

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3235

By Delegates Storch, Marple, E. Pritt, Kump, C. Pritt,

Anderson, and Hornbuckle

[By Request of the Consolidated Public Retirement
Board]

[Introduced February 02, 2023; Referred to the
Committee on Pensions and Retirement then
Finance]

1 A BILL to amend and reenact §5-10C-3, §5-10C-4 and §5-10C-5 of the Code of West Virginia,
 2 1931, as amended; all relating to government employees' retirement plans; updating
 3 definitions; clarifying pick-up contributions for non-teachers; and inserting new retirement
 4 plan in savings clause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-3.

Definitions.

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

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

7 (2) "Board of trustees" means, as appropriate: The Consolidated Public Retirement Board
 8 created in article ten-d of this chapter; the Higher Education Policy Commission; the West Virginia
 9 Council for Community and Technical College Education; the institutional governing boards
 10 responsible for the higher education retirement plan and supplemental retirement plan; or the
 11 boards of trustees of the firemen's and policemen's pension and relief funds created in §8-22-1 et
 12 seq. of this code.

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

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

18 (5) "Member contributions" means, as appropriate: The contributions required by section
 19 twenty-nine, article ten of this chapter from employees who are members of the West Virginia

20 Public Employees Retirement System; the contributions required by section §15-2-26 of this code
21 from employees who are members of the West Virginia State Police Death, Disability and
22 Retirement Fund; the contributions required by §7-14D-7 of this code from employees who are
23 members of the Deputy Sheriff Retirement System; the contributions required by §18-7A-14 of this
24 code from employees who are members of the State Teachers Retirement System; the
25 contributions authorized or required by §18-7A-14a of said chapter or by §18-23-4a of said chapter
26 from employees who are members of the West Virginia higher education retirement plan and
27 supplemental retirement plan; the contributions required by section four, article nine, chapter fifty-
28 one of this code from employees who are members of the Judges' Retirement System; the
29 contributions required by §8-22-19 of this code from employees who are members of municipal
30 firemen's and policemen's pension and relief funds; the contributions required by §8-22A-8 of this
31 code from employees who are members of the Municipal Police Officers and Firefighters
32 Retirement System; the contributions required by §18-7B-9 of this code from employees who are
33 members of the Teachers' Defined Contribution Retirement System; the contributions required by
34 §15-2A-5 of this code from the employees who are members of the West Virginia State Police
35 Retirement System; ~~or~~ the contributions required by §16-5V-8 of this code from employees who
36 are members of the West Virginia Emergency Medical Services Retirement System; or the
37 contributions required by §20-18-8 of this code from employees who are members of the West
38 Virginia Natural Resources Police Officers Retirement System.

39 (6) "Participating public employer" means the State of West Virginia, any board,
40 commission, department, institution or spending unit and includes any agency with full-time
41 employees, created by rule of the Supreme Court of Appeals, which for the purpose of this article
42 shall be considered a department of state government and county boards of education with
43 respect to teachers and nonteachers employed by them; any political subdivision in the state
44 which has elected to cover its employees, as defined in this article, under the West Virginia Public
45 Employees Retirement System; any political subdivision in the state which has elected to cover its

46 employees, as defined in this article, under the Deputy Sheriff Retirement System; any political
47 subdivision in the state which has elected to cover its employees, as defined in this article, under
48 the West Virginia Emergency Medical Services Retirement System; ~~and~~ any political subdivision
49 in this state which is subject to the provisions of articles twenty-two and twenty-two-a, chapter
50 eight of this code; and any public charter school established pursuant to §18-5G-1 et seq. of this
51 code which has elected to participate in, and cover its employees under, either the State Teachers
52 Retirement System or the Teachers' Defined Contribution Retirement System.

53 (7) "Political subdivision" means the State of West Virginia, a county, city or town in the
54 state; a school corporation or corporate unit; any separate corporation or instrumentality
55 established by one or more counties, cities or towns, as permitted by law; any corporation or
56 instrumentality supported in most part by counties, cities or towns; any public corporation charged
57 by law with the performance of a governmental function and whose jurisdiction is coextensive with
58 one or more counties, cities or towns, any agency or organization established by or approved by
59 the Department of Health and Human Resources for the provision of community health or mental
60 retardation services and which is supported in part by state, county or municipal funds.

61 (8) "Retirement system" means, as appropriate: The West Virginia Public Employees
62 Retirement System created in §5-10-1 et seq.; the West Virginia State Police Death, Disability and
63 Retirement Fund created in §15-2-26 through §15-2-39a, inclusive; the West Virginia Deputy
64 Sheriff Retirement System created in §7-14D-1 et seq.; the state Teachers Retirement System
65 created in §18-7A-1 et seq. of this code; the West Virginia higher education retirement plan and
66 supplemental retirement plan created in §18-&A-14a_of said chapter and section four-a, article
67 twenty-three of said chapter; the Judges' Retirement System created in §51-9-1 et seq.; the
68 firemen's or policemen's pension and relief funds created in §8-22-16; the Municipal Police
69 Officers and Firefighters Retirement System created in §8-22A-4; the Teachers' Defined
70 Contribution Retirement System created in article seven-b, chapter eighteen of this code; the West
71 Virginia State Police Retirement System created in article two-a, chapter fifteen of this code; ~~or~~ the

72 West Virginia Emergency Medical Services Retirement System created in §16-5V-1 et seq.; or the
73 West Virginia Natural Resources Police Officers Retirement System created in article eighteen,
74 chapter twenty of this code.

75 (9) "Teacher" and "nonteacher" has have the meaning meanings ascribed to the term
76 terms "teacher member" and "nonteaching member" in §18-7A-3 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 and county boards of education for
2 its teachers and nonteachers shall pick-up and pay the contributions which the employees are
3 required by law to make to the retirement system in which they are a member for all compensation
4 earned by its member employees after June 30, 1986. Any political subdivision that is a
5 participating public employer in the West Virginia Public Employees Retirement System shall pick-
6 up and pay the contributions which the employees are required by law to make to the retirement
7 system in which they are members for all compensation earned by its member employees after
8 January 1, 1995. Public employers participating in the Municipal Police Officers and Firefighters
9 Retirement System shall pick-up and pay the contributions which the employees are required by
10 law to make to the system in which they are members for all compensation earned by its member
11 employees beginning January 1, 2010. Counties shall pick-up and pay the contributions which the
12 employees are required by law to make to the Deputy Sheriff Retirement System in which they are
13 members for all compensation earned by its member employees after June 30, 1998. Any election
14 made by a political subdivision to pick-up and pay employee contributions prior to January 1, 1995,
15 remains in effect and is not altered or amended by the amendments made to this section during
16 the regular legislative session, 1995. Unless a different commencement date for pick-up is
17 specifically stated in this section, all participating public employers under this article, with respect
18 to retirement systems subject to this article, shall pick-up and pay the contributions which their
19 employees are required by law to make to the retirement system in which they are a member from
20 and after the commencement of the required employee contributions.

21 (b) When the participating public employer picks up and pays the contributions of its
22 member employees, the contributions, although designated by statute as employee contributions,
23 shall be treated as employer contributions in determining the tax treatment thereof under article
24 twenty-one, chapter eleven of this code and the federal Internal Revenue Code of 1986, as
25 amended, and the contributions shall not be included in the gross income of the employee in
26 determining his or her tax treatment under those provisions until they are distributed or made
27 available to the employee or his or her beneficiary. The participating public employer shall pay
28 these employee contributions from the same source of funds used in paying compensation to the
29 employee, by effecting an equal cash reduction in the gross salary of the employee, or by an off-
30 set against future salary increases, or by a combination of reduction in gross salary and off-set
31 against future salary increases. In no event shall any employee of a participating public employer
32 have the right to opt out of pick-up or to elect to receive the picked-up and contributed amounts
33 directly instead of having them paid by the participating public employer into the retirement system
34 pursuant to this article.

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

39 (d) The amount of employee contributions picked up by the participating public employer
40 shall be paid to the retirement system in the manner and form and in the frequency required by the
41 board of trustees and shall be accompanied by supporting data that the board of trustees may
42 prescribe. When paid to the retirement system, each of these amounts shall be credited to the
43 deposit fund account of the member for whom the contribution was picked up and paid by the
44 participating public employer.

§5-10C-5.

Savings

clause.

1 In enacting this article, it is the intent of the Legislature that the retirement plan created

2 pursuant to this article and those created pursuant to §5-10-1 et seq.; §7-14D-1, et seq.; a§8-22A-
3 1 et seq.; §15-2-1 et seq.; §18-7A-1 et seq.; §51-9-1 et seq.; §18-23-4a; §8-22-16; §18-7B-1 et
4 seq.; §15-2A-1 et seq.; and §16-5-1 et seq.; §18-20-1 et seq. qualify under Section 401 of the
5 Internal Revenue Code of 1986, as amended, and that the member contributions picked up by the
6 participating public employer qualify under Subsection (h), Section 414 of the Internal Revenue
7 Code of 1986, as amended. If the United States Internal Revenue Service does not approve of
8 certain sections or phraseology of certain sections of this article as being in compliance with the
9 statutes or regulations governing the Internal Revenue Service, the respective boards of trustees,
10 in the adoption of the deferred compensation plan, shall adopt the terminology with respect to
11 those sections that comply with the statutes or regulations governing the Internal Revenue
12 Service.

NOTE: The purpose of this bill is to add the Natural Resource Police Officers Retirement System and public charter schools for federal pick-up contribution purposes.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.