

1 **H. B. 4649**

2
3 (By Delegates Cann, Guthrie, Mahan, Marshall,
4 Perdue, L. Phillips, D. Poling, Skaff,
5 Stowers, Varner and Williams)

6 (By Request of the State Treasurer)

7 [Introduced February 20, 2012; referred to the
8 Committee on Government Organization then Finance.]

9
10 A BILL to repeal §12-1-12c of the Code of West Virginia, 1931, as
11 amended; to repeal §18-22D-1, §18-22D-2, §18-22D-3, §18-22D-4,
12 §18-22D-5, §18-22D-6, §18-22D-7, §18-22D-8 and §18-22D-9 of
13 said code; to repeal 48-2-604 of said code; to amend and
14 reenact §5-10B-3, §5-10B-3a and §5-10B-8 of said code; to
15 amend said code by adding thereto a new section, designated
16 §5-10B-14; to amend and reenact §12-1-3, §12-1-8, §12-1-11 and
17 §12-1-12b of said code; to amend and reenact §12-2-2 and §12-
18 2-3 of said code; to amend and reenact §12-3-1 of said code;
19 to amend and reenact §12-3A-3 of said code; to amend and
20 reenact §18-25-1 of said code; to amend and reenact §18-30-8
21 and §18-30-11 of said code; to amend and reenact §18A-4-12 of
22 said code; and to amend and reenact §36-8-13 of said code, all
23 relating to the State Treasurer's Office; repealing a
24 duplicate code section dealing with the Cash Management
25 Improvement Act; repealing the obsolete higher education

1 student assistance loan program; repealing a duplicate fee for
2 marriage licenses; authorizing Roth contributions, conversions
3 and rollovers for the Internal Revenue Code §457 plan;
4 authorizing the Treasurer to set the minimum contribution for
5 automatic enrollments; clarifying tax treatment of Roth
6 contributions; updating federal deposit insurance language;
7 deleting archaic language pertaining to loan ratios to qualify
8 as a state depository; clarifying what constitutes a conflict
9 of interest for treasury employees; permitting bank officers
10 to sign reports; authorizing banks to submit reports in an
11 electronic format; changing quarterly reports to annual
12 reports for the CMIA; changing the requirement for deposits to
13 be made within twenty-four hours to one business day;
14 authorizing the Treasurer to grant an exception when
15 circumstances make compliance with the one business day rule
16 difficult or expensive; requiring the Treasurer to establish
17 standards for internal controls for receipting funds;
18 requiring spending units to establish internal control
19 procedures and to submit them for review when requested by the
20 Treasurer; requiring spending units to adopt revisions offered
21 by the Treasurer; authorizing the Treasurer to audit
22 receipting of moneys by spending units; requiring audits
23 pertaining to receipting moneys by internal and external
24 auditors to include evaluation of internal controls; requiring

1 copies of audits be sent to the Treasurer and Legislative
2 Auditor; clarifying the differences in general revenue,
3 special revenue and federal funds; changing the quarterly
4 report to the Legislative Auditor pertaining to outside bank
5 accounts to an annual report; updating procedures for stale
6 dated state checks; authorizing the Treasurer to develop
7 record retention requirements; amending deferred compensation
8 programs for education employees to permit maximum
9 contributions under the Internal Revenue Code; amending the
10 college prepaid tuition and savings program administrative
11 account to permit the moneys be used for matching grant
12 contributions; amending the unclaimed property fund to permit
13 the funds be used for operations; and clarifying that college
14 prepaid tuition and savings program accounts are not to be
15 considered for purposes of determining eligibility for income-
16 based governmental financial assistance unless prohibited by
17 federal law.

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

19 That §12-1-12c of the Code of West Virginia, 1931, as amended,
20 be repealed; that §18-22D-1, §18-22D-2, §18-22D-3, §18-22D-4,
21 §18-22D-5, §18-22D-6, §18-22D-7, §18-22D-8 and §18-22D-9 of said
22 code be repealed; that §48-2-604 of said code be repealed; that
23 §5-10B-3, §5-10B-3a and §5-10B-8 of said code be amended and
24 reenacted; that said code be amended by adding thereto a new

1 section, designated §5-10B-14; that §12-1-3, §12-1-8, §12-1-11 and
2 §12-1-12b of said code be amended and reenacted; that §12-2-2 and
3 §12-2-3 of said code be amended and reenacted; that §12-3-1 of said
4 code be amended and reenacted; that §12-3A-3 of said code be
5 amended and reenacted; that §18-25-1 of said code be amended and
6 reenacted; that §18-30-8 and §18-30-11 of said code be amended and
7 reenacted; that §18A-4-12 of said code be amended and reenacted;
8 and that §36-8-13 of said code be amended and reenacted, all to
9 read as follows:

10 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY**
11 **OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS**
12 **AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**

13 **ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.**

14 **§5-10B-3. Powers; contracts; meetings.**

15 (a) Notwithstanding any provision of this code to the
16 contrary, including, without limitation, this chapter and chapter
17 five-a of this code, the state employer and a public employer have
18 the power necessary or appropriate to carry out the provisions and
19 objectives of this article and to operate the trust, including,
20 without limitation, entering into contracts and executing and
21 delivering instruments; engaging consultants, auditors, counsel,
22 managers, advisors, trustees or any other contractors or
23 professionals; and charging and collecting administrative fees.

1 (b) The state employer or any public employer may, by
2 contract, agree with any of its employees to defer and hold in
3 trust any portion of that employee's compensation and may
4 subsequently purchase or acquire from vendors licensed to do
5 business in the State of West Virginia investment products for the
6 purpose of carrying out the objectives of the deferred compensation
7 plan as described in this article.

8 (c) Employees are authorized to attend meetings called by the
9 state employer or public employer for the purpose of explaining a
10 plan during regular working hours.

11 (d) Notwithstanding the provisions of section one, article
12 twenty-five, chapter eighteen or section twelve, article four,
13 chapter eighteen-a of this code, teachers and other employees
14 covered by those sections may participate in Internal Revenue Code
15 section 403(b), section 457 and any other deferred compensation
16 plans at the same time and the amount of reduction for any deferred
17 compensation plan shall not exceed the amount excludable from
18 income under the Internal Revenue Code.

19 **§5-10B-3a. Automatic enrollment.**

20 (a) Every state employee commencing work on and after July 1,
21 2007, shall have a minimum ~~of ten dollars~~ amount, as set by the
22 Treasurer, per pay period of his or her salary deferred to the
23 state deferred compensation plan unless the state employee provides
24 written notice declining to participate in accordance with the

1 Treasurer's guidelines. A state employee may change the
2 contribution amount or cease participating at any time. An employee
3 declining participation in the state deferred compensation plan may
4 elect to participate at a later time.

5 (b) A ~~political subdivision~~ public employer may establish an
6 automatic enrollment program in a deferred compensation plan
7 pursuant to this article. ~~A political subdivision employee~~ An
8 employee of a public employer may elect to not participate in the
9 deferred compensation plan at any time and to change the
10 contribution amount.

11 **§5-10B-8. Federal and state income tax.**

12 Notwithstanding any other provision of this article or any
13 other provision of law to the contrary, except for Roth
14 contributions provided for in section fourteen of this article, any
15 compensation deferred under any deferred compensation plan shall
16 not be subject to any federal, state or municipal income tax nor
17 shall any amount of compensation deferred be included for the
18 purposes of computation of any such income tax withheld on behalf
19 of any employee. Roth contributions and attributable earnings
20 under section fourteen of this article shall be subject to income
21 tax as provided under the Internal Revenue Code.

22 **§5-10B-14. Roth contributions, conversions and rollovers.**

23 The Treasurer or any public employer may authorize a qualified
24 Roth contribution program within the plan in accordance with the

1 Internal Revenue Code, including, without limitation, conversions
2 and rollovers.

3 **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

4 **ARTICLE 1. STATE DEPOSITORIES.**

5 **§12-1-3. Depositories for interest earning deposits;**
6 **qualifications.**

7 Any state or national bank or any state or federal savings and
8 loan association in this state shall, upon request made to the
9 State Treasurer, be designated as an eligible depository for
10 interest earning deposits of state funds if such bank or state or
11 federal savings and loan association meets the requirements set
12 forth in this chapter. For purposes of this article, the term
13 "interest earning deposits" includes certificates of deposit. The
14 State Treasurer shall make and apportion such interest earning
15 deposits and shall prescribe the interest rates, terms and
16 conditions of such deposits, all in accordance with the provisions
17 of ~~article six~~ articles six and six-c of this chapter: *Provided,*
18 That state or federal savings and loan associations insured by an
19 agency of the federal government shall be eligible for such
20 deposits ~~not in excess of one hundred thousand dollars~~ that do not
21 exceed the maximum amount insured by any agency of the federal
22 government. *Provided, however,* ~~That notwithstanding any provision~~
23 ~~of this article to the contrary, no such interest earning deposits~~

~~1 may be deposited in any depository which has been in existence over
2 a period of five years which does not have a loan to deposit ratio
3 of fifty percent or more and which does not have farm, single or
4 multifamily residential unit loans in an amount greater than
5 twenty five percent of the amount of loans representing a loan to
6 deposit ratio of fifty percent. For the purpose of making the
7 foregoing calculation, the balances due the depository on the
8 following loans shall be given effect: (1) Qualifying residential
9 loans held by the depository; (2) qualifying loans made in
10 participation with other financial institutions; (3) qualifying
11 loans made in participation with agencies of the state, federal or
12 local governments; and (4) qualifying loans originated and serviced
13 by the depository but owned by an out of state investor. The
14 computation of the criteria for eligibility specified above shall
15 be based on the average daily balances of deposits, the average
16 daily balances of total loans and qualifying residential loans for
17 the period being reported.~~

18 §12-1-8. Conflict of interest.

~~19 No depository in this state may serve or be eligible for
20 designation as a State Depository if any employee of the
21 Treasurer's office, or a spouse or minor child of that employee, is
22 an officer, director or employee of the depository or owns greater
23 than two percent of the depository either in his or her own name or
24 beneficially or an interest in the depository. An employee of the~~

1 ~~Treasurer's office shall disclose the circumstance, if any, in the~~
2 ~~sworn statement required under the provisions of section one,~~
3 ~~article one, chapter six-b of this code. An employee of or a person~~
4 ~~applying for a position with the Treasurer's office shall disclose~~
5 ~~to the Treasurer if he or she, or his or her spouse, is an officer,~~
6 ~~director or employee of a depository or owns greater than two~~
7 ~~percent of a depository. Any employee of the Treasurer's office~~
8 ~~who, or whose spouse, is an officer, director or employee of a~~
9 ~~depository or owns greater than two percent of a depository shall~~
10 ~~not participate in any selection of or in any contract negotiations~~
11 ~~with any depository.~~

12 **§12-1-11. Reports by depositories to Treasurer; discontinuance of**
13 **depositories.**

14 (a) Each depository of state funds shall at the end of each
15 quarter cause its president or ~~cashier~~ or designated officer to
16 report to the Treasurer the amount of state funds on deposit and
17 the report shall be verified by the affidavit of the officer making
18 it. The form and contents of the report shall be prescribed by the
19 Treasurer and may be in an electronic format.

20 (b) For the failure to file the report, or for other good
21 cause, the Treasurer may discontinue any depository as an eligible
22 depository and cause all state funds to be withdrawn from any
23 depository or depositories so discontinued.

24 (c) When a depository is discontinued, the Treasurer shall

1 immediately notify such depository of its discontinuance, and shall
2 immediately withdraw by current checks or by transfer to another
3 depository or depositories the full amount of the deposits held by
4 any depository so discontinued. After discontinuance, it shall be
5 unlawful for the Treasurer to deposit any state funds in any
6 depository so discontinued until such time as the depository may be
7 reinstated to eligibility.

8 **§12-1-12b. Cash Management Improvement Act; administration;**
9 **reports.**

10 (a) The Cash Management Improvement Act of 1990, Public Law
11 101-453, October 24, 1990, 31 U.S.C. Section 6501 et. seq. (CMIA)
12 and regulations, as amended, establishes requirements and
13 techniques, including calculations, for the receipt and
14 disbursement of federal funds by states. The authorized official
15 and representative of the State of West Virginia for the CMIA is
16 the State Treasurer.

17 (b) In administering the CMIA, the State Treasurer is
18 authorized to do all things reasonably necessary, including without
19 limitation, entering into agreements with, negotiating settlements
20 with, ~~refunding~~ paying any interest due and satisfying any
21 liability to the United States Treasury in accordance with the
22 CMIA.

23 (c) Periodically, the State Treasurer shall transfer to the
24 "Federal Cash Management Fund", which is hereby authorized and

1 continued, earnings on the state General Revenue Fund in an amount
2 the Treasurer estimates is needed to make ~~refunds~~ interest payments
3 in accordance with the CMIA. After each annual settlement with the
4 United States Treasury, the State Treasurer shall transfer to the
5 state General Revenue Fund any moneys remaining in the Federal Cash
6 Management Interest Fund for the period just settled.

7 (d) The State Treasurer shall also transfer periodically to
8 the "Federal Cash Management - Administration Fund," which is
9 hereby authorized and continued, earnings on the state General
10 Revenue Fund in an amount the Treasurer determines is needed to pay
11 for the costs of administering the CMIA. The State Treasurer may
12 pay the costs he or she incurs in administering the CMIA from the
13 Federal Cash Management - Administration Fund.

14 (e) All state spending units shall cooperate fully with the
15 State Treasurer in accumulating all the necessary data elements to
16 fully comply with the CMIA.

17 (f) The State Treasurer shall send ~~quarterly reports~~ an annual
18 report on the activities involving the CMIA to the Governor,
19 Auditor, Secretary of Revenue and Joint Committee on Government and
20 Finance.

21 **ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE**
22 **STATE OR ANY POLITICAL SUBDIVISION.**

23 **§12-2-2. Itemized record of moneys received for deposit;**

1 **regulations governing deposits; credit to state**
2 **fund; exceptions.**

3 (a) All officials and employees of the state authorized by
4 statute to accept moneys ~~due~~ on behalf of the State of West
5 Virginia shall keep a daily itemized record of moneys received for
6 deposit in the State Treasury and shall deposit within ~~twenty-four~~
7 ~~hours~~ one business day with the State Treasurer all moneys received
8 or collected by them for or on behalf of the state for any purpose
9 whatsoever. The State Treasurer may grant an exception to the one
10 business day rule when circumstances make compliance difficult or
11 expensive.

12 (b) The State Treasurer shall establish standards for internal
13 controls for spending units receipting moneys, assist spending
14 units in developing and improving their internal control procedures
15 for receipting moneys and provide training. State spending units
16 accepting moneys shall establish and at least annually review
17 internal control procedures for receipting moneys that safeguard
18 assets, minimize fraud, waste and abuse, and comply with applicable
19 laws, rules and regulations. Upon request of the State Treasurer,
20 spending units, except the Department of Revenue, shall submit
21 their internal control procedures and any revisions to their
22 internal control procedures to the State Treasurer for review. The
23 State Treasurer ~~may review the procedures and methods used by~~
24 ~~officials and employees authorized to accept moneys due the state~~

1 ~~and change the procedures and methods if he or she determines it is~~
2 ~~in the best interest of the state~~ may make revisions to or
3 suggestions for internal control procedures if he or she believes
4 the procedures do not provide reasonable protection for moneys
5 collected. ~~Provided, That the State Treasurer may not review or~~
6 ~~amend the procedures by which the Department of Revenue accepts~~
7 ~~moneys due the state.~~ A spending unit shall adopt any revisions
8 made by the Treasurer. Any confidential information in internal
9 control procedures shall be redacted before release of the internal
10 control procedures in accordance with a request pursuant to article
11 one, chapter twenty-nine-b of this code.

12 (c) The Treasurer may also audit the receipting of moneys by
13 a spending unit, except the Department of Revenue. A copy of any
14 audit performed by the Treasurer shall be submitted to the
15 Legislative Auditor. Any audit of a spending unit by an internal
16 or external Auditor shall include an evaluation of and report on
17 the adequacy of internal control procedures for receipting moneys,
18 with a copy of the audit being sent to the Treasurer and to the
19 Legislative Auditor within thirty days of issuance of the audit.

20 (d) The State Treasurer shall propose rules for legislative
21 approval, in accordance with the provisions of article three,
22 chapter twenty-nine-a of this code governing the procedure for
23 deposits. The official or employee making deposits with the State
24 Treasurer shall prepare deposit lists in the manner and upon report

1 forms prescribed by the State Treasurer in the state accounting
2 system. The State Treasurer shall review the deposits in the state
3 accounting system and forward the information to the State Auditor
4 and to the Secretary of Revenue.

5 ~~(b)~~ (e) All moneys received shall be recorded in federal,
6 general revenue or special revenue funds in the State Treasury, as
7 follows:

8 (1) All moneys received by the state from appropriations made
9 by the Congress of the United States federal funds, defined in
10 section two, article eleven, chapter four of this code, received
11 shall be recorded in ~~special~~ federal fund accounts, in the State
12 Treasury apart from the general and special revenues of the state,
13 and shall be expended in accordance with the provisions of article
14 eleven, chapter four of this code.

15 (2) All moneys, other than federal funds defined in section
16 two, article eleven, chapter four of this code, and special revenue
17 funds, defined in subsection (f) of this section, shall be credited
18 to the state fund and treated by the State Auditor and State
19 Treasurer as part of the general revenue of the state.

20 (f) Special revenue funds are specific revenue sources which
21 by legislative enactments are not required to be accounted for as
22 general revenue or federal funds, and include, but are not limited
23 to the following, which shall be recorded in separate accounts:

24 (1) All funds excluded by the provisions of section six,

1 article eleven, chapter four of this code;

2 (2) All funds derived from the sale of farm and dairy products
3 from farms operated by any spending unit of the state;

4 (3) All endowment funds, bequests, donations, executive
5 emergency funds and death and disability funds;

6 (4) All fees and funds collected at state educational
7 institutions for student activities;

8 (5) All funds derived from collections from dormitories,
9 boardinghouses, cafeterias and road camps;

10 (6) All moneys received from counties by institutions for the
11 deaf and blind on account of clothing for indigent pupils;

12 (7) All insurance collected on account of losses by fire and
13 refunds;

14 (8) All funds derived from bookstores and sales of blank paper
15 and stationery, and collections by the chief inspector of public
16 offices;

17 (9) All moneys collected and belonging to the capitol building
18 fund, state road fund, state road sinking funds, general school
19 fund, school fund, state fund (moneys belonging to counties,
20 districts and municipalities), state interest and sinking funds,
21 state compensation funds, the fund maintained by the Public Service
22 Commission for the investigation and supervision of applications
23 and all fees, money, interest or funds arising from the sales of
24 all permits and licenses to hunt, trap, fish or otherwise hold or

1 capture fish and wildlife resources and money reimbursed and
2 granted by the federal government for fish and wildlife
3 conservation; and

4 (10) All moneys collected or received under any act of the
5 Legislature providing that funds collected or received under the
6 act shall be used for specific purposes.

7 ~~(e)~~ (g) All moneys, except as provided in subdivisions (1)
8 through (9), inclusive, subsection ~~(b)~~f of this section, shall be
9 paid into the State Treasury in the same manner as collections not
10 excepted and recorded in separate accounts for receipt and
11 expenditure for the purposes for which the moneys are authorized to
12 be collected by law: *Provided*, That amounts collected pursuant to
13 subdivision (10), subsection ~~(b)~~f of this section, which are found,
14 from time to time, to exceed funds needed for the purposes set
15 forth in general law may be transferred to other accounts or funds
16 and redesignated for other purposes by appropriation of the
17 Legislature.

18 (h) The gross amount collected in all cases shall be paid into
19 the State Treasury. Commissions, costs and expenses, including,
20 without limitation, amounts charged for use of bank, charge, credit
21 or debit cards, incurred in the collection process shall be paid
22 from the gross amount collected in the same manner as other
23 payments are made from the State Treasury.

24 ~~(d)~~ (i) The State Treasurer may establish an imprest fund or

1 funds in the office of any state spending unit upon receipt of a
2 proper application. To implement this authority, the State
3 Treasurer shall propose rules for legislative approval in
4 accordance with the provisions of article three, chapter twenty-
5 nine-a of this code. The State Treasurer or his or her designee
6 shall annually audit all imprest funds and prepare a list of the
7 funds showing the location and amount as of fiscal year end,
8 retaining the list as a permanent record of the State Treasurer
9 until the Legislative Auditor has completed an audit of the imprest
10 funds of all agencies and institutions involved.

11 ~~(e)~~ (j) The State Treasurer may develop and implement a
12 centralized receipts processing center. The State Treasurer may
13 request the transfer of equipment and personnel from appropriate
14 state agencies to the centralized receipts processing center in
15 order to implement the provisions of this section: *Provided*, That
16 the Governor or appropriate Constitutional officer has authority to
17 authorize the transfer of equipment or personnel to the centralized
18 receipts processing center from the respective agency.

19 **§12-2-3. Deposit of moneys not due the state.**

20 (a) All officials and employees of the state authorized to
21 accept moneys that the State Treasurer determines or that this code
22 specifies are not funds due the state pursuant to the provisions of
23 section two of this article shall deposit the moneys, as soon as
24 practicable, in the manner and in the depository specified by the

1 State Treasurer. The State Treasurer shall prescribe the forms and
2 procedures for depositing the moneys.

3 **(b)** Notwithstanding any provision of this code to the
4 contrary, including provisions stating funds collected are not
5 state funds and provisions authorizing a spending unit to have one
6 or more accounts outside the Treasury, a spending unit shall comply
7 with the State Treasurer's procedures for the receipt and
8 disbursement of moneys not due the state and obtain written
9 authorization from the State Treasurer before depositing any moneys
10 in an account outside the Treasury. Upon the State Treasurer's
11 written revocation of the authorization, the spending unit shall
12 deposit funds deposited in an account outside the Treasury into the
13 Treasury in the manner and in the depository specified by the State
14 Treasurer. The State Treasurer is the final determining authority
15 as to whether these funds are funds due or not due the state
16 pursuant to section two of this article.

17 **(c)** The State Treasurer shall ~~on a quarterly basis~~ provide the
18 Legislative Auditor with ~~a~~ an annual report of all accounts
19 authorized under this section.

20 **ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

21 **§12-3-1. Manner of payment from Treasury; form of checks.**

22 (a) Every person claiming to receive money from the Treasury
23 of the state shall apply to the Auditor for a warrant for same. The
24 Auditor shall thereupon examine the claim, and the vouchers,

1 certificates and evidence, if any, offered in support thereof, and
2 for so much thereof as he or she finds to be justly due from the
3 state, if payment thereof is authorized by law, and if there is an
4 appropriation not exhausted or expired out of which it is properly
5 payable, the Auditor shall issue his or her warrant on the
6 Treasurer, specifying to whom and on what account the money
7 mentioned therein is to be paid, and to what appropriation it is to
8 be charged. The Auditor shall present to the Treasurer daily
9 reports on the number of warrants issued, the amounts of the
10 warrants and the dates on the warrants for the purpose of
11 effectuating the investment policies of the State Treasurer, and
12 the West Virginia Investment Management Board and West Virginia
13 Board of Treasury Investments. On the presentation of the warrant
14 to the Treasurer, the Treasurer shall ascertain whether there are
15 sufficient funds in the Treasury to pay that warrant, and if he or
16 she finds it to be so, he or she shall in that case, but not
17 otherwise, endorse his or her check upon the warrant, directed to
18 some depository, which check shall be payable to the order of the
19 person who is to receive the money therein specified.

20 ~~(b) If a check is not presented for payment within six months~~
21 ~~after it is drawn, it is the duty of the treasurer to credit it to~~
22 ~~the depository on which it was drawn, to credit the "Treasurer's~~
23 ~~State Check Fund," which is hereby created in the State Treasury,~~
24 ~~and immediately notify the Auditor to make corresponding entries on~~

1 ~~the Auditor's books. If the State Treasurer determines any funds~~
2 ~~deposited in the state check account are federal funds, the State~~
3 ~~Treasurer shall notify the spending unit authorizing the payment.~~
4 ~~Within six months following issuance of the notice, the spending~~
5 ~~unit shall inform the State Treasurer of the amount of federal~~
6 ~~funds included in the check, the account from which the federal~~
7 ~~funds were disbursed, and the current fiscal year account to which~~
8 ~~the federal funds are to be transferred. After receiving the~~
9 ~~information, the State Treasurer shall transfer the amount of~~
10 ~~federal funds specified as a reimbursement to the current fiscal~~
11 ~~year account specified to receive federal funds by the spending~~
12 ~~unit. For a period of up to six months, the State Treasurer shall~~
13 ~~endeavor to pay the money in the state check account to the payee.~~
14 ~~The treasurer shall credit the money that has been in the state~~
15 ~~check account for six months, or for a shorter period as determined~~
16 ~~by the treasurer, to the unclaimed property fund pursuant to the~~
17 ~~provisions of article eight, chapter thirty-six of this code, and~~
18 ~~shall immediately notify the Auditor to make corresponding entries~~
19 ~~on the Auditor's books.~~

20 ~~(c)~~ (b) No state depository may pay a check issued by the
21 State Treasurer unless ~~it~~ the check is presented within six months
22 after it is drawn. ~~and every~~ Every state check shall bear upon its
23 face the words "Void, unless presented for payment within six
24 months." If a state check is not presented for payment within six

1 months after it is drawn, the state check is presumed to be a stale
2 check and shall be reported as unclaimed property, in accordance
3 with article eight, chapter thirty-six of this code.

4 (c) All state spending units shall regularly monitor checks
5 issued on their behalf in accordance with procedures established by
6 the Treasurer. Factors to be reviewed and reported to the
7 Treasurer include, but are not limited to, whether any outstanding
8 check contains federal funds, whether good-faith efforts have been
9 made to locate the payees, and whether the outstanding check still
10 constitutes a valid obligation owed to the payee. If any state
11 check remains outstanding and is not presented for payment within
12 ninety days after issuance and contains any federal funds, the
13 spending unit shall advise the Treasurer of the amount of federal
14 funds included in the check, the account from which the federal
15 funds were disbursed and the current fiscal year account to which
16 the federal funds are to be transferred. If the check remains
17 outstanding and becomes a stale check, the Treasurer shall credit
18 the amount of the check to the state depository on which the check
19 was issued, notify the Auditor to make corresponding entries on his
20 or her books, transfer the amount of federal funds reported as a
21 reimbursement to the current fiscal year account specified to
22 receive federal funds by the spending unit. The Treasurer shall
23 transfer any funds from stale checks that are not federal funds
24 into the Unclaimed Property Fund.

1 (d) Any information or records maintained by the Treasurer
2 concerning any check not presented for payment within six months of
3 the date of issuance is confidential and exempt from disclosure
4 under the provisions of article one, chapter twenty-nine-b of this
5 code, and ~~is disclosable~~ may be disclosed only to the state
6 spending unit authorizing the check or to the payee, his or her
7 personal representative, next of kin or attorney-at-law.

8 (e) All claims required by law to be allowed by any court, and
9 payable out of the State Treasury, shall have the seal of the court
10 allowing or authorizing the payment of the claim affixed by the
11 clerk of the court to his or her certificate of its allowance. No
12 claim may be audited and ~~paid~~ payment authorized by the Auditor
13 unless the seal of the court is thereto attached as aforesaid. No
14 tax or fee may be charged by the clerk for affixing his or her seal
15 to the certificate, referred to in this section. The Treasurer
16 shall propose rules in accordance with the provisions of article
17 three, chapter twenty-nine-a of this code governing the procedure
18 for such payments from the Treasury.

19 **ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.**

20 **§12-3A-3. Financial electronic commerce.**

21 (a) The State Auditor and the State Treasurer shall implement
22 electronic commerce capabilities for each of their offices to
23 facilitate the performance of their duties under this code. The
24 State Treasurer shall competitively bid the selection of vendors

1 needed to provide the necessary banking, investment and related
2 goods and services, and the provisions of article one-b, chapter
3 five, and articles three and seven, chapter five-a of this code
4 shall not apply, unless requested by ~~the State Auditor or the state~~
5 Treasurer.

6 (b) A document or a signature received, issued or used by the
7 Auditor or the Treasurer shall be considered an original and may
8 not be denied legal effect on the ground that it is in electronic
9 form.

10 (c) The Auditor or Treasurer may, in his or her discretion,
11 require documents filed with or submitted to his or her respective
12 office be filed or submitted in a prescribed electronic format.

13 (d) The Auditor or Treasurer, in his or her discretion, may
14 waive:

15 (1) Any requirements for a document filed or submitted in an
16 electronic format; or

17 (2) Any requirements for the certification, notarization or
18 verification of a document filed or submitted in an electronic
19 format.

20 (e) The head of each spending unit is responsible for adopting
21 and implementing security procedures to ensure adequate integrity,
22 security, confidentiality, and auditability of the business
23 transactions of his or her spending unit when utilizing electronic
24 commerce.

1 (f) The Treasurer shall develop procedures for the storage,
2 retention and disposal of state records, as defined in section
3 three, article eight, chapter five-a of this code, filed with or
4 submitted to his or her office, and for the reproduction and
5 preservation of essential state records, as defined in section 4,
6 article eight, chapter five-a of this code, filed with or submitted
7 by his or her office. Preservation duplicates, as defined in
8 section three, article eight, chapter five-a of this code, shall be
9 maintained in an unalterable readable electronic media in
10 accordance with industry standards, reviewed for accuracy and
11 indexed, and shall have the same force and effect as the original
12 records whether the original record is in existence or not. The
13 procedures shall provide for the maintenance of the confidentiality
14 of the records and ensure the Director of the Division of Archives
15 and History receives the records the Director identifies as having
16 historic value. The Treasurer shall purchase the equipment and
17 supplies needed for record retention as part of his or her
18 electronic commerce activities.

19 **CHAPTER 18. EDUCATION.**

20 **ARTICLE 25. TAX DEFERRED INVESTMENTS FOR TEACHERS AND OTHER**
21 **EMPLOYEES.**

22 **§18-25-1. Authority to make tax deferred investments for teachers**
23 **and other employees.**

1 A county board of education, the ~~Teachers~~ Consolidated Public
2 Retirement Board, the West Virginia Board of Education and the
3 Department of Education and the Arts and their agencies may provide
4 by written agreement between the department, any such board or
5 agency and any teacher or other employee to reduce the cash salary
6 payable to the teacher or other employee, and, in consideration
7 thereof, to pay an amount equal to the amount of the reduction as
8 premiums on an annuity contract or investments into a custodial
9 account or other investment owned by the teacher or other employee.
10 The annuity contract, custodial account or other investment shall
11 be in such form and upon such terms as will qualify the payments
12 thereon for tax deferment under the United States Internal Revenue
13 Code. The amount of the reduction for a Section 403(b) plan may not
14 exceed the amount excludable from income under Section 403(b) of
15 the United States Internal Revenue Code, and amendments and
16 successor provisions thereto, and shall be considered a part of the
17 teachers or employees salary for all purposes other than federal
18 and state income tax.

19 The transaction of making the tax deferred investment for a
20 teacher or other employee by a Board of Education, the ~~Teachers~~
21 Consolidated Public Retirement Board, the West Virginia Board of
22 Education and the Department of Education and the Arts and their
23 agencies imposes no liability nor responsibility whatsoever on the
24 boards, department or members thereof except to show that the

1 payments have been remitted for the purposes for which deducted.

2 **ARTICLE 30. West Virginia College Prepaid Tuition and Savings**
3 **Program Act.**

4 **§18-30-8. College Prepaid Tuition and Savings Program**
5 **Administrative Account.**

6 (a) There is hereby created a separate account within the
7 State Treasurer's office titled the "College Prepaid Tuition and
8 Savings Program Administrative Account" for the purposes of
9 implementing, operating and maintaining the trust funds and program
10 created by this article and providing matching grant contributions
11 for the program. ~~On the effective date of this section, all moneys~~
12 ~~in the Prepaid Tuition Trust Fund Administrative Account are hereby~~
13 ~~transferred to the College Prepaid Tuition and Savings Program~~
14 ~~Administrative Account.~~

15 (b) The administrative account shall receive all fees, charges
16 and penalties collected by the board. Expenditures from the fund
17 are authorized from collections subject to appropriations made by
18 the Legislature.

19 **§18-30-11. ~~Financial aid Assistance eligibility not affected.~~**

20 (a) The calculations of a beneficiary's eligibility for state
21 student financial aid for higher education may not include or
22 consider the value of distributions available in a prepaid tuition
23 account or the value of distributions available in a savings plan
24 account.

1 (b) The value of a prepaid tuition account or a savings plan
2 account shall not be considered for purposes of determining
3 eligibility for income-based governmental financial assistance,
4 unless otherwise prohibited by federal law.

5 **CHAPTER 18A. SCHOOL PERSONNEL.**

6 **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

7 **§18A-4-12. Tax deferred investments for teachers and other**
8 **employees.**

9 (a) For the purpose of this section, when an employee shall
10 have attained the age of eighteen years the said employee may be
11 eligible to participate in the defined group plans.

12 (b) A county board of education, the ~~Teachers~~ Consolidated
13 Public Retirement Board, the West Virginia Board of Education and
14 ~~the board of Regents of West Virginia~~ public higher education
15 governing boards and their agencies may provide by written
16 agreement between any such board or agency and any teacher or other
17 employee to reduce the cash salary payable to such teacher or other
18 employee, and, in consideration thereof, to pay an amount equal to
19 the amount of such reduction as premiums on an annuity contract or
20 payments on a custodial account or other investment owned by such
21 teacher or other employee, which annuity contract, custodial
22 account or other investment is in such form and upon such terms as
23 will qualify the payments thereon for tax deferment under the
24 United States Internal Revenue Code. The amount of such reduction

1 for a section 403(b) plan shall not exceed the amount excludable
 2 from income under section 403(b) of the United States Internal
 3 Revenue Code, and amendments and successor provisions thereto, and
 4 shall be considered a part of the teacher's or employee's salary
 5 for all purposes other than federal and state income tax.

6 (c) The purchase of such tax deferred investment for a teacher
 7 or other employee by a board of education, the ~~Teachers' Retirement~~
 8 ~~Board~~ Consolidated Public Retirement Board, the West Virginia Board
 9 of Education and the ~~board of regents of~~ West Virginia public
 10 higher education governing boards and their agencies shall impose
 11 no liability nor responsibility whatsoever on said boards or
 12 members thereof except to show that the payments have been remitted
 13 for the purposes for which deducted.

14 **CHAPTER 36. ESTATES AND PROPERTY**

15 **ARTICLE 8. Uniform Unclaimed Property Act.**

16 **§36-8-13. Deposit of funds.**

17 (a) The administrator shall record the name and last known
 18 address of each person appearing from the holders reports to be
 19 entitled to the property and the name and last known address of
 20 each insured person or annuitant and beneficiary and with respect
 21 to each policy or annuity listed in the report of an insurance
 22 company, its number, the name of the company and the amount due.

23 (b) The Unclaimed Property Fund is continued. The
 24 administrator shall deposit all funds received pursuant to this

1 article in the Unclaimed Property Fund, including the proceeds from
2 the sale of abandoned property under section twelve of this
3 article. In addition to paying claims of unclaimed property duly
4 allowed, the administrator may deduct the following expenses from
5 the Unclaimed Property Fund:

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

7 (2) Expenses incurred in returning the property to owners,
8 including without limitation the costs of mailing and publication
9 to locate owners;

10 (3) Reasonable service charge; ~~and~~

11 (4) Expenses incurred in examining records of holders of
12 property and in collecting the property from those holders; and

13 (5) Expenses related to the general operations of the
14 Treasurer's office.

15 (c) The Unclaimed Property Trust Fund is continued within the
16 State Treasury. The administrator may invest the Unclaimed Property
17 Trust Fund with the West Virginia Board of Treasury Investments and
18 all earnings shall accrue to the fund and are available for
19 expenditure in accordance with this article. After deducting the
20 expenses specified in subsection (b) of this section and
21 maintaining a sum of money from which to pay claims duly allowed,
22 the administrator shall transfer the remaining moneys in the
23 Unclaimed Property Fund to the Unclaimed Property Trust Fund.

24 (d) (1) On July 1, 2009, the unclaimed property administrator

1 shall transfer the amount of \$8 million from the Unclaimed Property
2 Trust Fund to the Prepaid Tuition Trust Escrow Fund.

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

8 (e) On or before June 1, 2007, the unclaimed property
9 administrator shall transfer the amount of \$2 million from the
10 Unclaimed Property Trust Fund to the Deferred Compensation Matching
11 Fund for operation of the deferred compensation matching program
12 for state employees. On or before June 1, 2008, the unclaimed
13 property administrator shall transfer the amount of \$1 million from
14 the Unclaimed Property Trust Fund to the Deferred Compensation
15 Matching Fund for operation of the matching program.

16 (f) After transferring any money required by subsections (d)
17 and (e) of this section, the administrator shall transfer moneys
18 remaining in the Unclaimed Property Trust Fund to the General
19 Revenue Fund.

NOTE: The purpose of this bill is to clarify and update Code provisions relating to the State Treasurer's Office. The bill repeals a duplicate Code section pertaining to the Cash Management Improvement Act, §12-1-12c; repeals the obsolete higher education student assistance loan program, §18-22D-1 et seq.; and repeals a duplicate fee for marriage licenses, §48-2-604. For the Internal

Revenue Code §457 plan, the bill authorizes Roth 457 contributions, conversions and rollovers which were recently authorized by the Internal Revenue Code, authorizes the Treasurer to set the minimum contribution for automatic enrollments, and clarifies tax treatment of a Roth 457. Updates federal deposit insurance language, deletes archaic language pertaining to loan ratios to qualify as a state depository, clarifies what constitutes a conflict of interest for treasury employees, permits bank officers to sign reports, authorizes banks to submit reports in an electronic format, and changes quarterly reports to annual reports for the CMIA. Changes the requirement for deposits to be made within 24 hours to one business day and authorizes the Treasurer to grant an exception when circumstances make compliance with the one business day rule difficult or expensive. Requires the Treasurer to establish standards for internal controls for receipting funds, requires spending units to establish the internal controls and to submit them for review when requested by the Treasurer. Spending units are required to adopt revisions offered by the Treasurer. The bill authorizes the Treasurer to audit receipting of moneys by spending units, requires audits by internal and external Auditors to include evaluation of internal controls and requires copies of the audits be sent to the Treasurer and to the Legislative Auditor. Clarifies the differences in general revenue, special revenue and federal funds. Changes the quarterly report to the Legislative Auditor pertaining to outside bank accounts to an annual report. Procedures for stale dated state checks are updated and the Treasurer is authorized to develop record retention requirements. Deferred compensation programs for education employees are amended to permit maximum contributions in accordance with the Internal Revenue Code. The college prepaid tuition and savings program administrative account is amended to permit the Treasurer to use the funds for matching grant contributions, and the unclaimed property fund is amended to permit the Treasurer to use the funds for office operations. Also, language added to clarify that college prepaid tuition and savings program accounts are not to be considered for purposes of determining eligibility for income-based governmental financial assistance unless prohibited by federal law.

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

§5-10B-14 is new; therefore, it has been completely underscored.