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**WEST VIRGINIA CODE CHAPTER 5**  
**ARTICLE 10B**

WV Legislature

**§5-10B-1. Legislative purpose.**

The legislative purpose of this enactment is to enable employees of the state, its agencies, counties, municipalities and political subdivisions of such governmental bodies to participate in voluntary deferred compensation plans authorized by the United States Internal Revenue Code as interpreted by the Internal Revenue Service, thereby permitting such employees to obtain the advantages inherent in such plans relative to the income tax treatment of the contributions and disbursements made pursuant to such voluntary income deferment plans. It is further the purpose of this enactment to authorize the establishment of separate plans for the state and its agencies and for counties, municipalities and political subdivisions within the state and to authorize county, municipal and political subdivision employees to participate in the state deferred compensation plan if their employer does not have a plan.

**§5-10B-2. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

(k) "Treasurer" means the state Treasurer.

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

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**§5-10B-3. Powers; contracts; meetings.**

(a) Notwithstanding any provision of this code to the contrary, including, without limitation, this chapter and chapter five-a of this code, the state employer and a public employer have the power necessary or appropriate to carry out the provisions and objectives of this article and to operate the trust, including, without limitation, entering into contracts and executing and delivering instruments; engaging consultants, Auditors, counsel, managers, advisors, trustees or any other contractors or professionals; and charging and collecting administrative fees.

(b) The state employer or any public employer may, by contract, agree with any of its employees to defer and hold in trust any portion of that employee's compensation and may subsequently purchase or acquire from vendors licensed to do business in the State of West Virginia investment products for the purpose of carrying out the objectives of the deferred compensation plan as described in this article.

(c) Employees are authorized to attend meetings called by the state employer or public employer for the purpose of explaining a plan during regular working hours.

**§5-10B-3a. Automatic enrollment.**

(a) Every state employee commencing work on and after July 1, 2007, shall have a minimum of \$10 per pay period of his or her salary deferred to the state deferred compensation plan unless the state employee provides written notice declining to participate in accordance with the Treasurer's guidelines: *Provided*, That temporary employees and employees of the Higher Education Policy Commission, the Council for Community and Technical College Education, and the state's public institutions of higher education are exempt from the requirement in this section.

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

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

**§5-10B-4. Responsibility for implementing plans -- Payroll reductions -- Billing and administration.**

(a) The responsibility for implementing the deferred compensation plan for employees of the state employer shall be delegated to the board of trustees through June 30, 2006. On July 1, 2006, the Treasurer shall manage any deferred compensation plan for state employees. Any and all records, moneys, contracts, property and other matters involving deferred compensation plans for state employees shall transfer on July 1, 2006, to the Treasurer.

(b) The responsibility for implementing the deferred compensation plan for employees of a public employer is delegated to the county commission of a county, the governing body of a municipality, as that term is defined in section two, article one, chapter eight of this code, and, in the case of any other political subdivision, the board, commission or other similar body responsible for determining the policy of such political subdivision. A county commission or a governing body of another public employer may request the Treasurer authorize its employees to participate in the state plan instead of implementing its own plan.

(c) If the governing body has adopted more than one plan, an employee electing to participate shall also elect the plan or plans in which he or she desires to participate. When a public employer has not implemented a plan, its employees may participate in the state plan.

(d) Payroll reductions shall be remitted as specified by the state employer or public employer for deposit in the trust, in each instance, by the appropriate payroll officer. The board of trustees, the Treasurer or appropriately designated local officer, board or committee of deferred compensation plan may contract with one or more vendors to provide consolidated billing and all or any other goods and services needed for a plan.

(e) Plans shall operate without cost to or contribution from the state employer or public employer except for the incidental expense of administering the payroll salary reductions and the remittance thereof.

(f) The state employer and the public employers may charge fees on plan contributions, total assets, total return or other selected method as necessary to provide for the administrative expenses of a plan.

**§5-10B-5. Investment of funds.**

Notwithstanding any other provision of law to the contrary, the board, or the Treasurer beginning July 1, 2006, as well as the appropriate local officer, board or committee, designated as responsible for implementing a deferred compensation plan, is hereby authorized to invest compensation held pursuant to a deferred compensation plan in investment products.

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**§5-10B-6. Program supplemental.**

The deferred compensation plan or plans established pursuant to this article shall exist and serve in addition to other retirement, pension or benefit systems established by the state employer and any public employer. The deferred compensation plan or plans established by this article shall not supersede, make inoperative or reduce any benefits provided by the consolidated retirement system or programs established by the state employer or any public employer, or any other retirement, pension or benefit program established by law for the benefit of employees.

**§5-10B-7. Other benefits unaffected by deferred compensation plan.**

Notwithstanding any other provision of law to the contrary, any compensation deferred under this article shall be considered part of an employee's compensation for purposes of any other employee retirement, pension or benefit program. No deferral of compensation under any deferred compensation plan shall effect a reduction of any retirement, pension or other benefit program provided by law.

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**§5-10B-8. Federal and state income tax.**

Notwithstanding any other provision of this article or any other provision of law to the contrary, any compensation deferred under any deferred compensation plan shall not be subject to any federal, state or municipal income tax nor shall any amount of compensation deferred be included for the purposes of computation of any such income tax withheld on behalf of any employee.

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**§5-10B-9. Liabilities of State of West Virginia or political subdivisions.**

The state employer and the public employers shall not incur any liability for losses suffered or change in value of an investment product. The financial liability of the state employer or public employer under any deferred compensation plan shall be limited in each instance to amounts paid over to the trust but not invested.

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**§5-10B-10. Deferred compensation plan funds held in trust.**

(a) Notwithstanding anything herein to the contrary, as of January 1, 1998, all assets and income of all deferred compensation plans created or administered pursuant to this article shall be held in trust for the exclusive benefit of participants and their beneficiaries.

(b) The West Virginia Deferred Compensation Trust Fund is created within the accounts held by the Treasurer or with one or more financial institutions, vendors or any other entities selected by the Treasurer for the purpose of managing and investing the trust. A public employer managing a trust shall create a trust fund and select one or more financial institutions, vendors or other entities to hold the trust.

(c) The corpus, assets and earnings of the trust do not constitute public funds of the state or public employer and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the state employer or a public employer in connection with a plan does not create or constitute a debt, but is solely an obligation of the trust.

**§5-10B-10a. Matching contribution program.**

(a) For a period commencing July 1, 2007, and continuing through September 30, 2012, the Treasurer is authorized to establish and operate a savings incentive program pursuant to section 401(a) of the Internal Revenue Code of 1986, as amended, in which a state employee participating in the deferred compensation plan authorized in this article may receive certain matching contributions pursuant to this section. The Treasurer shall establish matching program guidelines in accordance with this article.

(b) To qualify for participation in the matching program, a state employee shall have contributed to his or her deferred compensation account not less than \$10 every pay period during a fiscal year.

(c) (1) Subject to the limitations provided by subdivision (2) of this subsection and subsections (e) and (f) of this section, the Treasurer shall allocate and credit a matching sum of up to twenty-five percent of the contributions a qualified state employee made to his or her deferred compensation account during a fiscal year for a period of up to five fiscal years, which contributions shall be at least \$10 in every pay period during the fiscal year and which matching contributions for any employee shall not exceed \$100 in any one fiscal year and \$400 total over the life of the matching program.

(2) The Treasurer shall set the amount of funds a qualified state employee may receive as a match in accordance with this section in an amount not to exceed the amount of funds authorized by the Legislature for this purpose.

(d) The matching contribution shall be remitted annually by the Treasurer from the West Virginia Deferred Compensation Matching Fund, which is hereby created, to the employee's account in the West Virginia Deferred Compensation Trust Fund no later than September 30, each year for the prior fiscal year.

(e) The Treasurer shall not obligate, authorize or pay any match for which funds are not available in the West Virginia Deferred Compensation Matching Fund.

(f) Operation of the matching program is contingent upon funding made available by the West Virginia Legislature and may be changed or discontinued at any time for a time certain or indefinitely, as determined by the Legislature or the Treasurer. The maximum amount of funds that may be expended from the Deferred Compensation Matching Fund in any one fiscal year is \$1 million.

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

(h) Moneys in the Deferred Compensation Matching Fund may be invested, in whole or in part, with the West Virginia Board of Treasury Investments or any other entity the Treasurer

selects and all earnings shall accrue to and be retained by the fund.

(i) The State of West Virginia, the Treasurer and his or her employees, agents and representatives shall not be liable for any losses incurred by the Deferred Compensation Matching Fund.

(j) Any moneys remaining in the Deferred Compensation Matching Fund at the termination of the matching program shall be transferred to the General Revenue Fund of the state no later than December 31, 2012.

(k) Any public employer may elect to operate its own matching program.

**§5-10B-11. Deferred Compensation Administrative Account.**

The Deferred Compensation Administrative Account is created in the accounts of the Treasurer for the purposes of implementing, operating and maintaining the trust and plan. The account shall receive all fees charged and collected by the Treasurer under this article.

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**§5-10B-12. Confidential information exempt from disclosure.**

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

**§5-10B-12a. Disclosure of information to the Treasurer for operation of the plan.**

For purposes of this article, any person or entity with information pertaining to an employee participating in the state plan shall disclose to the Treasurer any payroll related information the Treasurer determines he or she needs for the operation of the state deferred compensation plan. Disclosure of the information shall begin upon enactment of this section on a schedule and under arrangements required by the Treasurer. Information disclosed pursuant to this section shall be used by the Treasurer only for the operation of the state plan. The Treasurer shall treat the information obtained as confidential and shall not disclose the information except to a vendor providing goods or services for the plan, who shall also treat the information as confidential, or as required by law.

**§5-10B-13. Moneys not subject to legal process; qualified domestic relations orders.**

No account, benefit or right, created pursuant to this article, accrued or accruing, is subject to execution, garnishment, attachment, sale to satisfy a judgment or order, the operation of bankruptcy or insolvency laws, or other process of law and shall be unassignable, except that accounts, benefits and contributions under the plan are subject to "qualified domestic relations orders" as that term is defined in Internal Revenue Code §414(p).

**§5-10B-14. Roth accounts.**

The Treasurer or any public employer may authorize Roth accounts within the plan in accordance with the Internal Revenue Code, including, without limitation, conversions, deferrals, rollovers and transfers.

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