

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENROLLED**

## **Senate Bill 449**

By Senators Nelson, Deeds, Oliverio, and Hunt

[Passed March 07, 2023; in effect 90 days from  
passage]

1 AN ACT 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 nonteachers; 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 §5-10-29  
19 of this code from employees who are members of the West Virginia Public Employees Retirement

20 System; the contributions required by section §15-2-26 of this code from employees who are  
21 members of the West Virginia State Police Death, Disability and Retirement Fund; the  
22 contributions required by §7-14D-7 of this code from employees who are members of the Deputy  
23 Sheriff Retirement System; the contributions required by §18-7A-14 of this code from employees  
24 who are members of the State Teachers Retirement System; the contributions authorized or  
25 required by §18-7A-14a of said chapter or by §18-23-4a of said chapter from employees who are  
26 members of the West Virginia higher education retirement plan and supplemental retirement plan;  
27 the contributions required by §51-9-4 of this code from employees who are members of the  
28 Judges' Retirement System; the contributions required by §8-22-19 of this code from employees  
29 who are members of municipal firemen's and policemen's pension and relief funds; the  
30 contributions required by §8-22A-8 of this code from employees who are members of the  
31 Municipal Police Officers and Firefighters Retirement System; the contributions required by §18-  
32 7B-9 of this code from employees who are members of the Teachers' Defined Contribution  
33 Retirement System; the contributions required by §15-2A-5 of this code from the employees who  
34 are members of the West Virginia State Police Retirement System; the contributions required by  
35 §16-5V-8 of this code from employees who are members of the West Virginia Emergency Medical  
36 Services Retirement System; or the contributions required by §20-18-8 of this code from  
37 employees who are members of the West Virginia Natural Resources Police Officers Retirement  
38 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; any political subdivision in this  
49 state which is subject to the provisions of articles twenty-two and twenty-two-a, chapter eight of  
50 this code; and any public charter school established pursuant to §18-5G-1 *et seq.* of this code  
51 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.* of this code; the West Virginia State Police Death,  
63 Disability and Retirement Fund created in §15-2-26 through §15-2-39a of this code, inclusive; the  
64 West Virginia Deputy Sheriff Retirement System created in §7-14D-1 *et seq.* of this code; the state  
65 Teachers Retirement System created in §18-7A-1 *et seq.* of this code; the West Virginia higher  
66 education retirement plan and supplemental retirement plan created in §18-7A-14a of this code  
67 and §18-23-4a of this code; the Judges' Retirement System created in §51-9-1 *et seq.* of this code;  
68 the firemen's or policemen's pension and relief funds created in §8-22-16 of this code; the  
69 Municipal Police Officers and Firefighters Retirement System created in §8-22A-4 of this code; the  
70 Teachers' Defined Contribution Retirement System created in article seven-b, chapter eighteen of  
71 this code; the West Virginia State Police Retirement System created in article two-a, chapter

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

75 (9) "Teacher" and "nonteacher" have the meanings ascribed to the terms "teacher  
76 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.*; §8-22A-1  
3 *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 seq.*;  
4 §15-2A-1 *et seq.*; §16-5V-1 *et seq.*; and §20-18-1 *et seq.* of this code qualify under Section 401 of  
5 the Internal Revenue Code of 1986, as amended, and that the member contributions picked up by  
6 the participating public employer qualify under Subsection (h), Section 414 of the Internal  
7 Revenue Code of 1986, as amended. If the United States Internal Revenue Service does not  
8 approve of certain sections or phraseology of certain sections of this article as being in compliance  
9 with the statutes or regulations governing the Internal Revenue Service, the respective boards of  
10 trustees, in the adoption of the deferred compensation plan, shall adopt the terminology with  
11 respect to those sections that comply with the statutes or regulations governing the Internal  
12 Revenue Service.