

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4375**

4 (By Delegates Reynolds, Skaff, Pethtel, L. Phillips, Canterbury,  
5 Jones and Sponaugle)

6 (Originating in the House Committee on Finance.)

7  
8 [February 21, 2014]

9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §5-10E-1, §5-10E-2,  
12 §5-10E-3, §5-10E-4, §5-10E-5, §5-10E-6, §5-10E-7, §5-10E-8,  
13 §5-10E-9, §5-10E-10, §5-10E-11, §5-10E-12 and §5-10E-13; and  
14 to amend and reenact §36-8-13 of said code, all relating to  
15 establishing the West Virginia Voluntary Employee Retirement  
16 Accounts Program; establishing findings; defining terms;  
17 providing for liberal construction; requiring compliance with  
18 federal and state law; providing for plan administration;  
19 authorizing the Treasurer to propose rules; establishing  
20 participation; requiring all federal approvals and filings be  
21 received and made before operations begin; creating trust;  
22 prohibiting assignment, except for qualified domestic  
23 relations orders; authorizing investments; specifying that the  
24 corpus, assets and earnings of trust do not constitute public

1 funds; deferring compensation from federal, state and  
2 municipal income taxes; authorizing collection of fees;  
3 creating administration account; transferring up to \$3 million  
4 from the Unclaimed Property Trust Fund; requiring that \$3  
5 million be repaid no later than June 30, 2024; paying program  
6 costs; requiring reimbursement to Unclaimed Property Trust  
7 Fund; specifying the state and the Treasurer are not liable  
8 for losses or changes in value; specifying certain information  
9 is confidential; requiring payroll information be provided to  
10 the Treasurer; requiring audits; and providing for the  
11 transfer of money from the Unclaimed Property Trust Fund for  
12 start-up of the program.

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

14 That the Code of West Virginia, 1931, as amended, be amended  
15 by adding thereto a new article, designated §5-10E-1, §5-10E-2,  
16 §5-10E-3, §5-10E-4, §5-10E-5, §5-10E-6, §5-10E-7, §5-10E-8,  
17 §5-10E-9, §5-10E-10, §5-10E-11, §5-10E-12 and §5-10E-13; and that  
18 §36-8-13 of said code be amended and reenacted, all to read as  
19 follows:

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

1 **ARTICLE 10E. WEST VIRGINIA VOLUNTARY EMPLOYEE RETIREMENT ACCOUNTS**  
2 **PROGRAM.**

3 **§5-10E-1. Findings.**

4 (a) The West Virginia Legislature finds that West Virginia  
5 workers deserve the opportunity to participate in retirement plans  
6 that are cost-effective and that will assist them in having a  
7 stable financial future. According to research by the AARP, nearly  
8 fifty percent of West Virginia workers have no access to  
9 employment-based retirement plans. The lack of pensions and  
10 savings subjects West Virginia workers, the state and state  
11 taxpayers to further strains on safety net programs, the future of  
12 which are uncertain.

13 (b) The Legislature further finds that West Virginia small  
14 businesses deserve assistance in attracting and retaining a secure  
15 workforce. Research by the National Council of Public Employees  
16 Retirement Systems shows that eighty-two percent of nongovernmental  
17 employers agree that offering retirement benefits helps recruitment  
18 of good employees, but that sixty-four percent believe offering a  
19 retirement benefit is too expensive. The Legislature finds that  
20 creating the West Virginia Voluntary Employee Retirement Account  
21 Program, a cost-effective and portable group retirement savings  
22 program, and made available to West Virginia small businesses and  
23 their employees will provide a simple, cost-effective way for West  
24 Virginia workers to save for retirement and for West Virginia

1 employers to offer a much needed employee benefit.

2 **§5-10E-2. Definitions.**

3 Unless the context in which used clearly requires a different  
4 definition, the following definitions apply throughout this  
5 article:

6 (1) "Internal Revenue Code" means the Internal Revenue Code of  
7 1986, as amended from time to time.

8 (2) "Investment product" means any fixed or variable rate  
9 annuity, savings account, certificate of deposit, money market  
10 account, bond, mutual fund or any other form of investment not  
11 prohibited under the Internal Revenue Code and authorized by the  
12 West Virginia Voluntary Employee Retirement Account Program.

13 (3) "Nonparticipating employer" means a nongovernmental  
14 employer in West Virginia with no more than one hundred employees  
15 in the state, not offering a retirement plan for employees but may  
16 make payroll deductions in accordance with the West Virginia  
17 Voluntary Employee Retirement Account Program.

18 (4) "Participating employee" means any person employed in this  
19 state by a nongovernmental employer in West Virginia with no more  
20 than one hundred employees in the state, who has chosen to have a  
21 part of his or her wages or salary contributed to an account in the  
22 West Virginia Voluntary Employee Retirement Account Program and who  
23 has at least \$1 in an account in the program.

24 (5) "Participating employer" means any nongovernmental employer

1 in West Virginia with no more than one hundred employees in this  
2 state, not offering an active retirement plan for employees at the  
3 time the employer executed an agreement with the Treasurer to  
4 participate in the West Virginia Voluntary Employee Retirement  
5 Account Program.

6 (6) "Plan" means a retirement plan created and operated under  
7 this article.

8 (7) "Program" means the West Virginia Voluntary Employee  
9 Retirement Account Program created under this article.

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

11 (9) "Trust" means the West Virginia Voluntary Employee  
12 Retirement Accounts Trust established under this article.

13 **§5-10E-3. West Virginia Voluntary Employee Retirement Accounts**  
14 **Program created; body corporate.**

15 The West Virginia Voluntary Employee Retirement Accounts  
16 Program is created within the office of the West Virginia State  
17 Treasurer under the direction of the Treasurer to provide a  
18 cost-effective group retirement plan for nongovernmental employers  
19 and employees in West Virginia. The Voluntary Employee Retirement  
20 Accounts Program is a body corporate.

21 **§5-10E-4. Liberal construction; compliance.**

22 This article shall be liberally construed so as to provide a  
23 tax-qualified retirement program for participating employers and  
24 participating employees. The program shall comply with the

1 Internal Revenue Code and other applicable federal and state law.

2 **§5-10E-5. Administration; powers; rules.**

3 (a) The Treasurer shall administer the program and the West  
4 Virginia Voluntary Employee Retirement Accounts Trust, created in  
5 section seven of this article, shall develop standards and  
6 requirements for operation and has all powers necessary to  
7 effectuate the purposes of this article and to operate the program  
8 and the trust.

9 (b) Notwithstanding any provision of this code to the contrary,  
10 including, without limitation, this chapter and chapter five-a of  
11 this code, the Treasurer has authority to enter into contracts and  
12 execute and deliver instruments, including, without limitation,  
13 contracts with participating employers and employees; engage  
14 consultants, auditors, counsel, managers, advisors, trustees or any  
15 other contractors or professionals; and charge and collect  
16 administrative fees.

17 (c) The Treasurer may propose rules for legislative approval  
18 in accordance with article three, chapter twenty-nine-a of this  
19 code as necessary to implement this article, and may promulgate  
20 emergency rules.

21 **§5-10E-6. Participation.**

22 (a) Nongovernmental employers that employ no more than one  
23 hundred employees in this state and that do not offer a currently  
24 active retirement program for employees may voluntarily elect to

1 participate in the program and provide their employees with the  
2 opportunity to become participating employees. However, nothing in  
3 this article requires employers to participate in the program,  
4 except as provided in subsection (b) of this section. A  
5 participating employer shall comply with all program requirements,  
6 including, without limitation, making payroll deductions and  
7 remittances as required by the Treasurer. A participating employer  
8 may elect to discontinue participation in accordance with program  
9 requirements.

10 (b) An employee of a nonparticipating employer in West Virginia  
11 may elect to participate and defer a portion of his or her salary  
12 to an account under the program in his or her name, and the only  
13 requirement of his or her employer is to make payroll deductions  
14 and remittances as requested by the employee in writing and as  
15 determined by the Treasurer.

16 (c) A participating employer, in its sole discretion, may elect  
17 to make a contribution to the account of an employee on whatever  
18 basis it elects in accordance with the program requirements.

19 (d) A participating employer, in its sole discretion, may  
20 require any or all of its employees to contribute a specific amount  
21 or percentage of their wages to their accounts.

22 (e) A participating employee may increase or decrease the  
23 amount of his or her contribution or cease participation at any  
24 time within the limitations permitted by the program or the

1 employer upon written notice to the employer and the Treasurer.

2 (f) The program may not begin receiving employee contributions  
3 until the required approvals or filings, if any, have been received  
4 or made.

5 **§5-10E-7. Creation of trust; assignment; investments; not public**  
6 **funds.**

7 (a) The West Virginia Voluntary Employee Retirement Trust is  
8 created and all funds of participating employees and participating  
9 employers shall be held in the trust by the Treasurer for the  
10 exclusive benefit of the participating employees, participating  
11 employers and their beneficiaries, notwithstanding any other  
12 provision of this article or other provision of this code.

13 (b) Neither the participating employee, nor the participating  
14 employee's beneficiary or beneficiaries, nor any other designee,  
15 may commute, sell, assign, transfer or otherwise convey the right  
16 to receive any principal or payments under the program: *Provided,*  
17 That in cases of divorce or legal separation and pursuant to  
18 qualified domestic relations orders as defined by the Internal  
19 Revenue Service and which meet the requirements of a legislative  
20 rule proposed pursuant to article three, chapter twenty-nine-a of  
21 this code, duly entered by courts of record, the payments and  
22 rights to payments may be transferred. These payments and rights  
23 are nonassignable and nontransferable. Account balances,  
24 principal, payments or distributions of any kind are not subject to

1 attachment, garnishment or execution and, pursuant to section four,  
2 article ten, chapter thirty-eight of this code, are exempt from  
3 bankruptcy proceedings.

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

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

13 **§5-10E-8. Income tax.**

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

19 **§5-10E-9. Fees; administration account; costs payable solely from**  
20 **account; reimbursement.**

21 (a) The Treasurer shall assess fees on assets or participating  
22 employees to operate the program and repay the amounts advanced  
23 from the Unclaimed Property Trust Fund.

24 (b) The Voluntary Employee Retirement Accounts Program

1 Administration Account is created in the accounts of the Treasurer  
2 for the purposes of implementing, operating and maintaining the  
3 trust and program. The account shall receive all fees assessed and  
4 collected by the Treasurer for the program, moneys from the  
5 Unclaimed Property Trust Fund and any other moneys made available.

6 (c) Moneys in the account may be invested, in whole or in  
7 part, by the Treasurer as he or she determines. All earnings shall  
8 accrue to and be retained by the account.

9 (d) Beginning July 1, 2014, the unclaimed property  
10 administrator shall transfer from the Unclaimed Property Trust Fund  
11 the amounts requested by the Treasurer, from time to time, for  
12 deposit in the Voluntary Employee Retirement Accounts Program  
13 Administration Account. The total amounts requested by the  
14 Treasurer may not exceed \$3 million.

15 (e) The costs of establishing and operating the program shall  
16 be paid solely from moneys available in the account. Any unused  
17 moneys from the Unclaimed Property Trust Fund in the account shall  
18 be returned to the Unclaimed Property Trust Fund. If moneys in the  
19 account are insufficient to establish and operate the program, then  
20 the program and trust shall terminate in accordance with the terms  
21 of the trust.

22 (f) Moneys from the Unclaimed Property Trust Fund shall be  
23 reimbursed from fees assessed for the administration of the program  
24 and shall be repaid in a timely manner as the program matures and

1 a full accounting made on an annual basis, with the total amount  
2 fully reimbursed no later than June 30, 2024.

3 **§5-10E-10. State and Treasurer not liable.**

4 The State of West Virginia and the Treasurer are not liable  
5 individually or collectively for losses suffered or for any change  
6 in value of an investment product or the trust.

7 **§5-10E-11. Confidential information exempt from disclosure.**

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

18 **§5-10E-12. Disclosure of information to the Treasurer for**  
19 **operation of the program.**

20 For purposes of this article, an employer with a participating  
21 employee shall disclose to the Treasurer any payroll related  
22 information the Treasurer determines he or she needs for the  
23 operation of the program. Information disclosed pursuant to this  
24 section may only be used by the Treasurer for the operation of the

1 program. The Treasurer shall treat the information obtained as  
2 confidential and may not disclose the information except to an  
3 entity providing goods or services for the program, who shall also  
4 treat the information as confidential, or as required by law.

5 **§5-10E-13. Audits.**

6 The Treasurer shall have annual audits of the program  
7 conducted, sending copies of the audits to the Governor, members of  
8 the legislative Joint Committee on Government and Finance and the  
9 Legislative Librarian and shall publish copies of the audits on the  
10 program website.

11 **CHAPTER 36. ESTATES AND PROPERTY.**

12 **ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.**

13 **§36-8-13. Deposit of funds.**

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

20 (b) The Unclaimed Property Fund is continued. The  
21 administrator shall deposit all funds received pursuant to this  
22 article in the Unclaimed Property Fund, including the proceeds from  
23 the sale of abandoned property under section twelve of this  
24 article. In addition to paying claims of unclaimed property duly

1 allowed, the administrator may deduct the following expenses from  
2 the Unclaimed Property Fund:

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

4 (2) Expenses incurred in returning the property to owners,  
5 including without limitation the costs of mailing and publication  
6 to locate owners;

7 (3) Reasonable service charge; and

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

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

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

22 (2) On or before December 15 of each year, notwithstanding any  
23 provision of this code to the contrary, the administrator shall  
24 transfer the sum of \$1 million from the Unclaimed Property Trust

1 Fund to the Prepaid Tuition Trust Escrow Fund, until the actuary  
2 certifies there are sufficient funds to pay out all contracts.

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

11 (f) On or before June 1, 2013, the unclaimed property  
12 administrator shall transfer the amount of \$3,631,846.55 from the  
13 Unclaimed Property Trust Fund to the Municipal Pensions and  
14 Protection Fund for the purpose of satisfying any amounts due as of  
15 April 27, 2012 to policemen's and firemen's pension and relief  
16 funds in accordance with section fourteen-d, article three, chapter  
17 thirty-three of this code.

18 (g) Beginning July 1, 2014, the unclaimed property  
19 administrator shall transfer from the Unclaimed Property Trust Fund  
20 the amounts requested by the Treasurer, from time to time, for  
21 deposit in the Voluntary Employee Retirement Accounts Program  
22 Administration Account. The total amounts requested by the  
23 Treasurer may not exceed \$3 million.

24 (h) After transferring any money required by subsections (d)

1 through ~~(f)~~ (g) of this section, the administrator shall transfer  
2 moneys remaining in the Unclaimed Property Trust Fund to the  
3 General Revenue Fund.