WEST VIRGINIA CODE: §12-6-9A

§12-6-9a. Trust indenture.

The provisions of the trust indenture entered into by the Governor on July 1, 1996, with the West Virginia trust fund, inc., acting as the trustee, are superseded by the following provisions:

(a) The board shall continue to hold each of the participant plans specified by this article in a separate irrevocable trust as trustee pursuant to the terms and provisions set forth in this section and with the earnings and losses accounted for and charged individually to each participant plan and trust: Provided: That the board shall be authorized to invest the assets held in each participant plan in any investment fund even though the board may also invest non-401(a) moneys in the investment fund. Participant plans, each declared by this section to be held in a separate irrevocable trust, include, but are not limited to, the following and any other plans that may be added to this section or otherwise designated by the Legislature from time to time:

(1) The public employees' retirement system;

(2) The teachers' retirement system;

(3) The West Virginia state police retirement system;

(4) The death, disability and retirement fund of the division of public safety;

(5) The judges' retirement system;

(6) The deputy sheriffs' retirement system;

(7) The pneumoconiosis fund;

(8) The workers' compensation fund; and

(9) The wildlife endowment fund.

(b) The Legislature hereby reserves the following rights and powers:

(1) The right by supplemental agreement to amend, modify or alter the terms of the trusts established by this section without consent of the trustee, or any beneficiary, except that no amendment to a trust which holds any 401(a) plan moneys may be made which allows at any time for any part of the corpus or income (other than the part that is required to pay taxes and administration expenses) to be used for, or diverted to, purposes other than for the exclusive benefit of the employees or their beneficiaries in accordance with the requirements of section 401(a)(2) of the Internal Revenue Code, as it may be amended from

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time to time; and

(2) The right to request and receive additional information from the trustee at any time.

(c) In the administration of the trusts created by this article, the trustee has the following powers:

(1) To purchase, retain, hold, transfer and exchange and to sell, at public or private sale, the whole or any part of the trust estate upon such terms and conditions as it considers advisable;

(2) To invest and reinvest the trust estate or any part of the trust estate, in any kind of property, real or personal, including, but not limited to, mortgage or mortgage participations, common stocks, preferred stocks, common trust funds, investment funds established by the board, bonds, notes or other securities, notwithstanding the provisions of articles five and six, chapter forty-four of this code;

(3) To carry the securities and other property held in trust either in the name of the trustee or in the name of its nominee;

(4) To vote, in person or by proxy, all securities held in trust, to join in or to dissent from and oppose the reorganization, recapitalization, consolidation, merger, liquidation or sale of corporations or property; to exchange securities for other securities issued in connection with or resulting from any transaction; to pay any assessment or expense which the trustee considers advisable for the protection of its interest as holder of the securities; to deposit securities in any voting trust or with any protective or like committee or with a trustee depository; to exercise any option appurtenant to any securities for the conversion of any securities into other securities; and to exercise or sell any rights issued upon or with respect to the securities of any corporation, all upon terms the trustee considers advisable;

(5) To prosecute, defend, compromise, arbitrate or otherwise adjust or settle claims in favor of or against the trustee or other trust estate;

(6) To employ and pay from the trusts legal and investment counsel, brokers and any other assistants and agents the trustee considers advisable; and

(7) To develop, implement and modify an asset allocation plan for each participant plan. The asset allocation plans shall be implemented within the management and investment of the individual trusts.

(d) All trust income shall be free from anticipation, alienation, assignment or pledge by, and free from attachment, execution, appropriation or control by or on behalf of, any and all creditors of any beneficiary by any proceeding at law, in equity, in bankruptcy or insolvency.

(e) Notwithstanding any other provision of this article, in the case of a trust which holds any 401(a) plan's money, it is impermissible at any time for any part of the corpus or income to

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be (within the taxable year or thereafter) used for, or diverted to, purposes other than the exclusive benefit of the employees and their beneficiaries in accordance with the requirements of section 401(a)(2) of the Internal Revenue Code, as it may be amended from time to time.

(f) The trustee may receive any other property, real or personal, tangible or intangible, of any kind whatsoever, that may be granted, conveyed, assigned, transferred, devised, bequeathed or made payable to the applicable trust and all the properties shall be held, managed, invested and administered by the trustee as provided in this article.

(g) The trustee shall promptly cause to be paid to the state from the applicable trust the amounts certified by the governor as necessary for the monthly payment of benefits to the beneficiaries of the trust.

(h) The trustee shall render an annual accounting to the governor not more than one hundred twenty days following the close of the fiscal year of each trust.

(i) No trust shall be invalid by reason of any existing law or rule against perpetuities or against accumulations or against restraints upon the power of alienation, but each trust shall continue for the time necessary to accomplish the purposes for which it is established.

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