

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4565

BY DELEGATES STATLER, ELLINGTON, SUMMERS,

G. WARD, TONEY, AND QUEEN

[Passed March 11, 2022; in effect ninety days from passage.]

1 AN ACT to amend and reenact §5-10B-2 and §5-10B-3a of the Code of West Virginia, 1931, as
2 amended; to amend §18-25-1 of said code; and to amend §18A-4-12 of said code; all
3 relating generally to government employees deferred compensation plans; providing
4 definitions; exempting certain employees from the requirement of automatic enrollment
5 into certain plans; and removing outdated language to align with federal law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.

§5-10B-2. Definitions.

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

3 (a) "Board" means the Consolidated Public Retirement Board provided for in §5-10-1 *et*
4 *seq.*

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

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

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

15 (e) "Eligible employer" means counties, municipalities or political subdivisions of those
16 governmental bodies which meet the definition of "state" as described in Internal Revenue Code
17 Section 457 (e)(1), but which do not meet the definition of "state employer" as used in this article.

18 (f) "Employee" means any person, whether appointed, elected or under contract, providing
19 services for the state employer or public employer for which compensation is paid.

20 (g) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been
21 amended.

22 (h) "Investment product" means any fixed or variable rate annuity, life insurance contract,
23 savings account, certificate of deposit, money market account, bond, mutual fund or any other
24 form of investment not prohibited under the Internal Revenue Code and authorized by the state
25 employer or the public employer for the purpose of receiving funds under a plan.

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

28 (j) "Temporary employee" means a state employee who entered into a written agreement
29 with his or her employer, prior to his or her first day of employment, specifying that his or her term
30 of employment would be for two years or less in duration.

31 (k) "Treasurer" means the state Treasurer.

32 (l) "Vendor" means a private entity that sells investment products or provides goods and
33 services.

§5-10B-3a. Automatic enrollment.

1 (a) Every state employee commencing work on and after July 1, 2007, shall have a
2 minimum of \$10 per pay period of his or her salary deferred to the state deferred compensation
3 plan unless the state employee provides written notice declining to participate in accordance with

4 the Treasurer's guidelines: *Provided*, That temporary employees and employees of the Higher
5 Education Policy Commission, the Council for Community and Technical College Education, and
6 the state's public institutions of higher education are exempt from the requirement in this section.

7 (b) At any time, a state employee may change the amount that he or she defers each pay
8 period to the state deferred compensation plan or cease participating in the plan. An employee
9 declining participation in the state deferred compensation plan may elect to participate at a later
10 time.

11 (c) A political subdivision may establish an automatic enrollment program in a deferred
12 compensation plan pursuant to this article. A political subdivision employee may elect to not
13 participate in the deferred compensation plan at any time and to change the contribution amount.

CHAPTER 18. EDUCATION.

ARTICLE 25. TAX DEFERRED INVESTMENTS FOR TEACHERS AND OTHER EMPLOYEES.

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

1 A county board of education, the Teachers' Retirement Board, the West Virginia Board of
2 Education and the Department of Education and the arts and their agencies may provide by
3 written agreement between the department, any such board or agency and any teacher or other
4 employee to reduce the cash salary payable to the teacher or other employee, and, in
5 consideration thereof, to pay an amount equal to the amount of the reduction as premiums on an
6 annuity contract or investments into a custodial account or other investment owned by the teacher
7 or other employee. The annuity contract, custodial account or other investment shall be in such
8 form and upon such terms as will qualify the payments thereon for tax deferment under the United
9 States Internal Revenue Code. The amount of the reduction may not exceed the amount
10 excludable from income under the United States Internal Revenue Code, and amendments and

11 successor provisions thereto, and shall be considered a part of the teachers or employees salary
12 for all purposes other than federal and state income tax.

13 The transaction of making the tax deferred investment for a teacher or other employee by
14 a Board of Education, the Teachers' Retirement Board, the West Virginia Board of Education and
15 the Department of Education and the arts and their agencies imposes no liability nor responsibility
16 whatsoever on the boards, department or members thereof except to show that the payments
17 have been remitted for the purposes for which deducted.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

1 For the purpose of this section, when an employee shall have attained the age of eighteen
2 years the said employee may be eligible to participate in the defined group plans.

3 A county board of education, the Teachers' Retirement Board and the West Virginia Board
4 of Education and their agencies may provide by written agreement between any such board or
5 agency and any teacher or other employee to reduce the cash salary payable to such teacher or
6 other employee, and, in consideration thereof, to pay an amount equal to the amount of such
7 reduction as premiums on an annuity contract or payments on a custodial account or other
8 investment owned by such teacher or other employee, which annuity contract, custodial account
9 or other investment is in such form and upon such terms as will qualify the payments thereon for
10 tax deferment under the United States Internal Revenue Code. The amount of such reduction
11 shall not exceed the amount excludable from income under the United States Internal Revenue
12 Code, and amendments and successor provisions thereto, and shall be considered a part of the
13 teacher's or employee's salary for all purposes other than federal and state income tax.

14 The purchase of such tax deferred investment for a teacher or other employee by a Board
15 of Education, the Teachers' Retirement Board and the West Virginia Board of Education and their

- 16 agencies shall impose no liability nor responsibility whatsoever on said boards or members
17 thereof except to show that the payments have been remitted for the purposes for which deducted.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor