WEST VIRGINIA CODE CHAPTER 12 ARTICLE 6C

WV Legislature

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

This article, cited as the West Virginia Treasury Investments Act, is enacted to provide for the investment and management of the Consolidated Fund for the purposes of making state moneys more accessible to state government and allowing the Investment Management Board to focus on long-term investment of the trust estates it manages pursuant to article six of this chapter.

WV Legislature

§12-6C-2. Legislative findings.

(a) The Legislature finds and declares that the Consolidated Fund should benefit from financial professionals dedicated to and focused on the sound administration, investment and management of the Fund.

(b) The Legislature finds and declares that the State Treasurer currently enters into agreements on behalf of the West Virginia Investment Management Board with political subdivisions and provides reporting services for participants in the Consolidated Fund.

(c) The Legislature finds and declares that the transfer of the Consolidated Fund to the West Virginia Board of Treasury Investments will allow for management of the fund within state government and will encourage better cash management of state moneys.

(d) The Legislature finds and declares that a public body corporate within state government with appropriate governance is the best means of assuring reasonable access to and prudent management and investment of the Consolidated Fund.

(e) The Legislature finds and declares that in accomplishing these purposes, the West Virginia Board of Treasury Investments is acting in all respects for the benefit of the citizens of the state in managing and investing the Consolidated Fund.

(f) The Legislature further finds and declares that it is in the best interests of the state, its citizens and the political subdivisions to create the West Virginia Board of Treasury Investments to manage and invest the Consolidated Fund to: (1) Provide focused investment services for the operating funds of the state and of its political subdivisions; (2) provide better management of all state funds within state government; and (3) allow the West Virginia Investment Management Board to focus on the long-term investment of the trust estates it manages pursuant to article six of this chapter.

WV Legislature

§12-6C-3. Definitions.

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

(1) "Board" means the governing body for the West Virginia Board of Treasury Investments. References in this code to the entity investing the moneys of the Consolidated Fund, to the West Virginia Board of Investments, to the West Virginia Trust Fund or to the West Virginia Investment Management Board in connection with investing moneys in the Consolidated Fund means the Board as defined in this subdivision;

(2) "Consolidated fund" means the investment fund continued in section six of this article and transferred to the Board by the West Virginia Investment Management Board for Management and Investment;

(3) "Director" means any member serving on the Board;

(4) "Local government funds" means the moneys of a political subdivision, including policemen's and firemen's pension and relief funds, and volunteer fire department funds, transferred to the Board for deposit;

(5) "Participant" means any state government spending unit or political subdivision which transfers moneys to the Board for investment;

(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) "Securities" means all bonds, notes, debentures or other evidences of indebtedness and other lawful investment instruments; and

(8) "State funds" means all moneys of the state which may be lawfully invested except for the "school fund" established by section four, article XII of the State Constitution.

WV Legislature

§12-6C-4. West Virginia Board of Treasury Investments created; body corporate; board; directors; nomination and appointment of directors, qualifications and terms of appointment, advice and consent; annual and other meetings; committees; board approval of investment policies required; open meetings, qualifications.

(a) The West Virginia Board of Treasury Investments is created as a public body corporate and established to provide prudent fiscal administration, investment, and management for the Consolidated Fund.

(b) Any appointment to the board is effective immediately upon appointment by the Governor with respect to voting, constituting a quorum, receiving expenses, and all other rights and privileges of the director position. A trustee of the West Virginia Investment Management Board other than the Governor, State Treasurer, or State Auditor is not eligible to serve as a director of the board.

(c) The board shall consist of five directors, as follows:

(1) The Governor, the State Treasurer, and the State Auditor or their designees. They shall serve by virtue of their offices and are not entitled to compensation under the provisions of this article. The Governor, State Treasurer, and State Auditor or their designees are subject to all duties, responsibilities, and requirements of the provisions of this article; and

(2) Two persons appointed by the Governor subject to the advice and consent of the Senate.

(d) Of the two directors appointed by the Governor, one shall be a certified public accountant with experience in finance, investing, and management, and one shall be an attorney with experience in finance, investing, and management.

(e)(1) Initial appointment of the appointed directors shall be for the following terms:

(A) One director shall be appointed for a term ending June 30, 2007; and

(B) One director shall be appointed for a term ending June 30, 2009.

(2) Except for appointments to fill vacancies, each subsequent appointment shall be for the term ending June 30th of the fourth year following the year the preceding term expired. A director may be reappointed. In the event a vacancy occurs it shall be filled by appointment for the unexpired term. A director whose term has expired shall continue in office until a successor has been duly appointed and qualified. No appointed director of the board may be removed from office by the Governor except for official misconduct, incompetency, neglect of duty, gross negligence, misfeasance, or gross immorality.

(f) All directors shall receive reasonable and necessary expenses actually incurred in discharging director's duties pursuant to this article. The board is authorized to compensate the two directors appointed by the Governor pursuant to subdivision (2), subsection (c) of this section, in an amount of up to $500 for each board meeting that the directors attend in

WV Legislature

person.

(g) The board shall hold quarterly meetings. Board bylaws may provide for calling and holding additional meetings. Representatives of participants and members of the public may attend any meeting held by the board, except during those meetings or part of meetings closed by the board as permitted by law. Attendees shall observe standards of decorum established by board policy.

(h) The board shall annually adopt a fee schedule and a budget reflecting fee structures for the year.

(i) The board chair may appoint committees as needed, including, but not limited to, an investment policies committee to discuss drafting, reviewing, or modifying written investment policies. Each committee shall seek input from participants before reporting its recommendations to the board. The board may meet with any or all committees during any of its meetings.

(j) Any meeting of the board may be closed upon adoption of a motion by any director 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 participants.

WV Legislature

§12-6C-5. Powers of the Board.

The Board may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes. The Board may:

(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 using the policies and procedures of the State Treasurer's Office;

(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 to the contrary, specifically article three, chapter five-a of this code, retain and contract with legal, accounting, financial and investment managers, 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 investments authorized by this article;

(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 consolidated fund 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) Abide by agreements entered into by the State Treasurer with political subdivisions of the state for investment of moneys of the political subdivisions by the Board;

(13) Charge and collect administrative fees from participants, including 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) Use any contract or agreement of the Investment Management Board or the State

WV Legislature

Treasurer's Office and enter into its own contracts or agreements, including, without limitation entering into a contract or agreement with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities held by the Board and with any investment manager and investment advisor needed;

(16) Make, and from time to time, amend and repeal bylaws, rules and procedures not inconsistent 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 investment accounts;

(19) Offer assistance and seminars to spending units and to political subdivisions;

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

(21) Establish one or more investment funds, pools or participant accounts within the consolidated fund for the purpose of investing the moneys and assets for which it is director, trustee, custodian or otherwise authorized to invest pursuant to this article. Interests in each fund, pool or participant account are designated as units and the Board shall adopt industry standard accounting procedures to determine the unit value of each fund, pool or participant account. The securities in each investment fund, pool or participant account are the property of the Board and each fund, pool or participant account is considered an investment pool, investment fund or investment participant account.

WV Legislature

§12-6C-6. Consolidated fund continued; management.

(a) The consolidated fund is continued and notwithstanding any provision of this code to the contrary, is vested in the West Virginia Board of Treasury Investments on July 1, 2005.

(b) Each spending unit authorized to invest moneys shall unless prohibited by law, request the State Treasurer to invest its moneys. Based upon spending unit representations, the State Treasurer shall send the moneys to the West Virginia Board of Treasury Investments or to the Investment Management 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 the state spending unit from which it receives moneys to allow the board to invest the moneys.

(d) Moneys held in the various funds and accounts administered by the board are invested as permitted by this article and subject to the restrictions contained in this article.

(e) The State Treasurer shall maintain records of the deposits and withdrawals of each participant and the performance of the various funds, pools and accounts. The board shall report the earnings on the funds, pools, and accounts under management to the State Treasurer at the times determined by the State Treasurer.

(f) The board shall establish policies for the administration of the various funds, pools and accounts authorized by this article as it determines necessary. The policies may specify the minimum amounts and timing of deposits and withdrawals and any other matters authorized by the board.

(g) 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.

WV Legislature

§12-6C-7. Management and control of fund; officers; staff; fiduciary or surety bonds for directors; liability of directors.

(a) The management and control of the Consolidated Fund is vested solely in the Board in accordance with the provisions of this article.

(b) The State Treasurer is the chairperson of the Board. The Board shall elect a vice chairperson. Annually, the directors shall elect a secretary to keep a record of the proceedings of the Board and provide any other duties required by the board. The board may elect a person who is not a member of the board as secretary.

(c) The board may use the staff of the State Treasurer, employ personnel and contract with any person or entity needed to perform the tasks related to operating the Consolidated Fund.

(d) The Board shall retain an internal auditor to report directly to the Board and shall fix his or her compensation. As a minimum qualification, 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, internal controls and the security of transactions.

(e) The Board may retain one employee with a chartered financial analyst designation or an employee who is a certified treasury manager.

(f) Each director shall give a separate fiduciary or surety bond from a surety company qualified to do business within this State in a penalty amount of one million dollars for the faithful performance of his or her duties as a director. The Board shall purchase a blanket bond for the faithful performance of its duties in the amount set by the board of at least $10 million. The amount of the blanket bond is in addition to the $1 million individual bond required of each director by the provisions of this section. The Board may require 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 are fixed by the board. The premiums payable on all fiduciary or surety bonds are expenses of the board.

(g) The directors, employees of the Board and employees of the State Treasurer performing work for or on behalf of the Board are not liable personally, either jointly or severally, for any debt or obligation created by the Board: Provided, That the directors and employees of the Board are liable for acts of misfeasance or gross negligence.

(h) The board is exempt from the provisions of article three, chapter five-a, and sections seven and eleven, article three, chapter twelve of this code. However, the board is subject to the purchasing policies and procedures of the State Treasurer's Office.

WV Legislature

§12-6C-8. Administration of Consolidated Fund.

(a) In the administration of the Consolidated Fund continued by this article, the board may:

(1) Purchase, retain, hold, transfer and exchange and sell, at public or private sale, the whole or any part of the fund or pools upon any terms and conditions it considers advisable;

(2) Invest and reinvest the fund and pools or any part thereof in fixed income securities as provided in this article;

(3) Carry the securities and other property held in trust either in the name of the board or in the name of its nominee;

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

(5) Prosecute, defend, compromise, arbitrate or otherwise adjust or settle claims in favor of or against the board or a director;

(6) Employ and pay from the fund any investment advisors, brokers, counsel, managers and any other assistants and agents the board considers advisable;

(7) Develop, implement and modify an asset allocation plan and investment policy for each fund or pool; and

(8) Create a local government investment pool, a program to purchase certificates of deposit from West Virginia financial institutions that are state depositories and any funds, pools or participant accounts needed.

(b) All income and earnings are 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.

(c) The board shall render an annual accounting not more than one hundred twenty days following the close of the fiscal year.

WV Legislature

§12-6C-9. Asset allocation; investment policies, authorized investments; restrictions.

(a) The board shall develop, adopt, review, or modify an asset allocation plan for the Consolidated Fund at each annual board meeting.

(b) The board shall adopt, review, modify, or cancel the investment policy of each fund or pool created at each annual board meeting. For each participant directed account authorized by the State Treasurer, staff of the board shall develop an investment policy for the account and create the requested account. The board shall review all existing participant directed accounts and investment policies at its annual meeting for modification.

(c) The board shall consider the following when adopting, reviewing, modifying, or canceling investment policies:

(1) Preservation of capital;

(2) Risk tolerance;

(3) Credit standards;

(4) Diversification;

(5) Rate of return;

(6) Stability and turnover;

(7) Liquidity;

(8) Reasonable costs and fees;

(9) Permissible investments;

(10) Maturity ranges;

(11) Internal controls;

(12) Safekeeping and custody;

(13) Valuation methodologies;

(14) Calculation of earnings and yields;

(15) Performance benchmarks and evaluation; and

(16) Reporting.

WV Legislature

(d) No security may be purchased by the board unless the type of security is on a list approved at a board meeting. The board shall review the list at its annual meeting.

(e) Notwithstanding the restrictions which are otherwise provided by law with respect to the investment of funds, the board and all participants, now and in the future, may invest funds in these securities:

(1) Obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency or corporation thereof and obligations and securities of the United States sponsored enterprises, including, without limitation:

(i) United States Treasury;

(ii) Export-Import Bank of the United States;

(iii) Farmers Home Administration;

(iv) Federal Farm Credit Banks;

(v) Federal Home Loan Banks;

(vi) Federal Home Loan Mortgage Corporation;

(vii) Federal Land Banks;

(viii) Government National Mortgage Association;

(ix) Merchant Marine bonds; and

(x) Tennessee Valley Authority Obligations;

(2) Obligations of the Federal National Mortgage Association;

(3) Commercial paper with a rating of A-1 or better as determined by a nationally recognized statistical rating organization;

(4) For pools with a weighted average maturity or duration not to exceed three years, commercial paper with an A-2 rating or better as determined by a nationally recognized statistical rating organization;

(5) Corporate debt with an A rating or better as determined by a nationally recognized statistical rating organization;

(6) For pools with a weighted average maturity or duration not to exceed three years, corporate debt with a BBB- rating or better as determined by a nationally recognized statistical rating organization;

WV Legislature

(7) State and local government, or any instrumentality or agency thereof, securities with a weighted average maturity or duration not to exceed three years and an A rating or better as determined by a nationally recognized statistical rating organization;

(8) Repurchase agreements involving the purchase of United States Treasury securities and repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities;

(9) Reverse repurchase agreements involving the purchase of United States Treasury securities and reverse repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities;

(10) Asset-backed securities rated AAA or better as determined by a nationally recognized statistical rating organization;

(11) Certificates of deposit;

(12) Money market and other fixed income funds; and

(13) Investments in accordance with the Linked Deposit Program, a program using financial institutions in West Virginia to obtain certificates of deposit, loans approved by the Legislature and any other programs authorized by the Legislature.

(f) In addition to the restrictions and conditions contained in this section, at no time shall more than five percent of the Consolidated Fund be invested in securities issued by a single private corporation or association.

(g) Securities purchased in compliance with this article that become noncompliant may be retained upon recommendation of the investment manager of the security and the board investment consultant.

WV Legislature

§12-6C-10. Investment authority for Consolidated Fund transferred to Board; exceptions.

Effective July 1, 2005, all duties vested by law in state spending units and the West Virginia Investment Management Board relating to the Consolidated Fund are transferred to the Board, including without limitation the investment of moneys, and the acquisition, sale, exchange or disposal of securities or any other investment: Provided, That neither this section nor any other section of this article applies to the "board of the school fund" and the "school fund" established by section 4, article XII of the State Constitution: Provided, however, That the municipal bond commission may make funds under its control available to the board for investment.

WV Legislature

§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.

(a) Subject to a liquidity determination, the West Virginia Board of Treasury Investments shall make a revolving loan available to the West Virginia Economic Development Authority in an amount of up to $200 million. The revolving loan shall be used for business or industrial development projects authorized by §31-15-7 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 §31-15-20 of this code which authorizes a $150 million revolving loan and §31-18B-1 *et seq*. of this code which authorizes a $50 million investment pool: *Provided*, That the West Virginia Economic Development Authority may not loan more than $15 million for any one business or industrial development project. The revolving loan authorized by this subsection shall be secured by one note at a variable interest rate equal to 50 percent of the West Virginia Economic Development Authority's weighted average interest rate for outstanding loans in the Business and Industrial Development Loan Program authorized by §31-15-7 of this code. The rate may not be lower than 1.50 percent and must be reset on July 1 of each year. Monthly payments made by the West Virginia Economic Development Authority to the board shall be calculated on a 120-month amortization. The revolving loan is 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.

(b) The outstanding principal balance of the revolving loan from the board to the West Virginia Economic Development Authority may at no time exceed 103 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. The independent audit of the West Virginia Economic Development Authority financial records shall annually certify that 103 percent requirement.

(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 §31-15-7 of this code shall 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 West Virginia Board of Treasury Investments, or any predecessor entity, to the West Virginia Economic Development Authority are refundable by proceeds of the revolving loan contained in this section and the board shall make no loans to the West Virginia Economic Development Authority pursuant to §31-15-20 of this code or §31-18B-1 *et seq*. of this code.

(e) The directors of the West Virginia Board of Treasury Investments shall bear no fiduciary responsibility with regard to any of the loans contemplated in this section.

WV Legislature

(f) *Inspection of records*. — Within 30 days of receiving a written request from the board, the authority shall provide the board with the opportunity to inspect and copy any records in the custody of the authority related to any loan issued by the board to the authority or any loan from the authority to a third party funded by a loan issued by the board. Records to be made available pursuant to this subsection include, but are not limited to, accounting records, loan applications, loan agreements, board minutes, audit reports, and transaction records. Records of the authority held, from time to time, by the board pursuant to this subsection that are exempt from disclosure pursuant to the provisions of §31-15-22 of this code or §29B-1-1 *et seq*. of this code shall remain so while held by the board.

(g) Notwithstanding any other provision of this code to the contrary, the West Virginia Economic Development Authority shall pay to the West Virginia Board of Treasury Investments the entire outstanding balance of the revolving loan authorized by this section within 30 days of the deposit of sufficient funds for such repayment in the Economic Development Project Fund created in §31-15-23a of this code. Upon repayment of the outstanding loan balance, the revolving loan authorized by this section shall terminate and no additional loan moneys shall be made available to the West Virginia Economic Development Authority pursuant to this section.

WV Legislature

§12-6C-11a. Broadband Loan Insurance Program; requirements.

(a) *Definitions*. — For the purposes of this section, the following terms have the following meanings:

(1) "Authority" refers to the West Virginia Economic Development Authority.

(2) "Board" refers to the West Virginia Board of Treasury Investments.

(3) "Broadband Loan Insurance Program" or the "program" refers to the program through which the authority issues loan insurance, as authorized by §31-15-8a of this code.

(4) "Debt instrument" means any note, loan agreement, or any other form of indebtedness whatsoever and shall expressly include a letter of credit or other agreement relating to a letter of credit.

(5) "Eligible broadband provider" has the same meaning provided in §31-15-8a of this code.

(6) "Financial institution" means the bank, insurance company, or other institution in the business of lending money, that conditions issuance of a debt or security instrument on loan insurance by the authority, as described in §31-15-8a(b)(2) of this code.

(b) *Loan for broadband deployment*. —

(1) The loan previously authorized by §12-6C-11(h) of this code is hereby continued, subject to the requirements of this section.

(2) Subject to a liquidity determination and cash availability, the board shall provide a nonrecourse revolving loan to the authority, from the Consolidated Fund, in an amount not to exceed $80 million, for the purpose of funding the Broadband Loan Insurance Program authorized by §31-15-8a of this code.

(3) The board shall make the loan moneys available to the authority upon receipt of the following:

(A) A written request by the authority that the board transfer a specific amount of loan moneys to the authority; and

(B) A written statement by the authority certifying that the authority is in full compliance with all applicable provisions of federal and state law, as well as any agreements entered into with the board.

(4) The authority may not award an amount of the loan moneys exceeding $20 million, in any single calendar year, to insure the debt or security instruments, or costs related thereto, of any one broadband provider.

WV Legislature

(5) The authority shall maintain the loan moneys made available pursuant to this section in an account that is separate and segregated from its other assets and programs. The loan moneys may not be transferred to any other fund or account or used for any purpose other than to insure debt and security instruments, as expressly authorized in §31-15-8a of this code. The authority may withdraw the loan moneys from the account only as provided in subsection(d) of this section.

(6) The authority may not deduct or use any amount of loan moneys transferred pursuant to this subsection to pay for the authority's operating or administrative expenses.

(c) *Loan terms and requirements. —*

(1) The loan authorized by this section shall be classified by the board as a long-term fixed income investment and shall bear interest on the outstanding principal balance of the loan at a variable interest rate equal to the 12-month average of the board's yield on its West Virginia Money Market pool. The rate shall be the rate set on July 1, 2017, under prior enactment of §12-6C-11(h) of this code and adjusted quarterly during each year thereafter. The maximum annual adjustment may not exceed one percent.

(2) The loan authorized by this section is nonrecourse. Upon payment in full of any said insured debt instruments or release in full of any security instruments, the authority shall reduce the outstanding balance of the loan by a like amount. Additionally, quarterly, the authority shall determine the outstanding balance of all such insured debt and security instruments and shall accordingly adjust the outstanding balance of the loan to equal the outstanding obligations of the authority for all said insured debt and security instruments. The authority shall notify the board, in writing, of any such adjustment.

(3) The loan is secured by a security interest that pledges and assigns the cash proceeds of all collateral securing all insurance agreements entered into by the authority pursuant to §31-15-8a of this code. In the event moneys received by the authority respecting any individual insured debt or security instrument relating to providing broadband service under §31-15-8a of this code is insufficient to pay when due the principal or interest installments, or both, with respect to the loan authorized by this section by the board to the authority, the principal or interest, or both, as the case may be, due on the loan made to the authority pursuant to this section shall be deferred and any and all past-due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the authority of all moneys respecting said debt instruments.

(d) *Withdraw of moneys in event of default.* – The authority may withdraw loan moneys from the separate and segregated account required by subdivision (5), subsection (b) of this section, only in the event that a broadband provider has defaulted on a debt instrument or security interest insured by the authority. The loan monies may not be used for any purpose other than to pay amounts due to a financial institution resulting from the broadband provider's default, according to a loan insurance agreement entered into pursuant to §31-15-8a of this code. Prior to withdrawing any amount of loan monies from the separate

WV Legislature

and segregated account, the authority shall provide notice of the default to the board and certify to the board that:

(1) The broadband provider has defaulted on a debt instrument or security interest insured by the authority and the broadband provider does not have the option to enter into a forbearance agreement with the financial institution; and

(2) The authority has pursued or will pursue any reasonable remedies to recoup the costs to the state resulting from the default, including, but not limited to, instituting a legal action to seize the collateral described in subdivision (3), subsection (c) of this section.

(e) *Inspection of records.* – Within 30 days of receiving a written request from the board, the authority shall provide the board with the opportunity to inspect and copy any records in the custody of the authority related to the Broadband Loan Insurance Program. Records to be made available pursuant to this subsection include, but are not limited to, accounting records, loan insurance applications, loan insurance agreements, authority meeting minutes, audit reports, and transaction records. Records of the authority that may be held from time to time by the board pursuant to this subsection shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of §29B-1-1 *et seq.* of this code.

WV Legislature

§12-6C-11b. Infrastructure Investment Reimbursement Fund.

(a) The West Virginia Board of Treasury Investments shall make available to the Department of Transportation, subject to a liquidity determination, a revolving loan of up to $200 million from the Consolidated Fund for the purposes authorized by this section. The loan moneys requested and authorized pursuant to subsection (b) of this section shall be deposited in a special revenue fund, to be known as the Infrastructure Investment Reimbursement Fund.

(b) The Board of Treasury Investments shall make the loan moneys authorized by this section available upon receipt of the following:

(1) A written request by the Secretary of the Department of Transportation that the board deposit a specific amount of loan moneys, subject to the limitations provided in this section, into the Infrastructure Investment Reimbursement Fund;

(2) A written statement by the Secretary of the Department of Transportation certifying that the department will use the loan moneys for expenditures meeting the requirements of subsection (c) of this section; and

(3) Copies of any available documents demonstrating that the planned expenditures of loan moneys meet the requirements of subsection (c) of this section, including but not limited to any agreement or contract entered into by the Department of Transportation and the federal government.

(c) The Secretary of the Department of Transportation may authorize expenditures from the Infrastructure Investment Reimbursement Fund that qualify for cost reimbursement according to an agreement with the federal government pursuant to the Infrastructure Investment and Jobs Act, Public Law 117-58, 135 Stat. 443 (2021).

(d) Upon receiving moneys from the federal government to reimburse for expenditures as authorized by subsection (c) of this section from the Infrastructure Investment Reimbursement Fund, the Secretary of the Department of Transportation shall immediately reimburse the Infrastructure Investment Reimbursement Fund from said reimbursed moneys from the federal government.

(e) Any balance remaining in the fund at the end of each fiscal year shall be transferred to the Consolidated Fund. If, at any time during a fiscal year, the secretary determines that the balance in the fund exceeds the amount required for expenditures authorized in subsection (c) of this section, the secretary shall provide notice of said determination to the Board of Treasury Investments and the excess balance of the fund shall be transferred to the Consolidated Fund.

(f) The secretary shall prepare and submit a quarterly report to the Joint Committee on Government and Finance, the Board of Treasury Investments, and the Governor which shall include, at a minimum:

WV Legislature

(1) The aggregate outstanding amount of the loan authorized by this section; and

(2) For each project for which loan moneys were expended, the status of the project, the estimated completion date of the project, the amount of loan moneys expended for the project, the amount of federal reimbursement moneys received for the project, and the remaining amount of federal reimbursement moneys projected to be received for the project.

(g) Upon request of the Board of Treasury Investments, the secretary shall provide the board with the opportunity to inspect and copy any records in the custody of the department related to any transaction involving the Infrastructure Investment Reimbursement Fund. Records to be made available pursuant to this subsection include, but are not limited to, accounting records, contracts or agreements, audit reports, and transaction records.

(h) The provisions of this section shall cease to have effect after June 30, 2027, unless reauthorized by the West Virginia Legislature, and the Secretary of the Department of Transportation must reimburse the Infrastructure Investment Reimbursement Fund 100 percent of the amount of any expenditures from the Infrastructure Investment Reimbursement Fund by such date.

WV Legislature

§12-6C-12. Securities handling.

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, 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.

WV Legislature

§12-6C-13. Standard of care.

(a) The Uniform Prudent Investor Act, codified in §44-6C-1 *et seq*. of this code, is the standard for any investments made under this article. Investments are further subject to the following:

(1) The directors 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;

(2) The directors shall defray reasonable expenses of investing and managing the Consolidated Fund by charging fees as provided in this article; and

(3) The directors shall discharge their duties in accordance with the documents and instruments consistent with the provisions of this article.

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

(c) For any shareholder voting rights held by the board, the standard of care provided in in §12-6-11a of this code shall apply to the board, its directors, and its fiduciaries. The board shall exercise all shareholder voting rights according to the requirements, restrictions, and procedures set forth in that section. The requirements of this subsection are effective July 1, 2024.

WV Legislature

§12-6C-14. Existing investments.

The Investments Management Board shall transfer the cash, securities and other investments of the Consolidated Fund it holds, maintains or administers to the West Virginia Board of Treasury investments on July 1, 2005, which will lawfully vest the West Virginia Board of Treasury Investments with ownership of all securities or other investments of the Consolidated Fund.

WV Legislature

§12-6C-15. Annual audits; financial statements; information.

(a) The Board shall have an annual financial and compliance audit of the assets, funds, pools and participant accounts managed by the Board 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 Board shall have financial and compliance audits 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 completed annually.

(b) The Board shall produce monthly financial statements for the assets managed by the Board and send them to each member of the Board and provide copies as reasonably requested.

(c) Each quarter the Board shall deliver a report for the prior quarter to the Council of Finance and Administration.

(d) The Board shall contract with an investment consulting or a certified public accounting firm meeting the criteria set out in subsection (a) of this section for an annual audit of the reported returns of the assets managed by the Board.

(e) The Board shall prepare an annual report detailing all fees charged by the Board under this article. The Board shall furnish copies of the report to the Legislative Joint Committee on Government and Finance.

(f) Unless specifically otherwise stated, copies of the reports required in this section shall be furnished to the Board, Governor, President of the Senate, Speaker of the House of Delegates, Council of Finance and Administration, Legislative Librarian and upon request to any legislator, legislative committee, financial institution, member of the media and the public.

(g) The Board shall provide any other information requested in writing by the Council of Finance and Administration or any member of the Legislature.

WV Legislature

§12-6C-16. Reports to participants.

(a) On a monthly basis, the Board shall timely provide the State Treasurer with information to enable the State Treasurer to provide an itemized statement of a spending unit's or other participant's account in the Consolidated Fund to each state spending unit and any other entity investing moneys in the Consolidated Fund. The statement shall include the beginning balance, contributions, withdrawals, income distributed, change in value and ending balance.

(b) The Board shall prepare annually, or more frequently if determined necessary by the Board, a report of its operations and the performance of the various funds, pools and participant accounts administered by it. The Board shall furnish copies of the report to each participant, the President of the Senate, Speaker of the House of Delegates, Legislative Auditor, and upon request to any legislative committee, any legislator, any banking institution or state or federal savings and loan association in this state and any member of the news media. The Board shall also keep the reports available for inspection by any citizen of this state.

WV Legislature

§12-6C-17. Legal status of spending units continued.

Except as otherwise provided in this article, every state spending unit shall retain 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 or account.

WV Legislature

§12-6C-18. Authorization for loans by the Board.

(a) Any loan made from the Consolidated Fund by a predecessor entity shall remain in existence and in accordance with the terms and conditions of the loan.

(b) The Board shall continue the work of the Investment Management Board in taking the steps necessary to increase the liquidity of the Consolidated Fund to allow for any loans authorized by the Legislature without increasing the risk of loss.

WV Legislature

§12-6C-19. Creation of fee account and investment account; budget.

(a) The Board may charge fees, which are subtracted from the total return on investments, for the reasonable and necessary expenses incurred by the Board in rendering services. All fees collected shall be deposited in a special account in the State Treasury created and designated the Board of Treasury Investments Fee Fund. Expenditures from the Fund shall be for the purposes set forth in this article and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature, in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: Provided, That for the fiscal year ending the June 30, 2006, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

(b) There is created in the State Treasury a special account designated the Board of Treasury Investments Investment Fund for use in receiving funds for investment, disbursing funds from investments and processing investment transactions.

(c) All fees dedicated, identified or readily identifiable to an entity, fund, pool or participant account shall be charged to that entity, fund, pool or participant account 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 schedules.

WV Legislature

§12-6C-20. Termination of board.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Treasury Investments shall continue to exist until July 1, 2010.

WV Legislature