WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 538

(By Senator CHAFIN, ET AL.)

PASSED: March 10, 2006

In Effect 90 days from Passage
ENROLLED

Senate Bill No. 538

(By Senators Chafin, Helmick and Love)

[Passed March 10, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §5-10B-1, §5-10B-2, §5-10B-3, §5-10B-4, §5-10B-5, §5-10B-9 and §5-10B-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §5-10B-11, §5-10B-12 and §5-10B-13, all relating to government employees' deferred compensation plans; transferring responsibility for the State Employee Deferred Compensation Plan to the State Treasurer on the first day of July, two thousand six; authorizing political subdivisions without plans to request the Treasurer include its employees in the state plan; allowing political subdivision employees to participate in the state plan; allowing political subdivision employees to participate in the state plan when their employer does not offer a plan; clarifying various powers and requirements; authorizing employees to attend meetings called by the state or public employer during regular working hours to explain the plan; authorizing the state and public employers to charge fees for plan administration; clarifying liability; establishing trust fund and administrative account in the State Treasury; providing that information that would tend to disclose the
identity of a participating employee is exempt from disclosure under the Freedom of Information Act; and protecting the moneys from certain legal processes.

Be it enacted by the Legislature of West Virginia:

That §5-10B-1, §5-10B-2, §5-10B-3, §5-10B-4, §5-10B-5, §5-10B-9 and §5-10B-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §5-10B-11, §5-10B-12 and §5-10B-13, all to read as follows:

ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.

§5-10B-1. Legislative purpose.

1 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 deferral 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.

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

3 (a) "Board" means the Consolidated Public Retirement Board provided for in article ten of this chapter.
(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) "Employee" means any person, whether appointed, elected or under contract, providing services for the state employer or public employer for which compensation is paid.

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

(g) "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.

(h) "Public 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 (d)(1), but which do not meet the definition of "state employer" as used in this article.
(i) "State employer" means the State of West Virginia, which includes every state board, commission, agency and instrumentality.

(j) "Treasurer" means the State Treasurer.

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

§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-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 the thirtieth day of June, two thousand six. On the first day of
July, two thousand six, 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 the first day of July, two thousand six, 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 the first day of July, two thousand six, 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.

§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.

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

(a) Notwithstanding anything herein to the contrary, as of the first day of January, one thousand nine hundred ninety-eight, 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-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.

§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-13. Moneys not subject to legal process.

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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 31st Day of March, 2006.

Governor