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SB538

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 538

(By Senator CHAFIN, ET AL)

PASSED MARCH 10, 2006

In Effect 90 days from Passage

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SECRETARY OF STATE

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Senate Bill No. 538

(BY SENATORS CHAFIN, HELMICK AND LOVE)

[Passed March 10, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §5-10B-1, §5-10B-2, §5-10B-3, §5-10B-4, §5-10B-5, §5-10B-9 and §5-10B-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §5-10B-11, §5-10B-12 and §5-10B-13, all relating to government employees' deferred compensation plans; transferring responsibility for the State Employee Deferred Compensation Plan to the State Treasurer on the first day of July, two thousand six; authorizing political subdivisions without plans to request the Treasurer include its employees in the state plan; allowing political subdivision employees to participate in the state plan; allowing political subdivision employees to participate in the state plan when their employer does not offer a plan; clarifying various powers and requirements; authorizing employees to attend meetings called by the state or public employer during regular working hours to explain the plan; authorizing the state and public employers to charge fees for plan administration; clarifying liability; establishing trust fund and administrative account in the State Treasury; providing that information that would tend to disclose the

identity of a participating employee is exempt from disclosure under the Freedom of Information Act; and protecting the moneys from certain legal processes.

Be it enacted by the Legislature of West Virginia:

That §5-10B-1, §5-10B-2, §5-10B-3, §5-10B-4, §5-10B-5, §5-10B-9 and §5-10B-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §5-10B-11, §5-10B-12 and §5-10B-13, all to read as follows:

ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.

§5-10B-1. Legislative purpose.

1 The legislative purpose of this enactment is to enable
2 employees of the state, its agencies, counties, municipali-
3 ties and political subdivisions of such governmental bodies
4 to participate in voluntary deferred compensation plans
5 authorized by the United States Internal Revenue Code as
6 interpreted by the Internal Revenue Service, thereby
7 permitting such employees to obtain the advantages
8 inherent in such plans relative to the income tax treatment
9 of the contributions and disbursements made pursuant to
10 such voluntary income deferment plans. It is further the
11 purpose of this enactment to authorize the establishment
12 of separate plans for the state and its agencies and for
13 counties, municipalities and political subdivisions within
14 the state and to authorize county, municipal and political
15 subdivision employees to participate in the state deferred
16 compensation plan if their employer does not have a plan.

§5-10B-2. Definitions.

1 Unless the context in which used clearly indicates a
2 different meaning, as used in this article:

3 (a) "Board" means the Consolidated Public Retirement
4 Board provided for in article ten of this chapter.

5 (b) "Deferred compensation" means the income and
6 earnings on that income an employee may legally defer for
7 personal income tax purposes pursuant to the Internal
8 Revenue Code until distribution.

9 (c) "Deferred compensation plan" or "plan" means a
10 trust whereby the state employer or a public employer
11 agrees with an employee for the voluntary reduction in
12 employee compensation for the payment of benefits by the
13 state employer or the public employer to the employee at
14 a later date pursuant to this article and the federal laws
15 and regulations relating to eligible state deferred compen-
16 sation plans as described in Section 457 of the Internal
17 Revenue Code.

18 (d) "Deferred compensation trust fund" or "trust" means
19 the fund in which deferred amounts and investment
20 income of participating employees are held.

21 (e) "Employee" means any person, whether appointed,
22 elected or under contract, providing services for the state
23 employer or public employer for which compensation is
24 paid.

25 (f) "Internal Revenue Code" means the Internal Revenue
26 Code of 1986, as it has been amended.

27 (g) "Investment product" means any fixed or variable
28 rate annuity, life insurance contract, savings account,
29 certificate of deposit, money market account, bond,
30 mutual fund or any other form of investment not prohib-
31 ited under the Internal Revenue Code and authorized by
32 the state employer or the public employer for the purpose
33 of receiving funds under a plan.

34 (h) "Public employer" means counties, municipalities or
35 political subdivisions of those governmental bodies which
36 meet the definition of "state" as described in Internal
37 Revenue Code Section 457 (d)(1), but which do not meet
38 the definition of "state employer" as used in this article.

39 (i) "State employer" means the State of West Virginia,
40 which includes every state board, commission, agency and
41 instrumentality.

42 (j) "Treasurer" means the State Treasurer.

43 (k) "Vendor" means a private entity that sells investment
44 products or provides goods and services.

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

1 (a) Notwithstanding any provision of this code to the
2 contrary, including, without limitation, this chapter and
3 chapter five-a of this code, the state employer and a public
4 employer have the power necessary or appropriate to carry
5 out the provisions and objectives of this article and to
6 operate the trust, including, without limitation, entering
7 into contracts and executing and delivering instruments;
8 engaging consultants, auditors, counsel, managers, advi-
9 sors, trustees or any other contractors or professionals; and
10 charging and collecting administrative fees.

11 (b) The state employer or any public employer may, by
12 contract, agree with any of its employees to defer and hold
13 in trust any portion of that employee's compensation and
14 may subsequently purchase or acquire from vendors
15 licensed to do business in the State of West Virginia
16 investment products for the purpose of carrying out the
17 objectives of the deferred compensation plan as described
18 in this article.

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

**§5-10B-4. Responsibility for implementing plans - Payroll
reductions - Billing and administration.**

1 (a) The responsibility for implementing the deferred
2 compensation plan for employees of the state employer
3 shall be delegated to the board of trustees through the
4 thirtieth day of June, two thousand six. On the first day of

5 July, two thousand six, the Treasurer shall manage any
6 deferred compensation plan for state employees. Any and
7 all records, moneys, contracts, property and other matters
8 involving deferred compensation plans for state employees
9 shall transfer on the first day of July, two thousand six, to
10 the Treasurer.

11 (b) The responsibility for implementing the deferred
12 compensation plan for employees of a public employer is
13 delegated to the county commission of a county, the
14 governing body of a municipality, as that term is defined
15 in section two, article one, chapter eight of this code, and,
16 in the case of any other political subdivision, the board,
17 commission or other similar body responsible for deter-
18 mining the policy of such political subdivision. A county
19 commission or a governing body of another public em-
20 ployer may request the Treasurer authorize its employees
21 to participate in the state plan instead of implementing its
22 own plan.

23 (c) If the governing body has adopted more than one
24 plan, an employee electing to participate shall also elect
25 the plan or plans in which he or she desires to participate.
26 When a public employer has not implemented a plan, its
27 employees may participate in the state plan.

28 (d) Payroll reductions shall be remitted as specified by
29 the state employer or public employer for deposit in the
30 trust, in each instance, by the appropriate payroll officer.
31 The board of trustees, the Treasurer or appropriately
32 designated local officer, board or committee of deferred
33 compensation plan may contract with one or more vendors
34 to provide consolidated billing and all or any other goods
35 and services needed for a plan.

36 (e) Plans shall operate without cost to or contribution
37 from the state employer or public employer except for the
38 incidental expense of administering the payroll salary
39 reductions and the remittance thereof.

40 (f) The state employer and the public employers may
41 charge fees on plan contributions, total assets, total return
42 or other selected method as necessary to provide for the
43 administrative expenses of a plan.

§5-10B-5. Investment of funds.

1 Notwithstanding any other provision of law to the
2 contrary, the board, or the Treasurer beginning the first
3 day of July, two thousand six, as well as the appropriate
4 local officer, board or committee, designated as responsi-
5 ble for implementing a deferred compensation plan, is
6 hereby authorized to invest compensation held pursuant to
7 a deferred compensation plan in investment products.

§5-10B-9. Liabilities of State of West Virginia or political subdivisions.

1 The state employer and the public employers shall not
2 incur any liability for losses suffered or change in value of
3 an investment product. The financial liability of the state
4 employer or public employer under any deferred compen-
5 sation plan shall be limited in each instance to amounts
6 paid over to the trust but not invested.

§5-10B-10. Deferred compensation plan funds held in trust.

1 (a) Notwithstanding anything herein to the contrary, as
2 of the first day of January, one thousand nine hundred
3 ninety-eight, all assets and income of all deferred compen-
4 sation plans created or administered pursuant to this
5 article shall be held in trust for the exclusive benefit of
6 participants and their beneficiaries.

7 (b) The West Virginia Deferred Compensation Trust
8 Fund is created within the accounts held by the Treasurer
9 or with one or more financial institutions, vendors or any
10 other entities selected by the Treasurer for the purpose of
11 managing and investing the trust. A public employer
12 managing a trust shall create a trust fund and select one or

13 more financial institutions, vendors or other entities to
14 hold the trust.

15 (c) The corpus, assets and earnings of the trust do not
16 constitute public funds of the state or public employer and
17 are available solely for carrying out the purposes of this
18 article. Any contract entered into by or any obligation of
19 the state employer or a public employer in connection with
20 a plan does not create or constitute a debt, but is solely an
21 obligation of the trust.

§5-10B-11. Deferred Compensation Administrative Account.

1 The Deferred Compensation Administrative Account is
2 created in the accounts of the Treasurer for the purposes
3 of implementing, operating and maintaining the trust and
4 plan. The account shall receive all fees charged and
5 collected by the Treasurer under this article.

§5-10B-12. Confidential information exempt from disclosure.

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

§5-10B-13. Moneys not subject to legal process.

1 No account, benefit or right, created pursuant to this
2 article, accrued or accruing, is subject to execution,
3 garnishment, attachment, sale to satisfy a judgment or
4 order, the operation of bankruptcy or insolvency laws, or
5 other process of law and shall be unassignable.

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

Candy White
.....
Chairman Senate Committee

W. Beery
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell Holmes
.....
Clerk of the Senate

Buffy W. Sand
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert R. Byrd
.....
Speaker House of Delegates

The within *is approved* this the *31st*
Day of *March*, 2006.

Paul M. Hancock
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 31 2006

Time 10:30am