

H. B. 2423

(By Delegates Boggs, T. Campbell, Caputo,
Manchin, Pethtel, Phillips, Craig and Border)

[Introduced January 12, 2011; referred to the
Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §5-10E-1, §5-10E-2,
§5-10E-3, §5-10E-4, §5-10E-5, §5-10E-6, §5-10E-7, §5-10E-8,
§5-10E-9, §5-10E-10, §5-10E-11 and §5-10E-12; and to amend and
reenact §36-8-13 of said code, all relating to establishing
the West Virginia Voluntary Employee Retirement Accounts
Program in the office of the State Treasurer; establishing
findings; defining terms; creating program as a body
corporate; providing for liberal construction; requiring
compliance with federal and state law; providing for plan
administration; authorizing Treasurer to propose rules;
establishing participation; requiring all federal approvals be
received before operations begin; creating trust; prohibiting
assignment, except for qualified domestic relations orders;
authorizing investments; specifying that the corpus, assets
and earnings of trust do not constitute public funds;
deferring compensation from federal, state and municipal

1 income taxes; authorizing collection of fees from accounts;
 2 creating administration account; requiring that any funds
 3 appropriated by the Legislature be reimbursed; specifying the
 4 state and the Treasurer are not liable for losses; specifying
 5 certain information is confidential; requiring payroll
 6 information be provided to the Treasurer; and providing for
 7 the transfer of money from the Unclaimed Property Trust Fund
 8 for start-up of the program.

9 *Be it enacted by the Legislature of West Virginia:*

10 That the Code of West Virginia, 1931, as amended, be amended
 11 by adding thereto a new article, designated §5-10E-1, §5-10E-2, §5-
 12 10E-3, §5-10E-4, §5-10E-5, §5-10E-6, §5-10E-7, §5-10E-8, §5-10E-9,
 13 §5-10E-10, §5-10E-11 and §5-10E-12; and that §36-8-13 of said code
 14 be amended and reenacted, all to read as follows:

15 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**
 16 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD**
 17 **OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS,**
 18 **OFFICES, PROGRAMS, ETC.**

19 **ARTICLE 10E. WEST VIRGINIA VOLUNTARY EMPLOYEE RETIREMENT ACCOUNTS**
 20 **PROGRAM.**

21 **§5-10E-1. Findings.**

22 (a) The Legislature finds that many workers in West Virginia
 23 do not have access to an employment-based retirement plan with
 24 federal income tax incentives. Workers who are unable to build up

1 pensions and savings risk living on low incomes in their later
2 years and are more likely to become dependent on governmental
3 services. In addition, small employers find offering pension plans
4 to their employees cost prohibitive and time consuming.

5 (b) The Legislature has determined that offering a group plan,
6 the West Virginia Voluntary Employee Retirement Account Program, to
7 West Virginia employers and employees should provide a simple,
8 cost-efficient way for West Virginia workers to save for retirement
9 and for West Virginia employers to offer a much needed employee
10 benefit.

11 **§5-10E-2. Definitions.**

12 Unless the context in which used clearly requires a different
13 definition, the following definitions in this section apply
14 throughout this article:

15 (1) "Internal Revenue Code" means the Internal Revenue Code of
16 1986, as amended from time to time.

17 (2) "Investment product" means any fixed or variable rate
18 annuity, life insurance contract, savings account, certificate of
19 deposit, money market account, bond, mutual fund or any other form
20 of investment not prohibited under the Internal Revenue Code and
21 authorized by the program.

22 (3) "Nonparticipating employer" means a nongovernmental
23 employer in West Virginia who employs no more than one hundred
24 employees in the state, who does not offer a retirement plan for

1 employees but who may make payroll deductions in accordance with
2 the program.

3 (4) "Participating employee" means any person employed in this
4 state by a nongovernmental employer who employs no more than one
5 hundred employees in the state, who has chosen to have a part of
6 his or her wages or salary contributed to an account in the program
7 and who has at least \$1 in an account in the program.

8 (5) "Participating employer" means any nongovernmental employer
9 who employs no more than one hundred employees in this state, who
10 does not offer a retirement plan for employees at the time the
11 employer executes an agreement with the Treasurer authorizing
12 employees to take part in the program.

13 (6) "Plan" means the retirement plan created and operated under
14 this article.

15 (7) "Program" means the voluntary employee retirement accounts
16 program created under this article.

17 (8) "Treasurer" means the West Virginia State Treasurer.

18 **§5-10E-3. West Virginia Voluntary Employee Retirement Accounts**

19 **Program created; body corporate.**

20 The West Virginia Voluntary Employee Retirement Accounts
21 Program is created within the office of the West Virginia State
22 Treasurer under the direction of the Treasurer to provide a cost-
23 efficient group retirement plan for nongovernmental employers and
24 employees in West Virginia.

1 The Voluntary Employee Retirement Accounts Program shall
2 constitute a body corporate.

3 **§5-10E-4. Liberal construction; compliance.**

4 This article shall be liberally construed so as to provide a
5 tax-deferred retirement system for participating employers and
6 participating employees.

7 The plan is intended to comply with the requirements of Section
8 401 and other provisions of the Internal Revenue Code and state law
9 to provide a group retirement plan, including without limitation
10 provisions for limits on deferred contributions.

11 **§5-10E-5. Administration; powers; rules.**

12 (a) The Treasurer shall create the plan and trust, develop
13 standards and requirements for operation, and shall have all powers
14 necessary to effectuate the purposes of this article and to operate
15 the plan and the trust.

16 (b) Notwithstanding any provision of this code to the contrary,
17 including, without limitation, this chapter and chapter five-a of
18 this code, the Treasurer has authority to enter into contracts and
19 execute and deliver instruments, including, without limitation,
20 contracts with participating employers and employees; engage
21 consultants, auditors, counsel, managers, advisors, trustees or any
22 other contractors or professionals; and charge and collect
23 administrative fees.

24 (c) The Treasurer may propose rules for legislative approval

1 in accordance with article three, chapter twenty-nine-a of this
2 code as necessary to implement this article, and is authorized to
3 promulgate emergency rules.

4 **§5-10E-6. Participation.**

5 (a) Nongovernmental employers that employ no more than one
6 hundred employees in this state and that do not offer a currently
7 active retirement program for employees may voluntarily elect to
8 participate in the program and provide their employees with the
9 opportunity to become participating employees. However, nothing in
10 this article may be construed as requiring employers to participate
11 in the program, except as provided in subsection (b) of this
12 section. A participating employer shall comply with all program
13 requirements, including, without limitation, making payroll
14 deductions and remittances as required by the Treasurer. A
15 participating employer may elect to discontinue participation in
16 accordance with program requirements.

17 (b) An employee of a nonparticipating employer in West Virginia
18 may elect to participate and defer a portion of his or her salary
19 to an account under the program in his or her name, and the only
20 requirement of his or her employer is to make payroll deductions
21 and remittances as requested by the employee in writing and as
22 determined by the Treasurer.

23 (c) An employer, in its sole discretion, may elect to make a
24 matching contribution to the account of an employee on whatever

1 basis it elects in accordance with the program requirements.

2 (d) A participating employee may increase or decrease the
3 amount of his or her contribution at any time within the
4 limitations permitted by the program, and an employee may cease to
5 participate in the program upon written notice to the employer.

6 (e) The program may not begin receiving employee contributions
7 until any approvals from federal agencies that may be required have
8 been received, and appropriate funds for start-up costs of the
9 program have been identified and appropriated by the Legislature.

10 **§5-10E-7. Creation of trust; assignment; investments.**

11 (a) All funds of participating employees and participating
12 employers shall be held in trust by the Treasurer for the exclusive
13 benefit of the participating employees, participating employers and
14 their beneficiaries, notwithstanding any other provision of this or
15 related articles.

16 (b) Neither the participating employee, nor the participating
17 employee's beneficiary or beneficiaries, nor any other designee,
18 has any right to commute, sell, assign, transfer, or otherwise
19 convey the right to receive any payments under the program. These
20 payments and rights are nonassignable and nontransferable. Account
21 balances are not subject to attachment, garnishment, or execution
22 and are not transferable by operation of law in the event of
23 bankruptcy, as provided in section four, article ten, chapter
24 thirty-eight of this code, or insolvency, except for qualified

1 domestic relations orders, as that term is defined in the Internal
2 Revenue Code and to the extent otherwise required by law.

3 (c) Notwithstanding any provision of this code to the contrary,
4 the Treasurer is authorized to invest funds in the trust in
5 investment products or with financial institutions or other
6 entities selected by the Treasurer.

7 (d) The corpus, assets and earnings of the trust do not
8 constitute public funds of the state and are available solely for
9 carrying out the purposes of this article. Any contract entered
10 into by the Treasurer in connection with the plan does not create
11 or constitute a debt, but is solely an obligation of the trust.

12 **§5-10E-8. Federal and state income tax.**

13 Any compensation deferred under the plan is not subject to
14 federal, state or municipal income tax, nor shall any amount of
15 compensation deferred be included for the purposes of computation
16 of any federal, state or municipal income tax withheld on behalf of
17 a participating employee.

18 **§5-10E-9. Costs; administrative account; start-up costs;**
19 **reimbursement.**

20 (a) The costs of establishing and operating the Voluntary
21 Employee Retirement Accounts Program and plan shall be paid from
22 the fees assessed by the Treasurer and from any funds appropriated
23 by the Legislature.

24 (b) The sole purpose of any funds appropriated by the

1 Legislature is for start-up costs and to operate the program, plan
2 and trust fund until the program provides sufficient funds for
3 operation. Any appropriated moneys unused shall be returned to the
4 fund from which they were appropriated. If the funds appropriated
5 by the Legislature are insufficient to make the program self-
6 sufficient, then the program, plan and trust fund shall terminate.

7 (c) The Voluntary Employee Retirement Accounts Plan
8 Administration Account is created in the accounts of the Treasurer
9 for the purposes of implementing, operating and maintaining the
10 trust and plan. The account shall receive all fees charged and
11 collected by the Treasurer and funds appropriated by the
12 Legislature under this article, if any.

13 (d) On or before July 1, 2011, the unclaimed property
14 administrator shall transfer the amount of \$3 million from the
15 Unclaimed Property Trust Fund to the Voluntary Employee Retirement
16 Accounts Plan Administration Account.

17 (e) Any funds appropriated by the Legislature for the program
18 shall be reimbursed to the state from fees assessed for program
19 operation in accordance with this article.

20 (f) Moneys in the administration fund may be invested, in whole
21 or in part, by the Treasurer as he or she determines. All earnings
22 shall accrue to and be retained by the fund.

23 **§5-10E-10. State and Treasurer not liable.**

24 The State of West Virginia and the Treasurer shall not incur

1 any liability for losses suffered or change in value of an
2 investment product.

3 **§5-10E-11. Confidential information exempt from disclosure.**

4 All information contained in the records maintained pursuant
5 to this article that would tend to disclose the identity of a
6 participating employee or a beneficiary, including, without
7 limitation, social security number, account number, address,
8 telephone number, e-mail address, amounts invested, selected
9 investments, returns and medical or disability information, are
10 confidential and exempt from disclosure under article one, chapter
11 twenty-nine-b of this code. Participating employees and persons
12 authorized by participating employees are permitted access to their
13 own information.

14 **§5-10E-12. Disclosure of information to the Treasurer for**
15 **operation of the program and plan.**

16 For purposes of this article, an employer with a participating
17 employee shall disclose to the Treasurer any payroll related
18 information the Treasurer determines he or she needs for the
19 operation of the program and plan. Information disclosed pursuant
20 to this section shall be used by the Treasurer for the operation of
21 the program and plan only. The Treasurer shall treat the
22 information obtained as confidential and shall not disclose the
23 information except to an entity providing goods or services for the
24 program and plan, who shall also treat the information as

1 confidential, or as required by law.

2 **CHAPTER 36. ESTATES AND PROPERTY.**

3 **ARTICLE 8. THE UNIFORM UNCLAIMED PROPERTY ACT.**

4 **§36-8-13. Deposit of funds.**

5 (a) The administrator shall record the name and last known
6 address of each person appearing from the holders reports to be
7 entitled to the property and the name and last known address of
8 each insured person or annuitant and beneficiary and with respect
9 to each policy or annuity listed in the report of an insurance
10 company, its number, the name of the company and the amount due.

11 (b) The Unclaimed Property Fund is continued. The
12 administrator shall deposit all funds received pursuant to this
13 article in the Unclaimed Property Fund, including the proceeds from
14 the sale of abandoned property under section twelve of this
15 article. In addition to paying claims of unclaimed property duly
16 allowed, the administrator may deduct the following expenses from
17 the Unclaimed Property Fund:

18 (1) Expenses of the sale of abandoned property;

19 (2) Expenses incurred in returning the property to owners,
20 including without limitation the costs of mailing and publication
21 to locate owners;

22 (3) Reasonable service charge; and

23 (4) Expenses incurred in examining records of holders of
24 property and in collecting the property from those holders.

1 (c) The Unclaimed Property Trust Fund is continued within the
2 state Treasury. The administrator may invest the Unclaimed
3 Property Trust Fund with the West Virginia Board of Treasury
4 Investments and all earnings shall accrue to the fund and are
5 available for expenditure in accordance with this article. After
6 deducting the expenses specified in subsection (b) of this section
7 and maintaining a sum of money from which to pay claims duly
8 allowed, the administrator shall transfer the remaining moneys in
9 the Unclaimed Property Fund to the Unclaimed Property Trust Fund.

10 (d) (1) On July 1, 2009, the unclaimed property administrator
11 shall transfer the amount of \$8 million from the Unclaimed Property
12 Trust Fund to the Prepaid Tuition Trust Escrow Fund.

13 (2) On or before December 15 of each year, notwithstanding any
14 provision of this code to the contrary, the administrator shall
15 transfer the sum of \$1 million from the Unclaimed Property Trust
16 Fund to the Prepaid Tuition Trust Escrow Fund, until the actuary
17 certifies there are sufficient funds to pay out all contracts.

18 (e) On or before June 1, 2007, the unclaimed property
19 administrator shall transfer the amount of \$2 million from the
20 Unclaimed Property Trust Fund to the Deferred Compensation Matching
21 Fund for operation of the deferred compensation matching program
22 for state employees. On or before June 1, 2008, the unclaimed
23 property administrator shall transfer the amount of \$1 million from
24 the Unclaimed Property Trust Fund to the Deferred Compensation

1 Matching Fund for operation of the matching program.

2 (f) On or before July 1, 2011, the unclaimed property
3 administrator shall transfer the amount of \$3 million from the
4 Unclaimed Property Trust Fund to the Voluntary Employee Retirement
5 Accounts Plan Administration Account.

6 ~~(f)~~ (g) After transferring any money required by subsections
7 (d), ~~and~~ (e) and (f) of this section, the administrator shall
8 transfer moneys remaining in the Unclaimed Property Trust Fund to
9 the General Revenue Fund.

NOTE: The purpose of this bill is to create the West Virginia Voluntary Employee Retirement Accounts Program, a voluntary tax-deferred retirement plan for nongovernmental employers and employees in the State of West Virginia who are without a retirement plan. Participation by employers and employees is voluntary. All federal requirements must be met before operations begin. A trust and an administration account are established. The bill provides for initial start-up and operations funding of \$3 million from the Unclaimed Property Trust Fund, subject to appropriation, and provides for repayment of the amount. The Treasurer is authorized to collect fees from accounts for operations. The bill specifically provides that the state and the Treasurer are not liable for any losses or change in value. Information of a personal nature gathered for participation in the program is confidential and not subject to a Freedom of Information Act request.

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