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**WEST VIRGINIA CODE CHAPTER 12**  
**ARTICLE 6**

WV Legislature

**§12-6-1. Purposes and objects; how article cited.**

This article, which may be cited as the "West Virginia Investment Management Act", is enacted to modernize the procedures for the investment of funds of the state and its political subdivisions for the purpose of increasing the investment return of those funds.

WV Legislature

**§12-6-1a. Legislative findings.**

(a) The Legislature hereby finds and declares that all the public employees covered by the Public Employees Retirement System, the Teachers Retirement System, the West Virginia State Police Retirement System, the Death, Disability and Retirement Fund of the Division of Public Safety, the Judges' Retirement System and the Deputy Sheriffs Retirement System should benefit from a prudent and conscientious staff of financial professionals dedicated to the administration, investment and management of those employees and employers financial contributions and that an independent board and staff should be immune to changing political climates and should provide a stable and continuous source of professional financial investment and management.

(b) The Legislature finds and declares that teachers and other public employees throughout the state are experiencing economic difficulty and that in order to reduce this economic hardship on these dedicated public employees and to help foster sound financial practices, the West Virginia Investment Management Board may develop, implement and maintain an efficient and modern system for the investment and management of the state's money, except those moneys managed in accordance with article six-c of this chapter. The Legislature further finds that in order to implement these sound fiscal policies, the West Virginia Investment Management Board shall operate as an independent board with its own full-time staff of financial professionals, immune to changing political climates, in order to provide a stable and continuous source of professional financial management.

(c) The Legislature hereby finds and declares further that experience has demonstrated that prudent investment provides diversification and beneficial return not only for public employees but for all citizens of the state and that in order to have access to this sound fiscal policy, public employee and employer contributions to the 401(a) plans are declared to be made to an irrevocable trust on behalf of each plan, available for no use or purpose other than for the benefit of those public employees.

(d) The Legislature hereby finds and declares further that the Workers' Compensation Fund and Coal-Workers' Pneumoconiosis Fund are trust funds to be used exclusively for those workers, miners and their beneficiaries who have sacrificed their health in the performance of their jobs and further finds that the assets available to pay awarded benefits should be prudently invested so that awards may be paid.

(e) The Legislature hereby finds and declares further that an independent public body corporate with appropriate governance is the best means of assuring prudent financial management of these funds under rapidly changing market conditions and regulations.

(f) The Legislature hereby finds and declares further that in accomplishing this purpose, the West Virginia Investment Management Board, created and established by this article, is acting in all respects for the benefit of the state's public employees and ultimately the citizens of the state and the West Virginia Investment Management Board may act as trustee of the irrevocable trusts created by this article and to manage and invest other state funds.

(g) The Legislature hereby finds and declares further that the standard of care and prudence applied to trustees, the conduct of the affairs of the irrevocable trusts created by this article and the investment of other state funds is intended to be that applied to the investment of funds as described in the "Uniform Prudent Investor Act" codified as article six-c, chapter forty-four of this code and as described in section eleven of this article.

(h) The Legislature further finds and declares that the West Virginia Supreme Court of Appeals declared the West Virginia Trust Fund Act unconstitutional in its decision rendered on the March 28, 1997, to the extent that it authorized investments in corporate stock, but the court also recognized that there were other permissible constitutional purposes of the West Virginia Trust Fund Act and that it is the role of the Legislature to determine those purposes consistent with the court's decision and the Constitution of West Virginia.

(i) The Legislature hereby further finds and declares that it is in the best interests of the state and its citizens to create a new investment management board in order to: (1) Be in full compliance with the provisions of the Constitution of West Virginia; and (2) protect all existing legal and equitable rights of persons who have entered into contractual relationships with the West Virginia Board of Investments and the West Virginia Trust Fund.

**§12-6-2. Definitions.**

As used in this article, unless a different meaning clearly appears from the context:

- (1) "Beneficiaries" means those individuals entitled to benefits from the participant plans;
- (2) "Board" means the governing body for the West Virginia Investment Management Board and any reference elsewhere in this code to Board of Investments or West Virginia Trust Fund means the board as defined in this subdivision;
- (3) "401(a) plan" means a plan which is described in Section 401(a) of the Internal Revenue Code of 1986, as amended, and with respect to which the board has been designated to hold assets of the plan in trust pursuant to the provisions of section nine-a of this article;
- (4) "Local government funds" means the moneys of a political subdivision, including policemen's pension and relief funds, firemen's pension and relief funds and volunteer fire departments, transferred to the board for deposit;
- (5) "Participant plan" means any plan or fund subject now or hereafter to subsection (a), section nine-a of this article;
- (6) "Political subdivision" means and includes a county, municipality or any agency, authority, board, county board of education, commission or instrumentality of a county or municipality and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;
- (7) "Trustee" means any member serving on the West Virginia Investment Management Board: Provided, That in section nine-a of this article in which the terms of the trusts are set forth, "trustee" means the West Virginia Investment Management Board;
- (8) "Securities" means all forms and types of investments, financial instruments or financial transactions which may be considered prudent for investment by the board under section eleven of this article; and
- (9) "State funds" means all moneys of the state which may be lawfully invested except the "school fund" established by section four, article XII of the State Constitution.

**§12-6-3. West Virginia investment management board continued; body corporate; trust fund board; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; annual and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.**

(a) There is hereby continued the West Virginia investment management board. The board is created as a public body corporate and established to provide prudent fiscal administration, investment and management for the funds of the participant plans and any other funds managed by the board.

(b) The board shall be governed by a board of trustees, consisting of thirteen members:

(1) Nominations made to the West Virginia trust fund board and the West Virginia board of investments shall remain in effect and are hereby specifically reauthorized and those members shall be members of the investment management board and shall serve out the remainder of their respective terms subject to the advice and consent of the Senate: Provided, That prior appointments which have been confirmed by the Senate are hereby specifically reauthorized without further action of the Senate.

(2) Any appointment is effective immediately upon appointment by the governor with respect to voting, constituting a quorum, receiving compensation and expenses and all other rights and privileges of the trustee position. All appointees shall have experience in pension management, institutional management or financial markets and one trustee shall be an attorney experienced in finance and investment matters and one trustee shall be a certified public accountant.

(3) The governor, the state auditor and the state treasurer or their designees shall serve as members of the board. They shall serve by virtue of their office and are not entitled to compensation under the provisions of this article. The governor, the auditor and the treasurer or their designees are subject to all duties, responsibilities and requirements of the provisions of this article, including, but not limited to, the provisions of subsections (e) and (f), section four of this article.

(c) At the end of each trustee's term, the governor may reappoint or appoint a successor who shall serve for a term ending on the thirty-first day of January in the sixth year following the year of his or her appointment: Provided, That for all terms ending in the year two thousand one, two appointments shall be for two-year terms; two appointments shall be for three-year terms; one shall be for a four-year term; and two shall be for six-year terms. Except for vacancy appointments made pursuant to subsection (d) of this section, all subsequent appointments shall be for terms ending on the thirty-first day of January in the sixth year following the year of appointment. No more than six of the ten appointed trustees may belong to the same political party.

(d) In the event of a vacancy among the trustees, an appointment shall be made by the

governor to fill the unexpired term.

(e) The governor may remove any trustee, other than trustees who serve by virtue of their elective office, in case of gross negligence or misfeasance and may declare that position vacant and may appoint a person for the vacancy as provided in subsection (d) of this section.

(f) Each trustee, other than those enumerated in subsection (b), subdivision (3) of this section, is entitled to receive and, at the trustee's option, the board shall pay to the trustee compensation in the amount of \$5,000 per year and additional compensation in the amount of \$500 per meeting attended by the trustee in excess of the four quarterly meetings required by this section. In addition, all trustees shall receive reasonable and necessary expenses actually incurred in discharging trustee duties pursuant to this article.

(g) The board shall meet quarterly and may include in its bylaws procedures for the calling and holding of additional meetings. For any quarterly or additional meeting in which the board shall review or modify its securities list or its investment objectives pursuant to subsection (f), section twelve of this article, the board shall give ten days' notice in writing to the designated representative of each participant plan selected pursuant to subdivision (1), subsection (i) of this section and the meeting shall be open to the members and beneficiaries of the participant plans for that portion of the meeting in which the board undertakes the review or modification.

(h) The board shall hold an annual meeting before the start of the fiscal year. The annual meeting may also serve as a quarterly meeting. The annual meeting shall be open to the public and the board shall receive oral and written comments from representatives, members and beneficiaries of the participant plans and from other citizens of the state. At the annual meeting, the board shall adopt a fee schedule and a budget reflecting fee structures for the year.

(i) Pursuant to subsection (j) of this section, the board shall meet with committees representing the participant plans to discuss the board's drafting, reviewing or modifying the written investment policy of the trust with respect to that committee's participant plan pursuant to section twelve of this article. Representatives and committees shall be designated as follows:

(1) The West Virginia consolidated public retirement board shall promulgate procedural rules by which each 401(a) plan for which the board is trustee, shall designate an individual representative of each 401(a) plan and the West Virginia workers' compensation commission shall promulgate procedural rules by which the pneumoconiosis fund and the workers' compensation fund shall designate an individual representative of each fund.

(2) On or before the first day of June of each year, the consolidated public retirement board shall submit in writing to the board the names of the six designated representatives of the 401(a) plans and the workers' compensation commission shall submit the names of the two

representatives.

(3) Each designated representative shall provide to the board his or her current address, updated each year on or before the first day of July, to which address the board shall provide notice of meetings of the board pursuant to subsection (g) of this section.

(4) Each designated representative shall submit in writing to the board on or before the first day of July of each year the names of no more than three persons comprising a committee representing the beneficiaries of that representative's participant plan.

(j) At its annual meeting, the board shall meet with each of the seven committees, formed pursuant to subdivision (1), subsection (i) of this section, for the purpose of receiving input from the committees regarding the board's drafting, reviewing or modifying its written investment policy statement for investment of the funds of the participant plans. In developing the investment policy statement, the trustees shall receive each committee's stated objectives and policies regarding the risk tolerances and return expectations of each participant plan, with attention to the factors enumerated in section twelve of this article, in order to provide for the continuing financial security of the trusts and the participant plans. The board may meet with the committees or any of them at its quarterly and additional meetings for the same purpose.

(k) All meetings of the board shall be open to the representatives of the participant plans as appointed pursuant to subdivision (1), subsection (i) of this section. The representatives are subject to any rules, bylaws, guidelines, requirements and standards promulgated by the board. The representatives shall observe standards of decorum established by the board. The representatives are subject to the same code of conduct applicable to the trustees and are subject to all board rules and bylaws. The representatives are also subject to any requirements of confidentiality applicable to the trustees. Each representative is liable for any act which he or she undertakes which violates any rule, bylaw or statute governing ethical standards, confidentiality or other standard of conduct imposed upon the trustees or the representatives. Any meeting of the board may be closed, upon adoption of a motion by any trustee, when necessary to preserve the attorney-client privilege, to protect the privacy interests of individuals, to review personnel matters or to maintain confidentiality when confidentiality is in the best interest of the beneficiaries of the trusts.

**§12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.**

(a) The management and control of the board shall be vested solely in the trustees in accordance with the provisions of this article.

(b) The State Treasurer shall be the chairman of the board and the trustees shall elect a vice chairman who may not be a constitutional officer or his or her designee to serve for a term of two years. Effective with any vacancy in the vice chairmanship, the board shall elect a vice chairman to a new two-year term. The vice chairman shall preside at all meetings in the absence of the chairman. Annually, the trustees shall elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the board.

(c) (1) The chairman of the board shall appoint a chief executive officer of the board, subject to board approval. The chief executive officer shall serve in his or her position until one of the following occur:

(A) A new chief executive officer of the board is appointed and approved by the board;

(B) The chief executive officer resigns from his or her position; or

(C) The chief executive officer is removed from his or her position by the board.

(2) The chairman of the board may appoint a temporary chief executive officer of the board, without board approval, to fill a vacancy in the position of chief executive officer for a period of time not to exceed six months.

(3) The chief executive officer shall have five years' experience in investment management with public or private funds within the 10 years next preceding the date of appointment. The chief executive officer additionally shall have academic degrees, professional designations, and other investment management or investment oversight or institutional investment experience in a combination the trustees consider necessary to carry out the responsibilities of the chief executive officer position as defined by the trustees. The trustees shall fix the duties and compensation of the chief executive officer.

(d) The trustees shall retain an internal auditor to report directly to the trustees and shall fix his or her compensation. The internal auditor shall be a certified public accountant with at least three years' experience as an auditor. The internal auditor shall develop an internal audit plan, with board approval, for the testing of procedures and the security of transactions.

(e) The board shall procure and maintain in effect commercially customary property, liability, crime, and other insurance to cover risks of loss from its operations. The types and amounts of the insurance coverages shall be determined by the board, from time to time, in its reasonable discretion, with reference to the types and amounts of insurance coverages purchased or maintained by other public institutions performing functions similar to those

performed by the board: *Provided*, That the board shall purchase a blanket bond for the faithful performance of its duties in the amount of at least \$10 million. The board may require that appropriate types and amounts of insurance be procured and maintained by, or a fiduciary or surety bond from a surety company qualified to do business in this state for, any person who has charge of, or access to, any securities, funds, or other moneys held by the board and the amount of the fiduciary or surety bond shall be fixed by the board. The premiums payable on any insurance or fiduciary or surety bonds that the board may require, from time to time, shall be an expense of the board. In connection with the duties of the board under this subsection, the board may establish, fund, and maintain a self-insurance account. If established, the board shall deposit and maintain moneys in the self-insurance account in amounts as may be determined by the board in consultation with one or more qualified insurance or actuarial consultants, and all moneys in any self-insurance account may be used only for the purpose of providing self-insurance, establishing reserves in connection with insurance deductibles, self-insured retentions, or self-insurance, or helping to defray the costs of insurance procured under this subsection, and for no other purpose. The board may procure any and all insurance coverages and bonds deemed appropriate by the board or required by the provisions of this article, either through the state Board of Risk and Insurance Management or in the commercial markets, in the discretion of the board.

(f) The trustees and employees of the board are not liable personally, either jointly or severally, for any debt or obligation created by the board: *Provided*, That the trustees and employees of the board are liable for acts of misfeasance or gross negligence.

(g) The board is exempt from the provisions of §12-3-7, §12-3-11, and §5A-3-1 *et seq.* of this code: *Provided*, That the trustees and employees of the board are subject to purchasing policies and procedures which shall be promulgated by the board. The purchasing policies and procedures may be promulgated as emergency rules pursuant to §29A-3-15 of this code.

(h) The amendments to this section adopted during the 2024 regular session of the Legislature are effective July 1, 2025.

**§12-6-5. Powers of the board.**

The board may exercise all powers necessary or appropriate, in accordance with the provisions of the West Virginia Uniform Prudent Investor Act, codified as article six-c, chapter forty-four of this code and section eleven of this article, to carry out and effectuate its corporate purposes, including, but not limited to, the power to:

- (1) Adopt and use a common seal and alter it at pleasure;
- (2) Sue and be sued;
- (3) Enter into contracts and execute and deliver instruments;
- (4) Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;
- (5) Promulgate and enforce bylaws and rules for the management and conduct of its affairs;
- (6) Notwithstanding any other provision of law, retain and employ legal, accounting, financial and investment advisors and consultants;
- (7) Acquire (by purchase, gift or otherwise), hold, exchange, pledge, lend and sell or otherwise dispose of securities and invest funds in interest earning deposits and in any other lawful investments;
- (8) Maintain accounts with banks, securities dealers and financial institutions both within and outside this state;
- (9) Engage in financial transactions whereby securities are purchased by the board under an agreement providing for the resale of the securities to the original seller at a stated price;
- (10) Engage in financial transactions whereby securities held by the board are sold under an agreement providing for the repurchase of the securities by the board at a stated price;
- (11) Consolidate and manage moneys, securities and other assets of the other funds and accounts of the state and the moneys of political subdivisions which may be made available to it under the provisions of this article;
- (12) Enter into agreements with political subdivisions of the state whereby moneys of the political subdivisions are invested on their behalf by the board;
- (13) Charge and collect administrative fees from political subdivisions for its services;
- (14) Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management of the investment securities;
- (15) Contract with one or more banking institutions in or outside the state for the custody,

safekeeping and management of securities held by the board;

(16) Make and, from time to time, amend and repeal bylaws, rules and procedures consistent with the provisions of this article;

(17) Hire its own employees, consultants, managers and advisors as it considers necessary and fix their compensation and prescribe their duties;

(18) Develop, implement and maintain its own banking accounts and investments;

(19) Do all things necessary to implement and operate the board and carry out the intent of this article;

(20) Upon request of the State Treasurer, transmit funds for deposit in the State Treasury to meet the daily obligations of state government;

(21) Establish one or more investment funds for the purpose of investing the funds for which it is trustee, custodian or otherwise authorized to invest pursuant to this article. Interests in each fund shall be designated as units and the board shall adopt industry standard accounting procedures to determine each fund's unit value. The securities in each investment fund are the property of the board and each fund shall be considered an investment pool or fund and may not be considered a trust nor may the securities of the various investment funds be considered held in trust. However, units in an investment fund established by or sold by the board and the proceeds from the sale or redemption of any unit may be held by the board in its role as trustee of the participant plans; and

(22) Notwithstanding any other provision of the code to the contrary, conduct investment transactions, including purchases, sales, redemptions and income collections, which shall not be treated by the State Auditor as recordable transactions on the state's accounting system.

**§12-6-5a. Legislative findings and limitation on certain board actions.**

(a) The Legislature hereby finds and declares that, during the period beginning August 1, 1984, and ending on January 31, 1989, certain overapportionments or overpayments of interest earnings were made by the board of investments to local government participants in the consolidated investment fund local government account.

The Legislature also finds and declares that said participants were not at fault for any losses incurred by the consolidated fund during the aforesaid period, and that the participants were justified in accepting and using the overapportionments or overpayments of interest earnings credited to their accounts.

The Legislature further finds and declares that attempts by the board of investments, the state or any other state officer or agency to recover the overapportionments or overpayments would harm the public good and create economic hardship for local governments, and, therefore, said overapportionments or overpayments ought not to be subject to recovery by the board or any other state officer or agency.

(b) Neither the state, the board of investments nor any other state officer or agency may expend any funds or permit any personnel to seek, or attempt to recover, from participants in the consolidated fund local government account any moneys received by such participants solely as a result of erroneous allocation of interest earnings to the participants' account during the period of time beginning August 1, 1984, and ending on January 31, 1989, unless authorized to do so by enactment of a separate and specific statute.

(c) This section shall not apply to any attempt by the board, the state or any other state officer or agency to recover moneys due for any other reason.

**§12-6-6. Annual audits; reports and information to constitutional and legislative officers, council of finance and administration, consolidated public retirement board, workers' compensation fund and coal-workers' pneumoconiosis fund; statements and reports open for inspection.**

(a) The board shall cause an annual financial and compliance audit of the assets managed by the board to be made by a certified public accounting firm which has a minimum staff of ten certified public accountants and which is a member of the American institute of certified public accountants and, if doing business in West Virginia, a member of the West Virginia society of certified public accountants. The financial and compliance audit shall be made of the board's books, accounts and records with respect to its receipts, disbursements, investments, contracts and all other matters relating to its financial operations. Copies of the audit report shall be furnished to the governor, state treasurer, state auditor, president of the Senate, speaker of the House of Delegates, council of finance and administration and consolidated public retirement board.

(b) The board shall produce monthly financial statements for the assets managed by the board and cause them to be delivered to each member of the board and the executive secretary of the consolidated public retirement board as established in sections one and two, article ten-d, chapter five of this code and to the executive director of the workers' compensation commission as administrator of the workers' compensation fund and coal-workers' pneumoconiosis fund as provided in section one-b, article one, chapter twenty-three of this code and section one, article three of said chapter and section seven, article four-b of said chapter.

(c) The board shall deliver in each quarter to the council of finance and administration and the consolidated public retirement board a report detailing the investment performance of the 401(a) plans.

(d) The board shall cause an annual audit of the reported returns of the assets managed by the board to be made by an investment consulting or a certified public accounting firm meeting the criteria set out in subsection (a) of this section. The board shall furnish copies of the audit report to the governor, state treasurer, state auditor, president of the Senate, speaker of the House of Delegates, council of finance and administration and consolidated public retirement board.

(e) The board shall provide any other information requested in writing by the council of finance and administration.

(f) All statements and reports with respect to participant plans required in this section shall be available for inspection by the members and beneficiaries and designated representatives of the participant plans.

**§12-6-7. Legal status of agencies and boards continued.**

Except as otherwise provided in this article, every state agency or board shall continue to have all of the powers and shall exercise all of the functions and duties vested in or imposed upon it by law, as to any fund, and shall continue to be constituted as provided by existing law.

WV Legislature

**§12-6-8. Investment funds established; management thereof.**

(a) There is continued a special investment fund designated as the Consolidated Fund. Effective June 30, 2005, the power and authority of the board as to the consolidated fund terminates. On July 1, 2005, the board shall transfer the consolidated fund, all moneys, obligations, assets, securities and other investments of the consolidated fund and all records, properties and any other document or item pertaining to the consolidated fund in its possession or under its control to the West Virginia Board of Treasury Investments established in article six-c of this chapter.

(b) Each board, commission, department, official or agency charged with the administration of state funds may request the State Treasurer to make moneys available to the board for investment.

(c) Each political subdivision of this state through its treasurer or equivalent financial officer may enter into agreements with the State Treasurer for the investment of moneys of the political subdivision. Any political subdivision may enter into an agreement with a state spending unit from which it receives funds to request transfer of the funds to their investment account with the Investment Management Board or the West Virginia Board of Treasury Investments.

(d) Moneys held in the various funds and accounts administered by the board shall be invested as permitted by this article and subject to the restrictions contained in this article. The board shall report the earnings on the various funds under management to the State Treasurer at the times determined by the State Treasurer. The board shall also establish rules for the administration of the various funds and accounts established by this section as it considers necessary for the administration of the funds and accounts, including, but not limited to: (1) The specification of amounts which may be deposited in any fund or account and minimum periods of time for which deposits will be retained; and (2) creation of reserves for losses: Provided, That in the event any moneys made available to the board may not lawfully be combined for investment or deposited in the consolidated funds established by this section, the board may create special accounts and may administer and invest those moneys in accordance with the restrictions specially applicable to those moneys.

(e) Notwithstanding any provision of this code to the contrary, the funds, pools and securities maintained or invested in by the board in accordance with this article are authorized investments for all local government funds.

**§12-6-9. Fees for service.**

The board may charge fees, which may be subtracted from the total return, for the reasonable and necessary expenses incurred by the investment management board in rendering services. All fees which are dedicated or identified or readily identifiable to an entity, plan or fund shall be charged to that entity, plan or fund and all other fees shall be charged as a percentage of assets under management. At its annual meeting, the board shall adopt a fee schedule and a budget reflecting fee structures.

**§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 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 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.

**§12-6-9b.**

Repealed.

Acts, 1996 Reg. Sess., Ch. 258.

WV Legislature

**§12-6-9c. Authorization of additional investments.**

Notwithstanding the restrictions which may otherwise be provided by law with respect to the investment of funds, all administrators, custodians or trustees of pension funds other than the board, each political subdivision of this state and each county board of education may invest funds in the securities of or any other interest in any investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. §80a, the portfolio of which is limited: (i) To obligations issued by or guaranteed as to the payment of both principal and interest by the United States of America or its agencies or instrumentalities; and (ii) to repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities: Provided, That the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian: Provided, however, That the investment company or investment trust is rated within one of the top two rating categories of any nationally recognized rating service such as Moody's or Standard & Poor's.

**§12-6-9d.**

Repealed.

Acts, 1996 Reg. Sess., Ch. 258.

WV Legislature

**§12-6-9e. Legislative findings; loans for industrial development; availability of funds and interest rates.**

(a) The Legislature hereby finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state; that a business and industrial development loan program provides for economic growth and stimulation within the state; that loans from pools established in the consolidated fund will assist in providing the needed capital to assist business and industrial development; and that time constraints relating to business and industrial development projects prohibit duplicative review by both the board and the West Virginia economic development authority board. The Legislature further finds and declares that an investment in the West Virginia enterprise capital fund, LLC, of moneys in the consolidated fund as hereinafter provided will assist in creating jobs and businesses within the state and providing the needed risk capital to assist business and industrial development. This section is enacted in view of these findings.

(b) The board shall make available, subject to cash availability, in the form of a revolving loan, up to \$175,000,000 from the consolidated fund to loan the West Virginia economic development authority for business or industrial development projects authorized by section seven, article fifteen, chapter thirty-one of this code and to consolidate existing loans authorized to be made to the West Virginia economic development authority pursuant to this section and pursuant to section twenty, article fifteen, chapter thirty-one of this code which authorizes a \$150,000,000 revolving loan, and article eighteen-b, chapter thirty-one of this code which authorizes a \$50,000,000 investment pool: Provided, That the West Virginia economic development authority may not loan more than \$15,000,000 for any one business or industrial development project. The revolving loan authorized by this subsection must be secured by one note at a variable interest rate equal to the twelve-month average of the board's yield on its cash liquidity pool. The rate must be set on the first day of July and the rate must be adjusted annually on the same date. The maximum annual adjustment may not exceed one percent. Monthly payments made by the West Virginia economic development authority to the board must be calculated on a one hundred twenty-month amortization. The revolving loan must be secured by a security interest that pledges and assigns the cash proceeds of collateral from all loans under this revolving loan pool. The West Virginia economic development authority may also pledge as collateral certain revenue streams from other revolving loan pools which source of funds does not originate from federal sources or from the board.

The outstanding principal balance of the revolving loan from the board to the West Virginia economic development authority may at no time exceed one hundred three percent of the aggregate outstanding principal balance of the business and industrial loans from the West Virginia economic development authority to economic development projects funded from this revolving loan pool. This provision must be certified annually by an independent audit of the West Virginia economic development authority financial records.

(c) The interest rates and maturity dates on the loans made by the West Virginia economic development authority for business and industrial development projects authorized by

section seven, article fifteen, chapter thirty-one of this code must be at competitive rates and maturities as determined by the West Virginia economic development authority board.

(d) Any and all outstanding loans made by the board, or any predecessor entity, to the West Virginia economic development authority must be refunded by proceeds of the revolving loan contained in this section and no loans may be made hereafter by the board to the West Virginia economic development authority pursuant to section twenty, article fifteen, chapter thirty-one of this code or article eighteen-b of said chapter.

(e) The trustees of the board bear no fiduciary responsibility as provided in section eleven of this article with specific regard to the revolving loan contemplated in this section.

(f) Subject to cash availability, the board shall make available to the West Virginia economic development authority from the consolidated fund a nonrecourse loan in an amount up to \$25,000,000, for the purpose of the West Virginia economic development authority making a loan or loans from time to time to the West Virginia enterprise advancement corporation, an affiliated nonprofit corporation of the West Virginia economic development authority. The respective loans authorized by this subsection by the board to the West Virginia economic development authority and by the West Virginia economic development authority to the West Virginia enterprise advancement corporation must each be evidenced by one note and must each bear interest at the rate of three percent per annum. The proceeds of any and all loans made by the West Virginia economic development authority to the West Virginia enterprise advancement corporation pursuant to this subsection must be invested by the West Virginia enterprise advancement corporation in the West Virginia enterprise capital fund, LLC, the manager of which is the West Virginia enterprise advancement corporation. The loan to West Virginia economic development authority authorized by this subsection must be nonrevolving, and advances thereunder must be made at times and in amounts as may be requested or directed by the West Virginia economic development authority, upon reasonable notice to the board, the loan authorized by this subsection is not subject to or included in the limitations set forth in subsection (b) of this section with respect to the \$15,000,000 limitation for any one business or industrial development project and limitation of one hundred three percent of outstanding loans, and may not be included in the revolving fund loan principal balance for purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized by this subsection to the West Virginia economic development authority must be classified by the board as a long-term, fixed income investment, must bear interest on the outstanding principal balance thereof at the rate of three percent per annum payable annually on or before the thirtieth day of June of each year, and the principal of which must be repaid no later than June 30, 2020, in annual installments due on or before June 30 of each year, which annual installments must commence no later than June 30, 2003, in annual principal amounts as may be agreed upon between the board and the West Virginia economic development authority, and which annual installments need not be equal. The loan authorized by this subsection must be nonrecourse and must be payable by the West Virginia economic development authority solely from amounts or returns received by the West Virginia economic development authority in respect of the loan authorized by this subsection to the West Virginia enterprise advancement

corporation, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which the board must have a security interest to secure repayment of the loan to the West Virginia economic development authority authorized by this subsection. Any and all loans from the West Virginia economic development authority to the West Virginia enterprise advancement corporation made pursuant to this subsection must also bear interest on the outstanding principal balance thereof at the rate of three percent per annum payable annually on or before the thirtieth day of June of each year, must be nonrecourse and must be payable by the West Virginia enterprise advancement corporation solely from amounts of returns received by the West Virginia enterprise advancement corporation in respect of its investment in the West Virginia enterprise capital fund, LLC, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which the board must have a security interest to secure repayment of the loan to the West Virginia economic development authority authorized by this subsection. In the event the amounts or returns received by the West Virginia enterprise advancement corporation in respect of its investment in the West Virginia enterprise capital fund, LLC, are not adequate to pay when due the principal or interest installments, or both, with respect to the loan from the West Virginia economic development authority and, as a result thereof, the West Virginia economic development authority is unable to pay the principal or interest installments, or both, with respect to the loan authorized by this subsection by the board to the West Virginia economic development authority, the principal or interest, or both, as the case may be due on the loan made to the West Virginia economic development authority pursuant to this subsection must be deferred, and any and all of these past-due principal and interest payments must promptly be paid to the fullest extent possible upon receipt by the West Virginia enterprise advancement corporation of moneys in respect of its investments in the West Virginia enterprise capital fund, LLC. The trustees or the board bear no fiduciary responsibility as provided in section eleven of this article with regard to the loan authorized by this subsection.

**§12-6-9f.**

Repealed.

Acts, 1996 Reg. Sess., Ch. 258.

WV Legislature

**§12-6-9g.**

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

WV Legislature

**§12-6-9h. Securities handling.**

In financial transactions whereby securities are purchased by the board under an agreement providing for the resale of such securities to the original seller at a stated price, the board shall take physical possession of the securities, directly, by its custodian bank or through a neutral third party: Provided, That an agreement with a neutral third party may not waive liability for the handling of the securities: Provided, however, That when the board is unable to take possession, directly, by its custodian bank or through a mutual third party, the board may leave securities in a segregated account with the original seller, provided the amount of the securities with any one seller may not exceed \$150 million.

**§12-6-10.**

Repealed.

Acts, 2005 Reg. Sess., Ch. 190.

WV Legislature

**§12-6-11. Standard of care and investment requirements; disclosure of information.**

(a) Any investments made under this article shall be made in accordance with the provisions of the Uniform Prudent Investor Act codified as article six-c, chapter forty-four of this code and is further subject to the following requirements:

(1) Trustees shall discharge their duties with respect to the 401(a) plans for the exclusive purpose of providing benefits to participants and their beneficiaries;

(2) Trustees shall diversify fund investment so as to minimize the risk of large losses unless, under the circumstances, it is clearly prudent not to do so;

(3) Trustees shall defray reasonable expenses of investing and operating the funds under management;

(4) Trustees shall discharge their duties in accordance with the documents and instruments governing the trusts or other funds under management insofar as the documents and instruments are consistent with the provisions of this article;

(5) Trustees, at the annual meeting required in subsection (h), section three of this article, shall review, establish and modify, if necessary, the investment objectives of the individual participant plans as incorporated in the investment policy statements of the respective trusts so as to provide for the financial security of the trust funds giving consideration to the following:

(A) Preservation of capital;

(B) Diversification;

(C) Risk tolerance;

(D) Rate of return;

(E) Stability;

(F) Turnover;

(G) Liquidity; and

(H) Reasonable cost of fees;

(6) The board may invest in a private real estate fund, a private equity fund or a hedge fund only if the investment satisfies the following conditions:

(A) A professional, third-party fiduciary investment adviser registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940, as amended, recommends the investment;

(B) The board or a committee designated by the board approves the investment;

(C) The board's ownership interest in the fund will be less than forty percent of the fund's assets at the time of acquisition; (D) The combined investment of institutional investors, other public sector entities and educational institutions and their endowments and foundations in the fund is equal to or greater than fifty percent of the board's total investment in the fund at the time of acquisition; and

(E) The largest investment of such fund is not greater than forty percent of the fund's assets at the time of acquisition; and

(7) The total assets of the private real estate fund, private equity fund or hedge fund shall be used in calculating the percentage requirements and limitations set forth in subdivision (6) of this subsection without regard to any particular investment vehicle in which assets may be held pending investment.

(b) If the standard confidentiality agreements, policies or procedures of any firm, company or organization through which the board invests in securities prohibit, restrict or limit the disclosure of information pertaining to the securities, the information is exempt from disclosure, under the provisions of chapter twenty-nine-b of this code or otherwise, to the extent of the prohibitions, restrictions or limitations.

(c) The duties of the board apply only with respect to those assets deposited with or otherwise held by it.

**§12-6-11a. Standard of care for shareholder voting; restrictions and requirements.**

(a) Definitions. – For the purposes of this section:

(1) "Beneficiaries" refers to the entities or individuals entitled to benefit from an investment or pool of investments held, administered, or managed by the board pursuant to this code.

(2) "Direct holdings" means all publicly traded securities of a company that are held directly by the board in an actively managed account or fund, when the board owns all shares or interests in said actively managed account or fund.

(3) "Fiduciary" refers to a fund manager or other entity that the board authorizes or otherwise entrusts to cast shareholder votes, by proxy or otherwise, on behalf of the board or the beneficiaries.

(4) "Indirect holdings" means all securities of a company that are held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the board, when the board owns shares or interests together with other investors or that are held in an account or fund.

(5) "Pecuniary factor" means a factor that has a direct and material effect on the financial risk or financial return to beneficiaries based on appropriate investment horizons consistent with an investment pool's objectives and funding policy. Environmental, social, corporate governance, or other similarly oriented considerations are not pecuniary factors, unless a prudent investor would determine that such a consideration directly and materially affects the financial risk or financial return to beneficiaries based on appropriate investment horizons consistent with an investment pool's objectives and funding policy. Any factor that does not meet the definition of "pecuniary factor" according to this subdivision is a "non-pecuniary factor".

(6) "Pecuniary interests" means the interests of minimizing financial risk and maximizing financial return to beneficiaries. Any interest that does not meet the definition of "pecuniary interests" is a "non-pecuniary interest".

(7) "Proxy vote" means a shareholder vote cast by a fiduciary on behalf of the shareholder.

(8) "Proxy voting choice options" refers to options offered by fiduciaries, which allow shareholders with indirect holdings to:

(A) Directly vote and transmit proxy votes;

(B) Select a third-party proxy voting policy and direct the fiduciary to cast proxy votes according to said policy;

(C) Direct proxy votes on individual resolutions or companies; or

(D) Otherwise exercise control over how proxy votes are cast.

(9) "Shareholder votes" refers to all shareholder votes that the board is authorized to cast or to entrust a fiduciary to cast, by proxy or otherwise, on behalf of the board with respect to shares in securities held directly or indirectly by the board.

(b) Applicability. - The requirements of this section apply to all investments and pools of investments that the board is authorized to hold, administer, or manage pursuant to this code.

(c) Standard of Care. - Consistent with the requirements of §12-6-11 and §44-6C-1 *et seq.* of this code, all shareholder votes must be cast solely in the pecuniary interests of the beneficiaries, based on a consideration of only pecuniary factors. The board may not cast, nor authorize a fiduciary to cast, any shareholder vote for the purpose of furthering non-pecuniary interests.

(d) Direct holdings. - The following restrictions and requirements apply to the board's direct holdings:

(1) The board may not adopt a practice or policy of casting shareholder votes or authorizing a fiduciary to cast shareholder votes according to the recommendations of a proxy advisory firm or other similar service provider unless such firm or service provider commits, in writing, to make all shareholder voting recommendations to the board or the board's fiduciary according to the standard of care established in subsection (c) of this section.

(2) The board may not entrust fund assets to a fiduciary, unless the fiduciary commits, in writing, to cast all shareholder votes according to the standard of care established in subsection (c) of this section.

(3) As a term of any contract with a fiduciary, the board shall require the fiduciary to provide advance notice to the board of any shareholder vote concerning non-pecuniary interests and to provide the board with a reasonable opportunity to instruct the fiduciary, in writing, how the vote must be cast.

(4) A fiduciary is prohibited from casting any shareholder vote for the purpose of furthering non-pecuniary interests.

(e) Indirect holdings. - The board shall deliver a letter to the fiduciary managing each investment fund in which the board has indirect holdings, inquiring whether the fiduciary offers proxy voting choice options that are available to the board. If the fiduciary offers proxy voting choice options, the board shall exercise those options according to the standard of care established in subsection (c) of this section. Nothing in this section requires the board to divest from any private market funds or from indirect holdings in actively or passively managed investment funds.

(f) Reporting. -

(1) The board shall produce an annual report tabulating and describing all shareholder votes cast by the board or the board's fiduciaries.

(2) For each shareholder vote cast during a calendar year, the report required by this subsection shall contain a vote caption, the board's or the fiduciary's vote, the recommendation of company management, and, if applicable, the proxy advisor or other service provider's recommendation.

(3) The board shall publish the report required by this subsection on the board's website no later than March 1 of the calendar year following the calendar year addressed in the report.

(g) Waiver after reasonable efforts. -

(1) If the board is unable to comply with the provisions of subsection (d) of this section without significantly increasing costs or limiting the quality of investment options or services available to the board, the board may waive the requirements of said subsection with regard to a particular fiduciary, upon a finding that:

(A) The board has made reasonable and good faith efforts to obtain fiduciary services meeting the requirements of subsection (d) of this section and has included said requirements in the board's minimum selection criteria for said services;

(B) Based on objective information available to the board, the cost of fiduciary services appears significantly higher than the fiduciary services available to similarly situated boards or funds not subject to similar requirements, or the quality of fiduciary services or investment options appears significantly lower than the quality of fiduciary services available to similarly situated boards or funds not subject to similar requirements; and

(C) The board determines that waiving subsection (d) of this section is clearly in the best pecuniary interests of the relevant fund's or funds' beneficiaries.

(2) A waiver authorized by this section must be adopted by a majority vote of board members serving at the time the vote is taken.

(h) Effective date. - The requirements of this section are effective July 1, 2024.

**§12-6-12.**

Repealed.

Acts, 2014 Reg. Sess., Ch. 148.

WV Legislature

**§12-6-13. Board as agency for investments; exceptions.**

All duties vested by law in any agency, commission, official or other board of the state relating to the investment of moneys, and the acquisition, sale, exchange or disposal of securities or any other investment are hereby transferred to the Board: Provided, That neither this section nor any other section of this article applies to the duties vested by law in any agency, commission, official or other board of the state relating to the investment of moneys and the acquisition, sale, exchange or disposal of securities or any other investment by the West Virginia Board of Treasury Investments pursuant to article six-c of this chapter, to the Board of the School Fund or to the School Fund established by section 4, article XII of the State Constitution: Provided, however, That funds under the control of the Municipal Bond Commission may, in the discretion of the Commission, be made available to the Board for investment by the Commission as provided in article three, chapter thirteen of this code.

**§12-6-14. Reports of board; legislative audits, reviews and studies.**

- (a) The board shall prepare annually, or more frequently if considered necessary by the board, a report of its operations and the performance of the various funds administered by it. The report shall include all operational costs, including, but not limited to, investment advisor fees, transaction costs, custody fees, and administrative salaries and costs.
- (b) A copy shall be furnished to the chief financial officer of each participant.
- (c) Within the first seven calendar days of each calendar year, the board shall file the annual report with the Joint Committee on Government and Finance, with copies to the President of the Senate, Speaker of the House and Legislative Auditor.
- (d) Upon request, the report shall be made available to any legislative committee, any banking institution or state or federal savings and loan association in this state and any member of the news media. The report shall be kept available for inspection by any citizen of this state.
- (e) The board shall cooperate with any legislative audits, performance and consultant reviews and studies of the board as may be directed by the Joint Committee on Government and Finance.

**§12-6-15.**

Repealed.

Acts, 2005 Reg. Sess., Ch. 190.

WV Legislature

**§12-6-16. Existing investments.**

The board shall be vested with ownership of all securities or other investments lawfully held by the board of investments or the West Virginia trust fund as of the effective date of this article. All obligations and assets of the board of investments and the West Virginia trust fund, inc., shall be vested in the West Virginia investment management board as of the effective date of this article.

WV Legislature

**§12-6-17. Severability of provisions.**

If any provision of this article, or the applicability thereof to any person or circumstance, is held invalid, the remainder of this article and the applicability thereof and of such provision to other persons or circumstances shall not be affected thereby.

WV Legislature

**§12-6-18. Liberal construction.**

This article, being necessary to secure the public health, safety, convenience and welfare of the citizens of this state, shall be liberally construed to effect the public purposes of this article. The powers granted to the board in this article, including, without limitation, those granted in section five of this article, are intended to be broad and shall be construed broadly so as to vest in the board the power and authority necessary or appropriate to carry out and effectuate its corporate purposes in the financial markets of the world, as the same may evolve, from time to time, at all times in a fashion consistent with the prudent investor standard as provided by the West Virginia Uniform Prudent Investor Act, codified as article six-c, chapter forty-four of this code and section eleven of this article.

**§12-6-19. Authorization for loans by the board.**

(a) The board, upon request of the state building commission, shall transfer moneys as a loan to the state building commission in an amount not to exceed in the aggregate \$21,000,000 for the purposes of financing or refinancing the projects specified in subsections (b) and (d), section eight, article six, chapter five of this code. The money borrowed shall bear interest during the term of the loan at a fixed rate not to exceed the interest rate on treasury notes, bills or bonds of the same term as the term of the loan the week of closing on the loan as reported by the treasury of the United States. Loans made under this subsection shall be repaid in regular monthly or semiannual payments, or as funds are made available by the budget office of department of administration, and shall be paid in full not later than twenty-five years from the date the loans are made with terms and conditions mutually agreed upon by the state building commission and the investment management board.

(b) The state investment management board shall upon request of the state building commission transfer moneys as a loan to the state building commission in an amount not to exceed in the aggregate \$137,000,000 for the purposes of financing construction of regional jails, correctional facilities or building extensions or improvements to regional jails and correctional facilities. Prior to the expenditure of any loan proceeds, the regional jail and correctional facility authority shall certify a list of projects to the state building commission and the joint committee on government and finance that shall be funded from loan proceeds. This certified list cannot thereafter be altered or amended other than by legislative enactment. The state building commission shall borrow money as needed by the regional jail and correctional facility authority. The investment management board shall transfer loan proceeds to the authority for expenditure. The money borrowed shall bear interest during the term of the loan at a fixed rate not to exceed the interest rate on treasury notes, bills or bonds of the same term as the term of the loan the week of closing on the loan as reported by the treasury of the United States.

(c) The regional jail and correctional facility authority shall expend the loan proceeds received under the provisions of subsection (b) of this section to proceed with the projects included in the letter submitted to the joint committee on government and finance dated January 15, 1997: Provided, That the letter shall not be construed to prioritize any project or projects which are included in the letter: Provided, however, That the authority may also expend loan proceeds for any expansion to any existing regional jail or any expansion to a regional jail under construction upon the effective date of this section.

(d) Loans made under this section for the projects specified in subsection (b) of this section and in subsection (d), section eight, article six, chapter five of this code, shall be repaid in annual payments of not less than \$12,000,000 per year by appropriation of the Legislature to the board. The amount transferred for loans under subsection (a) or (b) of this section shall not exceed that amount which the board determines is reasonable given the cash flow needs of the consolidated fund. The board shall make transfers for loans first for the project specified in subsection (d), section eight, article six, chapter five of this code, second for the projects specified in subsection (b) of this section and third for projects specified in

subsection (b), section eight, article six, chapter five of this code, which are in imminent danger of default in payment. The board shall take the steps necessary to increase the liquidity of the consolidated fund over a period of the next five years to allow for the loans provided in this section without increasing the risk of loss in the consolidated fund.

WV Legislature

**§12-6-20. Continuation of board.**

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

**§12-6-21. Investment with regional jail and correctional facility authority.**

(a) The Legislature finds and declares:

(1) That the supreme court of appeals has determined and ordered that the constitution of this state imposes a duty on behalf of the state to make significant improvements in the jail and correctional facility system, including the duty to make capital improvements to facilities and to pay for the cost of those improvements;

(2) That construction of capital improvements requires that the cost of the facilities be financed over time; that capital improvements cannot be funded out of the current year appropriations of the Legislature; and that section fifty-one, article six of the constitution prohibits the Legislature amending the budget bill so as to create a deficit;

(3) That while the supreme court of appeals is empowered to interpret the laws, including the constitution of the state, section one, article ten of the constitution grants to the Legislature the power of taxation; section fifty-one, article six of the constitution grants to the Legislature the power of appropriation; and section one, article five of the constitution prohibits any branch of government from exercising powers properly belonging to another;

(4) That the enacting of new taxes, or the diversion of revenues from other essential departments and functions of government, in order to support capital improvements in jails and correctional facilities, is not in the interests of the people of the state represented in the Legislature, and is specifically rejected by the Legislature in its exercise of its legitimate constitutional powers;

(5) That the decision of the supreme court of appeals, imposing a duty on the state to construct and pay for capital improvements to jails and correctional facilities arising out of the Bill of Rights of the United States constitution declared ratified in the year 1791, and the state constitution of the year 1863, constitutes a prior liability of the state within the meaning of section four, article ten of the constitution and an exception to the constitutional limitation on contracting state debt;

(6) That the construction of capital improvements of jail and correctional facilities may be funded through funds available for investment through the West Virginia investment management board, invested in such a manner as to be assured as high a rate of return as would be earned if these funds were otherwise invested, and repaid by the state as provided in this article.

(b) The investment management board shall upon request of the regional jail and correctional facility authority transfer moneys as an investment, from funds available for investment from the public employees retirement system, to the regional jail and correctional facility authority. The amount transferred may not exceed \$150,000,000 in the aggregate and shall be used for the purposes of financing construction of regional jails, correctional facilities, juvenile detention facilities, juvenile correctional facilities, or

extensions, renovations, improvements or additions thereto, or for the replacement or renovation of existing facilities. If the board has loaned money to the state building commission under subsection (b), section nineteen of this article, the total amount loaned shall be repaid to the board from funds made available under the investment made pursuant to this section. Prior to the expenditure of any of the funds, the regional jail and correctional facility authority shall certify to the joint committee on government and finance a list of projects that are to be funded from the invested funds. This certified list may not thereafter be altered or amended other than by legislative enactment. Funds shall be invested with the regional jail and correctional facility authority as requested by the regional jail and correctional facility authority. The money invested shall earn a return at a rate equal to the annualized rate of return earned by the core fixed-income portfolio of the public employees retirement system over the previous five years, plus one tenth of one percent: Provided, That in all events this rate of return may not be less than five percent per annum. The monthly rate of return shall be calculated every quarter. The manner and timing of the investment shall be determined by the board. The total of the amounts invested may not exceed a total of \$150,000,000 during fiscal year 1998, and fiscal year 1999, cumulatively. The authority to make the investment authorized by this section expires on June 30, 1999.

(c) There is created in the state treasury a regional jail and correctional facility investment fund dedicated to the payment of investment earnings and the return of capital invested under this section. The treasurer shall administer the fund. The fund is an interest-bearing account with interest earned credited to and deposited back into the fund. The fund consists of amounts required to be deposited by section fourteen, article three, chapter thirty-three of this code.

(d) The treasurer shall, monthly, transfer amounts from the regional jail and correctional facility investment fund to the board that are sufficient to allow investment earnings to be paid and the capital invested returned in substantially equal amounts by August 31, 2023: Provided, That the amount of investment earnings paid and the capital invested returned during the fiscal year beginning July 1, 1998, may not exceed \$10,000,000. Payment representing investment earnings and the return of capital invested shall begin six months from the date the initial funds are invested, or by January 10, 1999, whichever is later.

(e) The board shall calculate the amount of the projected annual investment earnings to be paid and the capital invested to be returned and certify the amount to the treasurer on the first day of December of each year, until all investment earnings are paid and the total capital invested is returned. (f) As a condition precedent to the transfer and investment of moneys by the investment management board pursuant to subsection (b) of this section, either the investment management board or the regional jail and correctional authority shall have first caused a judicial determination to be made by an appropriate action initiated in the West Virginia supreme court of appeals regarding the transfer of moneys by the investment management board to the regional jail and correctional facility authority as an investment from funds available for investment from the public employees retirement system, and to otherwise determine the constitutionality of the provisions of Enrolled House Bill 4702, as enacted by the Legislature in the year 1998. This judicial determination shall be

brought as soon as practicable, but not later than thirty days following the effective date of the amendments to this section made by the Legislature in the year 1998.

(g) The Legislature recognizes the fiduciary liability and responsibility imposed on the board by this article and by article six, chapter forty-four of this code. The board, its trustees and employees, have no liability, either personally or corporately with respect to the investment provided for in this section and the loans made under section nineteen of this article, if the investment and loans are made in accordance with the respective provisions of this section and section nineteen of this article.

(h) The regional jail and correctional facility authority shall expend the funds invested under the provisions of this section to proceed with the projects identified pursuant to subsection (b) of this section.

(i) The regional jail and correctional facility authority may return the total remaining capital invested upon thirty days written notice to the board and at the time of such return shall pay the investment earnings accrued to the return date.