginia Public Employees Retirement System; any  
77 political subdivision in the state which has elected to  
78 cover its employees, as defined in this article, under the  
79 Deputy Sheriff Retirement System; any political  
80 subdivision in the state which has elected to cover its  
81 employees, as defined in this article, under the West  
82 Virginia Emergency Medical Services Retirement

83 System; and any political subdivision in this state which  
84 is subject to the provisions of article twenty-two,  
85 chapter eight of this code.

86 (7) "Political subdivision" means the State of West  
87 Virginia, a county, city or town in the state; a school  
88 corporation or corporate unit; any separate corporation  
89 or instrumentality established by one or more counties,  
90 cities or towns, as permitted by law; any corporation or  
91 instrumentality supported in most part by counties,  
92 cities or towns; any public corporation charged by law  
93 with the performance of a governmental function and  
94 whose jurisdiction is coextensive with one or more  
95 counties, cities or towns, any agency or organization  
96 established by or approved by the Department of Health  
97 and Human Resources for the provision of community  
98 health or mental retardation services and which is  
99 supported in part by state, county or municipal funds.

100 (8) "Retirement system" means, as appropriate: The  
101 West Virginia Public Employees Retirement System  
102 created in article ten of this chapter; the West Virginia  
103 State Police Death, Disability and Retirement Fund  
104 created in sections twenty-six through thirty-eight,  
105 inclusive, article two, chapter fifteen of this code; the  
106 West Virginia Deputy Sheriff Retirement System  
107 created in article fourteen-d, chapter seven of this code;  
108 the State Teachers Retirement System created in article  
109 seven-a, chapter eighteen of this code; the West Virginia  
110 higher education retirement plan and supplemental  
111 retirement plan created in section fourteen-a, article  
112 seven-a of said chapter and section four-a, article  
113 twenty-three of said chapter; the Judges' Retirement  
114 System created in article nine, chapter fifty-one of this  
115 code; the firemen's or policemen's pension and relief

116 funds created in section sixteen, article twenty-two,  
117 chapter eight of this code; the Teachers' Defined  
118 Contribution Retirement System created in article  
119 seven-b, chapter eighteen of this code; the West Virginia  
120 State Police Retirement System created in article two-a,  
121 chapter fifteen of this code; or the West Virginia  
122 Emergency Medical Services Retirement System created  
123 in article five-v, chapter sixteen of this code.

124 (9) "Teacher" has the meaning ascribed to it in section  
125 three, article seven-a, chapter eighteen of this 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 boards of education for its teachers shall  
3 pick-up and pay the contributions which the employees  
4 are 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 political  
8 subdivision that is a participating public employer in  
9 the West Virginia Public Employees Retirement System  
10 shall pick-up and pay the contributions which the  
11 employees are required by law to make to the retirement  
12 system in which they are members for all compensation  
13 earned by its member employees after the first day of  
14 January, one thousand nine hundred ninety-five.  
15 Counties shall pick-up and pay the contributions which  
16 the employees are required by law to make to the  
17 Deputy Sheriff Retirement System in which they are  
18 members for all compensation earned by its member  
19 employees after the thirtieth day of June, one thousand  
20 nine hundred ninety-eight. Any election made by a

21 political subdivision to pick-up and pay employee  
22 contributions prior to the first day of January, one  
23 thousand nine hundred ninety-five, remains in effect  
24 and is not altered or amended by the amendments made  
25 to this section during the regular legislative session, one  
26 thousand nine hundred ninety-five. Unless a different  
27 commencement date for pick-up is specifically stated in  
28 this section, all participating public employers under  
29 this article, with respect to retirement systems subject to  
30 this article, shall pick-up and pay the contributions  
31 which their employees are required by law to make to  
32 the retirement system in which they are a member from  
33 and after the commencement of the required employee  
34 contributions.

35 (b) When the participating public employer picks up  
36 and pays the contributions of its member employees, the  
37 contributions, although designated by statute as  
38 employee contributions, shall be treated as employer  
39 contributions in determining the tax treatment thereof  
40 under article twenty-one, chapter eleven of this code  
41 and the federal Internal Revenue Code of 1986, as  
42 amended, and the contributions shall not be included in  
43 the gross income of the employee in determining his or  
44 her tax treatment under those provisions until they are  
45 distributed or made available to the employee or his or  
46 her beneficiary. The participating public employer shall  
47 pay these employee contributions from the same source  
48 of funds used in paying compensation to the employee,  
49 by effecting an equal cash reduction in the gross salary  
50 of the employee, or by an off-set against future salary  
51 increases, or by a combination of reduction in gross  
52 salary and off-set against future salary increases. In no  
53 event shall any employee of a participating public  
54 employer have the right to opt out of pick-up or to elect

55 to receive the picked-up and contributed amounts  
56 directly instead of having them paid by the  
57 participating public employer into the retirement  
58 system pursuant to this article.

59 (c) When employee contributions are picked up and  
60 paid by the participating public employer, they shall be  
61 treated by the board of trustees in the same manner and  
62 to the same extent as employee contributions made prior  
63 to the date on which employee contributions are picked  
64 up by the participating public employer.

65 (d) The amount of employee contributions picked up  
66 by the participating public employer shall be paid to the  
67 retirement system in the manner and form and in the  
68 frequency required by the board of trustees and shall be  
69 accompanied by supporting data that the board of  
70 trustees may prescribe. When paid to the retirement  
71 system, each of these amounts shall be credited to the  
72 deposit fund account of the member for whom the  
73 contribution was picked up and paid by the  
74 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 to  
3 this article and those created pursuant to article ten of  
4 this chapter; article fourteen-d, chapter seven of this  
5 code; article two, chapter fifteen of this code; article  
6 seven-a, chapter eighteen of this code; article nine,  
7 chapter fifty-one of this code; section four-a, article  
8 twenty-three, chapter eighteen of this code; section  
9 sixteen, article twenty-two, chapter eight of this code;  
10 article seven-b, chapter eighteen of this code; article

11 two-a, chapter fifteen of this code; and article five-v,  
12 chapter sixteen of this code qualify under Section 401 of  
13 the Internal Revenue Code of 1986, as amended, and  
14 that the member contributions picked up by the  
15 participating public employer qualify under Subsection  
16 (h), Section 414 of the Internal Revenue Code of 1986, as  
17 amended. If the United States Internal Revenue Service  
18 does not approve of certain sections or phraseology of  
19 certain sections of this article as being in compliance  
20 with the statutes or regulations governing the Internal  
21 Revenue Service, the respective boards of trustees, in  
22 the adoption of the deferred compensation plan, shall  
23 adopt the terminology with respect to those sections  
24 that comply with the statutes or regulations governing  
25 the Internal Revenue Service.



Enr. Com. Sub for S. B. No. 208] 10

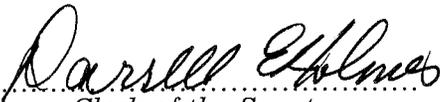
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

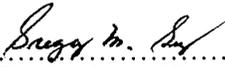
  
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Chairman Senate Committee

  
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Chairman House Committee

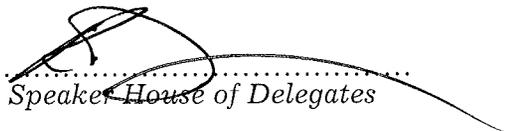
Originated in the Senate.

In effect ninety days from passage.

  
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Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved ..... this  
the 27th Day of March ..... 2008.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 21 2008

Time 9:40am