

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4565**

BY DELEGATES STATLER, ELLINGTON, SUMMERS,

G. WARD, TONEY, AND QUEEN

[Originating in the Committee on Finance;

February 25, 2022]



1 A BILL 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5 into certain plans; and removing outdated language to align with federal law.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 ~~article ten of~~  
4 ~~this chapter~~ §5-10-1 et 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 ~~(e)~~ (f) “Employee” means any person, whether appointed, elected or under contract,  
19 providing services for the state employer or public employer for which compensation is paid.

20 ~~(f)~~ (g) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been  
21 amended.

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

26 ~~(h) “Public employer” means counties, municipalities or political subdivisions of those~~  
27 ~~governmental bodies which meet the definition of “state” as described in Internal Revenue Code~~  
28 ~~Section 457 (d)(1), but which do not meet the definition of “state employer” as used in this article.~~

29 (i) “State employer” means the State of West Virginia, which includes every state board,  
30 commission, agency and instrumentality.

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

34 (k) “Treasurer” means the state Treasurer.

35 (l) “Vendor” means a private entity that sells investment products or provides goods and  
36 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) A state employee may change the contribution amount or cease participating at any~~  
8 ~~time~~ At any time, a state employee may change the amount that he or she defers each pay period  
9 to the state deferred compensation plan or cease participating in the plan. An employee declining  
10 participation in the state deferred compensation plan may elect to participate at a later time.

11 ~~(b)~~ (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 deferral under the United  
9 States Internal Revenue Code. The amount of the reduction may not exceed the amount  
10 excludable from income under ~~Section 403(b)~~ of the United States Internal Revenue Code, and  
11 amendments and successor provisions thereto, and shall be considered a part of the teachers or  
12 employees salary 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  
4 Board of Education ~~and the board of regents of West Virginia~~ and their agencies may provide by  
5 written agreement between any such board or agency and any teacher or other employee to  
6 reduce the cash salary payable to such teacher or other employee, and, in consideration thereof,  
7 to pay an amount equal to the amount of such reduction as premiums on an annuity contract or  
8 payments on a custodial account or other investment owned by such teacher or other employee,  
9 which annuity contract, custodial account or other investment is in such form and upon such terms  
10 as will qualify the payments thereon for tax deferral under the United States Internal Revenue  
11 Code. The amount of such reduction shall not exceed the amount excludable from income under  
12 ~~section 403(b)~~ of the United States Internal Revenue Code, and amendments and successor

13 provisions thereto, and shall be considered a part of the teacher's or employee's salary for all  
14 purposes other than federal and state income tax.

15           The purchase of such tax deferred investment for a teacher or other employee by a Board  
16 of Education, the Teachers' Retirement Board, and the West Virginia Board of Education ~~and the~~  
17 ~~board of regents of West Virginia~~ and their agencies shall impose no liability nor responsibility  
18 whatsoever on said boards or members thereof except to show that the payments have been  
19 remitted for the purposes for which deducted.