WEST VIRGINIA CODE CHAPTER 12 ARTICLE 5

WV Legislature

§12-5-1. Securities defined.

The term "securities" when used in this article shall include all bonds, securities, debentures, notes or other evidences of indebtedness, and for purposes of this chapter all cash received by any state spending unit intended to serve as security for a legal obligation, whether pursuant to court order or otherwise.

WV Legislature

§12-5-2. Treasurer custodian of securities; charges to companies for care, exchange and substitution of securities.

(a) The treasurer of this state, unless otherwise expressly provided by law, shall be custodian of all securities required by law to be deposited with the state or held in legal custody by the state, and all departments of this state, commissioners or agents of the state, who hold any such securities, shall transfer and deliver the same to the State Treasurer to be kept and held by him as legal custodian thereof until released in the manner provided by law: Provided, That the State Treasurer shall establish a list of which securities shall be acceptable securities and notify all state agencies of the contents of that list: Provided, however, That the provisions of this subsection shall not apply to the Investment Management Board.

(b) The treasurer may by formal order of record fix fair and reasonable charges for the care, custody, exchange and substitution of securities deposited by insurance companies and companies issuing annuity contracts. The treasurer shall collect the charges from the companies and shall deposit the collections in the General Revenue Fund: Provided, That no charge shall be made against any company depositing securities of the par value of less than $300,000.

WV Legislature

§12-5-3. Legislative Auditor to examine and list securities.

Before July 1, 2001 and at least every two fiscal years thereafter, the Legislative Auditor shall examine and list all of the securities in the custody of the State Treasurer. A copy of the list so examined and certified shall be transmitted to the State Treasurer and the Department of Administration.

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§12-5-4. Treasurer to keep accounts and make collections.

The Treasurer shall keep an accurate account of all securities received by him or her and collect and account for earnings received and the principal whenever it is due.

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§12-5-5. Protection and handling of securities.

(a) The noncash securities retained in the treasury shall be kept in a vault. The treasurer shall use due diligence in protecting the securities against loss from any cause. The treasurer shall designate certain employees to take special care of the securities. Only the treasurer and the designated employees may have access to the securities, and at least two of these persons shall be present whenever the securities are handled in any manner. The treasurer may contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities. The contract shall prescribe the rules for the handling and protection of the securities.

(b) The "Treasurer's Safekeeping Fund" is established in the State Treasury. The treasurer shall deposit moneys received pursuant to this article in the Treasurer's Safekeeping Fund. The treasurer is authorized to invest the money in accordance with this code and the restrictions placed on the money, with earnings accruing to the moneys in the fund. The treasurer shall prescribe the forms and procedures for processing the moneys.

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§12-5-6. When notes deemed securities; appraisal.

(a) Whenever, by statute of this state, any public official, board, commission or department of this state is charged with the approval of securities required as collateral for the deposit of public or other funds, or required to be deposited with the State Treasurer, or an investment of capital or surplus or a reserve or other fund, is required to be maintained consisting of designated securities deposited with the State Treasurer, the securities shall, at the discretion of that public official, board, commission or department, include and mean notes executed by the person or corporation required to make the deposit. The securities shall be made payable to the State of West Virginia upon demand, or in the event of the person or corporation, for the benefit of those for whom the securities are deposited, when the notes are secured by duly executed deeds of trust on improved, unencumbered real property located in the state and owned by the person or corporation executing the notes, the deeds of trust to be approved by the Attorney General of the state as to sufficiency of form and manner of execution and accompanied by proper abstracts of title and fire insurance policies equal to the amounts of the notes and recorded among the land records of the county in which the real property is located. Whenever any note so secured by a deed of trust on real property owned by any person or corporation is approved by any public official, board, commission or department of this state, the real property shall have an appraised value of at least thirty per centum more than the amount of the note. The value of the property shall be determined by an appraisal of two landowners, who are citizens of this state and generally recognized as experienced real estate appraisers, appointed by the public official, board, commission or department, charged with the approval of the securities. The expenses of the appraisal are to be borne by the person or corporation required to make the deposit, and each unit of that real property shall have an appraised value of at least $50,000.

For purposes of this section, "improved real property" means all real property within the limits of an incorporated city or town on which permanent buildings suitable for residential, industrial or commercial use are located.

For purposes of this section, real property shall not be deemed to be encumbered by reason of the existence of instruments reserving rights-of-way, sewer rights and rights in walls, nor by reason of building restrictions or other restrictive covenants, nor by reason of the fact that it, or any part thereof, is subject to lease under which rents or profits are reserved to the owner: Provided, That the deed of trust for such investment is a full and unrestricted first lien upon the property.

(b) Any public official, board, commission or department of this state charged with the approval of securities required to be deposited in accordance with this section, shall, at least annually and more often if deemed proper, appoint a disinterested person or persons, not exceeding three, to make an examination and appraisal of the securities deposited to determine if those securities meet the requirements of the law of this state. The cost of that examination and appraisal and expenses shall be borne by the person or corporation required to make the deposits as security: Provided, That the total cost and expenses shall

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not be less than $10 nor more than $25 per diem for each person conducting the examination.

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§12-5-7. Treasurer as financial advisor; selection of necessary parties; employment of bond counsel.

Unless otherwise specifically provided by law, the treasurer may select or serve as financial advisor for all bonds, notes, certificates of participation, certificate transactions and all other forms of securities and indebtedness issued by the state through its departments, commissions, boards or agencies after July 1, 1997. Unless otherwise specifically provided by law, the Governor shall coordinate the issuance of all bonds issued by the state and its departments, commissions, boards and agencies, through the Department of Administration and the Governor shall select all other necessary parties, including, but not limited to, bond, disclosure or other counsel, underwriters, trustee, verification agent and any other professionals necessary to effectuate the issuance of the bonds: Provided, That this section shall not apply to the Housing Development Fund created pursuant to article eighteen, chapter thirty-one of this code; and the hospital finance authority created pursuant to article twenty-nine-a, chapter sixteen of this code; the West Virginia economic development authority created pursuant to article fifteen, chapter thirty-one of this code; the West Virginia Parkways, Economic Development and Tourism Authority created pursuant to article sixteen-a, chapter seventeen of this code; the West Virginia public energy authority created pursuant to article one, chapter five-d of this code; the West Virginia solid waste management board created pursuant to article three, chapter twenty-two-c of this code; the West Virginia water development authority created pursuant to article one, chapter twenty-two-c of this code; the infrastructure and jobs development council created pursuant to article fifteen-a, chapter thirty-one of this code; the School Building Authority created pursuant to article nine-d, chapter eighteen of this code; and the governing boards of higher education: Provided, however, That these entities shall be governed by those provisions of law specifically designating financial and other professional counsel and personnel for bond issuances. All selections of professionals shall be competitive, but the bidding shall not be required to comply with the provisions of article three, chapter five-a of this code.

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