

H. B. 4375

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

[Introduced January 30, 2014; referred to the
Committee on Pensions and Retirement then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-10E-1, §5-10E-2, §5-10E-3, §5-10E-4, §5-10E-5, §5-10E-6, §5-10E-7, §5-10E-8, §5-10E-9, §5-10E-10, §5-10E-11, §5-10E-12 and §5-10E-13; and to amend and reenact §36-8-13 of said code, all relating to establishing the West Virginia Voluntary Employee Retirement Accounts Program; establishing findings; defining terms; providing for liberal construction; requiring compliance with federal and state law; providing for plan administration; authorizing the Treasurer to propose rules; establishing participation; requiring all federal approvals and filings be received and made before operations begin; creating trust; prohibiting assignment, except for qualified domestic relations orders; authorizing investments; specifying that the corpus, assets and earnings of trust do not constitute public funds; deferring compensation from federal, state and municipal income taxes; authorizing collection of fees; creating administration account; transferring up to \$3 million from the Unclaimed Property Trust Fund; requiring that \$3

1 million be repaid no later than June 30, 2024; paying program
2 costs; reimbursement of Unclaimed Property Trust Fund;
3 specifying the state and the Treasurer are not liable for
4 losses or changes in value; specifying certain information is
5 confidential; requiring payroll information be provided to the
6 Treasurer; requiring audits; and providing for the transfer of
7 money from the Unclaimed Property Trust Fund for start-up of
8 the program.

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

10 That the Code of West Virginia, 1931, as amended, be amended
11 by 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 that
14 §36-8-13 of said code be amended and reenacted, all to read as
15 follows:

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

20 **ARTICLE 10E. WEST VIRGINIA VOLUNTARY EMPLOYEE RETIREMENT ACCOUNTS**
21 **PROGRAM.**

22 **§5-10E-1. Findings.**

23 (a) The West Virginia Legislature finds that West Virginia
24 workers deserve the opportunity to participate in retirement plans
25 that are cost-effective and that will assist them in having a

1 stable financial future. According to research by the AARP, nearly
2 fifty percent of West Virginia workers have no access to
3 employment-based retirement plans. The lack of pensions and
4 savings subjects West Virginia workers, the state and state
5 taxpayers to further strains on safety net programs, the future of
6 which are uncertain.

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

20 **§5-10E-2. Definitions.**

21 Unless the context in which used clearly requires a different
22 definition, the following definitions apply throughout this
23 article:

24 "Internal Revenue Code" means the Internal Revenue Code of
25 1986, as amended from time to time.

26 "Investment product" means any fixed or variable rate annuity,

1 savings account, certificate of deposit, money market account,
2 bond, mutual fund or any other form of investment not prohibited
3 under the Internal Revenue Code and authorized by the West Virginia
4 Voluntary Employee Retirement Account Program.

5 "Nonparticipating employer" means a nongovernmental employer
6 in West Virginia with no more than one hundred employees in the
7 state, not offering a retirement plan for employees but may make
8 payroll deductions in accordance with the West Virginia Voluntary
9 Employee Retirement Account Program.

10 "Participating employee" means any person employed in this
11 state by a nongovernmental employer in West Virginia with no more
12 than one hundred employees in the state, who has chosen to have a
13 part of his or her wages or salary contributed to an account in the
14 West Virginia Voluntary Employee Retirement Account Program and who
15 has at least \$1 in an account in the program.

16 "Participating employer" means any nongovernmental employer in
17 West Virginia with no more than one hundred employees in this
18 state, not offering an active retirement plan for employees at the
19 time the employer executed an agreement with the Treasurer to
20 participate in the West Virginia Voluntary Employee Retirement
21 Account Program.

22 "Plan" means a retirement plan created and operated under this
23 article.

24 "Program" means the West Virginia Voluntary Employee Retirement
25 Account Program created under this article.

26 "Treasurer" means the West Virginia State Treasurer.

1 "Trust" means the West Virginia Voluntary Employee Retirement
2 Accounts Trust established under this article.

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

5 The West Virginia Voluntary Employee Retirement Accounts
6 Program is created within the office of the West Virginia State
7 Treasurer under the direction of the Treasurer to provide a
8 cost-effective group retirement plan for nongovernmental employers
9 and employees in West Virginia. The Voluntary Employee Retirement
10 Accounts Program is a body corporate.

11 **§5-10E-4. Liberal construction; compliance.**

12 This article shall be liberally construed so as to provide a
13 tax-qualified retirement program for participating employers and
14 participating employees. The program shall comply with the
15 Internal Revenue Code and other applicable federal and state law.

16 **§5-10E-5. Administration; powers; rules.**

17 (a) The Treasurer shall administer the program and the West
18 Virginia Voluntary Employee Retirement Accounts Trust, created in
19 section seven of this article, shall develop standards and
20 requirements for operation and has all powers necessary to
21 effectuate the purposes of this article and to operate the program
22 and the trust.

23 (b) Notwithstanding any provision of this code to the contrary,
24 including, without limitation, this chapter and chapter five-a of
25 this code, the Treasurer has authority to enter into contracts and

1 execute and deliver instruments, including, without limitation,
2 contracts with participating employers and employees; engage
3 consultants, auditors, counsel, managers, advisors, trustees or any
4 other contractors or professionals; and charge and collect
5 administrative fees.

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

10 **§5-10E-6. Participation.**

11 (a) Nongovernmental employers that employ no more than one
12 hundred employees in this state and that do not offer a currently
13 active retirement program for employees may voluntarily elect to
14 participate in the program and provide their employees with the
15 opportunity to become participating employees. However, nothing in
16 this article requires employers to participate in the program,
17 except as provided in subsection (b) of this section. A
18 participating employer shall comply with all program requirements,
19 including, without limitation, making payroll deductions and
20 remittances as required by the Treasurer. A participating employer
21 may elect to discontinue participation in accordance with program
22 requirements.

23 (b) An employee of a nonparticipating employer in West Virginia
24 may elect to participate and defer a portion of his or her salary
25 to an account under the program in his or her name, and the only
26 requirement of his or her employer is to make payroll deductions

1 and remittances as requested by the employee in writing and as
2 determined by the Treasurer.

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

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

9 (e) A participating employee may increase or decrease the
10 amount of his or her contribution or cease participation at any
11 time within the limitations permitted by the program or the
12 employer upon written notice to the employer and the Treasurer.

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

16 **§5-10E-7. Creation of trust; assignment; investments; not public**
17 **funds.**

18 (a) The West Virginia Voluntary Employee Retirement Trust is
19 created and all funds of participating employees and participating
20 employers shall be held in the trust by the Treasurer for the
21 exclusive benefit of the participating employees, participating
22 employers and their beneficiaries, notwithstanding any other
23 provision of this article or other provision of this code.

24 (b) Neither the participating employee, nor the participating
25 employee's beneficiary or beneficiaries, nor any other designee,
26 may commute, sell, assign, transfer or otherwise convey the right

1 to receive any payments under the program. These payments and
2 rights are nonassignable and nontransferable. Account balances are
3 not subject to attachment, garnishment or execution and, pursuant
4 to section four, article ten, chapter thirty-eight of this code,
5 are exempt from bankruptcy proceedings, except for qualified
6 domestic relations orders, as that term is defined in the Internal
7 Revenue Code and to the extent otherwise required by law.

8 (c) Notwithstanding any provision of this code to the
9 contrary, the Treasurer is authorized to invest funds in the trust
10 in investment products or with financial institutions or other
11 entities selected by the Treasurer.

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

17 **§5-10E-8. Income tax.**

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

23 **§5-10E-9. Fees; administration account; costs payable solely from**
24 **account; reimbursement.**

25 (a) The Treasurer shall assess fees on assets or participating
26 employees to operate the program and repay the amounts advanced

1 from the Unclaimed Property Trust Fund.

2 (b) The Voluntary Employee Retirement Accounts Program
3 Administration Account is created in the accounts of the Treasurer
4 for the purposes of implementing, operating and maintaining the
5 trust and program. The account shall receive all fees assessed and
6 collected by the Treasurer for the program, moneys from the
7 Unclaimed Property Trust Fund and any other moneys made available.

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

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

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

24 (f) Moneys from the Unclaimed Property Trust Fund shall be
25 reimbursed from fees assessed for the administration of the program
26 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
25 program. The Treasurer shall treat the information obtained as
26 confidential and may not disclose the information except to an

1 entity providing goods or services for the program, who shall also
2 treat the information as confidential, or as required by law.

3 **§5-10E-13. Audits.**

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

9 **CHAPTER 36. ESTATES AND PROPERTY.**

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

11 **§36-8-13. Deposit of funds.**

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

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

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

26 (2) Expenses incurred in returning the property to owners,

1 including without limitation the costs of mailing and publication
2 to locate owners;

3 (3) Reasonable service charge; and

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

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

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

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

23 (e) On or before June 1, 2007, the unclaimed property
24 administrator shall transfer the amount of \$2 million from the
25 Unclaimed Property Trust Fund to the Deferred Compensation Matching
26 Fund for operation of the deferred compensation matching program

1 for state employees. On or before June 1, 2008, the unclaimed
2 property administrator shall transfer the amount of \$1 million from
3 the Unclaimed Property Trust Fund to the Deferred Compensation
4 Matching Fund for operation of the matching program.

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

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

18 (h) After transferring any money required by subsections (d)
19 through ~~(f)~~ (g) of this section, the administrator shall transfer
20 moneys remaining in the Unclaimed Property Trust Fund to the
21 General Revenue Fund.

NOTE: The purpose of this bill is to establish the West Virginia Voluntary Employee Retirement Accounts Program. The bill establishes findings. The bill defines terms. The bill provides for liberal construction. The bill requires compliance with federal and state law. The bill provides for plan administration. The bill authorizes the Treasurer to propose rules. The bill establishes participation. The bill requires all federal approvals and filings

be received and made before operations begin. The bill creates a trust. The bill prohibits assignment, except for qualified domestic relations orders. The bill authorizes investments. The bill specifies that the corpus, assets and earnings of trust do not constitute public funds. The bill defers compensation from federal, state and municipal income taxes. The bill authorizes collection of fees. The bill creates administration account. The bill transfers up to \$3 million from the Unclaimed Property Trust Fund to the West Virginia Voluntary Employee Retirement Accounts Program. The bill pays program costs. The bill requires reimbursement to the Unclaimed Property Trust Fund. The bill specifies the state and the Treasurer are not liable for losses or changes in value. The bill specifies certain information is confidential. The bill requires payroll information be provided to the Treasurer. The bill requires audits. The bill provides for the transfer of money from the Unclaimed Property Trust Fund for start-up of the program. The bill provides that the transferred funds be repaid by June 30, 2024.

Article 10E is new; therefore, it has been completely underscored.

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