

Senate Bill No. 488

(By Senators Edgell, Prezioso, Unger, Kirkendoll, Beach, D. Hall,
Miller, Snyder, Wells, Yost, Stollings, Williams and Barnes)

[Introduced February 5, 2014; referred to the Committee on
Pensions; and then to the Committee on 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

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

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

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

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

1 **OFFICES, PROGRAMS, ETC.**

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

4 **§5-10E-1. Findings.**

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

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

1 their employees will provide a simple, cost-effective way for West
2 Virginia workers to save for retirement and for West Virginia
3 employers to offer a much needed employee benefit.

4 **§5-10E-2. Definitions.**

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

8 "Internal Revenue Code" means the Internal Revenue Code of
9 1986, as amended from time to time.

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

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

20 "Participating employee" means any person employed in this
21 state by a nongovernmental employer in West Virginia with no more
22 than one hundred employees in the state, who has chosen to have a
23 part of his or her wages or salary contributed to an account in the

1 West Virginia Voluntary Employee Retirement Account Program and who
2 has at least \$1 in an account in the program.

3 "Participating employer" means any nongovernmental employer in
4 West Virginia with no more than one hundred employees in this
5 state, not offering an active retirement plan for employees at the
6 time the employer executed an agreement with the Treasurer to
7 participate in the West Virginia Voluntary Employee Retirement
8 Account Program.

9 "Plan" means a retirement plan created and operated under this
10 article.

11 "Program" means the West Virginia Voluntary Employee Retirement
12 Account Program created under this article.

13 "Treasurer" means the West Virginia State Treasurer.

14 "Trust" means the West Virginia Voluntary Employee Retirement
15 Accounts Trust established under this article.

16 **§5-10E-3. West Virginia Voluntary Employee Retirement Accounts**
17 **Program created; body corporate.**

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

1 **§5-10E-4. Liberal construction; compliance.**

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

6 **§5-10E-5. Administration; powers; rules.**

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

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

21 (c) The Treasurer may propose rules for legislative approval
22 in accordance with article three, chapter twenty-nine-a of this
23 code as necessary to implement this article, and is authorized to

1 promulgate emergency rules.

2 **§5-10E-6. Participation.**

3 (a) Nongovernmental employers that employ no more than one
4 hundred employees in this state and that do not offer a currently
5 active retirement program for employees may voluntarily elect to
6 participate in the program and provide their employees with the
7 opportunity to become participating employees. However, nothing in
8 this article may be construed as requiring employers to participate
9 in the program, except as provided in subsection (b) of this
10 section. A participating employer shall comply with all program
11 requirements, including, without limitation, making payroll
12 deductions and remittances as required by the Treasurer. A
13 participating employer may elect to discontinue participation in
14 accordance with program requirements.

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

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

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

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

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

11 **§5-10E-7. Creation of trust; assignment; investments; not public**
12 **funds.**

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

19 (b) Neither the participating employee, nor the participating
20 employee's beneficiary or beneficiaries, nor any other designee,
21 may commute, sell, assign, transfer, or otherwise convey the right
22 to receive any payments under the program. These payments and
23 rights are nonassignable and nontransferable. Account balances are

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

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

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

15 **§5-10E-8. Income tax.**

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

21 **§5-10E-9. Fees; administration account; costs payable solely from**
22 **account; reimbursement.**

23 (a) The Treasurer shall assess fees on assets or participating

1 employees to operate the program and repay the amounts advanced
2 from the Unclaimed Property Trust Fund.

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

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

12 (d) 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 shall not exceed \$3 million.

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

1 of the trust.

2 (f) Moneys from the Unclaimed Property Trust Fund shall be
3 reimbursed from fees assessed for the administration of the program
4 and shall be repaid in a timely manner as the program matures and
5 a full accounting made on an annual basis, with the total amount
6 fully reimbursed no later than June 30, 2024.

7 **§5-10E-10. State and Treasurer not liable.**

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

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

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

22 **§5-10E-12. Disclosure of information to the Treasurer for**
23 **operation of the program.**

1 For purposes of this article, an employer with a participating
2 employee shall disclose to the Treasurer any payroll related
3 information the Treasurer determines he or she needs for the
4 operation of the program. Information disclosed pursuant to this
5 section may only be used by the Treasurer for the operation of the
6 program. The Treasurer shall treat the information obtained as
7 confidential and may not disclose the information except to an
8 entity providing goods or services for the program, who shall also
9 treat the information as confidential, or as required by law.

10 **§5-10E-13. Audits.**

11 The Treasurer shall have annual audits of the program
12 conducted, sending copies of the audits to the Governor, members of
13 the legislative Joint Committee on Government and Finance and the
14 Legislative Librarian, and shall publish copies of the audits on
15 the program website.

16 **CHAPTER 36. ESTATES AND PROPERTY.**

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

18 **§36-8-13. Deposit of funds.**

19 (a) The administrator shall record the name and last known
20 address of each person appearing from the holders reports to be
21 entitled to the property and the name and last known address of
22 each insured person or annuitant and beneficiary and with respect
23 to each policy or annuity listed in the report of an insurance

1 company, its number, the name of the company and the amount due.

2 (b) The Unclaimed Property Fund is continued. The
3 administrator shall deposit all funds received pursuant to this
4 article in the Unclaimed Property Fund, including the proceeds from
5 the sale of abandoned property under section twelve of this
6 article. In addition to paying claims of unclaimed property duly
7 allowed, the administrator may deduct the following expenses from
8 the Unclaimed Property Fund:

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

10 (2) Expenses incurred in returning the property to owners,
11 including without limitation the costs of mailing and publication
12 to locate owners;

13 (3) Reasonable service charge; and

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

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

1 Unclaimed Property Fund to the Unclaimed Property Trust Fund.

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

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

10 (e) On or before June 1, 2007, the unclaimed property
11 administrator shall transfer the amount of \$2 million from the
12 Unclaimed Property Trust Fund to the Deferred Compensation Matching
13 Fund for operation of the deferred compensation matching program
14 for state employees. On or before June 1, 2008, the unclaimed
15 property administrator shall transfer the amount of \$1 million from
16 the Unclaimed Property Trust Fund to the Deferred Compensation
17 Matching Fund for operation of the matching program.

18 (f) On or before June 1, 2013, the unclaimed property
19 administrator shall transfer the amount of \$3,631,846.55 from the
20 Unclaimed Property Trust Fund to the Municipal Pensions and
21 Protection Fund for the purpose of satisfying any amounts due as of
22 April 27, 2012 to policemen's and firemen's pension and relief
23 funds in accordance with section fourteen-d, article three, chapter

1 thirty-three of this code.

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

8 ~~(g)~~(h) After transferring any money required by subsections
9 (d) through ~~(f)~~ (g) of this section, the administrator shall
10 transfer moneys remaining in the Unclaimed Property Trust Fund to
11 the 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, strike-throughs and underscoring have been omitted.

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