WEST VIRGINIA CODE CHAPTER 12

WV Legislature

§12-1-1. Legislative findings and purpose.

The Legislature finds and declares that the efficient collection, disbursement, management and investment of public moneys in the State Treasury will benefit the citizens, teachers and public employees of this state by reducing the costs of government and providing sources of increased revenue without the necessity of increased taxation; and to achieve these goals, the State Treasurer shall provide a stable and continuous source of professional financial management, and shall be given the authority to develop and maintain modern systems, consistent with sound financial practices, for the collection, disbursement, management and investment of such moneys in conjunction with the State Treasurer.

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§12-1-1a. Definitions.

For the purposes of this chapter:

"Banking goods or services" refers to the goods and services required by a spending unit and provided by a financial institution to facilitate a spending unit's collection or acceptance of state funds, either directly by the spending unit or through a third-party vendor or other entity.

"Financial institution" means a bank, national banking association, non-bank financial institution, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a mutual savings bank, or a savings bank. The term also includes any entity when that entity is processing financial transactions for a spending unit or offering financial goods or services to a spending unit that are traditionally performed by a financial institution, including, but not limited to, check disbursement services, depository services, payment card processing services, or electronic funds transfers.

"Spending unit" means a department, agency, board, commission, or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

"State funds" refers to moneys accepted or collected on behalf of the state or those moneys designated by the Legislature or the State Treasurer as state funds, according to §12-1-2(e) of this code.

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§12-1-1b. Prohibited clauses in State Treasurer contracts.

(a) Any term or condition in any contract entered into by the State Treasurer shall be void ab initio to the extent that it requires the State Treasurer to agree to or abide by a term and condition prohibited in §5A-3-62 of this code.

(b) No official, employee, agent, or representative of the State Treasurer may contravene this section, and no oral or written expression of consent to any term or condition declared void ab initio by this section, or signature on a contract, may be deemed as such. Any contract that contains a term or condition declared void ab initio by this section shall otherwise be enforceable as if it did not contain such term or condition. All contracts entered into by the State Treasurer, except for contracts with another government, shall be governed by West Virginia law notwithstanding any term or condition to the contrary.

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§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by State Treasurer; definition of spending unit.

(a) The State Treasurer shall designate the state and national banks and the state and federal savings and loan associations in this state meeting the requirements of this chapter as depositories for all state funds placed in demand deposits.

(b)(1) Demand deposit accounts shall consist of receipt and disbursement accounts. Receipt accounts are accounts in which are deposited moneys belonging to or due the State of West Virginia or any official, department, board, commission or agency of the state.

(2) Disbursement accounts are accounts from which are paid moneys due from the State of West Virginia or any official, department, board, commission, political subdivision or agency of the state to any political subdivision, person, firm or corporation, except moneys paid from investment accounts.

(3) Investment accounts are accounts established by the West Virginia Investment Management Board, the West Virginia Board of Treasury Investments or the state Treasurer for the buying and selling of securities for investment purposes.

(c) The State Treasurer shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, concerning depositories for receipt accounts prescribing the selection criteria, procedures, compensation and any other contractual terms it considers to be in the best interests of the state giving due consideration to: (1) The activity of the various accounts maintained in the depositories; (2) the reasonable value of the banking services rendered or to be rendered the state by the depositories; and (3) the value and importance of the deposits to the economy of the communities and the various areas of the state affected by the deposits.

(d) The State Treasurer shall select depositories for disbursement accounts through competitive bidding by eligible banks in this state. If none of the eligible banks in this state are able to provide the needed services, then the state Treasurer may include eligible banks outside this state in the competitive bidding process. The State Treasurer shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, prescribing the procedures and criteria for the bidding and selection. The State Treasurer shall, in the invitations for bids, specify the approximate amounts of deposits, the duration of contracts to be awarded and any other contractual terms the state Treasurer considers to be in the best interests of the state, consistent with obtaining the most efficient service at the lowest cost.

The amount of money needed for current operation purposes of the state government, as determined by the state Treasurer, shall be maintained at all times in the state Treasury, in cash, in short term investments not to exceed five days or in disbursement accounts with financial institutions designated as depositories in accordance with the provisions of this

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section. No state officer or employee shall make or cause to be made any deposits of state funds in financial institutions which have not been designated as depositories.

(e) Except as otherwise provided in this code, only banks and state and federal savings and loan associations designated by the state Treasurer as depositories may accept deposits of state funds. Only the Legislature and the state Treasurer may determine whether funds are state funds and only the state Treasurer may approve the opening of an account or processing of a transaction with a financial institution.

(f) Boards, commissions and spending units with authority pursuant to this code to deposit moneys in a financial institution without approval of the state Treasurer shall retain that authority and are not required to have the state Treasurer designate a financial institution as a depository: Provided, That boards, commissions and spending units with moneys deposited in financial institutions not approved for that purpose by the state Treasurer shall submit a report on those moneys annually to the Legislative Auditor and the state Treasurer.

(g) The provisions of this section shall not apply to the proceeds from the sale of general obligation bonds or bonds issued by the School Building Authority, the Parkways, Economic Development and Tourism Authority, the Housing Development Fund, the Economic Development Authority, the Infrastructure and Jobs Development Council, the Water Development Authority or the Hospital Finance Authority.

(h) As used in this chapter, "spending unit" means a department, agency, board, commission or institution of state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

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§12-1-3. Depositories for interest earning deposits; qualifications.

Any state or national bank or any state or federal savings and loan association in this state shall, upon request made to the State Treasurer, be designated as an eligible depository for interest earning deposits of state funds if such bank or state or federal savings and loan association meets the requirements set forth in this chapter. For purposes of this article, the term "interest earning deposits" includes certificates of deposit or other financial institution products. The State Treasurer shall make and apportion such interest earning deposits and shall prescribe the interest rates, terms and conditions of deposits, all in accordance with the provisions of articles six and six-c of this chapter: Provided, That state or federal savings and loan associations insured by an agency of the federal government shall be eligible for such deposits not in excess of the amount insured by any agency of the federal government.

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§12-1-4. Bonds to be given by depositories.

(a) Before allowing any money to be deposited with any eligible depository in excess of the amount insured by an agency of the federal government or insured by a deposit guaranty bond issued by a valid bankers surety company acceptable to the treasurer, the state Treasurer shall require the depository to give a collaterally secured bond, in the amount of not less than $10,000, payable to the State of West Virginia, conditioned upon the prompt payment, whenever lawfully required, of any state money, or part thereof, that may be deposited with that depository, or of any accrued interest on deposits. The bond shall be a continuous bond but may be increased or decreased in amount or replaced by a new bond with the approval of the state Treasurer. The collateral security for the bond shall consist of bonds of the United States, or bonds or letters of credit of the federal land banks, of the federal home loan banks, or bonds of the State of West Virginia or of any county, district or municipality of this state, or other bonds, letters of credit, or securities approved by the treasurer. All bonds so secured are here designated as collaterally secured bonds. Withdrawal or substitution of any collateral pledged as security for the performance of the conditions of the bond may be permitted with the approval in writing of the treasurer. All depository bonds shall be recorded by the treasurer in a book kept in his or her office for the purpose, and a copy of the record, certified by the treasurer, shall be prima facie evidence of the execution and contents of the bond in any suit or legal proceeding. All collateral securities shall be delivered to or deposited for the account of the treasurer of the State of West Virginia and in the event said securities are delivered to the treasurer, he or she shall furnish a receipt therefor to the owner thereof. The treasurer and his or her bondsmen shall be liable to any person for any loss by reason of the embezzlement or misapplication of the securities by the treasurer or any of his or her employees, and for the loss thereof due to his or her negligence or the negligence of his or her employees; and the securities shall be delivered to the owner thereof when liability under the bond which they are pledged to secure has terminated. The treasurer may permit the deposit under proper receipt of the securities with one or more banking institutions within or outside the State of West Virginia and may contract with any institution for safekeeping and exchange of any collateral securities and may prescribe the rules for handling and protecting the collateral securities.

(b) A banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements:

(1) The funds are invested through a designated state depository selected by the Treasurer;

(2) The selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the state;

(3) The full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation;

(4) The selected depository acts as custodian for the state with respect to such certificates of

deposit issued for the state's account; and

(5) On the same date the public moneys are redeposited by the public depository, the public depository may, in its sole discretion, choose whether to receive deposits, in any amount, from other banks, savings banks, or savings and loan associations.

(c) A banking institution is not required to provide a bond or security in lieu of bond pursuant to this section if the deposits accepted are placed in a designated state depository that is selected and authorized by the state to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:

(1) On or after the date that the funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the state with respect to the funds redeposited into such accounts.

(2) State funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with §7-6-2 of this code.

(3) The full amount of the funds of the state redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation.

(4) On the same date that the funds of the state are redeposited pursuant to this section, the selected depository receives an amount of deposits from customers of other financial institutions through the deposit placement program that are equal to the amount of the state funds redeposited by the selected depository.

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§12-1-5. Limitation on amount on deposit; dedicated method; rules.

(a) The amount of state funds on deposit in any depository in excess of the amount insured by an agency of the federal government shall be secured by a deposit guaranty bond issued by a valid bankers' surety company or by other securities acceptable to the State Treasurer, pursuant to the dedicated method, in an amount of at least 102 percent of the amount on deposit. The value of the collateral shall be determined by the State Treasurer.

(b) The State Treasurer may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code as are necessary to effectuate the provisions of this section.

(c) For the purposes of this section, the term "dedicated method" means the securing of public deposits without accepting the contingent liability for the losses of public deposits of other designated state depositories as provided in this section.

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§12-1-6. Unlawful acceptance of deposits by depositories.

It is unlawful for any depository to accept and retain state deposits in excess of the amount permitted by application of the preceding section or in an amount greater than its paid up capital stock and surplus.

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§12-1-7. Rules; banking contracts and agreements; depositors; agreements.

In addition to rules specially authorized in this article, the West Virginia Investment Management Board and the State Treasurer are generally authorized to promulgate any rules necessary to protect the interests of the state, its depositories and taxpayers. All rules promulgated are subject to the provisions of article three, chapter twenty-nine-a of this code. Any rules previously established by the board of public works, the Board of Investments, the Investment Management Board or the State Treasurer pursuant to this article shall remain in effect until amended, superseded or rescinded.

Only the treasurer may enter into contracts or agreements with financial institutions for banking goods or services required by spending units. Boards, commissions and spending units with authority pursuant to this code to enter into contracts or agreements with financial institution for banking goods and services without approval of the State Treasurer shall retain that authority and are not required to have the treasurer designate a financial institution as a depository. The provisions of this section shall not apply to trust and investment accounts and activities for general obligation bonds or bonds issued by the School Building Authority, the Parkways, Economic Development and Tourism Authority, the Housing Development Fund, the economic development authority, the infrastructure and jobs development council, the water development authority or the hospital finance authority. A state spending unit requiring banking goods or services shall submit a request for the goods or services to the treasurer. If the treasurer enters into a contract or agreement for the required goods or services, spending units using the contract or agreement shall pay either the vendor or the treasurer for the goods or services used.

The treasurer is also authorized to enter into any depositors' agreements for the purpose of reorganizing or rehabilitating any depository in which state funds are deposited, and for the purpose of transferring the assets, in whole or in part, of any depository to any other lawful depository when, in the judgment of the treasurer, the interests of the state are promoted thereby, and upon condition that no right of the state to preferred payment is waived.

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§12-1-8. Conflict of interest.

An employee or a person applying for a position with the office of the Treasurer shall disclose to the Treasurer if he or she, or his or her spouse, is an officer, director or employee of a depository or owns greater than two percent of a depository. Any employee of the office of the Treasurer who, or whose spouse, is an officer, director or employee of a depository or owns greater than two percent of a depository may not participate in any selection of or in any contract negotiations with any depository.

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§12-1-9. Transfer of funds by check or electronic funds transfer; requirements.

Subject to applicable banking regulations or state law, the treasurer may transfer funds by check or electronic funds transfer whenever actually needed to pay the warrants drawn by the Auditor upon the treasury, to equalize deposits or to provide funds to purchase investments for the account of the state. All checks drawn for transfer of funds shall have printed or stamped on the face of same "for transfer of funds only", or if the transfer is made by electronic funds transfer, the electronic funds transfer and supporting documents shall be marked "for transfer of funds only".

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§12-1-10. The treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.

The treasurer shall keep in his office or her office a record showing the account of each depository. Under the account of each depository an entry shall be made showing the amount and date of each deposit, the amount and date of each withdrawal and the balance on deposit. The treasurer shall cause the state's account with each depository to be settled at the end of every month of the year and the balance in the depository to the credit of the treasury to be carried forward to the account of the next month.

All the statements and records shall be reconciled monthly and the reconciled reports shall be kept in the Treasurer's Office. The reconciled records for each month shall be kept in the Treasurer's Office for a period of five years.

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§12-1-11. Reports by depositories to Treasurer; discontinuance of depositories.

(a) Each depository of state funds shall at the end of each quarter cause its president or designated officer to report to the Treasurer the amount of state funds on deposit and the report shall be verified by the affidavit of the officer making it. The form and contents of the report shall be prescribed by the Treasurer and may be in an electronic format.

(b) For the failure to file the report, or for other good cause, the Treasurer may discontinue any depository as an eligible depository and cause all state funds to be withdrawn from any depository or depositories discontinued.

(c) When a depository is discontinued, the Treasurer shall immediately notify such depository of its discontinuance, and shall immediately withdraw by current checks or by transfer to another depository or depositories the full amount of the deposits held by any depository discontinued. After discontinuance, it shall be unlawful for the Treasurer to deposit any state funds in any depository discontinued until such time as the depository may be reinstated to eligibility.

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§12-1-12. Investing funds in treasury; depositories outside the state.

(a) When the funds in the Treasury exceed the amount needed for current operational purposes, as determined by the state Treasurer, the state Treasurer shall make all excess funds available for investment by the board of Treasury Investments which shall invest the excess for the benefit of the General Revenue Fund: *Provided*, That the state Treasurer, after reviewing the cash flow needs of the state, may withhold and invest amounts not to exceed $125 million of the operating funds needed to meet current operational purposes. Investments made by the state Treasurer under this section shall be made in short term investments not to exceed five days. Operating funds means the consolidated fund established in §12-6-8 of this code, including all cash and investments of the fund.

(b) Spending units with authority to retain interest or earnings on a fund or account may submit requests to the state Treasurer to transfer moneys to a specific investment pool of the Investment Management Board or the board of Treasury Investments and retain any interest or earnings on the money invested. The General Revenue Fund shall receive all interest or other earnings on money invested that are not designated for a specific fund or account.

(c) Whenever the funds in the Treasury exceed the amount for which depositories within the state have qualified, or the depositories within the state which have qualified are unwilling to receive larger deposits, the state Treasurer may designate depositories outside the state, disbursement accounts being bid for in the same manner as required by depositories within the state, and when depositories outside the state have qualified by giving the bond prescribed in §12-1-4 of this code, the state Treasurer shall deposit funds in the same manner as funds are deposited in depositories within the state under this article.

(d) The State Treasurer may transfer funds to financial institutions outside the state to meet obligations to paying agents outside the state if the financial institution meets the same collateral requirements as set forth in this article.

(e) Notwithstanding subsection (b) of this section, at the direction of the Governor, interest or earnings on federal moneys received by the state related to the COVID-19 pandemic, including, but not limited to, moneys received pursuant to the Coronavirus Aid, Relief, and Economic Security Act and the American Rescue Plan Act, shall be retained in the funds or accounts where the moneys are invested unless otherwise restricted by federal law or regulation, to be expended according to funding source restrictions. This subsection shall apply retroactively to the date of receipt of the federal moneys described in this subsection.

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§12-1-12a. Investment of operating funds for cash flow needs.

(a) The Legislature hereby finds and declares that the cash flow needs of the state require short term and liquid investments, and that up to $125 million of the operating funds of the state should be sufficient to meet cash flow needs. The Legislature further finds that the state Treasurer may withhold from transfer to the Investment Management Board up to $125 million of the operating funds of the state and invest those funds in short term and liquid investments.

(b) The State Treasurer may exercise any and all powers reasonably necessary or appropriate to carry out and effectuate the purposes of this section.

(c) Investments 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.

(d) The State Treasurer is authorized to invest the funds in repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities.

(e) The State Treasurer shall prepare monthly a report of the investments he or she administers. A copy of each report shall be furnished to the President of the Senate, speaker of the House, legislative Auditor, council of finance and administration, and upon request to any legislative committee, banking institution, state or federal savings and loan association in this state, and any member of the news media. The report shall also be kept available for inspection by the public.

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§12-1-12b. Cash Management Improvement Act; administration; reports.

(a) The Cash Management Improvement Act of 1990, Public Law 101-453, October 24, 1990, 31 U.S.C. Section 6501 et. seq. (CMIA) and regulations, as amended, establishes requirements and techniques, including calculations, for the receipt and disbursement of federal funds by states. The authorized official and representative of the State of West Virginia for the CMIA is the state Treasurer.

(b) In administering the CMIA, the state Treasurer is authorized to do all things reasonably necessary, including without limitation, entering into agreements with, negotiating settlements with, refunding any interest due and satisfying any liability to the United States Treasury in accordance with the CMIA.

(c) Periodically, the state Treasurer shall transfer to the "Federal Cash Management Fund", which is hereby authorized and continued, earnings on the state General Revenue Fund in an amount the Treasurer estimates is needed to make refunds in accordance with the CMIA. After each annual settlement with the United States Treasury, the state Treasurer shall transfer to the state General Revenue Fund any moneys remaining in the Federal Cash Management Interest Fund for the period just settled.

(d) The State Treasurer shall also transfer periodically to the "Federal Cash Management - Administration Fund," which is hereby authorized and continued, earnings on the state General Revenue Fund in an amount the Treasurer determines is needed to pay for the costs of administering the CMIA. The State Treasurer may pay the costs he or she incurs in administering the CMIA from the Federal Cash Management-Administration Fund.

(e) All state spending units shall cooperate fully with the state Treasurer in accumulating all the necessary data elements to fully comply with the CMIA.

(f) The State Treasurer shall send quarterly reports on the activities involving the CMIA to the Governor, Auditor, Secretary of Revenue and Joint Committee on Government and Finance.

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§12-1-12c.

Repealed.

Acts, 2013 Reg. Sess., Ch. 179.

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§12-1-12d. Investments by Marshall University, West Virginia University and West Virginia School of Osteopathic Medicine.

(a) Notwithstanding any provision of this article to the contrary, the governing boards of Marshall University, West Virginia University and West Virginia School of Osteopathic Medicine each may invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that university and which exists on January 1, 2005. The investment is subject to the limitations of this section.

(b) A governing board, through its chief financial officer, may enter into agreements, approved as to form by the State Treasurer, for the investment by its foundation of certain funds subject to their administration. Any interest or earnings on the moneys invested is retained by the investing university.

(c) Moneys of a university that may be invested with its foundation pursuant to this section are those subject to the administrative control of the university and that do not include any funds made available to the university from the state General Revenue Fund or the funds established in section eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code. Moneys permitted to be invested under this section may be aggregated in an investment fund for investment purposes.

(d) Investments by foundations that are authorized under this section shall be made in accordance with and subject to the provisions of the Uniform Prudent Investor Act, codified as article six-c, chapter forty-four of this code. As part of its fiduciary responsibilities, each governing board shall establish investment policies in accordance with the Uniform Prudent Investor Act for those moneys invested with its foundation. The governing board shall review, establish and modify, if necessary, the investment objectives as incorporated in its investment policies so as to provide for the financial security of the moneys invested with its foundation. The governing boards shall give consideration to the following:

(1) Preservation of capital;

(2) Diversification;

(3) Risk tolerance;

(4) Rate of return;

(5) Stability;

(6) Turnover;

(7) Liquidity; and

(8) Reasonable cost of fees.

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(e) A governing board shall report annually by December 31 to the Governor and to the Joint Committee on Government and Finance on the performance of investments managed by its foundation pursuant to this section.

(f) The amendments to this section in the second extraordinary session of the Legislature in 2010 apply retroactively so that the authority granted by this section shall be construed as if that authority did not expire on July 1, 2010.

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§12-1-12e. Investments by state colleges.

(a) Notwithstanding any provision of this article to the contrary, the governing boards of four-year public colleges and universities, with the exception of those schools provided for in section twelve-d of this article, after first consulting with the West Virginia Investment Management Board and the state Board of Treasury Investments to determine what their estimated rate of return on investment, including administrative expenses, would be if the moneys to be invested with the foundation were instead to be invested with the Investment Management Board or the Board of Treasury Investments when compared to any estimated return on investment, including administrative expenses, provided by the foundation, each may invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that institution and which exists on January 1, 2015. The investment is subject to the limitations of this section.

(b) A governing board, through its chief financial officer, may enter into agreements, approved as to form by the State Treasurer, for the investment by its foundation of certain funds subject to their administration. Any interest or earnings on the moneys invested is retained by the investing institution.

(c) Moneys of a four-year public college or university that may be invested with its foundation pursuant to this section are those subject to the administrative control of the institution and that do not include any funds made available to the institution from the state General Revenue Fund or the funds established in section eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code. Moneys permitted to be invested under this section may be aggregated in an investment fund for investment purposes.

(d) Of the moneys authorized for investment by this section, each four-year public college or university that may be invested with its foundation pursuant to this section, may have invested with its foundation at any time no more than $1 million excluding investment gains.

(e) Investments by foundations that are authorized under this section shall be made in accordance with and subject to the provisions of the Uniform Prudent Investor Act, codified as article six-c, chapter forty-four of this code. As part of its fiduciary responsibilities, each governing board shall establish investment policies in accordance with the Uniform Prudent Investor Act for those moneys invested with its foundation. The governing board shall review, establish and modify, if necessary, the investment objectives as incorporated in its investment policies so as to provide for the financial security of the moneys invested with its foundation. The governing boards shall give consideration to the following:

(1) Preservation of capital;

(2) Diversification;

(3) Risk tolerance;

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(4) Rate of return;

(5) Stability;

(6) Turnover;

(7) Liquidity; and

(8) Reasonable cost of fees.

(f) Prior to the initial transfer of funds to a foundation, the four-year public college or university shall submit its plan for the investment of the funds with its foundation to the Higher Education Policy Commission for its review. The purpose of review shall solely be to determine if the plan is financially prudent for the institution. Upon the commission's written finding that the plan is financially prudent for the institution, the institution is authorized to transfer its funds to the foundation for purposes of investment under this section.

(g) No four-year public college or university may transfer funds to its foundation pursuant to this section unless the college or university has a long-term bond from not less than two of the following rating entities of at least A3 by Moody's Investors Service, A- by Standard & Poor's and A- by Fitch Ratings.

(h) A governing board shall report annually by December 31 to the Governor and to the Joint Committee on Government and Finance on the performance of investments managed by its foundation pursuant to this section.

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§12-1-13. Payment of banking services and litigation costs for prior investment losses.

(a) The State Treasurer is authorized to pay for banking services, and goods and services ancillary to the banking services, by either a compensating balance in an account maintained at the financial institution providing the services or with a state warrant as described in section one, article three of this chapter.

(b) The Investment Management Board may pay for the investigation and pursuit of claims against third parties for the investment losses incurred during the period beginning on August 1, 1984, and ending on August 31, 1989. The payment may be in the form of a state warrant.

(c) If payment is made by a state warrant, the West Virginia Board of Treasury Investments, at the request of the state Treasurer, may establish within the consolidated fund an investment pool which will generate sufficient income to pay for all banking services provided to the state and to pay for the investigation and pursuit of the prior investment loss claims. All income earned by the investment pool shall be paid into a special account of the state Treasurer known as the banking services account to pay for all banking services and goods and services ancillary to the banking services provided to the state, for the investigation and pursuit of the prior investment loss claims, and for amortization of the balance in the investment imbalance fund.

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§12-1-14. Banking Services for Medical Cannabis.

(a) The Legislature finds and declares that the inability to provide banking services needed to collect and remit the fees, penalties, and taxes authorized under the West Virginia Medical Cannabis Act has delayed the implementation and is precluding access by the patients potentially eligible to be prescribed medical cannabis and investment by the persons and entities interested in providing services under the Act. The purpose of this section is to provide a solution to the banking problems encountered by the state in connection with the Act.

(b) The following words when used in this section shall have the following meanings, unless the context clearly indicates otherwise,

(1) "Act" means the West Virginia Medical Cannabis Act in §16A-1-1 et seq. of this code;

(2) "Financial institution" means a bank, national banking association, a non-bank financial institution, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a mutual savings bank, a credit union or a savings bank;

(3) "Non-bank financial institution" means a financial institution that does not have a banking license or is not supervised by a state, national or international banking regulatory agency. If a non-bank financial institution is a selected financial institution, it shall post a collateral bond of not less than 125 percent of the amounts on deposit with the Treasurer in lieu of any other collateral requirement in this article.

(4) "Selected financial institution" means a financial institution selected by the Treasurer under this section to receive, invest, and disperse the fees, penalties, and taxes authorized under the Act;

(5) "Treasurer" means the State Treasurer.

(c) The Treasurer shall select by competitive bid one or more financial institutions to provide banking services for the fees, penalties, and taxes collected under the Act and is authorized to pay any fees charged by a selected financial institution. A contract awarded by the Treasurer under the section may be extended as long as the Treasurer determines an extension is in the best interest of the state. A financial institution selected shall meet the requirements of this chapter for a state depository and any other applicable requirements of this section.

(d) The Medical Cannabis Program Fund authorized in §16A-9-2 of this code shall receive all civil penalties collected under §16A-12-8 of this code. Any method of receipt, remittance, payment, or transfer authorized by the Treasurer are acceptable under the Act.

(e) The Treasurer’s office may authorize the Medical Cannabis Program Fund be held in one or more accounts at a selected financial institution outside the treasury until the Treasurer is

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able to lawfully transfer moneys to the main disbursement account of the state. Moneys in the Medical Cannabis Program Fund may be invested by a financial institution or the West Virginia Board of Treasury Investments and earnings shall accrue to the Medical Cannabis Program Fund.

(f) The Treasurer may charge fees for providing banking services under the Act, including without limitation, fees for expenses incurred, oversight, and compliance. The Treasurer's Medical Cannabis Fund is hereby created to receive all fees charged by the Treasurer. The Treasurer may authorize the Treasurer's Medical Cannabis Fund held in an account at a selected financial institution outside the treasury until the Treasurer is lawfully able to transfer moneys to the main disbursement account of the state. When the financial institution holding the state concentration account will accept the medical cannabis funds of the state, the Treasurer shall transfer the funds and close the accounts created under this section. Moneys in the Treasurer's Medical Cannabis Fund shall be expended for the expenses incurred, oversight and compliance, and may be invested by a financial institution or the West Virginia Board of Treasury Investments with earnings accruing to the fund.

(g) The Enterprise Resource Planning Board shall configure wvOASIS to allow deposit in, investing moneys in, and making payments from the accounts established by the Treasurer pursuant to this section at a selected financial institution.

(h)(1) Actions taken under and in accordance with this section shall not be considered unlawful under any provision of this code.

(2) The Commissioner of Financial Institutions shall not prohibit, penalize, incentivize, or otherwise impair a financial institution from providing services to a person or entity involved in a medical cannabis-related business functioning under the Medical Cannabis Act solely because the person or entity is a grower, processor, dispensary, owner of any proportion, operator, employee, patient, caregiver, family or household member, financial broker, or other similar person or entity of a medical cannabis-related business operating in accordance with the Medical Cannabis Act: Provided, That nothing in this section shall prohibit the Commissioner of Financial Institutions from enforcing applicable laws and regulations related to ensuring the safety and soundness of a financial institution.

(3) No cause of action exists against the Treasurer and the state officers and employees involved in cannabis-related banking or financial services, in their personal capacities, while acting within the scope of duties contemplated by this Article or the Act. Any recovery for claims or actions arising from this Article is limited solely to the proceeds of available insurance coverage.

(4) To the extent permitted by law, the State of West Virginia shall defend the Treasurer and the state officers and employees involved in cannabis-related banking or financial services against any claims, charges, liabilities or expenses and shall indemnify and hold harmless the Treasurer and any state employee involved in cannabis-related banking or financial services provided within the scope of their duties or employment in accordance with the Act,

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including without limitation, defense in any state, federal, or local court and payment of the amount of any judgment obtained, damages, legal fees and expenses, and any other expenses incurred.

WV Legislature

§12-1A-1. Definitions.

[Repealed.]

WV Legislature

§12-1A-2. Legislative findings.

[Repealed.]

WV Legislature

§12-1A-3. Limitations on investment in linked deposits.

[Repealed.]

WV Legislature

§12-1A-4. Applications for loan priority; loan package; counseling.

[Repealed.]

WV Legislature

§12-1A-5. Acceptance or rejection of loan package; deposit agreement for linked deposits.

[Repealed.]

WV Legislature

§12-1A-6. Certification and monitoring of compliance; accountability and reporting.

[Repealed.]

WV Legislature

§12-1A-7. Liability of state.

[Repealed.]

WV Legislature

§12-1A-8. Penalties for violation of article.

[Repealed.]

WV Legislature

§12-1A-9. Effective dates.

[Repealed.]

WV Legislature

§12-1B-1. Short title.

This article shall be known, and may be cited as, the West Virginia Security for Public Deposits Act.

WV Legislature

§12-1B-2. Legislative intent; findings.

(a) The purpose of the West Virginia Security for Public Deposits Act is to allow designated state depositories to pledge collateral for all public deposits made by the state or by any county, municipality, spending unit, or political subdivision of the state through a pooled method, as defined in §12-1B-4 of this code.

(b) It is the intent of the Legislature that designated state depositories participating in the Public Deposits Program be authorized to secure public deposits through the pooled method, as an alternative to the methods of securing public deposits authorized under other sections of this code, including §7-6-2, §8-13-22a, §12-1-4, §12-1-5, and §18-9-6 of this code.

(c) The Legislature anticipates that authorizing designated state depositories to secure public deposits using the pooled method will lower the overall cost of public deposits and make public banking contracts in West Virginia more desirable to financial institutions.

WV Legislature

§12-1B-3. Applicability.

This article applies to public deposits. This article does not apply to investments made by the State Treasurer, the Board of Treasury Investments, the Investment Management Board, or any other investments of the state.

WV Legislature

§12-1B-4. Definitions.

For the purposes of this article, the following terms have the following meanings:

“Dedicated method” or “non-contingent liability pool” means the securing of public deposits without accepting the contingent liability for the losses of public deposits of other designated state depositories as provided in §12-1-5 of this code.

“Default” or “insolvent” includes, but may not be limited to, the failure or refusal of any designated state depository to return any public deposit upon demand or at maturity and the issuance of an order of supervisory authority restraining such depository from making payments of deposit liabilities or the appointment of a receiver for such depository.

“Defaulting depository” means any designated state depository determined to be in default or insolvent.

“Designated state depository” means any state or national bank or any state or federal savings and loan association in this state meeting the requirements of this chapter.

“Political subdivision” means any county, municipality, board of education, corporation or instrumentality of one or more counties or municipalities, or any other government organization.

“Pooled method” means securing public deposits by accepting the contingent liability for the losses of public deposits of other designated state depositories that choose this method, as required by this article and any rule pursuant to this article.

“Public deposit” means funds of a public depositor held by a designated state depository that is authorized to receive or administer such moneys from a public depositor for deposit in any of the following types of accounts: Time deposits; demand deposits; savings deposits; or any other transaction accounts.

“Public depositor” means the state or any county, municipality, spending unit, or other political subdivision of the state.

“Qualified escrow agent” means the State Treasurer or any bank or trust company approved by the State Treasurer to hold collateral pledged to secure public deposits.

“Required collateral” of a designated state depository means the amount of collateral required to secure public deposits, according to this article or rules promulgated or proposed pursuant to this article.

“Spending unit” means a department, agency, board, commission, or institution of state government for which an appropriation is requested or to which an appropriation is made by the Legislature.

WV Legislature

"State Treasurer" or "Treasurer" means the State Treasurer of West Virginia or his or her designee.

"West Virginia Security for Public Deposits Program" or "Public Deposits Program" means the system and procedures developed by the State Treasurer to enable designated state depositories to secure public deposits pursuant to this article.

WV Legislature

§12-1B-5. West Virginia Security for Public Deposits Program authorized.

The West Virginia Security for Public Deposits Program is hereby authorized. The State Treasurer shall announce the commencement of the West Virginia Security for Public Deposits Program, at which time the requirements of this article become effective, by publishing a notice in the State Register at least 30 days prior to commencement of the program. The Treasurer shall implement and administer the West Virginia Security for Public Deposits Program under the terms and conditions required by this article.

WV Legislature

§12-1B-6. The Treasurer’s Collateral Administration Fund.

There is hereby established in the State Treasury a special revenue account designated the Treasurer’s Collateral Administration Fund to be administered by the Treasurer pursuant to the provisions of this article. This fund shall be an interest-bearing fund and shall receive moneys authorized in the article. Moneys in the account shall be used by the Treasurer to pay any fees and costs associated with this article and for such other purposes as authorized by the Legislature.

WV Legislature

§12-1B-7. Powers and duties of the State Treasurer; rules; charges; contracts.

In order to implement and administer the Public Deposits Program, the State Treasurer may:

(1) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code as are necessary to effectuate the provisions of this article, including, but not limited to, the following:

(A) The terms and conditions under which public deposits must be secured;

(B) The method for determining the pooled collateral requirements based on the balance of public funds held in the designated state depository in excess of funds insured by an agency of the federal government and the evaluation of the overall financial condition of the designated state depository;

(C) The collateral requirements and collateral pledging level for each designated state depository as determined to be prudent under the circumstances and based on nationally recognized financial rating services information and established financial performance guidelines;

(D) The securities or instruments that constitute eligible collateral under this article and the percentage of face value or market value of such securities or instruments that can be used to secure public deposits;

(E) Reporting requirements for designated state depositories;

(F) The process for a designated state depository to withdraw from the pooled method of securing public deposits and instead be governed by the procedures for securing such deposits by the dedicated method or other approved method permitted in this code, consistent with the primary purpose of protecting public deposits;

(G) The process for determining when a default or insolvency has occurred, or is likely to occur, and the actions necessary for the protection, collection, compromise, or settlement of any claim arising in case of default or insolvency;

(H) Requirements for the payment of losses by pooled or dedicated methods; and

(I) Any and all guidelines necessary and proper for the full and complete administration of this article;

(2) Charge and collect any necessary administrative fees, fines, penalties, and service charges in connection with the Public Deposits Program or any agreement, contract, or transaction pursuant to this article;

(3) Execute contracts, agreements, or other instruments for goods and services necessary to

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effectuate this article, including agreements with designated state depositories or any other entity. Selection of these services is not subject to §5A-3-1 *et seq*. of this code; and

(4) Perform all other lawful actions necessary to effectuate the provisions of this article, subject to applicable state and federal law.

WV Legislature

§12-1B-8. Authority to secure public deposits; acceptance of liabilities and duties of designated state depositories.

(a) All designated state depositories are hereby authorized to secure public deposits in accordance with this article and shall be considered to have accepted the liabilities and duties imposed upon it pursuant to this article.

(b) Notwithstanding any provision of this code to the contrary, including, but not limited to, §7-6-2, §8-13-22a, §12-1-4, §12-1-5, and §18-9-6 of this code, a designated state depository securing public deposits in accordance with this article is not required to secure said deposits by another method provided in this code.

WV Legislature

§12-1B-9. Collateral for public deposits.

(a) Designated state depositories shall secure public deposits under this article by the pooled method, the dedicated method or by any other method permitted in this code. Every designated state depository securing public deposits under this article shall deposit with a qualified escrow agent eligible collateral equal to or in excess of the required collateral. Eligible collateral shall be valued as determined by the State Treasurer. Substitutions and withdrawals of eligible collateral may be made as determined by the State Treasurer.

(b) A designated state depository shall meet all collateral requirements under this article if it accepts or retains any public deposit under this article: Provided, That a designated state depository may accept or retain public deposits that occur outside of its set hours of operation and in excess of its required collateral, so long as any such necessary deposit of eligible collateral is made prior to the close of business on the second business day following receipt of the deposit.

WV Legislature

§12-1B-10. Subrogation of the State Treasurer to depositor's rights; payment of sums received from distribution of assets.

Upon payment in full to any designated state depository on any claim presented pursuant to this article, the State Treasurer shall be subrogated to all of such depositor's rights, title, and interest against the depository in default or insolvent and shall share in any distribution of such defaulting or insolvent depository's assets in the same amount as would have been received by the public depositor ratably with other depositors. Any sums received from any such distribution shall be paid to the other designated state depositories against which assessments were made, in proportion to such assessments, net of any proper payment or expense of the State Treasurer in enforcing any such claim.

WV Legislature

§12-1B-11. Deposit of public funds in designated state depositories; authority to make public deposits.

(a) Public deposits made pursuant to this article shall be deposited in a designated state depository.

(b) All public depositors shall make public deposits under their control in designated state depositories, securing such public deposits pursuant to this article: *Provided*, That a public depositor shall provide a designated state depository with at least two business days of advance notice prior to making any large increase in its public deposits that could otherwise result in the depository having an insufficient amount of eligible collateral necessary to secure the public deposits in accordance with the provisions of this article. If the advanced notice is not provided, the designated state depository shall notify the State Treasurer accordingly.

(c) A county, municipality, spending unit, or other political subdivision of the state may not require any pledge of collateral from a designated state depository for their deposits in excess of the requirements of this article.

WV Legislature

§12-1B-12. Liability of public depositors.

When deposits are made in accordance with this article, no official of a public depositor may be personally liable for any loss resulting from the default or insolvency of any designated state depository in the absence of negligence, malfeasance, misfeasance, or nonfeasance.

WV Legislature

§12-1B-13. Reports of designated state depositories.

No later than the 10th day after the end of each reporting period, or when otherwise requested by the State Treasurer, each designated state depository accepting any public deposit under this article shall submit to the State Treasurer an electronic report of such data as required by the Treasurer for the administration of this article.

WV Legislature

§12-1B-14. Inconsistent provisions.

If provisions of this article are inconsistent with the provisions of any other state or local law relating to the pledge of collateral by the state or any county, municipality, or other political subdivision for purposes of securing public deposits in financial institutions, the provisions of this article shall control.

WV Legislature

§12-1C-1. Definitions.

(a) For the purposes of this article, the following terms shall have the following meanings:

(1) “Banking contract” means a contract entered into by the Treasurer and a financial institution pursuant to this chapter, to provide banking goods or services to a spending unit.

(2) “Boycott of energy companies” means without a reasonable business purpose, refusal to deal with a company, termination of business activities with a company, or another action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:

(A) Engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy;

(B) Engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or

(C) Does business with a company that engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy.

(3) “Company” means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, that exist for the purpose of making profit.

(4) “Financial institution” means a bank, national banking association, non-bank financial institution, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a mutual savings bank, a credit union, or a savings bank.

(5) “Reasonable business purpose” includes any purpose directly related to:

(A) Promoting the financial success or stability of a financial institution;

(B) Mitigating risk to a financial institution;

(C) Complying with legal or regulatory requirements; or

(D) Limiting liability of a financial institution.

(6) “Restricted financial institution” means a financial institution included in the most recently updated restricted financial institution list.

(7) “Restricted financial institution list” means the list of financial institutions prepared,

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maintained, and published pursuant to this article.

(8) “Treasurer” refers to the West Virginia State Treasurer.

WV Legislature

§12-1C-2. Restricted financial institutions list.

(a) The Treasurer is authorized to prepare and maintain a list of financial institutions that are engaged in a boycott of energy companies.

(b) The Treasurer must publicly post the restricted financial institution list on the Treasurer's website and submit a copy of the list to the Governor, the President of the Senate, and the Speaker of the House of Delegates.

(c) A citation to this article and a brief summary of the purpose of the list must appear at the top of the list, including a statement that inclusion on the list is not an indication of unsafe or unsound operating conditions of any financial institution nor any risk to consumer deposits.

(d) The Treasurer must update the restricted financial institution list annually, or more often as the Treasurer considers necessary.

WV Legislature

§12-1C-3. Notice to financial institutions.

(a) Forty-five days prior to including a financial institution on the restricted financial institution list, the Treasurer must send a written notice to the institution containing the following information:

(1) That the Treasurer has determined that the financial institution is a restricted financial institution;

(2) That the financial institution will be placed on the restricted financial institution list in 45 days unless, within 30 days following the receipt of the written notice, the restricted financial institution demonstrates that it is not engaged in a boycott of energy companies;

(3) That the restricted financial institution list is published on the Treasurer's website; and

(4) That the institution's placement on the list may render the institution ineligible to enter into, or remain in, banking contracts with the State of West Virginia.

(b) Following a restricted financial institution's inclusion on the restricted financial institution list, the Treasurer will remove the institution from the list if the institution demonstrates that it has ceased all activity that boycotts energy companies.

WV Legislature

§12-1C-4. Sources of information.

(a) In determining whether to include a financial institution on the restricted financial institution list, the Treasurer shall consider and may rely upon the following information:

(1) A financial institution's certification that it is not engaged in a boycott of energy companies;

(2) Publicly available statements or information made by the financial institution, including statements by a member of a financial institution's governing body, an executive director of a financial institution, or any other officer or employee of the financial institution with the authority to issue policy statements on behalf of the financial institution; or

(3) Information published by a state or federal government entity.

(b) In determining whether to include a financial institution on the restricted financial institution list, the Treasurer may not rely solely on the following information:

(1) Statements or complaints by an energy company; or

(2) Media reports of a financial institution's boycott of energy companies.

(c) A financial institution may not be compelled to produce or disclose any data or information deemed confidential, privileged, or otherwise protected from disclosure by state or federal law.

WV Legislature

§12-1C-5. Restricted financial institutions.

(a) In selecting a financial institution to enter into a banking contract, the Treasurer is authorized to disqualify restricted financial institutions from the competitive bidding process or from any other official selection process.

(b) The Treasurer is authorized to refuse to enter into a banking contract with a restricted financial institution based on its restricted financial institution status.

(c) The Treasurer is authorized to require, as a term of any banking contract, an agreement by the financial institution not to engage in a boycott of energy companies for the duration of the contract.

WV Legislature

§12-1C-6. Limitation on liability.

With respect to actions taken in compliance with this article, a public agency, public official, public employee, or member or employee of a financial institution is immune from liability.

WV Legislature

§12-1C-7. Exemptions.

The provisions of this section do not apply to the duties, actions, and transactions of the West Virginia Investment Management Board as set forth in §12-6-1 *et seq*. of this code.

WV Legislature

§12-2-1. How and to whom taxes and other amounts due the state or any political subdivision, official, department, board, commission or other collecting agency thereof may be paid.

All persons, firms and corporations shall promptly pay all taxes and other amounts due from them to the state, or to any political subdivision, official, department, board, commission or other collecting agency thereof authorized by law to collect the taxes and other amounts due by any authorized commercially acceptable means, in money, United States currency or by check, bank draft, certified check, cashier's check, post office money order, express money order or electronic funds transfer payable and delivered to the official, department, board, commission or collecting agency thereof authorized by law to collect the taxes and other amounts due and having the account upon which the taxes or amounts due are chargeable against the payer of the taxes or amounts due. The duly elected or appointed officers of the state and of its political subdivisions, departments, boards, commissions and collecting agencies having the account on which the taxes or other amounts due are chargeable against the payer of the taxes or other amounts due and authorized by law to collect the taxes or other amounts due, and their respective agents, deputies, assistants and employees shall in no case be the agent of the payer in and about the collection of the taxes or other amounts, but shall at all times and under all circumstances be the agent of the state, its political subdivision, official, department, board, commission or collecting agency having the account on which the taxes or amounts are chargeable against the payer of the taxes or other amounts due and authorized by law to collect the same.

WV Legislature

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

(a) All officials and employees of the state authorized by statute to accept moneys on behalf of the State of West Virginia shall keep a daily itemized record of moneys received for deposit in the State Treasury and shall deposit within one business day with the State Treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. The State Treasurer may grant an exception to the one business day rule when circumstances make compliance difficult or expensive. The State Treasurer may review the procedures and methods used by officials and employees authorized to accept moneys due the state and change the procedures and methods if he or she determines it is in the best interest of the state: *Provided*, That the State Treasurer may not review or amend the procedures by which the Department of Revenue accepts moneys due the state: *Provided, however*, That absent an exemption granted by the State Treasurer, the Department of Revenue must utilize the State Treasurer's contracts or agreements entered into pursuant to §12-1-2 or §12-3A-6 of this code for any banking goods and services required for said procedures. The State Treasurer shall propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq*. of this code governing the procedure for deposits. The official or employee making deposits with the State Treasurer shall prepare deposit lists in the manner and upon report forms prescribed by the State Treasurer in the state accounting system. The State Treasurer shall review the deposits in the state accounting system and forward the information to the State Auditor and to the Secretary of Revenue.

(b) All moneys received by the state from appropriations made by the Congress of the United States shall be recorded in special fund accounts, in the State Treasury apart from the general revenues of the state, and shall be expended only upon appropriation of the Legislature in accordance with the provisions of §4-11-1 *et seq*. of this code. All moneys, other than federal funds, defined in §4-11-2 of this code, shall be credited to the state fund and treated by the State Auditor and State Treasurer as part of the general revenue of the state except the following funds which shall be recorded in separate accounts:

(1) All funds excluded by the provisions of §4-11-6 of this code;

(2) All funds derived from the sale of farm and dairy products from farms operated by any spending unit of the state;

(3) All endowment funds, bequests, donations, executive emergency funds and death and disability funds;

(4) All fees and funds collected at state educational institutions for student activities;

(5) All funds derived from collections from dormitories, boardinghouses, cafeterias, and road camps;

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(6) All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;

(7) All insurance collected on account of losses by fire and refunds;

(8) All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices;

(9) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking fund, general school fund, school fund, state fund (moneys belonging to counties, districts, and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the Public Service Commission for the investigation and supervision of applications and all fees, money, interest or funds arising from the sales of all permits and licenses to hunt, trap, fish, or otherwise hold or capture fish and wildlife resources and money reimbursed and granted by the federal government for fish and wildlife conservation; and

(10) All moneys collected or received under any act of the Legislature providing that funds collected or received under the act shall be used for specific purposes.

(c) All moneys, except as provided in subdivisions (1) through (9), inclusive, subsection (b) of this section, shall be paid into the State Treasury in the same manner as collections not excepted and recorded in separate accounts for receipt and expenditure for the purposes for which the moneys are authorized to be collected by law: *Provided*, That amounts collected pursuant to subdivisions (1) through (10), subsection (b) of this section, which are found, from time to time, to exceed funds needed for the purposes set forth in general law may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The gross amount collected in all cases shall be paid into the State Treasury. Commissions, costs and expenses, including, without limitation, amounts charged for use of bank, charge, credit or debit cards, incurred in the collection process shall be paid from the gross amount collected in the same manner as other payments are made from the State Treasury.

(d) The State Treasurer may establish an imprest fund or funds in the office of any state spending unit upon receipt of a proper application. To implement this authority, the State Treasurer shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code. The State Treasurer or his or her designee shall annually audit all imprest funds and prepare a list of the funds showing the location and amount as of fiscal year end, retaining the list as a permanent record of the State Treasurer until the Legislative Auditor has completed an audit of the imprest funds of all agencies and institutions involved.

(e) The State Treasurer may develop and implement a centralized receipts processing center. The State Treasurer may request the transfer of equipment and personnel from appropriate state agencies to the centralized receipts processing center in order to implement the provisions of this section: *Provided*, That the Governor or appropriate

constitutional officer has authority to authorize the transfer of equipment or personnel to the centralized receipts processing center from the respective agency.

WV Legislature

§12-2-3. Deposit of moneys not due the State.

(a) All officials and employees of the State authorized to accept moneys that the State Treasurer determines or that this code specifies are not funds due the State pursuant to the provisions of section two of this article shall deposit the moneys, as soon as practicable, in the manner and in the depository specified by the State Treasurer. The State Treasurer shall prescribe the forms and procedures for depositing the moneys.

(b) Notwithstanding any provision of this code to the contrary, including provisions stating funds collected are not state funds and provisions authorizing a spending unit to have one or more accounts outside the Treasury, a spending unit shall comply with the State Treasurer's procedures for the receipt and disbursement of moneys not due the state and obtain written authorization from the State Treasurer before depositing any moneys in an account outside the Treasury. Upon the State Treasurer`s written revocation of the authorization, the spending unit shall deposit funds deposited in an account outside the Treasury into the Treasury in the manner and in the depository specified by the State Treasurer. The State Treasurer is the final determining authority as to whether these funds are funds due or not due the state pursuant to section two of this article.

(c) The State Treasurer shall provide the Legislative Auditor with an annual report of all accounts authorized under this section.

WV Legislature

§12-2-4. Duty of depositories.

Immediately upon the receipt of a deposit from the state, it shall be the duty of the depository to credit the treasurer with the amount of the deposit, to date and sign the certificate of deposit by some legally constituted official of the depository and promptly transmit the certificate to the treasurer.

WV Legislature

§12-2-5. Deposits in correspondent banks of state depositories.

When any payment of money has been made to the state for road bonds or other purposes outside of the state, the treasurer has the authority to place the same to the credit of one or more state depositories in one or more of its correspondent banks located within or without the state. The treasurer shall, upon making such a deposit in the correspondent bank, secure from it a proper certificate of deposit certifying the amount and the name of the state depository to whose credit the deposit was made by the treasurer. The treasurer shall forward a copy of the certificate to the state depository receiving the deposit through its correspondent bank, and it shall be the duty of the depository immediately to issue to the State of West Virginia a proper certificate of deposit for the amount deposited, dated the same day the deposit was made in the correspondent bank. Before making the deposit the treasurer shall secure written authority from the depository, designating the name and address of its correspondent bank or banks in which deposits are to be made and the maximum amount to be deposited in each. The depository bonds of all state depositories authorizing and receiving the deposits in their correspondent banks shall be liable for the deposits the same as if the deposits had been made with them directly, whether the bonds are so conditioned or not, and all depository bonds hereafter issued shall so provide.

WV Legislature

§12-2-6. Violations; penalties.

Any person violating any of the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding $1,000 or confined in jail not exceeding one year, or both, in the discretion of the court, and in addition thereto shall forfeit whatever office or position he holds in connection with the state government.

WV Legislature

§12-3-1. Manner of payment from treasury; form of checks.

(a) Every person claiming to receive money from the treasury of the state shall apply to the Auditor for a warrant for same. The Auditor shall thereupon examine the claim, and the vouchers, certificates and evidence, if any, offered in support thereof, and for so much thereof as he or she finds to be justly due from the state, if payment thereof is authorized by law, and if there is an appropriation not exhausted or expired out of which it is properly payable, the Auditor shall issue his or her warrant on the treasurer, specifying to whom and on what account the money mentioned therein is to be paid, and to what appropriation it is to be charged. The Auditor shall present to the treasurer daily reports on the number of warrants issued, the amounts of the warrants and the dates on the warrants for the purpose of effectuating the investment policies of the State Treasurer and the Investment Management Board. On the presentation of the warrant to the treasurer, the treasurer shall ascertain whether there are sufficient funds in the treasury to pay that warrant, and if he or she finds it to be so, he or she shall in that case, but not otherwise, endorse his or her check upon the warrant, directed to some depository, which check shall be payable to the order of the person who is to receive the money therein specified.

(b) If a check is not presented for payment within six months after it is drawn, it is the duty of the treasurer to credit it to the depository on which it was drawn, to credit the "Treasurer's Stale Check Fund," which is hereby created in the State Treasury, and immediately notify the Auditor to make corresponding entries on the Auditor's books. If the State Treasurer determines any funds deposited in the stale check account are federal funds, the State Treasurer shall notify the spending unit authorizing the payment. Within six months following issuance of the notice, the spending unit shall inform the State Treasurer of the amount of federal funds included in the check, the account from which the federal funds were disbursed, and the current fiscal year account to which the federal funds are to be transferred. After receiving the information, the State Treasurer shall transfer the amount of federal funds specified as a reimbursement to the current fiscal year account specified to receive federal funds by the spending unit. For a period of up to six months, the State Treasurer shall endeavor to pay the money in the stale check account to the payee. The treasurer shall credit the money that has been in the stale check account for six months, or for a shorter period as determined by the treasurer, to the unclaimed property fund pursuant to the provisions of article eight, chapter thirty-six of this code, and shall immediately notify the Auditor to make corresponding entries on the Auditor's books.

(c) No state depository may pay a check unless it is presented within six months after it is drawn and every check shall bear upon its face the words "Void, unless presented for payment within six months."

(d) Any information or records maintained by the treasurer concerning any check not presented for payment within six months of the date of issuance is confidential and exempt from disclosure under the provisions of article one, chapter twenty-nine-b of this code, and is disclosable only to the state spending unit authorizing the check, or to the payee, his or her personal representative, next of kin or attorney-at-law.

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(e) All claims required by law to be allowed by any court, and payable out of the State Treasury, shall have the seal of the court allowing or authorizing the payment of the claim affixed by the clerk of the court to his or her certificate of its allowance. No claim may be audited and paid by the Auditor unless the seal of the court is thereto attached as aforesaid. No tax or fee may be charged by the clerk for affixing his or her seal to the certificate, referred to in this section. The treasurer shall propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the procedure for such payments from the treasury.

WV Legislature

§12-3-1a. Payment by deposit in bank account.

The Auditor may issue his warrant on the treasurer to pay any person claiming to receive money from the treasury by deposit to the person's account in any bank or other financial institution by electronic funds transfer, if the person furnishes authorization of the method of payment. The Auditor shall prescribe the form of the authorization. If the authorization is in written form, it shall be sent to the Auditor for review and approval and then forwarded in electronic form to the treasurer. If the authorization is in electronic form, it shall be sent to both the Auditor and the treasurer. The Auditor must review and approve the authorization. This section may not be construed to require the Auditor to utilize the method of payment authorized by this section. An authorization furnished pursuant to this section may be revoked by written notice furnished to the Auditor and then forwarded by the Auditor in electronic form to the treasurer or by electronic notice furnished to both the Auditor and the treasurer. Upon execution of the authorization and its receipt by the office of the Auditor, the warrant shall be created in the manner specified on the authorization and forwarded to the treasurer for further disposition to the designated bank or other financial institution specified on the electronic warrant: Provided, That after July 1, 2002, the State Auditor shall cease issuing paper warrants except for income tax refunds. After that date all warrants except for income tax refunds, shall be issued by electronic funds transfer: Provided, however, That the Auditor, in his or her discretion, may issue paper warrants on an emergency basis.

WV Legislature

§12-3-1b. Voluntary direct deposits by Auditor of salaries of employees to banks or other financial institutions.

Any officer or employee of the State of West Virginia may authorize the direct deposit of his or her net wages to his or her account in any bank or other financial institution by electronic funds transfer. Direct deposit authorizations shall comply with the requirements of section one-a of this article. Upon approval of an authorization, the Auditor shall issue the warrant in the manner specified on the authorization and forward the warrant to the treasurer for further disposition to the designated bank or other financial institution on or before the day or days the officer or employee is due his or her net wages. Direct deposit authorizations may be revoked at any time thirty days prior to the date on which the direct deposit is regularly made and on a form to be provided by the Auditor: Provided, That on and after July 1, 2002, at the option of the Auditor, all wages shall be deposited directly into the employees' account at any bank or financial institution designated by the employee via electronic funds transfer or, if the employee does not have a bank account, through the West Virginia check card program in accordance with section four, article three-a of this chapter.

WV Legislature

§12-3-2. Auditor may administer oaths; seal.

The Auditor may administer oaths in relation to any claim presented to him in his official character. He may have and use an official seal, which may be affixed to any official certificate or other paper intended to be used outside of this state.

WV Legislature

§12-3-3.

Repealed.

Acts, 1941 Reg. Sess., Ch. 20.

WV Legislature

§12-3-4. No check to be drawn on depository having insufficient funds; necessity of warrant and check or electronic funds transfer.

The treasurer shall draw no check on any depository unless there is money enough in the depository to the credit of the treasury to pay the check when duly presented for payment. No depository holding money to the credit of the treasury shall pay out the same, or any part thereof, except upon a check of the treasurer endorsed on a warrant of the Auditor authorizing a check or a duly authorized electronic funds transfer drawn in place of such check.

WV Legislature

§12-3-5. When requisition to Auditor sufficient authority for issuing warrant.

(a) When an appropriation has been made by law, subject to the order or payable on the requisition of a particular officer, board or person, the order or written or electronic requisition is sufficient authority to the Auditor to issue a warrant for the same or any party thereof.

(b) The Auditor:

(1) Shall accept an electronic requisition from Marshall University and West Virginia University in an unaltered format approved by the Auditor;

(2) May accept or require an electronic requisition from any entity other than Marshall University or West Virginia University at his or her discretion in an unaltered format approved by the Auditor; and

(3) May not issue a warrant for an amount that exceeds the appropriation or for an expired appropriation.

WV Legislature

§12-3-6. Requisitions on behalf of state boards and institutions.

(a) An appropriation made to or for any state board or institution shall be drawn from the Treasury upon the requisition of an appropriate officer thereof to the Auditor at such times and in such amounts as is necessary for the purposes for which the appropriation is made. The Auditor shall pay the amount named in the requisition at such times and in such installments as are necessary for the purposes for which the appropriation is made.

(b) Except as provided in subsection (c) of this section, a requisition for appropriation for new buildings and substantial betterments shall be accompanied by the architect's estimate that the amount named in the requisition is needed for immediate use.

(c) The provisions of subsection (b) of this section do not apply to a requisition from:

(1) An institution from which the Auditor is required to accept an electronic requisition. Such an institution is not required to submit the documentation required in subsection (b) of this section, but shall maintain the documentation for inspection at the Auditor's request; and

(2) The Commissioner of Corrections.

(d) The Auditor may issue a warrant to pay money out of the state Treasury only if the money is needed for the present use.

WV Legislature

§12-3-7. Payment of compensation and expenses of members of state boards and commissions; embezzlement.

(a) Unless otherwise provided by law, a member of any state board or commission:

(1) Receives $4 per day for each day necessarily employed as such, including time spent traveling to and returning from the meeting location;

(2) Receives the actual and necessary expenses incurred in the discharge of his or her duties; and

(3) Does not receive mileage reimbursement.

(b) Prior to receiving compensation or expense reimbursement:

(1) The member prepares in duplicate an itemized statement specifying the number of days spent and the expenses incurred;

(2) The member certifies the accuracy of the itemized statement;

(3) The member delivers the original to the secretary or clerk of the board or commission for preservation in its office; and

(4) The secretary or clerk immediately forwards the duplicate to the Auditor.

(c) If any member willfully makes a greater charge of services or expenses than truth justified, he or she is guilty of embezzlement and punished accordingly.

(d) The governing board of Marshall University and West Virginia University each satisfies the requirements of subsection (b) of this section by maintaining the member's original itemized, certified statement and submitting an electronic requisition to the Auditor.

WV Legislature

§12-3-8. Requisition on behalf of institutions to be accompanied by statement showing funds on hand.

A requisition made upon the Auditor for any money appropriated for a state correctional facility; the West Virginia School for the Deaf and Blind; state mental health facilities; state hospitals; corrections facilities; Marshall University; West Virginia University; any other public institution for education, charity or correction; or institutions under the jurisdiction of the Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education shall be accompanied by a written or electronic statement of a financial officer of the institution, showing the amount of money in his or her hands to the credit of the institution, or otherwise in its control, on the day the requisition is forwarded for payment.

WV Legislature

§12-3-8a. Limitation on requisitions from judicial accounts.

No requisition shall be made upon the Auditor for any money appropriated for the judicial system of the state, unless prior approval shall have been obtained from the Supreme Court of Appeals or its administrative director authorizing such requisition.

WV Legislature

§12-3-9. Certificate with requisition as to need of money for present use.

Every board or officer authorized by law to issue requisitions upon the Auditor for payment of money out of the State Treasury, shall, before any such money is paid out of the State Treasury, certify to the Auditor that the money for which such requisition is made is needed for present use for the purposes for which it was appropriated; and the Auditor shall not issue his warrant to pay any money out of the State Treasury unless he is satisfied that the same is needed for present use for such purposes.

WV Legislature

§12-3-10. Itemized statement of claim against state; rules to be promulgated concerning same.

It is unlawful for any state officer to issue his or her requisition on the State Auditor in payment of any claim unless an itemized account is filed in the office of the officer issuing the requisition. The Auditor shall propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, to govern the form and manner by which claims shall be itemized for payment.

WV Legislature

§12-3-10a. Purchasing Card Program.

Notwithstanding the provisions of section ten of this article, payment of claims may be made through the use of the state Purchasing Card Program authorized by the provisions of this section. The Auditor, in cooperation with the Secretary of the Department of Administration, may establish a state Purchasing Card Program for the purpose of authorizing all spending units of state government to use a purchasing card as an alternative payment method. The Purchasing Card Program shall be conducted so that procedures and controls for the procurement and payment of goods and services are made more efficient. The program shall permit spending units to use a purchasing card to pay for goods and services. Notwithstanding any other provision of this code to the contrary, a purchasing card may be used to make any payment authorized by the Auditor, including regular routine payments and travel and emergency payments, and such payments shall be set at an amount to be determined by the Auditor. Purchasing cards may not be utilized for the purpose of obtaining cash advances, whether the advances are made in cash or by other negotiable instrument: Provided, That purchasing cards may be used for cash advances for travel purchases upon approval of the Auditor. Purchases of goods and services must be received either in advance of or simultaneously with the use of a state purchasing card for payment for those goods or services. The Auditor, by legislative rule, may eliminate the requirement for vendor invoices and provide a procedure for consolidating multiple vendor payments into one monthly payment to a charge card vendor. Selection of a charge card vendor to provide state purchase cards shall be accomplished by competitive bid. The Purchasing Division of the Department of Administration shall contract with the successful bidder for provision of state purchasing cards. Purchasing cards issued under the program shall be used for official state purchases only. The Auditor shall propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern the implementation of the purchase card program.

WV Legislature

§12-3-10b. Fraudulent or unauthorized use of purchasing cardprohibited; penalties.

(a) It is unlawful for any person to use a state purchasing card, issued in accordance with the provisions of section ten-a of this article, to make any purchase of goods or services in a manner which is contrary to the provisions of section ten-a of this article or the rules promulgated pursuant to that section.

(b) It is unlawful for any person to knowingly or intentionally possess with the intent to use a purchasing card without authorization pursuant to section ten-a of this article or the rules promulgated pursuant to that section.

(c) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years, or fined no more than $5,000, or both fined and imprisoned.

(d) A violation of this section may be prosecuted in the county in which the card was issued, unlawfully obtained, fraudulently used, used without authorization, or where any substantial or material element of the offense occurred.

WV Legislature

§12-3-10c. Transaction fees; disposition of fees.

(a) In order to promote and enhance the use of the state purchasing card program established by the provisions of section ten-a of this article and in order to maintain and develop the fiscal operations and accounting systems of the state, the Auditor and the treasurer may assess joint transaction fees for all financial documents that will be processed on the central accounting system. Such transaction fees shall be prescribed by legislative rule proposed in accordance with article three, chapter twenty-nine-a of this code and may include the following:

(1) A penalty fee to be assessed against spending units of state government who submit claims for payment of goods and services when those claims are authorized to be paid by use of a state purchasing card and the spending unit has failed to utilize the state purchasing card; and

(2) A transaction fee to be assessed against spending units of state government for every transaction received, electronically or otherwise, by the Auditor from the centralized accounting system.

(b) All fees collected under this section shall be deposited into the "Technology Support and Acquisition Fund" which is hereby created in the State Treasury to be administered by the Auditor. The Auditor and treasurer shall use moneys deposited in the fund to maintain and develop the state purchasing card program, support the fiscal operations of the state, including the state centralized accounting system, and to acquire and improve the technology required to support these functions: Provided, That expenditures from the fund are authorized from collections and are to be made only in accordance with an appropriation by the Legislature and in accordance with the provision of article three of this chapter and upon fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, however, That for the fiscal year ending June 30, 1998, expenditures from the fund may be made from collections: Provided further, That the Legislature is exempt from any fees imposed under this section.

WV Legislature

§12-3-10d. Purchasing Card Fund continued; expenditures.

(a) All money received by the state pursuant to any agreement with vendors providing purchasing charge cards, and any interest or other return earned on the money, shall be deposited in a special revenue revolving fund, designated the Purchasing Card Administration Fund, in the State Treasury to be administered by the Auditor. The fund shall be used to pay all expenses incurred by the Auditor in the implementation and operation of the Purchasing Card Program and may be used to pay expenses related to the general operation of the Auditor's office. The Auditor also may use the fund to pay expenses incurred by spending units associated with the use of the card, including system and program enhancements, and inspection and monitoring of compliance with all applicable rules and procedures. Expenditures from the fund shall be made in accordance with appropriations by the Legislature pursuant to the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions of §5A-2-1 *et seq.* of this code.

(b) Within three days of receiving rebate moneys resulting from state spending unit purchasing card purchases, the Auditor shall transfer 10 percent of such rebate moneys to the Purchasing Improvement Fund created pursuant to §5A-3-58 of this code.

(c) Within three days of receiving rebate moneys resulting from state spending unit purchasing card purchases, the Auditor shall transfer five and one half percent of such rebate moneys to the Entrepreneurship and Innovation Investment Fund, 10 percent of such rebate moneys to the Hatfield-McCoy Regional Recreation Authority and 10 percent of such moneys to the State Park Operating Fund.

WV Legislature

§12-3-10e. Purchasing Card Advisory Committee created; purpose; membership; expenses.

(a) There is created a Purchasing Card Advisory Committee to enhance the development and implementation of the purchasing card program. The committee shall solicit input from state agencies and make recommendations to improve the performance of the Purchasing Card Program. The committee consists of 14 members to be appointed as follows:

(1) The Auditor shall serve as chairperson of the committee and shall appoint four members from the Community and Technical College System of West Virginia and the system of four-year higher education institutions, one member from the Department of Human Services, one member from the Division of Highways, and two additional members at large from any state agency;

(2) The Secretary of the Department of Administration shall appoint one member from the I Office of Technology, one member from the Financial Accounting and Reporting Section, and one member from the Purchasing Division;

(3) The Secretary of the Department of Revenue shall appoint one member from the Department of Revenue; and

(4) The State Treasurer shall appoint one member from that office.

(b) Committee members shall be appointed for a term of one year, commencing on July 1. Committee members shall receive reimbursement for expenses actually incurred in the performance of their duties on the committee.

WV Legislature

§12-3-10f. Receiving report required for commodities received.

A receiving report shall be submitted to the State Auditor verifying the receipt of commodities by a state spending unit. The receiving report shall be an internally-generated document, either written or prepared using electronic media, that identifies commodities received. Commodities as defined in this section include, but are not limited to, the following: Materials, equipment, supplies, printing and automated data processing hardware and software.

The state officer or employee acting as head of each spending unit is responsible for the completion and timely submission of the receiving reports, which shall be prepared at the original point of receipt of the commodities at the spending unit by employees designated by the head of the spending unit to receive the commodities and prepare the receiving reports. The receiving reports shall include, but not be limited to, the following information: Vendor name, description and quantity of commodities received, date commodities are received, whether commodities are acceptable for payment, and a signed acknowledgment of receipt by the employees receiving the commodities. The receiving reports required by this section shall be prepared within twenty-four hours of the receipt of the commodities.

The head of a spending unit may not issue a requisition on the State Auditor in payment of a claim for commodities received by the spending unit unless the receiving report required by this section accompanies the claim for payment. The spending unit is liable for a debt improperly incurred or for a payment improperly made if the receiving report was not filed with the State Auditor as set forth in this section.

The State Auditor shall propose rules for legislative approval in accordance with provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this section.

No provision of this section shall apply to the West Virginia Legislature.

WV Legislature

§12-3-10g. Acceptance by Auditor for payment of a claim submitted by electronically generated invoices.

The State Auditor may consider an agency-generated electronic invoice as an original invoice pursuant to section ten of this article and any applicable rules approved thereto if the invoice contains the vendor name, vendor address, invoice number, invoice date, invoice amount, description of the items purchased or services provided, purchase order number and contract number, where applicable, and date of service provided or goods received: Provided, That agency-generated computer invoices may be considered for payment only if the agency has an established financial system which has been subjected to a financial audit by the Legislative Auditor or by an independent certified public accountant, duly licensed and in good standing.

WV Legislature

§12-3-11. Travel expenses; rules to be promulgated concerning travel expenses; dues to voluntary organizations; recruitment expenses for Higher Education Policy Commission and West Virginia higher education governing boards; moving expenses of employees of Higher Education Policy Commission and West Virginia higher education governing boards.

(a) The Governor shall promulgate rules concerning out-of-state travel by state officials and employees, except those in the legislative and judicial branches of the state government and except for the Attorney General, Auditor, Secretary of State, treasurer, Board of Investments, commissioner of agriculture and their employees, the Higher Education Policy Commission and the higher education governing boards and institutions under their jurisdiction. The Legislature, Supreme Court of Appeals, Attorney General, Auditor, Secretary of State, treasurer, Board of Investments, commissioner of agriculture, Higher Education Policy Commission and the higher education governing boards shall promulgate rules concerning out-of-state travel for their respective branches and departments of state government. Copies of the rules shall be filed with the Auditor and the Secretary of State. It is unlawful for the Auditor to issue a warrant in payment of any claim for out-of-state travel expenses incurred by a state officer or employee unless the claim meets all the requirements of the rules filed.

(b) Payment for dues or membership in annual or other voluntary organizations shall be made from the proper item or appropriation after an itemized schedule of the organizations, together with the amount of the dues or membership, has been submitted to the budget director and approved by the Governor.

(c) The secretary of the Department of Administration, the Higher Education Policy Commission or a higher education governing board may authorize the payment of traveling expenses incurred by any person invited to visit a state agency, the campus of any state institution of higher education or any other facility under control of a higher education governing board or the Higher Education Policy Commission to be interviewed concerning his or her possible employment by a state agency, a higher education governing board, the Higher Education Policy Commission or agent thereof.

(d) The secretary of the Department of Administration, the Higher Education Policy Commission or a higher education governing board may authorize payment of: (1) All or part of the reasonable expense incurred by a person newly employed by a state agency, a higher education governing board or the Higher Education Policy Commission in moving his or her household furniture, effects and immediate family to his or her place of employment; and (2) all or part of the reasonable expense incurred by an employee of a state agency, a higher education governing board or the Higher Education Policy Commission in moving his or her household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interest of the state: Provided, That no part of the moving expenses of any one employee shall be paid more frequently than once in twelve months.

WV Legislature

§12-3-12. Expiration of unexpended appropriations; reappropriations.

(a) Except as provided in subsection (b) of this section, every appropriation that is payable out of the general revenue, or so much thereof as may remain undrawn at the end of the year for which made, shall be deemed to have expired at the end of the year for which it is made, and no warrant shall thereafter be issued upon it: *Provided*, That warrants may be drawn through the 31st day of July after the end of the year for which the appropriation is made if the warrants are in payment of bills for such year and have been encumbered by the budget office prior to July first: Provided, however, That if such 31st day of July is on Saturday, then warrants may only be drawn through the Friday immediately preceding such Saturday, but if such 31st day of July is on Sunday, the warrants may be drawn through the Monday immediately following such Sunday.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary:

(1) Appropriations that are payable out of the general revenue, or so much thereof as may remain undrawn at the end of the year for which made, for buildings and land or capital outlay shall remain in effect, and shall not be deemed to have expired until the end of three years after the passage of the act by which such appropriations are made; and

(2) Appropriations that are payable out of the general revenue, or so much thereof as may remain undrawn at the end of the fiscal year for which made, that are reappropriated by the budget act for the ensuing fiscal year shall not be deemed to have expired unless, at the end of the fiscal year just ended, the total general revenue collections for the fiscal year just ended did not equal or exceed total general revenue appropriations for that fiscal year. If the total general revenue collections for the fiscal year just ended did not equal or exceed total general revenue appropriations for that fiscal year, all such reappropriations shall be deemed to have expired at the end of the fiscal year as provided in subsection (a) of this section.

(c) The Legislature may expire or provide for the expiration of any appropriation prior to the end of the fiscal year for which it is made.

WV Legislature

§12-3-12a. Payment of salaries of employees of Higher Education Policy Commission, Council for Community and Technical College Education and institutions of higher education over the twenty-six biweekly pay cycle.

Notwithstanding the provisions of section twelve of this article, in the event that an employee of the Higher Education Policy Commission, Council for Community and Technical College Education or of any of the institutions which they govern elects to receive his or her salary over the complete twenty-six biweekly pay cycle, warrants may be drawn for the biweekly pay periods covering the months of July and August following the fiscal year during which such salary was earned: Provided, That such warrants have been encumbered by the commission, council or institution and the Budget Office prior to June 30 of said fiscal year.

WV Legislature

§12-3-13. Salaries not to be paid until services rendered.

No money shall be drawn from the treasury to pay the salary of any officer or employee before his services have been rendered.

WV Legislature

§12-3-13a. Deductions by State Auditor from salaries of state officials and employees to pay taxes and purchase United States government bonds.

The Auditor of the State of West Virginia is authorized to deduct and withhold sums from the salaries or other compensation of state officials and employees, to purchase United States government bonds and other United States government obligations, or to pay taxes as may be required by an act or acts of the Congress of the United States of America.

The Auditor of the State of West Virginia shall, upon the written request or order of any state official or employee, deduct and withhold sums from the salaries or compensation of state officials and employees to make voluntary purchases of United States government bonds or other United States government obligations for such officials or employees.

The Auditor shall keep an account of the accumulated deductions of each state official and employee and shall issue receipts to state officials and employees for all sums deducted and withheld as herein provided. The sums, when deducted, shall be transferred by the Auditor to a special fund in the State Treasury, and, as soon as reasonably convenient, transmitted to the treasurer of the State of West Virginia, as an issuing agent of federal securities, or such other official or agent of the United States government designated by the secretary of the treasury of the United States of America, from time to time.

Should any official or employee leave the employ of the state at a time when there is not sufficient accumulation of deductions from his salary or compensation to purchase a United States government bond then the Auditor shall either purchase United States government savings stamps in the amount of the accumulation or refund to the official or employee the accumulation as an erroneous payment into the special fund herein created.

The Auditor shall be responsible for the delivery of United States government bonds or obligations purchased with the deductions from the salaries or compensation of state officials and employees only when the United States government bonds or obligations are presented to him by the official or agent of the United States government for delivery to the state officials or employees.

To promote efficiency and economy in making such deductions as provided herein, the Auditor is authorized to promulgate rules and regulations and to designate the time for the presentment of the payroll requisitions for state officials and employees and requisitions for other claims against the state: Provided, That all officials and employees shall be paid at least once every thirty-one days. All officials and employees of the state shall comply with the rules and regulations promulgated by the Auditor under this section.

WV Legislature

§12-3-13b. Voluntary deductions by State Auditor from salaries of employees to pay supplemental health and life insurance premiums; voluntary other deductions.

(a) Any officer or employee of the State of West Virginia may authorize that a voluntary deduction from his or her net wages be made for any supplemental health and life insurance premium, subject to prior approval by the Auditor. Such deductions shall be authorized on a form provided by the Auditor of the State of West Virginia and shall state:

(1) The identity of the employee;

(2) The amount and frequency of such deductions; and

(3) The identity and address of the insurance company to which such dues shall be paid.

(b) Upon execution of such authorization and its receipt by the office of the Auditor, such deductions shall be made in the manner specified on the form and remitted to the designated insurance company on the tenth day of each month: *Provided*, That the Auditor may approve and authorize voluntary other deductions, as defined under §21-5-1 of this code, to be made in accordance with rules proposed by the Auditor pursuant to §29A-3-1 *et seq*. of this code: *Provided, however*, That deductions shall be made at least twice monthly. Deduction authorizations may be revoked at any time 30 days prior to the date on which the deduction is regularly made and on a form to be provided by the office of the State Auditor.

(c) No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of officers and employees covered by this section.

WV Legislature

§12-3-14. Expenditures for institutions to be confined to appropriations for fiscal year; exceptions.

It shall be unlawful for the superintendent, manager, any officer, or any person or persons, board or body, acting or assuming to act for and on behalf of any institution, kept or maintained in whole or in part by this state, to expend for any fiscal year any greater sum for the maintenance or on account of such institution than shall have been appropriated by the Legislature therefor for such year except as provided in section thirteen, article one, chapter twenty-five of this code.

WV Legislature

§12-3-15. Expenditures for institutions in excess of appropriations; unauthorized debts; use in part payment of appropriation for whole payment.

It shall be unlawful for any such officer, board, body or person to expend for the erection, improvement or repair of any building or structure, or for the purchase of any real estate or other property, or upon any contract or undertaking whatsoever to be performed in whole or in part by the state, any sum exceeding that which shall have been appropriated or authorized therefor by the Legislature, nor shall they incur any debt or obligation on any such account not expressly authorized by the Legislature, nor use in part payment only upon the purchase or construction of any land or structure any sum which shall have been appropriated or authorized by the Legislature in full payment for such object.

WV Legislature

§12-3-16. Personal liability and penalty for violation of two preceding sections.

Any such officer or person who, in violation of any of the provisions of the two preceding sections, shall expend any sum or amount of money, or incur any debt or obligation, or make or participate in the making of any such contract, or shall be a party to any such transaction in any official capacity, shall be personally liable therefor, both jointly and severally, and an action may be maintained therefor by the state, or any person prejudiced thereby, in any court of competent jurisdiction, and such official shall further be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than ten nor more than $500, and may be confined in jail not less than ten days nor more than one year, and, in addition to the penalties hereinbefore provided, shall forfeit his office. And there shall be no liability upon the state, or the funds thereof, on account of any such debt, obligation or contract.

WV Legislature

§12-3-17. Liabilities incurred by state boards, commissions, officers or employees which cannot be paid out of current appropriations.

Except as provided in this section, it shall be unlawful for any state board, commission, officer or employee: (1) To incur any liability during any fiscal year which cannot be paid out of the then current appropriation for such year or out of funds received from an emergency appropriation; or (2) to authorize or to pay any account or bill incurred during any fiscal year out of the appropriation for the following year: *Provided,* That nothing contained herein shall prohibit entering into a contract or lease for buildings, land and space, the cost of which exceeds the current year's appropriation, even though the amount is not available during the then current year, if the aggregate cost does not exceed the amount then authorized by the Legislature. Nothing contained herein shall abrogate the provisions of the general law relating to the expiration of appropriations for buildings and land.

Any member of a state board or commission or any officer or employee violating any provision of this section shall be personally liable for any debt unlawfully incurred or for any payment unlawfully made.

WV Legislature

§12-3-18. Itemized statement of claims against counties, school districts or municipalities; false swearing; indorsement.

It shall be unlawful for any county court, Board of Education or the council of a municipal corporation, or other body charged with the administration of the fiscal affairs of any county, school district, independent school district or municipality, to pay any claim for services rendered or materials furnished unless an itemized account therefor is filed by the claimant covering the claim. Such account shall be itemized in detail, and shall show, among other things, the following: If the claim is for services, it shall show the kind of service, the dates when same was performed and the name of the person performing it; if the claim is for material or supplies furnished, the claim shall show in detail the kind of material or supplies, the quantity, dates of delivery and to whom delivered; and if the claim is for road or bridge work or for road or bridge material, the amount of which claim is for material in excess of $5 or for labor in excess of $25, the claim shall be verified by the affidavit of the person making it, and in such affidavit the person making the claim shall be required to state that the services performed or materials furnished, as set forth in such claim, were actually performed or actually furnished, and that the claim as stated is true and correct and that there is justly due to the claimant the sum set forth in the account. If any person shall swear falsely in the making of such affidavit, he shall be deemed guilty of false swearing. The president or presiding officer of the fiscal body allowing claims shall indorse on all accounts allowed the words "allowed and payment authorized," together with the date of allowance and signature of the president or other presiding officer.

WV Legislature

§12-3-19. General order by county commission, board of education or governing body of a municipal corporation prohibited.

It shall be unlawful for any county commission, Board of Education or the governing body of a municipal corporation, or other body charged with the administration of the fiscal affairs of any county, school district, independent school district or municipality, to issue any general order for a payroll, or to any person to be disbursed or distributed by him to those who have performed the services or furnished the materials for which payment is to be made, but in all such cases the order shall be made payable to the persons lawfully entitled to such payment: Provided, That a county commission, Board of Education or governing body of a municipal corporation may, upon the written request of any of their respective employees, issue a general order for a payroll to a bank, credit union or savings and loan institution for deposit to that employee's demand or time account. The written request shall specifically identify the employee, the financial institution, the type of account and the account number.

WV Legislature

§12-3-20. Electronic or wire transfer.

(a) Notwithstanding any other provision of this code to the contrary, whenever the treasurer of a county board of education, a county commission or a municipality is authorized or directed pursuant to law to disburse or transfer on behalf of the county board of education, county commission or municipality, funds in the custody of the treasurer or in the treasury of the county board of education, county commission or municipality, the treasurer is authorized to disburse or transfer the funds by means of electronic or wire transfer and that transfer shall include appropriate electronic remittance voucher information. The county board of education, county commission or governing body of a municipality may enter into a written agreement with the banking institution in which the funds are deposited, prescribing the manner in which electronic or wire transfer of the funds shall be accomplished, identifying by number and name those accounts from which electronic or wire transfers may be made, identifying which person or persons are authorized to order the electronic or wire transfer of funds from those accounts, and implementing a security procedure as defined in section two hundred one, article four-a, chapter forty-six of this code.

(b) It is the duty of the county board of education, county commission or governing body of a municipality to adopt a system of internal controls satisfactory to the Tax Commissioner as ex officio, the chief inspector and supervisor of public offices for the documentation and reporting of all transfers or disbursements of funds accomplished by electronic or wire transfer to ensure the safety and integrity of the payment process.

(c) The county board of education, county commission or governing body of a municipality shall also adopt procedures:

(1) Governing the method by which the treasurer is authorized to direct payments from the funds of the county board of education, county commission or municipality on deposit with a banking institution;

(2) Governing the method of payment of obligations of the county board of education, county commission or municipality, including payment by check, draft, electronic or wire transfer, or other method of payment mutually acceptable to the county board of education, county commission or governing body of a municipality, and the banking institution; and

(3) Covering any other matters it believes necessary to ensure the safety and integrity of the payment process.

(d) A county board of education, county commission or governing body of a municipality shall file a copy of the procedures it adopts in accordance with the provisions of subsection (c) of this section with each banking institution in which its funds are deposited.

(e) The treasurer of the county board of education, county commission or municipality, and the banking institution shall agree to follow rules and procedures for electronic fund transfers promulgated by the federal reserve bank and the national clearing house

WV Legislature

association (NACHA) to ensure the safety and integrity of the payment process. These safeguards must be approved by the county board of education, county commission or governing body of a municipality. If the county board of education, county commission or governing body of a municipality finds that the safeguards are consistent with and do not contravene the procedures adopted under the provisions of subsection (c) of this section, the safeguards must be approved.

(f) This section applies to disbursements or transfers made after May 31, 1998.

WV Legislature

§12-3A-1. Legislative purpose and findings.

The Legislature finds that state government should facilitate and promote electronic commerce, particularly in the electronic receipting and disbursing of state funds. As many individuals receiving recurring state funds do not have bank accounts for the purpose of receiving direct deposits, and as the state desires that all payments be made electronically by the year two thousand two, it is the intent of the Legislature to provide a mechanism for all payees to receive payments by electronic funds transfers through direct deposit or through state issued debit cards. Further, as usage of electronic commerce grows, state spending units need the ability to accept payments electronically. To meet these goals, the Legislature seeks to ensure proper management oversight and accountability are maintained.

WV Legislature

§12-3A-2. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) "Document" means any authentication, certificate, claim, form, invoice, record, report, requisition, security, statement or other similar item that may be in a tangible or electronic form.

(b) "Electronic" means electrical, digital, magnetic, wireless, optical, electromagnetic, biometric, or any other technology that is similar to these technologies.

(c) "Electronic commerce" means using electronic techniques for accomplishing business transactions, including electronic mail or messaging, electronic bulletin board, Internet technology, electronic funds transfers, electronic data interchange (EDI) techniques, and any other related electronic technologies.

(d) "Security procedure" means a methodology or procedure for the purpose of:

(1) Preventing access by unauthorized parties;

(2) Verifying that an electronic record or electronic signature is that of a specific party or created by a specific electronic point of origin; or

(3) Detecting error or alteration in the communication, content, or storage of an electronic record since a specific point in time.

(e) "WEB commerce" means electronic commerce on the Internet.

WV Legislature

§12-3A-3. Financial electronic commerce.

(a) The State Auditor and the State Treasurer shall implement electronic commerce capabilities for each of their offices to facilitate the performance of their duties under this code. The State Treasurer shall competitively bid the selection of vendors needed to provide the necessary banking, investment and related goods and services, and the provisions of article one-b, chapter five, and articles three and seven, chapter five-a of this code shall not apply, unless requested by the State Treasurer.

(b) A document or a signature received, issued or used by the Auditor or the Treasurer shall be considered an original and may not be denied legal effect on the ground that it is in electronic form.

(c) The Auditor or Treasurer may, in his or her discretion, require documents filed with or submitted to his or her respective office be filed or submitted in a prescribed electronic format.

(d) The Auditor or Treasurer, in his or her discretion, may waive:

(1) Any requirements for a document filed or submitted in an electronic format; or

(2) Any requirements for the certification, notarization or verification of a document filed or submitted in an electronic format.

(e) The head of each spending unit is responsible for adopting and implementing security procedures to ensure adequate integrity, security, confidentiality and auditability of the business transactions of his or her spending unit when utilizing electronic commerce.

WV Legislature

§12-3A-4. Payment by a West Virginia pay card.

The State Auditor and the State Treasurer may jointly establish a state-stored value debit card program known as the "West Virginia Pay Card" for recipients of employee payroll, retirement benefits, entitlement programs, vocational rehabilitation services funds disbursed pursuant to §18-10A-6 of this code, foster care and adoption stipends, subsidies, and other payments made under programs administered by the Department of Human Services, payments to contractors of the state, or other eligible payees of state funds, who do not possess a federally insured depository institution account. The State Auditor and the State Treasurer shall use every reasonable effort to encourage all identified unbanked recipients to obtain a federally insured depository account. The State Auditor shall include an unbanked recipient in the program upon determining that good cause exists. Once an unbanked recipient is included in the program, the State Auditor shall provide the State Treasurer with an electronic file containing the necessary unbanked recipient information. The State Treasurer shall issue a request for proposals in accordance with §12-3A-3 of this code to aid in the administration of the program. The State Auditor shall assist in the review of pay card proposals. In carrying out the purposes of this article, the State Treasurer shall not compete with banks or other federally insured financial institutions, or for profit.

WV Legislature

§12-3A-5. Limited establishment and use of point of sale terminals, etc., for special purposes and circumstances relating to certain public assistance payments.

(a) The State Treasurer shall have authority to contract with banking institutions and other entities to establish point of sale terminals ("POS terminals"), as defined in section twelve-b, article eight, chapter thirty-one-a of this code, that accept the West Virginia check card and the cards issued by state spending units to recipients of state or federal funds, food or other benefits. If other entities decline to provide the POS terminals in a manner that meets the requirements of this section, the treasurer is authorized to establish, own and operate POS terminals. The treasurer may place the POS terminals and associated equipment at any location within this state where he or she or the Department of Human Services determines the equipment is needed to provide reasonable access to users of the cards. The POS terminals authorized pursuant to this section may be used to provide any amount of cash payment or allowable purchase of retail items or other benefits as determined by the State Treasurer, pursuant to state law and rules and, where necessary, in cooperation with any appropriate federal agencies.

(b) POS terminals established pursuant to this section may be jointly owned and operated with private sector financial institutions and may be established for the sole purpose of providing access to electronically transmitted government benefits or payments. However, if the State Treasurer establishes POS terminals, they shall be made available for use by the general public and the retailer shall reimburse the state for each transaction as per an agreement entered into at the time the POS terminals are established.

(c) Any retailer, agency or other person providing cash withdrawal services for state administered electronic cards from its own funds through POS terminals established pursuant to this section are limited to charging a fee for the service in the amount of the higher of $1 or one percent of the amount of cash withdrawn.

(d) There is created in the State Treasury a separate special revenue account, which shall be an interest bearing account, to be known as the "Point of Sale Terminals Collection Account". The account shall contain any funds received from transactions on POS terminals installed by the State Treasurer and any other funds authorized by the Legislature. Moneys in the account shall be used by the treasurer to pay the fees and costs associated with the POS terminals and related equipment, and for such other purposes as determined by the Legislature.

(e) In carrying out the purposes of this article, the treasurer shall not compete with private sector providers of POS terminals, banks or other financial institutions, or for profit. If a private sector provider, bank or other financial institution certifies to the treasurer that it can provide POS terminals to meet the requirements contained within this article, the treasurer shall not establish or maintain equipment in the locations identified in the certification. Nothing in this article shall authorize the treasurer to establish or operate automatic teller machines.

WV Legislature

§12-3A-6. Receipting of electronic commerce purchases.

(a)(1) The State Treasurer may establish a system for acceptance of credit card and other payment methods for electronic commerce purchases from spending units. Notwithstanding any other provision of this code to the contrary, each spending unit, utilizing WEB commerce, electronic commerce, or other method that offers products or services for sale shall utilize the State Treasurer's system for acceptance of payments, except as provided in subsection (b) of this section.

(2) Notwithstanding any other provision of code to the contrary, the costs associated with the acceptance of credit card and other payment methods in the State Treasurer's system for electronic commerce purchases may be invoiced in a commercially reasonable manner, according to the legislative rules promulgated pursuant to subsection (f) of this section.

(3) For the purposes of this section, "spending unit" has the same meaning provided in §12-1-2 of this code.

(b) A state institution of higher education may receive credit card payments from systems of acceptance other than that provided by the State Treasurer if:

(1) The proposed alternate system is compliant with the payment card industry data security standards for acceptance of payments, and the institution is proposing to use the alternate system for the sole purpose of:

(A) Processing the payment of academic transcripts; or

(B) Accepting payment for applications for admission, if necessary, to participate in a national or regional program for applications for admission; or

(2) The institution certifies that the use of the alternate system will not cause a reduction in the volume of credit card revenues by more than 10 percent as compared to previous credit card revenues processed on behalf of the institution during the previous fiscal year and the State Treasurer consents to the use.

(c) To facilitate electronic commerce, the State Treasurer may charge a spending unit for the banking and other expenses incurred by the Treasurer on behalf of the spending unit and for any work performed, including, without limitation, assisting in the development of a website and utilization of the Treasurer's payment gateway. A special revenue account, entitled the Treasurer's Financial Electronic Commerce Fund, is created in the State Treasury to receive the amounts charged by the Treasurer. The Treasurer may expend the funds received in the Treasurer's Financial Electronic Commerce Fund only for the purposes of this article and for other purposes as determined by the Legislature.

(d) The State Treasurer may authorize a spending unit to assess and collect a fee to recover or pay the cost of accepting bank, charge, check, credit, or debit cards from amounts collected.

WV Legislature

(e) On or before March 1, 2023, all political subdivisions shall offer a system, with an online presence for acceptance of payments, that will allow persons to submit payments to political subdivisions electronically. Payments that shall be accepted through the required system shall include, but not be limited to, payments or fees for services provided by the political subdivision or any fee, fine, penalty, or other monetary payment collected by the political subdivision. Upon written request from a political subdivision, the State Treasurer may provide services of his or her office to a political subdivision and charge for the services.

(f)(1) The State Treasurer shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement the provisions of this section.

(2) The State Treasurer is authorized to promulgate legislative rules to establish a system by which the State Treasurer may exempt a political subdivision from the requirements of subsection (e) of this section. The rules authorized by this subsection shall include monetary threshold criteria for granting exemptions, based on the amount of revenue collections and the operations of the political subdivision applying for an exemption.

WV Legislature

§12-3A-7. Method of sale or disposal of personal property.

(a) Notwithstanding any other provision in this code to the contrary, the Treasurer, or any other state spending unit that has the authority to sell or dispose of personal property in its possession, may do so by using electronic commerce.

(b) The sale of property by the Treasurer, or other state spending unit, by using electronic commerce is, for all purposes, deemed a sale of personal property within the State of West Virginia.

WV Legislature

§12-4-1. Biennial reports.

All reports, settlements, accounts and statements which are now, or that hereafter may be required by law, shall be kept and made to conform to the fiscal year. As soon as practicable after June thirtieth, nineteen hundred and thirty-two, each of the officers or boards now or hereafter required by law to compile a biennial report shall compile a report covering the two preceding years, and every two years thereafter the biennial reports shall be made for the two preceding years.

WV Legislature

§12-4-2. Accounts of Treasurer and Auditor; Auditor to certify condition of revenues and funds of the state.

The Treasurer shall keep in his or her office separate accounts with each depository, and also a summary account for the state, and when money is paid into the treasury, it shall be charged to the proper depository and credited to a summary account. The Auditor shall keep in his or her office separate accounts of the particular heads or sources of revenue, and a summary account with the Treasurer, beside such individual accounts with officers and persons as may be necessary, and shall charge every sum of money received for the state as aforesaid to the Treasurer's account, and credit it under the particular head of revenue to which it properly belongs, distinguishing especially in distinct accounts the receipts on account of the capital of the school fund and those on account of the income of said fund subject to annual distribution. The Auditor shall certify annually to the Secretary of Revenue the condition of the state revenues and the several funds of the state. The certification shall be used by the Secretary in the preparation of a tentative state budget as required of him or her by §5-1A-1 *et seq.*, and §11B-2-1 *et seq.* of this code.

WV Legislature

§12-4-3. Accounts of appropriations.

The Auditor and Secretary of Revenue shall each keep an account of every appropriation made by law, and of the several sums drawn thereon, so that the accounts may show at all times the balance undrawn on each appropriation. The account so kept shall be compared every month and errors, if any, corrected.

WV Legislature

§12-4-3a. Accounts of the Auditor.

The Auditor shall at all times maintain and have available for public inspection a report containing monthly balances in the treasury, which balances shall include, but not be limited to, the general revenue surplus balance; the general revenue surplus appropriation account balance; the state general revenue reappropriated account balance; the state general revenue current account balance; the total state account balance; and the total general revenue.

WV Legislature

§12-4-4. Accounts of expenditures; signing of checks and warrants; facsimile signatures and use of mechanical and electrical devices; forgery; penalty.

When the treasurer issues his check on a depository, he or she shall credit the same to the account of the depository, and charge it to the summary account provided for in section two of this article. The Auditor shall keep accounts of the particular heads of expenditures, and, when he or she issues a warrant on the treasurer, shall credit the treasurer's summary account therewith and charge the same under the particular head of expenditure to which it properly belongs, distinguishing especially the disbursements on account of the capital and the annual income of the school fund, as directed in section two of this article in relation to receipts belonging to that fund. All checks when issued by the treasurer shall bear his or her signature, personally signed by the treasurer, or by employees as are, in writing, authorized by the treasurer to make his or her signature thereto, or bear a facsimile of the treasurer's signature. All warrants when issued by the Auditor shall bear his or her signature, personally signed by the Auditor, or by employees as are, in writing, authorized by the Auditor to make his or her signature thereto, or bear a facsimile of the Auditor's signature. The signature of the treasurer, or Auditor, respectively, may be made, however, by means of such mechanical or electrical device as the treasurer, or Auditor, respectively, may select. Any mechanical or electrical device selected shall be safely kept in the respective offices of the treasurer or Auditor so that no one has access to the device except the treasurer, or the Auditor, and the employees authorized to respectively sign checks or warrants as provided by this section. If any person, other than the treasurer, or Auditor, respectively, or their respective duly and respectively authorized employees, sign the name of the treasurer or the Auditor, respectively, by the use of any mechanical or electrical device, or otherwise, or use the facsimile of the signature of either of them, on any check or warrant, or utter or attempt to employ as true such forged check or warrant, knowing it to be forged, he or she shall be guilty of a felony and, upon conviction thereof, shall be imprisoned not less than two nor more than ten years.

WV Legislature

§12-4-5. Individual accounts; Auditor to notify sureties when sheriff defaults.

There shall be kept in the Auditor's office all necessary and proper accounts of persons having pecuniary transactions with the state, and especially accounts of all persons employed in the collection of any part of the public revenue, including the school fund. In case of a default made by any sheriff in the prompt payment of money due from him as such sheriff of his county, it shall be the duty of the Auditor, within sixty days after default is made by such sheriff, to notify the sureties on the official bond of such sheriff. In such notice to the sureties, the amount of indebtedness of such sheriff shall be stated, including all the funds due to the state from such sheriff, and the Auditor shall also lodge a copy of such notice with the clerk of the county court of the county of such defaulting sheriff, and with the State Tax Commissioner.

WV Legislature

§12-4-6. Comparison of books of Auditor and treasurer; monthly balances.

At the end of every month of the year, the summary account of the treasurer kept on the books of the Auditor's office shall be compared with the summary account kept by the treasurer, and the errors, if there be any in either, corrected. The summary account of the month shall be adjusted and a balance shall be struck showing the amount then in the treasury. The balance shall be carried forward in the books of both offices to the account for the next month.

WV Legislature

§12-4-7. Annual state dollar report of Auditor.

The Auditor shall furnish annually to the Governor, the President of the Senate, and the Speaker of the House of Delegates on or before January 15, a report detailing financial information for the prior calendar and fiscal year. It shall contain a statement of the receipts and disbursements, under the proper general heads, during the preceding fiscal year, and show the balance in the Treasury at the beginning and end of that year. It shall also contain an estimate of the revenue and expenditures for the current year, with similar statements and estimates respecting the school fund. It shall show the indebtedness of the state and the balances standing at the end of the year to the credit of the several unexpired appropriations, specifying in each case the date when the appropriation was made. It shall also contain information relating to the salaries of state employees, including notation of salaries greater than $80,000 paid during the prior calendar year. The report shall be accompanied with an explanation of the amounts of receipts and disbursements and the balances and estimates reported. In it the Auditor shall point out any defects which may occur to him or her in the revenue laws. Furthermore, the Auditor shall suggest the remedies for those deficits. If the Auditor is of the opinion that the future revenue is likely to prove insufficient, then the Auditor shall recommend plans for increasing the revenue and suggest new subjects of taxation, or additional taxes on the old, as he or she may deem proper.

WV Legislature

§12-4-8. Office hours of Auditor and treasurer.

The hours for transacting business in the offices of the Auditor and treasurer shall be from eight-thirty in the morning until five o'clock in the afternoon.

WV Legislature

§12-4-9. Absence of Auditor or treasurer.

When it is necessary for either the Auditor or treasurer to be absent, the other shall be informed of the absence. During the absence, the duties of the officer so absent may be performed by the Auditor's or treasurer's designee respectively. The absent officer and his sureties shall be liable for any malconduct or neglect of the person acting in his or her place.

Notwithstanding restrictions which may otherwise be provided by law concerning membership on any board, agency or commission, the Auditor and treasurer each may designate a representative who is authorized to act for and on their behalf in any and all matters relating to those memberships.

WV Legislature

§12-4-10. State not preferred as to unsecured claim.

On and after February 1, 1933, the state shall not, by virtue of prerogative or any other right, have any priority or preference of any claim or demand in its favor which is not made a lien and given such priority and preference by statute, over any other unsecured or common creditor of any person, firm or corporation against the property or assets or any part thereof of the debtor.

WV Legislature

§12-4-11. Exceptional items fund.

(a) There is hereby created in the Treasurer's Office a special fund known as the "exceptional items fund" to be administered by the treasurer pursuant to the provisions of this section and rules and regulations established thereunder.

(b) The treasurer is authorized to make transfers to and from the exceptional items fund for the purpose of clearing irreconcilable items carried forward on his accounts with state depositories: Provided, That no transfer may be made as to any irreconcilable item in excess of $50 without the approval of the State Auditor.

(c) The treasurer and Auditor shall jointly promulgate rules and regulations establishing procedures and conditions for issuance of substitute checks to payees in cases where the checks originally issued are erroneous, or have been lost, mutilated, destroyed, stolen or forged. Any disbursements pursuant to such rules and regulations shall be made from the exceptional items fund. Any moneys received by the state from persons responsible for wrongfully cashing such originally issued checks shall be deposited in such fund.

WV Legislature

§12-4-12. Treasurer authorized to provide check-cashing service; establishment and audit of cash funds.

The treasurer may provide a check-cashing service at his or her office in the capitol building and may charge fees for the service for each check cashed and for each check returned for insufficient funds. For this purpose, he or she may establish from receipts in the treasury not more than two cash funds each in an initial amount not to exceed $100,000. The treasurer shall designate certain employees in his or her office who are to provide the service and have charge of the funds, and may require the employees to be bonded either individually or by blanket bonds. The cost of the bond or bonds shall be paid out of the treasurer's current expense appropriation.

The fees received for the service shall be deposited in the cash funds and itemized accounts of the receipts shall be maintained. Any check determined by the treasurer to be uncollectible shall be charged against the fund from which it was cashed. Before July 1, 2001 and at least every three fiscal years thereafter, the Legislative Auditor shall audit the cash funds and all accounts and records relating to the service provided pursuant to this section. If the amount of either cash fund, after charges for uncollectible checks, exceeds $100,000 at the conclusion of any audit, the treasurer shall transfer the excess to the General Revenue Fund.

WV Legislature

§12-4-13.

Repealed.

Acts, 1997 Reg. Sess., Ch. 95

WV Legislature

§12-4-14. West Virginia Grant Transparency and Accountability Act; Accountability of grantees receiving state funds or grants, procedures, reporting, auditing, investigations, and recovery; sworn statements by volunteer fire departments; rule making, criminal penalties.

(a) This section may be cited as the West Virginia Grant Transparency and Accountability Act. The West Virginia Grant Transparency and Accountability Act is intended to develop a coordinated, nonredundant process for the effective oversight and monitoring of state grant recipients, thereby ensuring quality programs and limiting fraud, waste, and abuse.

(b) For the purposes of this section:

(1) "Grantor" means a state spending unit awarding a state grant.

(2) "Grantee" means any entity receiving a state grant, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity.

(3) "Subgrantee" means an entity, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity, that receives grant money from a grantee that was awarded a state grant.

(4) "Report" means an engagement, such as an agreed-upon procedures engagement or other attestation engagement, performed and prepared by a certified public accountant to test whether state grants were spent as intended. The term "report" does not mean a full-scope audit or review of the entity receiving the state grant.

(5) "State grant" means funding provided by a grantor, regardless of the original source of the funds, to a grantee upon application for a specific purpose. The term "state grant" does not include: (A) Payments for goods and services purchased by a state spending unit; (B) compensation to state employees and public officials; (C) reimbursements to state employees and public officials for travel or incidental expenses; (D) grants of student aid; (E) government transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G) funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds; (H) retirement benefits; (I) federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq.*, and the funds required to match the federal funds; (J) distributions to volunteer and part-volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, §33-12C-7 of this code; (K) money received from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code; and (L) grants made by the West Virginia Water Development Authority.

(6) "West Virginia debarred list" means the list maintained by the State Auditor that contains the names of individuals and entities that are ineligible, either temporarily or permanently, from receiving an award of state grant funds.

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(7) "State Auditor" means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated, or approved by the State Auditor to perform the service.

(8) "Stop payment order" means a communication from the grantor to the State Auditor and the State Treasurer, following procedures established by the State Auditor, causing the cessation of payments to a grantee or subgrantee as a result of the grantee or subgrantee's failure to comply with one or more terms of the state grant or subgrant, violations of law, or the initiation of an audit or investigation.

(9) "Stop payment procedure" means the procedure created by the State Auditor which effects a stop payment order or the lifting of a stop payment order.

(c)(1) Any grantee who receives one or more state grants in the amount of $50,000 or more in the aggregate in a state's fiscal year shall file with the grantor and the State Auditor a report of the disbursement of the state grant funds. When the grantor causes an audit, by an independent certified public accountant, to be conducted of the state grant funds, the audit is performed using generally accepted government auditing standards, and a copy of the audit is available for public inspection, no report is required to be filed under this section. An audit performed that complies with Office of Management and Budget circular A-133, and submitted within the period provided in this section, may be substituted for the report.

(2) Any grantee who receives a state grant in an amount less than $50,000, or who is not required to file a report because an audit has been conducted or substituted as provided by subdivision (1) of this subsection, shall file with the grantor and State Auditor a sworn statement of expenditures made under the state grant.

(3) Subgrant of state grant funds – If any grantee obtains state grant funds and grants any part, or all of those funds, to a subgrantee for a specific purpose or purposes, the granted funds shall be treated as a state grant.

(4) Reports and sworn statements of expenditures required by this section shall be filed within two years of the end of the grantee's fiscal year in which the disbursement of state grant funds by the grantor was made. The report shall be made by an independent certified public accountant at the cost of the grantee. State grant funds may be used to pay for the report if the applicable grant provisions allow. The scope of the report is limited to showing that the state grant funds were spent for the purposes intended when the state grant was made.

(5) In the event the State Auditor determines that applicable reporting or record-keeping provisions for state grants are delinquent or not in compliance with this code, the State Auditor shall notify the State Treasurer and no further state grant funds appropriated to the grantor under the specific state grant shall be encumbered or expended until such time as the State Auditor determines that all applicable reporting or record-keeping provisions are brought into compliance: *Provided*, That such suspension of funding does not violate federal law or regulations, or unreasonably prevent or detrimentally impact, the ability of the

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agency grantor to receive federal support or funding.

(6) Each grantor shall designate a Chief Accountability Officer, to the extent possible from within its existing staff, who shall serve as a liaison to the State Auditor, and shall be responsible for the grantor's implementation of, and compliance with, the law, rules, and terms of state grants. Such position may be held concurrently with any other designated position.

(d)(1) Grantors or the State Auditor shall issue stop payment orders for failure to file required reports. Any grantee failing to file a required report or sworn statement of expenditures within the two-year period as provided in this section for state grant funds, is barred from subsequently receiving state grants until the grantee has filed the report or sworn statement of expenditures and is otherwise in compliance with the provisions of this section.

(2) Any grantor shall report any grantee failing to file a required report or sworn statement of expenditures within the required period provided in this section to the State Auditor for purposes of debarment from receiving state grants.

(3) The State Auditor shall maintain a searchable and publicly accessible database listing all awarded state grants. All grantors shall provide a list of grantees and subgrantees to the State Auditor and all other information regarding state grant funds and grantees as required by law or rule.

(e)(1) The grantor administering the state grant shall notify the grantee of the reporting requirements set forth in this section.

(2) All grantors shall, prior to awarding a state grant, verify that the grantee is not barred from receiving state grants pursuant to this section. The verification process shall, at a minimum, include:

(A) A requirement that the grantee seeking the state grant provide a sworn statement from an authorized representative that the grantee has filed all reports and sworn statements of expenditures for state grants received as required under this section; and

(B) Confirmation from the State Auditor by the grantor that the grantee has not been identified as one who has failed to file a report or sworn statement of expenditures under this section. Confirmation may be accomplished by accessing the computerized database provided for in this section.

(3) If any report or sworn statement of expenditures submitted pursuant to the requirements of this section provides evidence of a reportable condition or violation, the grantor shall provide a copy of the report or sworn statement of expenditures to the State Auditor within 30 days of receipt by the grantor.

(4) The grantor and State Auditor shall maintain copies of reports and sworn statements of

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expenditures required by this section and make the reports or sworn statements of expenditures available for public inspection, as well as for use in audits and performance reviews of the grantor.

(5) Stop payment procedures – The State Auditor, in cooperation with grantors, shall promulgate legislative, procedural, and interpretive rules in accordance with the provisions of §29A-3-1 *et seq*. of this code in implementing the provisions of this section which shall include, but not be limited to:

(A) Procedures concerning issuing and lifting stop payments and other corrective actions;

(B) Factors to be considered in determining whether to issue a stop payment order including whether or not a stop payment order is in the best interest of the state;

(C) Factors to be considered in determining whether a stop payment order should be lifted; and

(D) Procedures for notification to the grantee or subgrantee of the issuance of a stop payment order, the lifting of a stop payment order, and any other related information.

(6) Informal Conference – Whenever a grantor reasonably believes that state grant funds are subject to recovery, the grantor shall provide the grantee the opportunity for at least one informal conference to determine the facts and issues and to resolve any conflicts before taking any formal recovery actions.

(7) Formal Procedures for Recovery –

(A) If a grantor determines that certain state grant funds are to be recovered, then, prior to taking any action to recover the state grant funds, the grantor shall provide the grantee of the funds a written notice of the intended recovery. This notice shall identify the funds and the amount to be recovered and the specific facts which permit recovery.

(B) A grantee shall have 35 days from the receipt of the notice required in paragraph (A) of this subdivision to return the state grant funds or request a hearing in writing to show why recovery is not justified or proper.

(C) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision, then:

(i) The hearing shall be conducted under §29A-5-1 *et seq*. of this code, and be presided over by the grantor director or their designee;

(ii) The grantor shall hold the hearing at which, the grantee or designated representative may present evidence and witnesses to show why recovery should not be permitted; and

(iii) After the conclusion of the hearing, the grantor shall make a final decision and issue a written final recovery order in compliance with §29A-5-3 of this code and send a copy of the

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order to the grantee and the State Auditor.

(D)(i) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision, then the grantor may not take any action of recovery until at least 35 days after the grantor has issued a final recovery order pursuant to the requirements of paragraph (C) of this subdivision.

(ii) If a grantee does not return the state grant funds or request a hearing as permitted in paragraph (B) of this subdivision, then the grantor may proceed with recovery of the state grant funds identified in the notice issued pursuant to the requirements of paragraph (A) of this subdivision, at any time after the expiration of the 35 day request period established in paragraph (B) of this subdivision.

(8) Recovery of State Grant Funds by Grantor Agency – Any state grant funds which have been misspent or are being improperly held are subject to recovery by the grantor. The grantor shall take affirmative and timely action to recover all misspent or improperly held state grant funds. In order to effectuate the recovery of such state grant funds, the grantor may use any one, or a combination of, the following:

(A) Offset the amounts against existing state grants or future state grants to be made by the grantor making the recovery;

(B) Request offsets of the amounts from existing state grants or future state grants to be made by other grantors;

(C) Initiate any debt collection method authorized by law against any private person, business, or entity;

(D) Remove the grantee from the grantor programs and debar the grantee's participation in future state grant programs for a period not to exceed three years, or until removed from the West Virginia debarred list; or

(E) Request further action under subdivision (9) of this subsection to recover state grant funds and otherwise enforce all applicable laws.

(9) Recovery of State Grant Funds – The Attorney General, independently or on behalf of the State Auditor, may take any action within his or her authority to recover any state grant funds which have been misapplied or are being improperly held and have all the powers of collection established in this act in addition to any other powers authorized by law, including, without limitation, to file lawsuits to recover state grant funds.

(10) All state grant funds, whose use is not restricted by law or otherwise appropriated, which are recovered by the grantor, or State Auditor, and expired or unexpended state grant funds remaining at state grant completion or termination, shall be deposited in a special revenue fund, which is hereby created and established in the State Treasury to be known as the Grant Recovery Fund. The moneys in the fund, with all interest or other earnings

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thereon, shall be expended only upon appropriation by the Legislature.

(11) The State Auditor has authority to promulgate procedural and interpretive rules and propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq*. of this code to assist in implementing the provisions of this section. The rules shall set forth uniform administrative requirements and reporting procedures for state grants and subgrants to ensure compliance. Grantors shall not impose additional or inconsistent requirements unless specifically required by state or federal law.

(12) Conflicts of interest – The State Auditor shall adopt rules regarding conflict of interest policies for state grants. Grantors, grantees, and subgrantees must disclose, in writing, any potential conflicts of interest to the grant applicant prior to awarding the state grant.

(f)(1) Any grantor administering a state grant shall, in the manner designated by the State Auditor, notify the State Auditor of the maximum amount of funds to be disbursed, the identity of the grantee authorized to receive the funds, the grantee's fiscal year and federal employer identification number, and the purpose and nature of the state grant within 30 days of making the state grant or authorizing the disbursement of the funds, whichever is later.

(2) The State Treasurer shall provide the Legislative Auditor the information concerning formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code, the Legislative Auditor requests, and in the manner designated by the Legislative Auditor.

(3) The State Auditor shall maintain the West Virginia debarred list identifying grantees who have failed to file reports and sworn statements required by this section. The list shall be in the form of a computerized database that shall be accessible by grantors and the public over the Internet, unless public disclosure would violate federal law or regulations.

(g) An audit of state grant funds may be authorized at any time by the Joint Committee on Government and Finance to be conducted by the State Auditor in cooperation with the Legislative Auditor at no cost to the grantee.

(h) Any report submitted pursuant to the provisions of this section may be filed electronically in accordance with the provisions of §39A-1-1 *et seq*. of this code.

(i) Any grantee who files a fraudulent sworn statement of expenditures under subsection (b) of the section, a fraudulent sworn statement under subsection (d) of this section, or a fraudulent report under this section, is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(j) Prohibition on use of state grant funds for prohibited political activity –

(1) For the purpose of this section, "prohibited political activity" means activity directed

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toward the success or failure of a political party, candidate for political office, or ballot issue, and includes, without limitation, express advocacy for the election or defeat of a political party, candidate, or ballot issue.

(2) Grantors, grantees, subgrantees, and personnel thereof shall not knowingly use state grant funds, or goods or services purchased with state grant funds, to engage, either directly or indirectly, in a prohibited political activity.

(3) Grantors, grantees, subgrantees and personnel thereof shall not be knowingly compensated from state grant funds for time spent engaging in a prohibited political activity.

(4) Nothing in this section shall prohibit any organization described in 26 U.S.C. § 501(c)(3) or 26 U.S.C. § 501(c)(4) receiving a state grant from engaging in any federally permissible activity regarding advocacy, indirect and direct lobbying, and political activity, provided that the specific funds acquired by a state grant or grantor shall not be used for those activities that are permitted by federal law but prohibited by this section.

(5) A grantor, grantee, subgrantee, or personnel thereof who knowingly uses state grant funds for prohibited political activity in violation of this section, is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(k) Reporting – Effective on or before December 31, 2022, and every three years thereafter, the State Auditor shall submit to the Joint Legislative Committee on Government and Finance a report that demonstrates the efficiencies, cost savings, and reductions in fraud, waste, and abuse. The report shall include, but not be limited to, facts describing:

(1) The number and names of entities placed on the West Virginia Debarred List;

(2) The number of stop payment orders issued to grantees;

(3) Any savings realized as a result of the implementation of this act;

(4) A statement of funds recovered and funds in the recovery process;

(5) Any reductions in the number of duplicative audit report reviews; and

(6) The overall number of state grants awarded that given year and the total amount of dollars awarded by each grantor.

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§12-4-14a. Workers' Compensation Subsidy for Volunteer Fire Departments; creation of program; Auditor to administer.

(a) For the purposes of this section:

(1) "Fiscal year" means the fiscal year of the state.

(2) "Individual base year premium" means the individual premium that became due and payable by a volunteer fire department after June 30, 2010, but before July 1, 2011.

(3) "Individual premium" means the workers' compensation insurance premium due and payable by a volunteer fire department for fire fighting services, rapid response emergency medical services, ambulance services or diving services provided by the volunteer fire department in each twelve month period beginning on or after July 1, 2011.

(4) "Total base year premium" means the aggregate workers' compensation insurance premium due and payable by all volunteer fire departments for fire fighting services, rapid response emergency medical services, ambulance services or diving services provided by the volunteer fire departments as determined by the Insurance Commissioner after June 30, 2010, but before July 1, 2011.

(5) "Total premium" means the aggregate workers' compensation insurance premium due and payable by all volunteer fire departments for fire fighting services, rapid response emergency medical services, ambulance services or diving services provided by the volunteer fire departments in each twelve month period beginning on or after July 1, 2011.

(b) In recognition of the burden of increasing workers' compensation insurance premiums on volunteer fire departments, the Legislature has determined that additional funding assistance should be made available to eligible departments to pay a portion of those premium increases beginning with invoices due and payable on or after July 1, 2011.

(c) There is hereby established a special program which shall be known as the "Volunteer Fire Department Workers' Compensation Subsidy Program." The program shall be administered by the State Auditor from moneys that may be appropriated and designated for the program by the Legislature pursuant to this section and section thirty-three-a, article three, chapter thirty-three of this code.

(d) The State Auditor shall administer the distribution of moneys appropriated for the Volunteer Fire Department Workers' Compensation Subsidy Program to volunteer fire departments to help defray workers' compensation insurance premium increases.

(1) Volunteer fire departments shall request supplemental funds by submitting to the Auditor the following information:

(A) The previous fiscal year's workers' compensation premium invoices with paid receipts;

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(B) The current fiscal year's workers' compensation premium invoices showing the amount due and due date and any applicable paid receipts; and

(C) Any other information the Auditor deems necessary for administering the subsidy on forms and schedules as the Auditor directs. The Auditor is authorized to set up an electronic filing system at his or her discretion for filing of the aforementioned information.

(2) After determining that there is a premium increase and the amount of the premium increase for the volunteer fire department requesting the subsidy, the Auditor shall make disbursements in the manner set forth in subsection (e) of this section subject to the following requirements:

(A) The volunteer fire department must be in good standing with the State Fire Marshal;

(B) The volunteer fire department must be registered with the Auditor's Office in a form and manner prescribed by the Auditor prior to being eligible for consideration of any subsidy, which registration must be completed no fewer than thirty days prior to the due date of the workers' compensation premium;

(C) The volunteer fire department must agree that the subsidy for its workers' compensation insurance premium increase will be paid directly to its insurance carrier by the Auditor and that it will timely pay the balance of the premium due; and

(D) Should a volunteer fire department fail to pay the balance of its workers' compensation insurance premium after a disbursement by the Auditor and that insurance policy is subsequently cancelled, the premium paid by the Auditor shall be returned directly to him or her. If the Auditor does not receive a reimbursement for a cancelled policy, he or she shall seek reimbursement for the subsidy portion of the insurance premium from the State Treasurer when the Treasurer makes the next quarterly payment to the volunteer fire department pursuant to sections thirty-three and fourteen-d, article three, chapter thirty-three of this code.

(e) Beginning with the fiscal year that starts July 1, 2011, and continuing in each fiscal year thereafter, after the Auditor has verified that a volunteer fire department is eligible for a subsidy pursuant to this section, he or she shall pay on behalf of a volunteer fire department its subsidy, which is calculated by:

(1) Dividing the total amount of premium subsidy allocated by the Legislature to the Volunteer Fire Department Workers' Compensation Subsidy Program by the total premium minus the total base year premium, which calculation produces the "total shortfall multiplier"; and

(2) Multiplying the total shortfall multiplier determined in subdivision (1) of this subsection by the individual premium less the individual base year premium.

(3) In no event shall a volunteer fire department receive a workers' compensation premium

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subsidy greater than one hundred percent of its premium increase.

(f) For fiscal years after July 1, 2011, the Auditor shall consult with the Insurance Commissioner to determine the total amount of workers' compensation premium due by volunteer fire departments for any subsequent fiscal year. The Auditor may determine payment dates based upon information reasonably available for such a determination.

(g) The Auditor may promulgate emergency rules and may propose for promulgation legislative rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, as are necessary to provide for implementation and enforcement of the provisions of this section.

(h) The volunteer fire departments' workers' compensation premium subsidy program shall undergo a review to assess its effectiveness after three years of operation. The Auditor shall submit a report to the Joint Committee on Government and Finance not later than February 1, 2015, and provide details of the program operation including funds distributed and departments taking advantage of the subsidy.

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§12-4-14b. Accountability of volunteer and part-volunteer fire companies or departments receiving state funds for equipment and training; review or audit of expenditures; withholding of state funds for delinquency or misuse; notifications.

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

"Equipment and training grant" means a grant of money to a volunteer fire company or a part-volunteer fire department from the Fire Service Equipment and Training Fund created in §29-3-5f of this code;

"Formula distribution" means a distribution of money to volunteer and part-volunteer fire companies or departments made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code; and

"State funds accounts" means every bank account and investment account established by a volunteer or part-volunteer fire company or department into which the volunteer or part-volunteer fire company or department has deposited or invested money from formula distributions and equipment and training grants.

(b) *Filing required documentation.* — Every volunteer and part-volunteer fire company or department seeking to receive formula distributions or an equipment and training grant shall file copies of bank statements and check images from the company's or department's state funds accounts for the previous calendar year with the Legislative Auditor on or before February 1 of each year.

(c) *Reviews and audits*. — The Legislative Auditor is authorized to conduct regular reviews or audits of deposits and expenditures from formula distribution and equipment and training grant funds by volunteer and part-volunteer fire companies or departments. The Legislative Auditor may assign an employee or employees to perform audits or reviews at his or her direction. The State Treasurer shall provide the Legislative Auditor information, in the manner designated by the Legislative Auditor, concerning formula distributions and equipment and training grants paid to volunteer or part-volunteer fire companies and departments. The volunteer or part-volunteer fire company or department shall cooperate with the Legislative Auditor, the Legislative Auditor's employees, and the State Auditor in performing their duties under the laws of this state.

(d) *State Auditor.* — Whenever the State Auditor performs an audit of a volunteer or part-volunteer fire company or department for any purpose, the Auditor shall also conduct an audit of other state funds received by the company or department pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code. The Auditor shall send a copy of the audit to the Legislative Auditor. The Legislative Auditor may accept an audit performed by the Auditor in lieu of performing an audit under this section.

(e) *Withholding of funds*. —The Treasurer is authorized to withhold payment of a formula distribution or an equipment and training grant from a volunteer or part-volunteer fire

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company or department, when properly notified by the Legislative Auditor pursuant to this section, of any of the following conditions:

(1) Failure to file, in a timely manner, copies of bank statements and check images with the Legislative Auditor;

(2) Failure to cooperate with a review or audit conducted by the Legislative Auditor;

(3) Misapplication of state funds; or

(4) Failure to file a report or a sworn statement of expenditures as required by §12-4-14 of this code for a state grant other than an equipment and training grant.

(f) *Delinquency in filing.* — If, after February 1, a volunteer or part-volunteer fire company or department has failed to file the required bank statements and check images with the Legislative Auditor, the Legislative Auditor shall notify the delinquent company or department at two separate times in writing of the delinquency and of possible forfeiture of its Fire Service Equipment and Training Fund distribution for the year. If the required bank statements and check images are not filed with the Legislative Auditor by March 31, unless the time period is extended by the Legislative Auditor, the Legislative Auditor shall then notify the Treasurer who shall withhold payment of any amount that would otherwise be distributed to the company or department. Prior to each subsequent quarterly disbursement of funds by the Treasurer, the Legislative Auditor shall notify each delinquent company or department twice per each quarter in which the company or department is delinquent. The Legislative Auditor may choose the method or methods of notification most likely to be received by the delinquent company or department.

(g) *Noncooperation*. — If, in the course of an audit or review by the Legislative Auditor, a volunteer or part-volunteer fire company or department fails to provide documentation of its accounts and expenditures in response to a request of the Legislative Auditor, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount that would otherwise be distributed to the company or department under the provisions of §33-3-14d, §33-3-33, and §33-12C-7 of this code until the Legislative Auditor informs the State Treasurer that the company or department has cooperated with the review or audit.

(h) *Reporting of other grants.* — Nothing in this section alters the duties and responsibilities of a volunteer or part-volunteer fire company or department imposed under §12-4-14 of this code if that company or department has received funds from any state grant program other than from the Fire Service Equipment and Training Fund. If the Legislative Auditor is notified by a grantor that a volunteer or part-volunteer fire company or department has failed to file a report or a sworn statement of expenditures for a state grant it received, the Legislative Auditor shall notify the State Treasurer who shall withhold further distributions to the company or department in the manner provided in this section.

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(i) *Escrow and forfeiture of moneys withheld*. — The Volunteer Fire Department Audit Account previously created in the Treasury is hereby continued. When the State Treasurer receives notice to withhold the distribution of money to a volunteer or part-volunteer fire company or department pursuant to this section, the Treasurer shall instead deposit the amounts withheld into the Volunteer Fire Department Audit Account. If the Treasurer receives notice that the volunteer or part-volunteer fire company or department has come into compliance in less than one year from the date of deposit into this special revenue account, then the Treasurer shall release and distribute the withheld amounts to the company or department, except that any interest that has accrued thereon shall be credited to the general revenue of the state. If, after one year from payment of the amount withheld into the special revenue account, the Legislative Auditor informs the State Treasurer of continued noncooperation by the company or department, the delinquent company or department forfeits the amounts withheld and the State Treasurer shall pay the amounts withheld into Fire Service Equipment and Training Fund created in §29-3-5f of this code.

(j) Misuse of state money. — If the Legislative Auditor determines that a volunteer or part-volunteer fire company or department has used formula distribution money for purposes not authorized by §8-15-8b of this code or has used equipment and training grant money for purposes not authorized by the grant program, the Legislative Auditor shall give a written notice of noncompliance to the company or department. If a volunteer or part-volunteer fire company or department disagrees or disputes the finding, the company or department may contest the finding by submitting a written objection to the Legislative Auditor within five working days of receipt of the Legislative Auditor's finding. The department or company shall then have 60 days from the date of the Legislative Auditor's finding to provide documentation to substantiate that the expenditures were made for authorized purposes. If the volunteer or part-volunteer fire company or department does not dispute the findings of the Legislative Auditor or if the company or department is not able to substantiate an authorized purpose for the expenditure, the Legislative Auditor shall notify the Treasurer of the amount of misapplied money and the Treasurer shall deduct that amount from future distributions to that company or department until the full amount of unauthorized expenditure is offset.

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§12-4-14c. Accountability of volunteer and part-volunteer fire companies or departments receiving state funds for equipment and training; review or audit of expenditures; withholding of state funds for delinquency or misuse; notifications.

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

"Equipment and training grant" means a grant of money to a volunteer fire company or a part-volunteer fire department from the Fire Service Equipment and Training Fund created in §29-3-5f of this code;

"Formula distribution" means a distribution of money to volunteer and part-volunteer fire companies or departments made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code; and

"State funds account" means a bank account established by a volunteer or part-volunteer fire company or department and maintained for the exclusive use and accounting of money from formula distributions and equipment and training grants.

(b) *Filing required documentation.* — Every volunteer and part-volunteer fire company or department seeking to receive formula distributions or an equipment and training grant shall file copies of bank statements and check images from the company's or department's state funds account for the previous calendar year with the Legislative Auditor on or before February 1 of each year.

(c) *Reviews and audits*. — The Legislative Auditor is authorized to conduct regular reviews or audits of deposits and expenditures from formula distribution and equipment and training grant funds by volunteer and part-volunteer fire companies or departments. The Legislative Auditor may assign an employee or employees to perform audits or reviews at his or her direction. The State Treasurer shall provide the Legislative Auditor information, in the manner designated by the Legislative Auditor, concerning formula distributions and equipment and training grants paid to volunteer or part-volunteer fire companies and departments. The volunteer or part-volunteer fire company or department shall cooperate with the Legislative Auditor, the Legislative Auditor's employees, and the State Auditor in performing their duties under the laws of this state.

(d) *State Auditor.* — Whenever the State Auditor performs an audit of a volunteer or part-volunteer fire company or department for any purpose, the Auditor shall also conduct an audit of other state funds received by the company or department pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code. The Auditor shall send a copy of the audit to the Legislative Auditor. The Legislative Auditor may accept an audit performed by the Auditor in lieu of performing an audit under this section.

(e) *Withholding of funds*. —The Treasurer is authorized to withhold payment of a formula distribution or an equipment and training grant from a volunteer or part-volunteer fire company or department, when properly notified by the Legislative Auditor pursuant to this

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section, of any of the following conditions:

(1) Failure to file, in a timely manner, copies of bank statements and check images with the Legislative Auditor;

(2) Failure to cooperate with a review or audit conducted by the Legislative Auditor;

(3) Misapplication of state funds; or

(4) Failure to file a report or a sworn statement of expenditures as required by §12-4-14 of this code for a state grant other than an equipment and training grant.

(f) *Delinquency in filing.* — If, after February 1, a volunteer or part-volunteer fire company or department has failed to file the required bank statements and check images with the Legislative Auditor, the Legislative Auditor shall notify the delinquent company or department at two separate times in writing of the delinquency and of possible forfeiture of its Fire Service Equipment and Training Fund distribution for the year. If the required bank statements and check images are not filed with the Legislative Auditor by March 31, unless the time period is extended by the Legislative Auditor, the Legislative Auditor shall then notify the Treasurer who shall withhold payment of any amount that would otherwise be distributed to the company or department. Prior to each subsequent quarterly disbursement of funds by the Treasurer, the Legislative Auditor shall notify each delinquent company or department twice per each quarter in which the company or department is delinquent. The Legislative Auditor may choose the method or methods of notification most likely to be received by the delinquent company or department.

(g) *Noncooperation*. — If, in the course of an audit or review by the Legislative Auditor, a volunteer or part-volunteer fire company or department fails to provide documentation of its accounts and expenditures in response to a request of the Legislative Auditor, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount that would otherwise be distributed to the company or department under the provisions of §33-3-14d, §33-3-33, and §33-12C-7 of this code until the Legislative Auditor informs the State Treasurer that the company or department has cooperated with the review or audit.

(h) *Reporting of other grants.* — Nothing in this section alters the duties and responsibilities of a volunteer or part-volunteer fire company or department imposed under §12-4-14 of this code if that company or department has received funds from any state grant program other than from the Fire Service Equipment and Training Fund. If the Legislative Auditor is notified by a grantor that a volunteer or part-volunteer fire company or department has failed to file a report or a sworn statement of expenditures for a state grant it received, the Legislative Auditor shall notify the State Treasurer who shall withhold further distributions to the company or department in the manner provided in this section.

(i) *Escrow and forfeiture of moneys withheld*. — The Volunteer Fire Department Audit

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Account previously created in the Treasury is hereby continued. When the State Treasurer receives notice to withhold the distribution of money to a volunteer or part-volunteer fire company or department pursuant to this section, the Treasurer shall instead deposit the amounts withheld into the Volunteer Fire Department Audit Account. If the Treasurer receives notice that the volunteer or part-volunteer fire company or department has come into compliance in less than one year from the date of deposit into this special revenue account, then the Treasurer shall release and distribute the withheld amounts to the company or department, except that any interest that has accrued thereon shall be credited to the general revenue of the state. If, after one year from payment of the amount withheld into the special revenue account, the Legislative Auditor informs the State Treasurer of continued noncooperation by the company or department, the delinquent company or department forfeits the amounts withheld and the State Treasurer shall pay the amounts withheld into Fire Service Equipment and Training Fund created in §29-3-5f of this code.

(j) *Misuse of state money.* — If the Legislative Auditor determines that a volunteer or part-volunteer fire company or department has used formula distribution money for purposes not authorized by §8-15-8b of this code or has used equipment and training grant money for purposes not authorized by the grant program, the Legislative Auditor shall give a written notice of noncompliance to the company or department. If a volunteer or part-volunteer fire company or department disagrees or disputes the finding, the company or department may contest the finding by submitting a written objection to the Legislative Auditor within five working days of receipt of the Legislative Auditor's finding. The department or company shall then have 60 days from the date of the Legislative Auditor's finding to provide documentation to substantiate that the expenditures were made for authorized purposes. If the volunteer or part-volunteer fire company or department does not dispute the findings of the Legislative Auditor or if the company or department is not able to substantiate an authorized purpose for the expenditure, the Legislative Auditor shall notify the Treasurer of the amount of misapplied money and the Treasurer shall deduct that amount from future distributions to that company or department until the full amount of unauthorized expenditure is offset.

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§12-4-15. Bank at school.

(a) The State Treasurer may conduct a program in West Virginia public schools to educate students about banking activities and to encourage savings. Banking institutions under the jurisdiction of the West Virginia commissioner of banking may participate in the program by assisting the treasurer in developing and producing materials for use in the schools, opening savings accounts for students at the schools and receiving and accepting deposits at the schools.

(b) The State Treasurer may not implement the banking program in any school in a county unless he or she obtains permission from the county board of education and the principal of the school; and

(c) Nothing in this section shall be construed to require any professional or service employee to perform additional duties as a result of the establishment of the banking program.

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§12-4-16. Transfer of specified excess funds.

(a) The treasurer has authority to monitor all state funds and accounts created by the Legislature. The treasurer shall transfer, using the state's accounting system, the appropriate amount of excess funds whenever the Legislature has:

(1) Created a fund or account and provided that only a specified amount is allowed to remain in the fund or account from one fiscal year to another, or other specified period; and

(2) Required that excess amounts are to revert or be deposited into the General Revenue Fund, school fund or other specified fund or account.

(b)(1) If a statutory provision provides that only a specified amount is allowed to remain in a fund from one fiscal year to another, the treasurer shall transfer the excess amount, as of the date specified by the provision, no later than August 15, of each year and give written notice of the transfer to all spending units that are authorized to use the fund or account.

(2) If a statutory provision provides for the transfer of excess amounts at a time other than the end of a fiscal year, the treasurer shall transfer the specified excess amounts within fifteen days of the time provided.

(c) The treasurer shall file quarterly reports with the Joint Committee on Government and Finance setting forth the accounts and funds from which excess funds were transferred and the amounts transferred.

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§12-4-17. Retention and disposal of Treasurer's records.

The Treasurer shall develop procedures for the storage, retention and disposal of records filed with, submitted to or created by the Treasurer's office. The procedures shall comply with the requirements for state records, as defined in section three, article eight, chapter five-a of this code, and for the reproduction and preservation of essential state records, as defined in section four, article eight, chapter five-a of this code. Preservation duplicates, as defined in section three, article eight, chapter five-a of this code, shall be maintained in an unalterable readable electronic media in accordance with industry standards, reviewed for accuracy and indexed, and shall have the same force and effect as the original records whether the original records are in existence or not. The procedures shall provide for the maintenance of the confidentiality of the records and ensure the director of the division of archives and history receives the records the director identifies as having historic value. The Treasurer shall purchase the equipment and supplies needed for record retention as part of his or her electronic commerce activities: Provided, That this section shall not limit the responsibility of the Treasurer to provide all documents necessary for the State Auditor, the Department of Revenue and the State Tax Department to complete their duties.

WV Legislature

§12-4A-1. Legislative findings.

The Legislature finds that there is no centralized state authority responsible for receiving and referring reports of possible fraud, misappropriation of, mismanagement or waste of state funds. It is the intent of the Legislature to see that all state funds are utilized for the maximum benefit of the people of the State of West Virginia. The Legislature finds that it is important to provide the people of this state with both a forum and an opportunity to report suspected fraud, waste or abuse of state funds, and to have those reports properly investigated.

WV Legislature

§12-4A-2. General purpose.

The State Auditor shall have authority to receive reports of possible fraud, misappropriation, mismanagement or waste of state funds of the State of West Virginia and to refer such reports to the commission on special investigations, county prosecutors and law-enforcement agencies.

WV Legislature

§12-4A-3. Duties generally.

(a) The State Auditor may employ a forensic accountant to receive and review reports of suspected fraud, misappropriation, mismanagement or waste of state funds which shall be filed in that office. Such reports shall be confidential, except that the State Auditor or his or her designee may supply information necessary to effectuate this article to the appropriate governmental entities.

(b) The State Auditor shall establish modes of communication sufficient to receive reports of suspected fraud, misappropriation of, mismanagement or waste of state funds. Reports of suspected fraud, misappropriation, mismanagement or waste may be filed by any citizen or employee of the State of West Virginia.

(c) Nothing in this article shall be construed to limit the authority of any other governmental entity to conduct an internal investigation of suspected fraud, misappropriation, mismanagement or waste.

WV Legislature

§12-4A-4. Enforcement.

(a) The authority to enforce the provisions of this article shall be vested in the State Auditor. The State Auditor shall promptly forward any evidence of suspected fraud, misappropriation of, mismanagement or waste of state funds to the commission on special investigations and, if potentially criminal in nature, to the prosecuting attorney of the county in which such is alleged to have taken place, to the law-enforcement agency with jurisdiction in the area as well as to the commission on special investigations.

(b) If such reports are made about an agency that has its own investigative body, then the State Auditor may refer evidence of the fraud, misappropriation, mismanagement or waste to that investigative body.

WV Legislature

§12-4B-1. Legislative findings.

The Legislature finds that:

(a) Educational facilities, nonprofit organizations, juvenile detention centers, municipal and county public safety offices and other public, charitable or educational enterprises or organizations are always in need of computers, telecommunications devices and other technological equipment, while the acquisition of such equipment is costly;

(b) The State Auditor must frequently purchase computers, telecommunications devices and other technological equipment for his or her interaction with national and international financial services industries;

(c) The purchase by the State Auditor of modern computers, telecommunications devices and other technological equipment frequently results in the surplus of existing equipment;

(d) Surplus equipment is generally obsolete and may no longer be used effectively by agency employees;

(e) Although the computers, telecommunications devices and other technological equipment is no longer useful in interacting with the financial services industry, they may still be useful items for a less complex and less high-speed dependent use;

(f) Heretofore, the State Auditor has stripped the equipment for spare parts for other machines and that this continued practice does not necessarily result in the equipment's highest and best remaining use; and

(g) Rather than break down the equipment for spare parts or send obsolete machines to the surplus property unit of the state Purchasing Division where they may languish with lack of use, it would be in the best interest of the state that any obsolete computers, telecommunications devices or technological equipment be donated by the State Auditor's office to educational facilities, nonprofit organizations, juvenile detention centers, municipal and county public safety offices and other public, charitable or educational enterprises or organizations.

WV Legislature

§12-4B-2. Computer donation program created.

(a) Notwithstanding any other provision of this code to the contrary, the State Auditor is hereby authorized within his or her agency to create a computer donation program to donate equipment, which would otherwise be transferred to the surplus property unit of the Purchasing Division, to educational facilities, nonprofit organizations, juvenile detention centers, municipal and county public safety offices and other public, charitable or educational enterprises or organizations in this state. This program authorizes the State Auditor's office to donate surplus equipment.

(b) The program shall be administered by a director as appointed or employed by the State Auditor. The Auditor may either appoint the director from existing staff from his or her office or may employ a director from existing funds.

(c) The director shall keep records and accounts that indicate the equipment donated, the age of the equipment, the reasons for declaring it obsolete and to which educational facility, nonprofit organization, juvenile detention center, municipal or county public safety office or other public, charitable or educational enterprise or organization the equipment was donated.

WV Legislature

§12-4B-3. Legislative rules.

The State Auditor shall propose legislative rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code which shall detail the regulations for implementing the program. The rules shall provide for fair and impartial selection of equipment recipients.

WV Legislature

§12-4B-4. Severability.

If any provision or application of this article is held invalid, the invalidity does not affect any other provision or application of this article which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

WV Legislature

§12-5-1. Securities defined.

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

WV Legislature

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

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

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

WV Legislature

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

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

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

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

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

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

WV Legislature

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

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

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§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.

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(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.

WV Legislature

§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.

WV Legislature

§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

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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

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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.

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§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

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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.

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§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,

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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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

(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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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;

WV Legislature

(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.

WV Legislature

§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

WV Legislature

(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. –

WV Legislature

(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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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

WV Legislature

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

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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.

WV Legislature

§12-6A-1. Short title.

This article shall be known and may be cited as "The Debt Management Act".

WV Legislature

§12-6A-2. Legislative findings and declaration of public necessity.

The Legislature hereby finds and declares that in order to maintain the strong financial management of the state, to meet the fiscal needs of state government and to facilitate financing essential capital projects at the lowest possible cost to the citizens of the state, the state must regularly monitor the amount of debt issued by the state and its spending units, ensure the state and its spending units meet all debt service requirements, monitor the credit rating of the state and analyze the acceptance of debt issued by the state and its spending units. The Legislature further finds that in order to meet these important goals, the Division of Debt Management needs to be continued.

WV Legislature

§12-6A-3. Division of Debt Management continued; director.

(a)The Division of Debt Management is continued in the office of the State Treasurer.

(b) The Division shall serve as a central information source concerning the incurrence, recording and reporting of debt issued by the state and its spending units, and shall prepare reports pertaining to the capacity of the state and its spending units to issue debt.

(c) The Treasurer shall appoint a director, qualified by reason of exceptional training and experience in the field of activities of his or her respective Division, and who shall serve at the will and pleasure of the Treasurer.

WV Legislature

§12-6A-4. Definitions.

For the purpose of this article:

"Debt" means bonds, notes, certificates of participation, certificate transactions, capital leases, debentures, lease purchases, mortgages, securitizations and all other forms of securities and indebtedness obligations evidencing specific amounts owed and payable on demand or on determinable dates.

"Debt impact report" means a report prepared by the division which includes information pertaining to a proposed issuance of debt by the state or its spending units.

"Division" means the Division of Debt Management.

"Moral obligation bond" means a debt obligation for which the state or a spending unit has made a nonbinding covenant to make up any deficiency in debt service.

"Net tax supported debt" means the amount of tax supported debt less any applicable refundings, defeasances, escrow accounts, reserve requirements and sinking funds.

"State" means the State of West Virginia.

"Spending unit" means a state department, agency, board, commission, committee, authority or other entity of the state with the power to issue and secure debt. Spending unit does not include local political subdivisions.

"Tax-supported debt" means: (1) General obligation bonds of the state; (2) moral obligation bonds of the state or a spending unit; (3) capital leases, installment purchases, lease purchases, mortgages, certificates of participation and any other similar debt financing transaction extending beyond one year issued by the state or its spending units; and (4) any other debt issued by the state or a spending unit which is not self-supporting. Debt issued by the West Virginia housing development fund, economic development authority, hospital finance authority, parkway authority, public energy authority, solid waste management board and water development authority, with the exception of debt secured by lottery revenues or secured by a lease with the Secretary of Administration, is not tax-supported debt.

WV Legislature

§12-6A-5. Powers and duties.

The Division of Debt Management shall perform the following functions and duties:

(1) Continuously evaluate the current and projected debt and debt service requirements of the State and its spending units.

(2) Evaluate cash flow projections relative to proposed and existing revenue bond issues.

(3) Issue a debt impact report if requested by the Governor, the President of the Senate or the Speaker of the House of Delegates. The Division may request any additional information needed to issue a debt impact report. A debt impact report shall in no way restrict the Governor, the Legislature or the spending unit.

(4) Act as liaison with the Legislature on all debt matters, including, but not limited to, new debt issues and the status of debt issued by the State and its spending units.

(5) Assist the State and its spending units regarding the issuance of debt if requested.

(6) Establish reporting requirements for the issuance of debt by the State and its spending units pursuant to the provisions of this article.

(7) Monitor continuing disclosure requirements and post-issuance compliance issues with federal and state tax and securities law, including, without limitation, arbitrage, rebate and remedial measures.

(8) Make and execute contracts and other instruments and pay the reasonable value of services or commodities rendered to the division pursuant to those contracts.

(9) Contract, cooperate or join with any one or more other governments or public agencies, with any political subdivision of the State, or with the United States, to perform any administrative service, activity or undertaking which the contracting party is authorized by law to perform, charge for providing services and expend any fees collected.

(10) Do all things necessary or convenient to effectuate the intent of this article and to carry out its powers and functions.

WV Legislature

§12-6A-6. Reporting.

(a) Within fifteen days following the end of each calendar quarter, each state spending unit shall provide the division and the Legislative Auditor, in the manner provided by this article and in such form and detail as the State Treasurer may require, a report including, but not limited to, the name of the state spending unit, the amounts and types of debt incurred during the calendar quarter and outstanding at the end of the calendar quarter, the cost and expenses of incurring the debt, the maturity date of each debt, the terms and conditions of the debt, the current debt service on the debt, the interest rate on the debt, the source of the proceeds utilized for repayment of the debt, the amounts of repayment during the calendar quarter, the repayment schedule and the security for the debt. A state spending unit having no outstanding debt shall not be required to provide the quarterly report but shall file an annual report, on forms established by the Division of Debt Management: Provided, That the state spending unit shall immediately notify the Division of Debt Management of any change in the spending unit's outstanding debt or financial condition.

(b) Not less than thirty days prior to a proposed offering of debt by the state or a state spending unit, written notice of the proposed offering and the terms thereof shall be given to the Division by the state spending unit in the form as the Division may require.

(c) Within thirty days after closing on an offering, the responsible spending unit shall report to the division the information pertaining to the offering required by the division in the form the division may require.

(d) On or before January 31 and July 31 of each year, the division shall prepare and issue a report of all debt of the State and its spending units and of all proposed debt issuances of which the division has received notice and shall furnish a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Delegates, the members of the Joint Committee on Government and Finance, the Legislative Auditor and upon request to any other legislative committee and any member of the Legislature. The report shall be kept available for inspection by any citizen of the state. The division shall also prepare updated reports of all debt of the state and its spending units as of March 31 and September 30 each year, which shall be available for inspection at the office of the state Treasurer within thirty days of the end of the respective calendar quarter.

(e) On or before January 15 each year, the division shall report to the Governor and to the Legislature on the capacity of the state to issue additional debt. In preparing its annual review and estimate, the division shall, at a minimum, consider:

(1) The amount of net tax supported debt outstanding and debt authorized but not issued during the current and next fiscal year and annually for the following ten fiscal years;

(2) Debt service requirements during the current and next fiscal year and annually for the following ten fiscal years based upon existing outstanding debt, previously authorized but unissued debt and projected bond authorizations;

WV Legislature

(3) Any information available from the budget office of the department of revenue in connection with projected revenues and anticipated capital expenditures projected for at least the next five fiscal years;

(4) The amount of debt the state and its spending units may prudently issue;

(5) What is needed to keep West Virginia within an average to low range of nationally recognized debt limits;

(6) The debt ratios rating agencies and analysts use; and

(7) The effect of authorizations of new tax supported debt on each of the considerations in this subsection.

WV Legislature

§12-6A-7. Promulgation of rules.

The Treasurer shall propose rules for legislative approval relating to the reporting requirements and duties under this article in accordance with the provisions of article three, chapter twenty-nine-a of this code.

WV Legislature

§12-6B-1.

Repealed.

Acts, 2013 Reg. Sess., Ch. 179.

WV Legislature

§12-6B-2.

Repealed.

Acts, 2013 Reg. Sess., Ch. 179.

WV Legislature

§12-6B-3.

Repealed.

Acts, 2013 Reg. Sess., Ch. 179.

WV Legislature

§12-6B-4.

Repealed.

Acts, 2013 Reg. Sess., Ch. 179.

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

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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

§12-6D-1. West Virginia Enterprise Resource Planning Board created; board composition and purpose; Enterprise Resource planning defined.

(a) As used in this article "enterprise resource planning" means the implementation of software applications to achieve the comprehensive integration of data sources and processes of state agencies into a unified system that includes the state's financial management, procurement, personnel, payroll, budget development and other administrative business processes.

(b) There is created the West Virginia Enterprise Resource Planning Board, whose purpose is to develop, implement and manage the Enterprise Resource Planning System.

(c) The board consists of the Governor, Auditor and the Treasurer, who serve by virtue of their offices and are not entitled to compensation under the provisions of this article.

WV Legislature

§12-6D-2. Powers of the board.

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;

(4) Acquire by purchase, gift or otherwise, hold, use and dispose of real and personal property, deeds, mortgages and other instruments;

(5) Accept and receive gifts, grants and other moneys from any source;

(6) Promulgate and enforce by-laws and rules for the management and conduct of its affairs;

(7) Propose legislative rules, including emergency rules, in accordance with article three, chapter twenty-nine-a of this code to establish a user fee for the maintenance of the Enterprise Resource System;

(8) Contract with and retain legal, accounting, financial and information technology managers, advisors and consultants;

(9) Delegate to the committee any and all duties of the board deemed necessary and convenient to effectuate the intent of this article;

(10) Review and ratify or overrule any decision of the steering committee;

(11) Review written appeals submitted by the steering committee chairman at the request of a committee member; and

(12) Do all things necessary or convenient to implement and operate the board and carry out the purposes of this article.

WV Legislature

§12-6D-3. Management and control of Enterprise Resource Planning System; designation of chair; meetings; executive session.

(a) The board shall manage and control the Enterprise Resource Planning System in accordance with the provisions of this article. (b) The Governor shall be the chairperson of the board unless the board votes to elect another member as chairperson.

(c) Decisions of the board require unanimous consent of the members.

(d) The board may use the staff, policies and procedures of the State Auditor, employ personnel and contract with any person or entity needed to perform the tasks related to the development, management and operation of the Enterprise Resource Planning System.

(e) The board shall hold meetings at least quarterly. Board by-laws may provide for additional meetings.

(f) All three voting members must be present to constitute a quorum of any meeting.

(g) Meetings of the board are subject to the provisions of article nine-a, chapter six of this code.

(h) The board may convene in executive session, upon adoption of a proper motion by a board member, when necessary to preserve the attorney-client privilege, to protect the privacy interests of individuals, to review personnel matters, to maintain confidentiality when confidentiality is in the best interest of the participants, or as otherwise provided by law.

WV Legislature

§12-6D-4. Steering Committee created; powers and authority.

[Repealed.]

WV Legislature

§12-6D-5. Enterprise Resource Planning Fund.

There is hereby created a fund in the State Treasury entitled the Enterprise Resource Planning System Fund to be administered by the board. The fund shall consist of any appropriations or transfers made for the purpose of studying, evaluating, creating, developing, implementing and managing a new Enterprise Resource Planning System and any fees collected in accordance with legislative rules approved by the board and proposed pursuant to this article. Expenditures from the fund are to be made for the purposes set forth in this article in accordance with appropriations by the Legislature and are not authorized from collections.

WV Legislature

§12-6D-6. Transfer of Enterprise Resource Planning Funds.

The unencumbered balances of all funds allocated to the enterprise resource planning system for fiscal year ending June 30, 2011, and the fiscal year ending June 30, 2012, are hereby transferred to the Enterprise Resource Planning System Fund on the effective date of this section in the year 2011.

WV Legislature

§12-6D-7. Establishing state vehicle fixed assets record keeping.

The West Virginia Enterprise Resource Planning Board shall, after consulting with the Fleet Management Division, established pursuant to §5A-12-1 et seq. of this code, and the Division of Motor Vehicles, pursuant to the authority in §17A-3-25, develop standard naming conventions for the title, registration, and other fixed asset information to be used in the identification of state vehicles in the system of record for fixed assets, and shall also designate the information to be entered by spending units into the centralized accounting system maintained by the West Virginia Enterprise Resource Planning Board, for the development and maintenance of an accurate and updated state vehicle inventory.

WV Legislature

§12-6E-1. Definitions.

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

“Approved investment” means a proposed investment in a final project as approved by the Investment Committee.

“Approved project proposal” means a project proposal that has been approved by the Investment Committee.

“Final project” means the final project or investment product developed by a selected manager.

“Investment Committee” means the committee established in §12-6E-4 of this code.

“Investment Management Board” means the West Virginia Investment Management Board established under §12-6-1, *et seq*. of this code.

“Mountaineer Impact Office” means the agency and government instrumentality of the State of West Virginia established under §12-6E-6 of this code to implement, invest and administer the assets transferred from the West Virginia Impact Fund to the Investment Committee.

“Project proposal” means a proposal for a particular project identified by the Mountaineer Impact Office to implement the goal of the West Virginia Impact Fund described in §12-6E-3 of this code.

“Selected manager” means one or more asset or project managers selected by the Mountaineer Impact Office under §12-6E-6 of this code.

“West Virginia Impact Fund” means the fund established in §12-6E-2 of this code.

WV Legislature

§12-6E-2. West Virginia Impact Fund.

(a) There is hereby created within the State Treasury a special revenue account, designated the "West Virginia Impact Fund" to be administered by the Governor for the purposes set forth in this article.

(b) The fund shall consist of all moneys made available for the purposes of this article from any source, including, but not limited to, any moneys that may be appropriated and designated for those purposes by the Legislature; all interest or other return earned or received from investment of the fund; any moneys which the fund is authorized to receive under any provision of this code for the purposes of this article; all gifts, grants, bequests or transfers made to the fund from any source; all interest or other return received from the Investment Committee's deposits or investments, as provided by this article; and any other funds which the Investment Committee directs to be deposited into the fund. Expenditures from the fund shall be made by transfer to the Investment Committee solely for the purposes set forth in this article pursuant to resolution of the Investment Committee adopted under §12-6E-3 of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this article. The funds contained in the fund shall be available for appropriation by the Legislature.

WV Legislature

§12-6E-3. Purpose and goal; investment standards.

(a) The purpose of this article is to continue the efforts of this state to further economic development, infrastructure development, and job creation in the State of West Virginia for the public benefit. It is not the intent of this article that the state compete with private entities by investing in projects to further economic development, infrastructure development and job creation for the public benefit where private capital investment is available for that purpose, but where private capital is not available for major investments to further that purpose, it is in the public interest that the state act to facilitate those major investments. To that end, it is necessary that the state provide the opportunity and support for major investments of capital in this state for projects that would not otherwise be expected to attract private investment in the usual course of business transactions without state sponsorship of and partnership in the investments. The establishment and functions of the West Virginia Impact Fund, the Investment Committee, and the Mountaineer Impact Office as provided in this article are intended to facilitate these investments.

(b) The assets of the West Virginia Impact Fund, upon transfer to the Investment Committee as provided by this article, may be:

(1) Invested in any final project presented by the Mountaineer Impact Office under this article that is approved by resolution of the Investment Committee that requires an aggregate investment of moneys in the project of not less than $25 million by either the Investment Committee, as sole investor, or by the Investment Committee and one or more co-investors, public or private, with the goal of furthering economic development, infrastructure development and job creation in the State of West Virginia; and

(2) Expended by the Investment Committee in such amounts necessary to provide for the payment of expenses incurred in the administration of this article.

(c) The Mountaineer Impact Office shall identify specific project proposals for projects, which may be single target companies, blind pool investment funds or other, to implement the goal of the West Virginia Impact Fund.

(d) The Mountaineer Impact Office shall present such project proposals for approval or disapproval to the Investment Committee pursuant to §12-6E-6 of this code.

(e) When determining whether to approve a final project, the Investment Committee shall take into consideration:

(1) The ability of the project to leverage other sources of funding;

(2) Whether investment funding for the project from other sources, public or private, is available or could otherwise reasonably be expected to be available without the state's participation in the investment made under this article;

(3) The ability of the project to create or retain jobs, considering the number of jobs, the

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type of jobs, whether benefits are or will be paid, the type of benefits involved, and the compensation reasonably anticipated to be paid to persons filling new jobs or the compensation currently paid to persons whose jobs would be retained;

(4) Whether, and the extent to which, the project will promote economic development, infrastructure development, and job creation in the state; and

(5) Whether the project is in the best interest of the public.

(f) The Investment Committee may not approve a project or accept funding from or participation in any investment by a potential partner, investor, or entity when such approval or participation would violate the laws of the United States or the laws of the State of West Virginia, or where such approval or participation would provide aid or comfort to any designated enemy of the United States or the agent of any regime determined by the United States Government to be a narcotics trafficking, human trafficking, sponsor of terrorism, totalitarian, or other criminal regime.

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§12-6E-4. Establishment of the Investment Committee; appointments; removal; vacancy; quorum.

(a) There is hereby created the Investment Committee, as an agency of the State of West Virginia, to manage the investment of the assets transferred to the Investment Committee from the West Virginia Impact Fund.

(b) The Investment Committee shall consist of seven voting members. The President of the Senate and the Speaker of the House of Delegates shall serve *ex officio* as non-voting members. The voting members shall consist of:

(1) The Governor and the Secretary of the Department of Commerce, or their designees shall serve as members of the Investment Committee. They shall serve by virtue of their office and are not entitled to compensation under the provisions of this article. The Governor and the Secretary of the Department of Commerce 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 paragraph (A), subdivision (2) of this subsection and subdivision (3) of this subsection.

(2)(A) Five members of the Investment Committee shall be appointed by the Governor, with the advice and consent of the Senate. The terms of the appointed members shall be three years, subject to the following: The initial appointment of one member shall be for a term of one year; the initial appointment of two members shall be for terms of two years; and the initial appointment of two members shall be for terms of three years. At the end of each member'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 third year following the year of his or her appointment. Except for vacancy appointments made pursuant to this paragraph, all subsequent appointments shall be for terms ending on the thirty-first day of January in the third year following the expiration of the prior term for the position to which the appointment is made. No more than three of the five appointed members may belong to the same political party. In the event of a vacancy among the trustees, the Governor shall promptly make an appointment to fill the unexpired term.

(B) The Governor may remove any appointed member in case of gross negligence or misfeasance and may declare that position vacant and may appoint a person for the vacancy as provided in this subsection. A removal by the Governor must be in writing and must state the reason for the removal. A member who is removed by the Governor may not participate in Investment Committee business and may not be counted for purposes of establishing a quorum after the member receives written notice of removal from the Governor.

(C) The appointed members may not hold any other state or federal office, position or employment, either elective or appointive, except as a member of the armed forces of either the United States or of this state or as a member of a governing board of an institution of higher education of this state, and must have recognized competence and experience in finance, investments, or other business management-related fields.

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(3) Each appointed member is entitled to receive and, at the member's option, the Investment Committee shall pay to the member compensation in the amount of $400 for each day on which the member attended a meeting of the Investment Committee. In addition, all appointed members shall receive reasonable and necessary expenses actually incurred in discharging member duties pursuant to this article.

(c) The Investment Committee may continue to act notwithstanding any vacancy.

(d) The presence of four voting members of the Investment Committee shall constitute a quorum for the exercise of any authority granted to the Investment Committee in this article. Action may be taken only upon affirmative vote of four voting members of the Investment Committee, which vote may be in person or in writing.

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§12-6E-5. Powers and duties of Investment Committee; disclosure of interests; standard of care.

(a) The Investment Committee shall have the authority to (1) appoint the managing director of the Mountaineer Impact Office, (2) approve or disapprove project proposals, (3) approve or disapprove the negotiated terms of any proposed investment of funds held by the Investment Committee in any final project, (4) approve or disapprove of the managing director's appointment of employees and retention of consultants to carry out the duties of the Mountaineer Impact Office, (5) initiate the formation of legal entities with their own governance structure to facilitate the development of projects; and (6) participate in the formation of legal entities with their own governance structure to facilitate the development of projects.

(b) The Investment Committee shall approve or disapprove project proposals and the negotiated terms of a proposed investment in any final project solely pursuant to its determination of whether the projects or the negotiated terms of the proposed investment in the final project meet the goal prescribed in §12-6E-3 of this code.

(c) The Investment Committee may, in its own right or through the Mountaineer Impact Office:

(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) Notwithstanding any other provision of law, retain and employ legal, accounting, financial and investment advisors, and consultants;

(6) Maintain accounts with banks, securities dealers, and financial institutions both within and outside this state;

(7) Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management of the investment securities;

(8) Contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities held by the committee;

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

(10) Hire its own employees, consultants, managers, and advisors as it considers

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necessary and fix their compensation and prescribe their duties;

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

(12) Do all things necessary to implement and operate the Investment Committee and the Mountaineer Impact Office and carry out the intent of this article.

(d) *Disclosure of interests*. — If a member of the Investment Committee acquires, owns, or controls an interest, direct or indirect, in any final project in which West Virginia Impact Fund assets are invested or proposed to be invested, the member shall immediately disclose the interest to the Investment Committee and shall be recused from voting on the matter in accordance with the provisions of the West Virginia Governmental Ethics Act. The disclosure is a matter of public record and shall be included in the minutes of the Investment Committee meeting next following the disclosure.

(e) *Standard of care*. — When making decisions, the Investment Committee shall exercise the judgment and care under the circumstances then prevailing that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the designation and management of large investments entrusted to it, not in regard to speculation, but in regard to the permanent disposition of funds, considering preservation of the purchasing power of the West Virginia Impact Fund over time, while maximizing the expected total return from both income and the appreciation of capital and accomplishing the goal of the West Virginia Impact Fund as set forth in §12-6E-3 of this code.

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§12-6E-6. Establishment of the Mountaineer Impact Office; managing director; project proposals; monitoring performance; consultation with Investment Management Board; insurance.

(a) There is hereby created the Mountaineer Impact Office. The Mountaineer Impact Office is an agency and instrumentality of the State of West Virginia managed by the Investment Committee. The purpose of the Mountaineer Impact Office is to implement, invest and administer the assets transferred to the Investment Committee from the West Virginia Impact Fund.

(b) The Investment Committee shall appoint a managing director, as a state employee, to manage the affairs of the Mountaineer Impact Office. The managing director shall have a strong background in business and significant experience in investments and the development of projects.

(c) The salary of the managing director is not restricted by state compensation rules but shall be determined by the Governor in accordance with customary salaries for officers and directors with similar responsibilities and experience in the private sector.

(d) The managing director may, with the approval of the Investment Committee, appoint permanent or temporary employees and/or retain consultants to carry out the duties of the Mountaineer Impact Office. An employee of the Mountaineer Impact Office, including the managing director, may not be a member of the Investment Committee.

(e) The Mountaineer Impact Office shall identify specific proposals for projects, which may be single target companies, blind pool investment funds or other, to implement the goal prescribed in §12-6E-3 of this code.

(f) The Mountaineer Impact Office shall present such project proposals for approval or disapproval to the Investment Committee.

(g) The Mountaineer Impact Office shall establish a procurement process for selecting one or more selected managers to develop final projects in accordance with each approved project proposal. This procurement process shall be streamlined and efficient and is not required to comply with §5A-3-1 *et seq*. of this code. Pursuant to the procurement process, the Mountaineer Impact Office shall identify, procure and enter into a non-binding memorandum of understanding with a selected manager to develop a final project in accordance with each approved project proposal.

(h) The Mountaineer Impact Office shall, with the selected manager, negotiate the terms and amount of any proposed investment of funds held by the Investment Committee in any final project.

(i) The Mountaineer Impact Office shall present such final negotiated terms and amount of a proposed investment in a final project for approval or disapproval to the Investment

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Committee, together with any disclosures of conflicts of interest in the proposed investment as required pursuant to §12-6E-5(d) of this code.

(j) The Mountaineer Impact Office shall monitor the qualitative and quantitative performance of each approved investment on an ongoing basis, with respect to the goal of investments prescribed in §12-6E-3 of this code, including without limitation, the exit and termination of each approved investment.

(k) The Mountaineer Impact Office may consult the Investment Management Board about investments made or proposed under this article.

(l) The Mountaineer Impact Office may exercise all powers necessary or appropriate to carry out the duties or responsibilities conferred upon it by law or the Investment Committee under the provisions of this article.

(m) The Mountaineer Impact Office shall procure and maintain in effect, for the benefit of the members of the Investment Committee, commercially customary property, liability, crime, and other insurance to cover risks of loss from the operations of the Investment Committee. The types and amounts of the insurance coverages shall be determined by the Mountaineer Impact Office, 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 Investment Committee, and in an amount of not less than $10 million. The Investment Committee 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 Investment Committee and the amount of the fiduciary or surety bond shall be fixed by the Investment Committee. The premiums payable on any insurance or fiduciary or surety bonds that the Committee may require, from time to time, shall be an expense of the Committee.

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§12-6E-7. Computation of income; audits; annual report.

(a) The Mountaineer Impact Office shall cause the income from investments made by the Investment Committee to be deposited back into the West Virginia Impact Fund, net of amounts determined by the Investment Committee to be necessary to provide for the payment of expenses incurred in the administration of this article.

(b) The Mountaineer Impact Office shall compute the net income of the Investment Committee's investments annually as of the last day of the fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses.

(c) The Mountaineer Impact Office shall annually cause combined annual financial and compliance audits of the assets in the West Virginia Impact Fund, and of the moneys transferred to and held by the Investment Committee, 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 Mountaineer Impact Office shall cause copies of the audits report to be furnished to the Governor, State Treasurer, State Auditor, President of the Senate, and the Speaker of the House of Delegates.

(d) By December 1 of each year, the Mountaineer Impact Office shall publish a report of the Investment Committee investments for distribution to the Governor, the President of the Senate, the Speaker of the House of Delegates, and the public. The Mountaineer Impact Office shall notify the Legislature that the report is available and otherwise comply with §4-1-23 and §5-1-20 of this code.

(e) The report published pursuant to subsection (d) of this section must include financial statements audited by independent outside auditors, a statement of the amount of money received by the Investment Committee and the West Virginia Impact Fund from each investment during the period covered, a statement of investments by the Investment Committee, including an appraisal at market value, a description of investment activities during the period covered by the report, a comparison of the investment performance with the intended goal contained in §12-6E-3 of this code and any other information the Mountaineer Impact Office determines would be in the public interest upon which the efforts of the Investment Committee and the Mountaineer Impact Office to meet the goals and objectives of this article may be measured.

(f) The reports described in this section shall be public record.

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§12-6E-8. Role of the Investment Management Board; immunity from liability.

The Investment Committee or the Mountaineer Impact Office may consult the Investment Management Board regarding their activities. To the extent the Investment Management Board determines that to do so is not inconsistent with its duties and responsibilities imposed by this code, it may consult with Investment Committee or the Mountaineer Impact Office regarding those activities. The Investment Management Board's trustees, advisors, officers and employees are not liable personally, either jointly or severally, for any debt or obligation created by the Investment Committee or the Mountaineer Impact Office, nor shall the Investment Management Board or its trustees, advisors, officers or employees be liable for any consultative advice, guidance or services that it may provide from time to time under this article.

WV Legislature

§12-6E-9. Immunities of Investment Committee and Mountaineer Impact Office; exemptions.

(a) The doctrine and principles of sovereign immunity extend to the West Virginia Impact Fund, the Mountaineer Impact Office, the Investment Committee and their operations.

(b) The members, advisors, officers, and employees of the Investment Committee and the Mountaineer Impact Office are not liable personally, either jointly or severally, for any debt or obligation created by the Investment Committee or the Mountaineer Impact Office: *Provided*, That the members, advisors, officers, and employees are liable for acts of misfeasance or gross negligence.

(c) The assets held by the Investment Committee in any account are exempt from all taxes and assessments in the State of West Virginia. All security instruments issued by the Investment Committee or the Mountaineer Impact Office, their transfer, and their income are exempt from all taxes and assessments in the State of West Virginia. No provision of this section may be construed to exempt from taxation any property, real or personal, that may be owned or otherwise held as a result of an investment made under this article. No provision of this section may be construed to exempt from taxation any income or other return derived by any entity other than the state as the result of an investment made under this article. No provision of this section may be construed to exempt from taxation any business activities resulting from an investment made under this article.

WV Legislature

§12-6E-10. Political activities.

(a) The resources of the West Virginia Impact Fund, the Investment Committee and the Mountaineer Impact Office may not be used to finance or influence political activities.

(b) A public official, or an immediate family member thereof, shall not intentionally or knowingly hold a financial interest in any project pursuant to this article, or hold a financial interest in a holding company, affiliate, intermediary or subsidiary thereof that owns an interest in a project authorized pursuant to this article, while the individual is a public official and for one year following termination of the individual's status as a public official. For the purposes of this section, the term "financial interest" does not include ownership of shares of mutual funds or other similar investment instruments in which the owner of such shares of mutual fund or other similar investment instrument has no decision making authority to what business decisions are made by those managing the investment.

WV Legislature

§12-6E-11. Confidential information.

The reports described in §12-6E-7 of this code shall be public record. If the standard confidentiality agreements, policies or procedures of a private enterprise or investor with which an investment in a project is proposed or made prohibit, restrict or limit the disclosure of information pertaining to the investment, the information is confidential and shall not form part of the public record and is exempt from disclosure under the provisions of chapter twenty-nine-b of this code. Such information may be publicly disclosed only for the purposes of an official law enforcement investigation or when its production is required in a court proceeding.

WV Legislature

§12-7-1. Purposes and objectives; how article cited.

This article, which may be cited as the "Jobs Investment Trust Act", is enacted to create a jobs investment trust to be used for the development, promotion and expansion of West Virginia's economy and to provide opportunities to businesses and college and university students to develop and implement plans for innovative projects and investment opportunity.

WV Legislature

§12-7-2. Legislative findings.

(a) The Legislature finds that the Jobs Investment Trust is a necessary tool to make investment funds available to eligible businesses, would stimulate economic growth, and provide or retain jobs within the state. Accordingly, it is declared to be the public policy of the state to create an investment program to inject needed capital into the business community, sustain or improve business profitability, and provide jobs to the citizens of the state.

(b) The Legislature further finds that:

(1) The availability of financial assistance through the creation of the jobs investment trust will promote economic development in the state and will serve the public purposes of the state;

(2) The public policy of the state will be served through financing projects, extending loans, providing financing or credit for working capital, creating innovative investment plans and options, and providing equity financing or the refinancing of existing debt of an enterprise;

(3) It is in the public interest, in order to address the needs of the business community and the citizens of the state, that a public body corporate be created with full power to accept grants, gifts, and appropriations; to generate revenues to furnish money and credit to approved businesses or enterprises; to promote the establishment of new and innovative projects; and to upgrade, expand, and retain existing projects; and

(4) Fundamental changes are occurring in national and international markets that increase the need for debt financing, equity capital, and near-equity capital for emerging, expanding, and restructuring business opportunities in the state.

(c) The Legislature further finds that:

(1) Due to the creation of the Jobs Investment Trust, moneys will be available for venture capital in this state;

(2) The implementation of this innovative program may supplant the need for the state to otherwise assist private venture capital concerns through other tax credits;

(3) Due to the availability of venture capital funds through this program the granting of venture capital company credits under the Capital Company Act should be reduced for three fiscal years pending the full implementation of the Jobs Investment Trust Program;

(4) Due to this reduction in the certification of tax credits, additional general revenue may become available for new economic development programs;

(5) These economic development programs may be funded from general revenue in an amount appropriate to effectuate the purposes of these programs; and

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(6) Due to the foregoing findings, there shall be an annual line item appropriation, in an amount determined by the Legislature, to the West Virginia Development Office for a matching grant program for regional economic development corporations or authorities.

WV Legislature

§12-7-3. Definitions.

For purposes of this article:

(a) “Board” means the West Virginia Economic Development Authority, established pursuant to §31-15-1 *et seq*. of this code.

(b) “Eligible business” means any business, including, but not limited to, a business licensed or seeking licensure by the small business administration as a small business investment company under the Small Business Investment Act, which is qualified to do business in West Virginia and is in good standing with all applicable laws affecting the conduct of such business.

(c) “Non-incentive tax credits” means the non-incentive tax credits issued by the state to the Jobs Investment Trust Board and authorized for sale and transfer by the jobs investment trust board pursuant to §12-7-8a of this code.

(d) “Securities” means all bonds, notes, stocks, units of ownership, debentures, or any other form of negotiable or nonnegotiable evidence of indebtedness or ownership.

WV Legislature

§12-7-4. Jobs Investment Trust Board; termination; vesting with the Economic Development Authority.

(a) The Jobs Investment Trust Board is hereby terminated, and the management and control of the Jobs Investment Trust shall be vested in the West Virginia Economic Development Authority.

(b)The board shall meet on a quarterly basis or more often, if necessary, to carry out the powers and duties of the board with respect to the management of the Jobs Investment Trust, as set forth in this article.

(c) For the purposes of managing the Jobs Investment Trust, the rules related to board makeup and quorum requirements shall be the same as those set forth in §31-15-5 of this code.

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§12-7-5. Management and control of jobs investment trust vested in board; officers; liability; authority of executive director to act on behalf of board; relationship to higher education institutions.

(a) It is the duty of the board to manage and control the Jobs Investment Trust. With the advice and consent of the Senate, the Governor appoints an executive director of the Jobs Investment Trust who is or has been a senior executive of a major financial institution, brokerage firm, investment firm or similar institution, with extensive experience in capital market development. The director serves at the Governor's will and pleasure and is responsible for managing and administering the daily functions of the Jobs Investment Trust and for performing other functions necessary to the effective operation of the trust. The compensation of the director is annually fixed by the board.

(b) The board annually elects a secretary to keep a record of the proceedings of the board, who need not be a member of the board.

(c) The members and officers of the board are not liable personally, either jointly or severally, for any debt or obligation created by the board.

(d) The acts of the board are solely the acts of its corporation and are not those of an agent of the state. A debt or obligation of the board is not a debt or obligation of the state.

(e) Upon the affirmative vote of at least a majority of those members in attendance in a meeting of the board, the board may approve any action to be taken and authorize the executive director for and on behalf of the board to execute and deliver all instruments, agreements, or other documents that are required or are reasonably necessary to effectuate the decisions or acts of the board.

(f) The West Virginia Economic Development Authority shall provide office space and staff support services for the director and the board shall act as fiscal agent for the board and, as such, shall provide accounting services for the board, invest all funds as directed by the board, service all investment activities of the board, and shall make the disbursements of all funds as directed by the board, for which the West Virginia Economic Development Authority shall be reasonably compensated as determined by the board.

(g) The board and the executive director shall involve students and faculty members of state institutions of higher education in the board's activities in order to enhance the opportunities at the institutions for learning and for participation in the board's investment activities and in the economic development of the state, whether in research, financial analysis, management participation, or in such other ways as the board and the executive director may find appropriate.

WV Legislature

§12-7-6. Corporate powers.

The board may:

(1)(A) Make loans to eligible businesses with or without interest secured if and as required by the board; and (B) acquire ownership interests in eligible businesses. These investments may be made in eligible businesses that stimulate economic growth and provide or retain jobs in this state and shall be made only upon the determination by the board that the investments are prudent and meet the criteria established by the board;

(2) Accept appropriations, gifts, grants, bequests, and devises and use or dispose of them to carry out its corporate purposes;

(3) Make and execute contracts, releases, compromises, agreements, and other instruments necessary or convenient for the exercise of its powers or to carry out its corporate purposes;

(4) Collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments, and other evidence of indebtedness, in connection with making equity investments and in connection with providing technical, consultative, and project assistance services;

(5) Sue and be sued;

(6) Make, amend, and repeal bylaws and rules consistent with the provisions of this article;

(7) Hire its own employees, who shall be employees of the State of West Virginia for purposes of §5-10-1 *et seq*. and §5-16-1 *et seq*. of this code, and appoint officers and consultants and fix their compensation and prescribe their duties;

(8) Acquire, hold, and dispose of real and personal property for its corporate purposes;

(9) Enter into agreements or other transactions with any federal or state agency, college or university, any person and any domestic or foreign partnership, corporation, association, or organization;

(10) Acquire real and personal property, or an interest in real or personal property, in its own name, by purchase or foreclosure when acquisition is necessary or appropriate to protect any loan in which the board has an interest; to sell, transfer, and convey any real or personal property to a buyer; and, in the event a sale, transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease real or personal property to a tenant;

(11) Purchase, sell, own, hold, negotiate, transfer, or assign: (A) Any mortgage, instrument, note, credit, debenture, guarantee, bond, or other negotiable instrument or obligation securing a loan, or any part of a loan; (B) any security or other instrument evidencing ownership or indebtedness; or (C) equity or other ownership interest. An offering of one of

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these instruments shall include the representation and qualification that the board is a public body corporate, managing a venture capital fund that includes high-risk investments and that in any transfer, sale, or assignment of any interest, the transferee, purchaser, or assignee accepts any risk without recourse to the Jobs Investment Trust or to the state;

(12) Procure insurance against losses to its property in amounts, and from insurers, as is prudent;

(13) Consent, when prudent, to the modification of the rate of interest, time of maturity, time of payment of installments of principal or interest, or any other terms of the investment, loan, contract, or agreement in which the board is a party;

(14) Establish training and educational programs to further the purposes of this article;

(15) File its own travel rules;

(16) Borrow money to carry out its corporate purpose in principal amounts and upon terms as are necessary to provide sufficient funds for achieving its corporate purpose;

(17) Take options in or warrants for, subscribe to, acquire, purchase, own, hold, transfer, sell, vote, employ, mortgage, pledge, assign, pool, or syndicate: (A) Any loans, notes, mortgages, or securities; (B) debt instruments, ownership certificates, or other instruments evidencing loans or equity; or (C) securities or other ownership interests of or in domestic or foreign corporations, associations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, joint ventures, or other private enterprise to foster economic growth, jobs preservation and creation in the State of West Virginia, and all other acts that carry out the board's purpose;

(18) Contract with either Marshall University or West Virginia University, or both, for the purpose of retaining the services of, and paying the reasonable cost of, services performed by the institution for the board to effectuate the purposes of this article;

(19) Enter into collaborative arrangements or contracts with private venture capital companies when considered advisable by the board;

(20) Provide equity financing for any eligible business that will stimulate economic growth and provide or retain jobs in this state and hold, transfer, sell, assign, pool, or syndicate, or participate in the syndication of, any loans, notes, mortgages, securities, debt instruments, or other instruments evidencing loans or equity interest in furtherance of the board's corporate purposes;

(21) Form partnerships, create subsidiaries, or take all other actions necessary to qualify as a small business investment company under the United States Small Business Investment Act, PL 85-699, as amended;

(22) Provide for staff payroll and make purchases in the same manner as the West Virginia

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Economic Development Authority;

(23) Indemnify its members, directors, officers, employees, and agents relative to actions and proceedings to which they have been made parties and make advances for expenses relative thereto and purchase and maintain liability insurance on behalf of those persons all to the same extent as authorized for West Virginia business corporations under present or future laws of the state applicable to business corporations generally; and

(24) Contract for the provision of legal services by private counsel and, notwithstanding the provisions of §5-3-1 *et seq*. of this code, counsel may, but is not limited to, represent the board in court, negotiate contracts and other agreements on behalf of the board, render advice to the board on any matter relating thereto, prepare contracts and other agreements, and provide any other legal services requested by the board.

WV Legislature

§12-7-7. Limitation on investments.

Subject to the provisions of §12-7-9 of this code, the board may invest in any eligible business: *Provided*, That at the time of the placement of the investment not more than 20 percent of the board's total investment portfolio is invested in one eligible business within any two-year period: *Provided, however*, That the board may invest in an eligible business up to an additional 20 percent of the board's total investment portfolio, or up to a total of $2,000,000, whichever is less. The additional investment must be in the form of a short-term debt investment to be repaid within 12 months of the investment: *Provided further*, That the board may extend said 12-month repayment term and upon terms consistent with the actions of other investors involved in similar investments with the eligible business if the eligible business demonstrates to the board: (1) That said business is progressing with a plan for capital formation and business development; and (2) that said extension of the 12-month period, and any other modification thereto, will not substantially prejudice the position of the board in relation to the other investors in, and creditors of, the eligible business: *And Provided further*, That the board shall report to the Governor and the Joint Committee on Government and Finance of its intention to extend any repayment term at least 20 days prior to the board approving any extension made on or after April 1, 1994. Any reported intent to extend any repayment term may be made electronically.

WV Legislature

§12-7-8. Funding.

[Repealed.]

WV Legislature

§12-7-8a. New millennium fund; new millennium fund promissory notes; nonincentive tax credits; rulemaking.

(a) The new millennium fund is continued to permit the board to better fulfill its mission to mobilize financing and capital for emerging, expanding and restructuring businesses in the state. New millennium fund moneys are to consist of all appropriations for use by the jobs investment trust board made by the Legislature subsequent December 31, 1999, and funds borrowed from private or institutional lenders by the board through the issuance of promissory notes. Fund moneys may be held in a separate account or accounts by or at the West Virginia Housing Development Fund for the board until the board disburses any portion of the funds. Fund moneys that are not set aside or otherwise designated for paying interest on the promissory notes may be used by the board in accordance with and to effectuate the purposes of this article. The board may impose reasonable fees and charges associated with its investment of funds from the new millennium fund in eligible businesses to be paid in any combination of money, warrants or equity interests.

(b) Without limiting the powers otherwise enumerated in this article, the board may: (1) Sell and transfer portions of the nonincentive tax credits created, issued and transferred to the board pursuant to the provisions of this section to contracting taxpayers and/or their assigns in return for the payments described in subsection (f) of this section; (2) issue or provide promissory notes on loans made to the board having terms of up to ten years on a zero-coupon basis or otherwise; (3) enter into put options or similar commitment contracts with taxpayers that would be for terms of up to ten years committing, at the board's option, to sell and transfer to the contracting taxpayers or their assigns at the end of the term and as soon after the term as is reasonable under the circumstances portions of the nonincentive tax credits created, issued and transferred to the board pursuant to this section; (4) grant, transfer and assign the benefits of the put options or similar commitment contracts as collateral to secure the board's obligations pursuant to its promissory notes; (5) satisfy the board's payment obligations under its promissory notes from assets of the board, other than the benefits of the put options or similar commitment contracts, then to effect a corresponding cancellation of the board's related nonincentive tax credit commitment; and (6) satisfy the board's payment obligations under its promissory notes from the benefits of the put options or similar commitment contracts, then to effect a corresponding sale and transfer of nonincentive tax credits. The terms and conditions of the promissory notes, put options or similar commitment contracts shall be consistent with the purposes of this section, and approved by board resolution, and may be different for separate transactions.

(c) Without limiting the powers otherwise enumerated in this article and with regard to the new millennium fund, the board has and may exercise all powers necessary to further the purposes of this section, including, but not limited to, the power to commit, sell and transfer nonincentive tax credits up to the total amount of $30,000,000.

(d) The board may issue its promissory notes pursuant to this section in amounts totaling no more than $6,000,000 in each of the fiscal years ending in 2001, 2002, 2003, 2004 and 2005 and may issue its nonincentive tax credit commitments in amounts totaling no more than

$6,000,000 in each of the fiscal years ending in 2001, 2002, 2003, 2004 and 2005. The board may agree to sell and transfer, at its option, nonincentive tax credits to taxpayers ten years after the date of its commitments and as soon thereafter as it is reasonable under the circumstances.

(e) Prior to committing to the sale and transfer of any nonincentive tax credits, the board shall first determine that:

(1) The new millennium fund moneys to be received in relationship to the commitment shall be used for the development, promotion and expansion of the economy of the state; and

(2) The existence and pledge of a put option or similar commitment contract that is supported by the nonincentive tax credits that are committed by the board is a material inducement to the private or institutional lender transferring moneys to the board to be placed in the new millennium fund.

(f) The board may sell and transfer nonincentive tax credits only in conjunction with the satisfaction of its obligations under its promissory notes issued pursuant to this section. Each original sale and transfer of nonincentive tax credits by the board shall be consummated upon payment to the board, or for its benefits, of an amount equal to the dollar amount of the nonincentive tax credits sold and transferred. The nonincentive tax credits sold and transferred by the board pursuant to this section shall be claimed as a credit on the tax returns for the year or years in which the nonincentive tax credits are sold and transferred by the board. The amount of the nonincentive tax credit that exceeds the taxpayer's tax liability for the taxable year in the year of the purchase may be carried to succeeding taxable years until used in full up to two years after the year of purchase and may not be carried back to prior taxable years. Any nonincentive tax credit sold and transferred by the board that remains outstanding after the third taxable year subsequent to and including the year of the transfer is forfeited.

(g) Nonincentive tax credits are created, issued and transferred by the state to the board in a total amount of $30,000,000 to be used by taxpayers, including persons, firms, corporations and all other business entities, to reduce the tax liabilities imposed upon them pursuant to articles twelve-a, thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four, chapter eleven of this code. The total amount of nonincentive tax credits that are created, issued and transferred to the board is $30,000,000. The nonincentive tax credits are freely transferable to subsequent transferees. The board shall immediately notify the President of the Senate, the Speaker of the House of Delegates and the Governor in writing if and when any nonincentive tax credits are sold and transferred by the board.

(h) In conjunction with the Department of Tax and Revenue, the board shall develop a system for: (i) Registering nonincentive tax credits, commitments for the sale and transfer of nonincentive tax credits, the assignments of the commitments and the assignments of the nonincentive tax credits; and (ii) certifying nonincentive tax credits so that when nonincentive tax credits are claimed on a tax return, they may be verified as validly issued

WV Legislature

by the board, properly taken in the year of claim and in accordance with the requirements of this section.

(i) The board may promulgate, repeal, amend and change rules consistent with the provisions of this article to carry out the purposes of this section. These rules are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the Secretary of State.

WV Legislature

§12-7-9. Applications for investment priority; investment package.

(a) The board shall accept and review applications from eligible businesses and shall determine the investment worthiness, the benefits to the West Virginia economy, the leverage potential for investments in small business investment companies, the jobs creation potential, and the economic circumstances of the region or regions of the state that would benefit from each proposal. The board shall attempt to balance its investments, as nearly as is practicable, among the geographic regions of the state.

(b) Any faculty or students of a public or private institution of higher education in the state may present for the board's consideration proposals relating to innovative projects or investment opportunities.

(c) An annual audit shall be conducted by an independent firm of certified public accountants and shall be made available to the Legislature annually. A copy of the audit may be provided to the Legislature electronically and paper copies may be provided upon the request of any member.

(d) The board shall forward to the West Virginia Economic Development Authority for its review and information approved investment packages containing information as is necessary to permit the West Virginia Economic Development Authority to carry out its duties under this article. The board shall determine whether each applicant is an eligible business.

WV Legislature

§12-7-10. Acceptance or rejection of investment package.

(a) The board may approve or disapprove an investment package or any portion thereof: Provided, That notwithstanding any provision of this article to the contrary, the board may not accept any investment package or any portion thereof unless the same has been reviewed and approved by the board's executive director in his or her sole discretion.

(b) The board shall disapprove any investment package if the business requesting such investment is not in good standing with all applicable laws affecting the conduct of such business. Upon request of the board, each affected state agency shall provide the board with such information as to the standing of each applicant, notwithstanding any provision of this code to the contrary.

WV Legislature

§12-7-11. Documentary materials concerning trade secrets; commercial, financial or personal information; confidentiality.

Any documentary material or data made or received by the board for the purpose of furnishing assistance, to the extent that the material or data consists of trade secrets, commercial, financial or personal information regarding the financial position or activities of such business or person, shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code. Any discussion or consideration of the trade secrets, commercial, financial or personal information may be held by the board in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code: Provided, That the board shall make public the following information regarding executed investments: (1) The names and addresses of the principals of the business and its board of directors; (2) the location or locations of the projects; (3) the amount of the investment or financial assistance provided by the board; (4) the purpose of the investment or financial assistance; (5) the maturity, interest rate and other pertinent terms of the investment; (6) the fixed assets which serve as security for the investment; and (7) the names and addresses of all persons holding twenty-five percent or more of the equity of the entity receiving investment assistance: Provided, however, That the board shall keep available in its offices for inspection by any citizen of this state the annual report prepared pursuant to the requirements of section twelve of this article and the annual audit report prepared pursuant to the requirements of sections nine and fourteen of this article.

WV Legislature

§12-7-12. Reports of board; report of housing development fund.

NOTE: West Virginia Code §12-7-12 was amended by two bills passed during the 2022 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, BOTH versions of this section are set out below.

The latter act, Senate Bill 523 (passed on March 7, 2022), amended West Virginia Code §12-7-12 to read as follows:

(a) The board shall prepare annually, or more frequently if deemed necessary by the board, a report of its operations and the performance of the various investments administered by it. A copy thereof shall be furnished to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor, and, upon request, to any legislative committee. Such report shall be kept available for inspection by any citizen of this state. The report required in this subsection may be made available electronically on the board's website or through the website of the West Virginia Economic Development Authority. The report may be submitted to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor, or to any legislative committee electronically and paper copies must be provided upon request.

(b) The West Virginia Economic Development Authority shall prepare annually and submit to the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor, and, upon request, any legislative committee, a report on the performance of the board and the quality of its investments for the preceding year. The report required in this subsection may be made available electronically on the West Virginia Economic Development Authority's website. The report may be submitted to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor, or to any legislative committee electronically and paper copies must be provided upon request.

The earlier act, House Bill 4067 (passed on February 10, 2022) amended West Virginia Code §12-7-12 to read as follows:

(a) The board shall prepare annually, or more frequently if deemed necessary by the board, a report of its operations and the performance of the various investments administered by it. A copy thereof shall be furnished to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor and, upon request, to any legislative committee. Such report shall be kept available for inspection by any citizen of this state.

(b) The West Virginia housing development fund shall prepare annually and submit to the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor and, upon request, any legislative committee, a report on the performance of the board and the quality of its investments for the preceding year.

(c) The report shall be transmitted to the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor and, upon request, any legislative committee electronically. Further, the report shall be provided to the legislative librarian to be posted

to the legislative website. No hard copy of the report shall be issued; however, upon request a hard copy shall be provided.

WV Legislature

§12-7-13. Earnings.

All earnings, interest and fees collected by the board on or in respect of funds provided by the West Virginia housing development fund shall go back into the jobs development fund created pursuant to section twenty-c, article eighteen, chapter thirty-one of this code, for reinvestment and no such earnings, interest or fees shall be considered part of the general revenue of the state.

WV Legislature

§12-7-14. Exemption from certain requirements; audit.

In order to provide excellent investment opportunities and to effectively implement the new millennium fund, the investment activity and the new millennium fund activity provided by this article shall be exempt from the bidding and public sale requirements, from the approval of contractual agreements by the department of finance and administration or the attorney general and from the requirements of chapter five-a of this code. The transactions provided by this article shall be subject to an annual audit by an independent firm of certified public accountants.

WV Legislature

§12-7-15. Conflicts of interest.

(a) No member of the board or officer, agent or employee thereof shall, in his or her own name or in the name of a nominee, hold an ownership interest of more than seven and one-half percent in any association, trust, corporation, partnership or other entity which is, in its own name or in the name of a nominee, a party to a contract or agreement upon which the member or officer, agent or employee may be called upon to act or vote.

(b) With respect to any direct or any indirect interest, other than an interest prohibited in subsection (a) of this section, in a contract or agreement upon which the member or officer, agent or employee may be called upon to act or vote, the member of the board or officer, agent or employee thereof holding such interest shall disclose the same to the board secretary prior to the taking of final action by the board concerning such contract or agreement and shall disclose the nature and extent of such interest and the date of his or her acquisition thereof, which disclosure shall be publicly acknowledged by the board and entered upon the minutes of the board. If a member of the board or officer, agent or employee thereof holds such an interest, he or she shall refrain from any further involvement on behalf of the board in regard to such contract or agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other members of the board or its officers, agents and employees concerning said contract or agreement. Notwithstanding any other provision of law, any contract or agreement entered into in conformity with this subsection shall not be void or invalid by reason of the interest described in this subsection, nor shall any person so disclosing the interest and refraining from further official involvement as provided in this subsection be guilty of an offense, be removed from office or be subject to any other penalty or legal disability on account of such interest.

(c) Any contract or agreement made in violation of subsection (a) or (b) of this section shall be null and void and shall give rise to no civil or criminal action against the board or any member thereof.

WV Legislature

§12-7-16. Credit of state not pledged.

The provisions of this article do not and shall not be construed to authorize the jobs investment trust board at any time or in any manner to grant or pledge the credit or taxing power of the state. None of the obligations or debts created by the jobs investment trust board under the authority granted in this article are or are to be construed to be obligations of the state.

WV Legislature

§12-8-1. Short title.

This article shall be known and may be cited as the pension

liability redemption act.

WV Legislature

§12-8-2. Declaration of policy; legislative findings; legislative intent.

The Legislature finds and declares that:

(a) The Legislature has established a number of pension systems, including the death, disability and retirement fund of the West Virginia State Police established in article two, chapter fifteen of this code; the Judges' Retirement System established in article nine, chapter fifty-one of this code; and the Teachers Retirement System established in article seven-a, chapter eighteen of this code, each of which is a trust for the benefit of the participating public employees.

(b) This article provides for the redemption of the unfunded actuarial accrued liability of each pension system through the issuance of bonds for the purpose of: (i) Providing for the safety and soundness of the pension systems; and (ii) realizing savings over the remaining term of the amortization schedules of the unfunded actuarial accrued liabilities and thereby achieve budgetary savings.

WV Legislature

§12-8-3. Definitions.

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

(1) "Bonds" means bonds, notes, refunding notes and bonds, or other obligations of the state issued by the Governor pursuant to this article.

(2) "Consolidated Public Retirement Board" means the Board created to administer all public retirement plans in this state under article ten-d, chapter five of this code and any board or agency that succeeds to the powers and duties of the Consolidated Public Retirement Board.

(3) "Costs" include, but are not limited to, amounts necessary to fund any capitalized interest funds and any reserve funds, any costs relating to the issuance and determination of the validity of the bonds, fees for obtaining bond insurance, credit enhancements or liquidity facilities, administrative costs, fees incurred pursuant to subsection (f), section five of this article and costs attributable to the agreements described in section six of this article.

(4) "Death, Disability and Retirement Fund" means the Death, Disability and Retirement Fund of the West Virginia State Police created by article two, chapter fifteen of this code.

(5) "Department of Administration" means the Department established pursuant to article one, chapter five-a of this code and any board or agency that succeeds to the powers and duties of the Department of Administration.

(6) "Executive order" means an executive order issued by the Governor to authorize the issuance of bonds as provided in this article.

(7) "Investment Management Board" means the Board established under article six, chapter twelve of this code, and any board or agency that succeeds to the powers and duties of the Investment Management Board.

(8) "Judges' Retirement System" means the Judicial Retirement System created under article nine, chapter fifty-one of this code.

(9) "Obligation holders" means any holder or owner of any bond, any trustee or other fiduciary for any holder, or any provider of a letter of credit, policy of bond insurance, surety, or other credit enhancement or liquidity facility or swap relating to any bond.

(10) "Pension Liability Redemption Fund" means the special account in the State Treasury created pursuant to subsection (a), section eight of this article.

(11) "Pension Liability Redemption Payments" means: (a) The principal of, premium, if any, and interest on any outstanding bonds issued pursuant to this article; and (b) any other amounts required to be paid pursuant to the terms of any outstanding bonds, any indenture authorized pursuant to this article and any other agreement entered into between the Governor and any obligation holder.

WV Legislature

(12) "Pension systems" means the Judges' Retirement System, the Death, Disability and Retirement Fund and the Teachers Retirement System.

(13) "Refund" or "refunding" means the issuance and sale of bonds the proceeds of which are used or are to be used for the payment, defeasance or redemption of outstanding bonds upon or prior to maturity.

(14) "Refunding bonds" means bonds issued for the payment, defeasance or redemption of outstanding bonds upon or prior to maturity.

(15) "Teachers Retirement System" means the retirement system established in article seven-a, chapter eighteen of this code.

(16) "Normal cost" means the value of benefits accruing for the current valuation year under the actuarial cost method.

(17) "Actuarial cost method" means a mathematical process in which the cost of benefits projected to be paid after a period of active employment has ended is allocated over the period of active employment during which the benefits are earned.

(18) "Unfunded actuarial accrued liability" means the aggregate of the unfunded actuarial accrued liabilities of the pension systems, with the unfunded actuarial accrued liability of each pension system being calculated in an actuarial valuation report provided by the Consolidated Public Retirement Board to the Department of Administration pursuant to section four of this article.

(19) "West Virginia State Police Retirement System" means the retirement system established in article two-a, chapter fifteen of this code.

(20) "West Virginia Public Employees Retirement System" means the retirement system established in article ten, chapter five of this code.

(21) "West Virginia State Sponsored Pension Systems" means the pension systems as defined in subdivision twelve of this subsection, the West Virginia Public Employees Retirement System and the West Virginia State Police Retirement System.

WV Legislature

§12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.

(a) The Governor may, as provided by this article, issue the bonds authorized in this section at a time or times as provided by a resolution adopted by the Legislature to fund all or a portion of the unfunded actuarial accrued liability, the bonds to be payable from and secured by moneys deposited in the Pension Liability Redemption Fund. Any bonds issued pursuant to this article, other than refunding bonds, shall be issued no later than five years after the date of adoption of the resolution of the Legislature authorizing the issuance of the bonds referred to in this section.

(b) The aggregate principal amount of bonds issued pursuant to the provisions of this article is limited to no more than the lesser of the following: (1) The principal amount necessary, after deduction of costs, underwriter's discount and original issue discount, if any, to fund not in excess of one hundred percent of the unfunded actuarial accrued liability of the Death, Disability and Retirement Fund of the West Virginia State Police established in article two, chapter fifteen of this code, one hundred percent of the unfunded actuarial accrued liability of the Judges' Retirement System established in article nine, chapter fifty-one of this code, and ninety-five percent of the unfunded actuarial accrued liability of the Teachers Retirement System established in article seven-a, chapter eighteen of this code, as certified by the Consolidated Public Retirement Board to the Department of Administration pursuant to subsection (e) of this section; or (2) $5,500,000,000; but in no event shall the aggregate principal amount of bonds issued exceed the principal amount necessary, after deduction of costs, underwriter's discount and original issue discount, if any, to fund not in excess of the total unfunded actuarial accrued liability, as certified by the Consolidated Public Retirement Board to the Department of Administration pursuant to subsection (e) of this section.

(c) The costs of issuance, excluding fees for ratings, bond insurance, credit enhancements and liquidity facilities, plus underwriter's discount and any other costs associated with the issuance shall not exceed, in the aggregate, the sum of one percent of the aggregate principal amount of bonds issued.

(d) The limitation on the aggregate principal amount of bonds provided in this section shall not preclude the issuance of bonds from time to time or in one or more series.

(e) No later than ten days after receipt of a request from the Department of Administration, the Consolidated Public Retirement Board shall provide the Department of Administration with a certified statement of the amount of each pension system's unfunded actuarial accrued liability calculated in an actuarial valuation report that establishes the amount of the unfunded actuarial accrued liability as of a date specified by the Department of Administration, based upon each pension system's most recent actuarial valuation as completed by the Consolidated Public Retirement Board.

(f) No later than fifteen days after receipt of a request from the Governor, the Department of Administration shall provide the Governor with a certification of the maximum aggregate principal amount of bonds that may be issued at that time pursuant to subsection (b) of this

WV Legislature

section.

WV Legislature

§12-8-5. Method of bond issuance; manner of sale of bonds; authority of Department of Administration.

(a) Upon the adoption of a resolution by the Legislature authorizing the issuance of the bonds in the amount and upon the terms specified in the resolution, the bonds shall be authorized by an executive order issued by the Governor. The executive order shall be received by the Secretary of State and filed in the State Register pursuant to section three, article two, chapter twenty-nine-a of this code. The Governor, either in the executive order authorizing the issuance of the bonds or by the execution and delivery by the Governor of a trust indenture or agreement authorized in the executive order, shall stipulate the form of the bonds, whether the bonds are to be issued in one or more series, the date or dates of issue, the time or times of maturity, the rate or rates of interest payable on the bonds, which may be at fixed rates or variable rates and which interest may be current interest or may accrue, the denomination or denominations in which the bonds are issued, the conversion or registration privileges applicable to some or all of the bonds, the sources and medium of payment and place or places of payment, the terms of redemption, any privileges of exchangeability or interchangeability applicable to the bonds, and the entitlement of obligation holders to priorities of payment or security in the amounts deposited in the pension liability redemption fund. Bonds shall be signed by the Governor and attested by the Secretary of State, by either manual or facsimile signatures.

(b) The bonds may be sold at public or private sale at a price or prices determined by the Governor. The Governor may enter into any agreements necessary or desirable to effectuate the purposes of this section, including agreements to sell bonds to any person and to comply with the laws of any jurisdiction relating thereto.

(c) The Governor, in the executive order authorizing the issuance of bonds or by the execution and delivery by the Governor of a trust indenture or agreement authorized in the executive order, may covenant as to the use and disposition of or pledge of funds made available for pension liability redemption payments or any reserve funds established pursuant to the executive order or established pursuant to any indenture authorized by the executive order. All costs may be paid by or upon the order of the Governor from amounts received from the proceeds of the bonds and from amounts received pursuant to section eight of this article.

(d) Bonds may be issued by the Governor upon resolution adopted by the Legislature authorizing the same.

(e) Neither the Governor, the Secretary of State, nor any other person executing or attesting the bonds or any agreement authorized in this article are personally liable with respect to payment of any pension liability redemption payments.

(f) Notwithstanding any other provision of this code, the Department of Administration, in the Department's discretion: (i) Shall select, employ and compensate one or more persons or firms to serve as bond counsel or cobond counsel who shall be responsible for the issuance

of a final approving opinion regarding the legality of the bonds issued pursuant to this article; (ii) may select, employ and compensate one or more persons or firms to serve as underwriter or counderwriter for any issuance of bonds pursuant to this article; and (iii) may select, employ and compensate one or more fiduciaries, financial advisors and experts, other legal counsel, placement agents, appraisers, actuaries and any other advisors, consultants and agents necessary to effectuate the purposes of this article. Notwithstanding the provisions of article three, chapter five of this code, bond counsel may represent the state in court, render advice and provide other legal services as may be requested by the Governor or the Department of Administration regarding any bond issuance pursuant to this article and all other matters relating to the bonds.

WV Legislature

§12-8-6. Contracts with obligation holders; provisions of bonds and trust indentures and other agreements.

(a) The Governor may enter into contracts with obligation holders and the Governor shall comply fully with the terms and provisions of any contracts made with obligation holders.

(b) In addition and not in limitation to the other provisions of this section, in connection with any bonds issued pursuant to this article, the Governor may enter into: (i) commitments to purchase or sell bonds and bond purchase or sale agreements; (ii) agreements providing for credit enhancement or liquidity, including revolving credit agreements, agreements establishing lines of credit or letters of credit, insurance contracts, surety bonds and reimbursement agreements; (iii) agreements to manage interest rate exposure and the return on investments, including interest rate exchange agreements, interest rate cap, collar, corridor, ceiling and floor agreements, option, rate spread or similar exposure agreements, float agreements and forward agreements; (iv) stock exchange listing agreements; and (v) any other commitments, contracts or agreements approved by the Governor.

(c) The Governor may covenant as to the bonds to be issued and as to the issuance of the bonds, in escrow or otherwise, provide for the replacement of lost, destroyed or mutilated bonds, covenant against extending the time for the payment of bonds or interest on the bonds and covenant for the redemption of bonds and provide the terms and conditions of the redemption.

(d) Except as otherwise provided in any executive order or in this article, the terms of the executive order and of this article in effect on the date the bonds are issued constitute a contract between the state and obligation holders. Any representation, warranty or covenant made by the Governor in the executive order, any indenture of trust or trust agreement authorized by the executive order, any bond or any other contract entered into pursuant to this article with any obligation holder shall be a representation, warranty or covenant made by the state.

(e) The Governor may vest in the obligation holders, or any portion of them, the right to enforce the payment of the bonds or agreements authorized in this article or any covenants securing or relating to the bonds or the agreements. The Governor may prescribe the procedure, if any, by which the terms of any contract with obligation holders may be supplemented, amended or abrogated, prescribe which supplements or amendments will require the consent of obligation holders and the portion of obligation holders required to effect the consent and prescribe the manner in which the consent may be given.

WV Legislature

§12-8-7. Proceeds from the sale of bonds.

(a) The proceeds from the sale of bonds, other than refunding bonds, issued pursuant to this article, after payment of any costs payable at time of issuance of the bonds, shall be paid to the Consolidated Public Retirement Board to fund the amount of the unfunded actuarial accrued liability for the pension systems provided for by the bonds.

(b) Prior to the time of issuance, when requested by the Department of Administration, the Investment Management Board shall prepare and submit to the Governor, the Speaker of the House of Delegates, the President of the Senate and the Department of Administration the short-term and long-term investment strategies that the Investment Management Board intends to follow for investment of the plan assets of the pension systems, as adjusted by the deposit of the proceeds of bonds issued pursuant to this article, which bond proceeds shall be invested pursuant to section six of article ten of the Constitution of West Virginia and otherwise as provided by law.

WV Legislature

§12-8-8. Continuation of Pension Liability Redemption Fund; disbursements to pay pension liability redemption payments.

(a) There is hereby continued a special account in the State Treasury to be administered by the State Treasurer, which is designated and known as the "Pension Liability Redemption Fund," into which shall be deposited any and all amounts appropriated by the Legislature or funds from any other source whatsoever which are made available by law for the purpose of making pension liability redemption payments. All funds deposited to the credit of the Pension Liability Redemption Fund shall be held in a separate account and all money belonging to the Fund shall be deposited in the State Treasury to the credit of the Pension Liability Redemption Fund.

(b) On or before the first day of November of each year, the Department of Administration shall certify to the Governor and the State Treasurer and deliver to the Speaker of the House of Delegates and the President of the Senate a certification as to the amount of pension liability redemption payments to be appropriated for the next fiscal year in order to pay in full when due all pension liability redemption payments that will become due during the next fiscal year. The certification shall include the amount and due date of each pension liability redemption payment. All moneys appropriated by the Legislature in accordance with a certification made pursuant to this subsection shall be deposited into the Pension Liability Redemption Fund.

(c) The State Treasurer shall pay to the trustee under the trust indenture or agreement executed by the Governor all pension liability redemption payments as and when due. The payments shall be transferred by electronic funds transfer, unless some other manner of funds transfer is specified by the Governor. No payments shall be required for bonds that are defeased or bonds for which a deposit sufficient to provide for all payments on the bonds has been made.

WV Legislature

§12-8-9. Refunding bonds.

Subject to the provisions of the outstanding bonds issued under this article and subject to the provisions of this article, the governor shall have the power to refund any outstanding bonds, whether the obligation refunded represents principal or interest, in whole or in part, at any time.

Refunding bonds shall mature at such time or times, which shall not exceed the longest original term of the bonds as issued, as the governor shall determine by executive order issued by the governor, which executive order shall be received by the secretary of state and filed in the state register pursuant to section three, article two, chapter twenty-nine-a of this code.

WV Legislature

§12-8-10. State pledges and covenants.

(a) The State of West Virginia covenants and agrees with the obligation holders, and the indenture shall so state, that the bonds issued pursuant to this article are a direct and general obligation of the State of West Virginia; that the pension liability redemption payments will be included in each budget along with all other amounts for payment and discharge of the principal of and interest on state debt; that the full faith and credit of the state is hereby pledged to secure the payment of the principal of and interest on the bonds; and that annual state taxes shall be collected in an amount sufficient to pay the pension liability redemption payments as they become due and payable from the Pension Liability Redemption Fund.

(b) The state hereby pledges and covenants with the obligation holders, and the indenture shall so state, that the state will not limit or alter the rights, powers or duties vested in any state official, or that state official's successors or assigns, and the obligation holders in a way that will inhibit any state official, or that state official's successors or assigns, from carrying out the state official's rights, powers or duties under this article, nor limit or alter the rights, powers or duties of any state official, or that state official's successors or assigns, in any manner which would jeopardize the interest of any obligation holder, or inhibit or prevent performance or fulfillment by any state official, or that state official's successors or assigns, with respect to the terms of any agreement made with any obligation holder pursuant to section six of this article.

(c) The state hereby pledges and covenants with the obligation holders, and the indenture shall state, that, while any of the bonds are outstanding, any changes in unfunded actuarial accrued liability in any of the West Virginia state sponsored pension systems resulting from the actual experience for that system occurring during any fiscal year due to net differences between the expected and actual experience for that year will be fully amortized over no more than the ten consecutive fiscal years following the date the Consolidated Public Retirement Board certifies the net actuarial gain or loss to the Governor. The certification shall be made on or before the thirty-first day of January of each year. The net actuarial gain or loss for the fiscal year shall be determined from the actuarial valuation authorized by the Consolidated Public Retirement Board for each plan completed at as of the first day of the following fiscal year. Following the receipt of the certification of net actuarial gain or loss, the Governor shall submit the amount of the amortization payment or credit each year for the pension systems as part of the annual budget submission or in an executive message to the Legislature. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the West Virginia Public Employees Retirement System and West Virginia State Police Retirement System.

(d) The state hereby pledges and covenants with the obligation holders, and the indenture shall state, that, while any of the bonds are outstanding, if the unfunded actuarial accrued liability of any of the West Virginia state sponsored pension systems increases or decreases due to changes in actuarial assumptions adopted by the Consolidated Public Retirement

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Board for completion of the annual actuarial valuation for any plan, the change shall be fully amortized over no more than the ten consecutive fiscal years following the date the Consolidated Public Retirement Board certifies the net change due to changes in assumptions to the Governor. The certification shall be made on or before the thirty-first day of January of each year. Following the receipt of the certification of change due to changes in actuarial assumptions, the Governor shall submit the amount of the amortization payment each year for the pension systems as part of the annual budget submission or in an executive message to the Legislature. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the Public Employees Retirement System and West Virginia State Police Retirement System.

(e) The state hereby pledges and covenants with the obligation holders, and the indenture shall state, that, while any of the bonds are outstanding (1) the state will not increase any existing benefits or create any new benefits for any retirees or beneficiaries currently receiving monthly benefit payments from any of the West Virginia state sponsored pension systems, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, in an amount that would exceed more than one percent of the accrued actuarial liability of the system as of the last day of the preceding fiscal year as determined in the annual actuarial valuation for each plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature; and (2) if any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under any of the West Virginia state sponsored pension systems, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in any of the West Virginia state sponsored pension systems as calculated in the annual actuarial valuation for each plan during any fiscal year, the additional unfunded actuarial accrued liability of that pension system will be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. Following the receipt of the certification of additional actuarial accrued liability, the Governor shall submit the amount of the amortization payment each year for the pension systems as part of the annual budget submission or in an executive message to the Legislature. The Consolidated Public Retirement Board shall include the six year amortization in the determination of the adequacy of the employer contribution percentage for the West Virginia Public Employees Retirement System and West Virginia State Police Retirement System.

(f) The state hereby pledges and covenants with the obligation holders, and the indenture shall state, that, while any of the bonds are outstanding that the computation of annuities or benefits for active members due to retirement, death or disability as provided for in the pension systems shall not be amended in any manner that increases any existing benefits or provides for new benefits.

(g) The state hereby pledges and covenants with the obligation holders, and the indenture

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shall state, that, while any of the bonds are outstanding, the state will not increase any existing benefits or create any new benefits for active members due to retirement, death or disability of the West Virginia Public Employees Retirement System or the West Virginia State Police Retirement System unless the actuarial accrued liability of the plan is at least eighty-five percent funded as of the last day of the prior fiscal year as determined in the actuarial valuation for the plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature. Any additional unfunded actuarial accrued liability due to any improvement in active members benefits shall be fully amortized over not more than ten years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the West Virginia Public Employees Retirement System and West Virginia State Police Retirement System.

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§12-8-11. Legal remedies of obligation holders.

Any obligation holder, except to the extent that the rights given by this article may be restricted by the executive order authorizing the issuance of the bonds or by the trust indenture or agreement authorized in such executive order, may by civil action, mandamus or other proceeding, protect and enforce any rights granted under the laws of this state, granted under this article, or granted by the executive order or by the trust indenture or agreement authorized in such executive order, and may enforce and compel the performance of all duties required by this article, by the executive order or by the trust indenture or agreement authorized in such executive order.

WV Legislature

§12-8-12. Nature of bonds; legal investments.

(a) The bonds issued under the provisions of this article shall be and have all the qualities of negotiable instruments under the uniform commercial code of this state and shall not be invalid for any irregularity or defect in the proceedings for the issuance thereof and shall be incontestable in the hands of bona fide purchasers or holders thereof for value.

(b) Notwithstanding any other provision of this code, the bonds issued pursuant to this article are securities in which all public officers and bodies of this state, including the investment management board, all municipalities and other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, including domestic for life and domestic not for life insurance companies, all banks, trust companies, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations and investment companies, all administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever who are authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital, in their control or belonging to them.

WV Legislature

§12-8-13. Exemption from taxation.

All bonds issued under the provisions of this article and the income therefrom shall be exempt from taxation by the state of West Virginia, or by any county, school district or municipality thereof, except inheritance, estate and transfer taxes.

WV Legislature

§12-8-14. Supersedure.

It is the intent of the Legislature that in the event of any conflict or inconsistency between the provisions of this article and any other law, to the extent of the conflict or inconsistency, the provisions of this article shall be enforced and the provisions of the other law shall be of no effect.

WV Legislature

§12-8-15. Operation of article.

Notwithstanding the effective date of this Act of the Legislature, this article shall not become operational and shall have no force and effect until the day the people ratify an amendment to the Constitution of this state authorizing pension obligation bonds.

WV Legislature

§12-8-16. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portions of this article and, to this end, the provisions of this article are hereby declared to be severable.

WV Legislature

§12-9-1. Special revenue account continued.

There is continued in the State Treasury the special revenue account, designated the West Virginia Savings and Investment Program Fulfillment Fund, previously authorized by §18-30-6a of this code. The fund shall be administered by the State Treasurer for the purposes described in this article.

WV Legislature

§12-9-2. Receipts and expenditures.

(a) The West Virginia Savings and Investment Program Fulfillment Fund shall consist of all moneys in the fund on the effective date of this section, any moneys that may be appropriated to the fund by the Legislature, all interest or other return earned or received from investment of the fund; any moneys which the fund is authorized to receive under any provision of this code for the purposes of this article, and all gifts, grants, bequests, or transfers made to the fund from any source.

(b) The State Treasurer may expend moneys in the West Virginia Savings and Investment Program Fulfillment Fund for costs to implement or administer any savings or investment program with an initial date of operation occurring on or after July 1, 2021, including, but not limited to, the Hope Scholarship Program, established in §18-31-1 et seq. of this code, and Jumpstart Savings Program, established in §18-30A-1 *et seq*. of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund to be expended as authorized by this article.

WV Legislature

§12-9-3. Investment of fund.

The State Treasurer is authorized to invest and reinvest moneys in the fund, and all interest and earnings of the fund shall accrue to the fund and be available for expenditure in accordance with this article.

WV Legislature

§12-10-1. Short title.

This article shall be known and cited as the "Prompt Payment Act of 2025".

WV Legislature

§12-10-2. Definitions.

The words defined in this section have the meanings given them for purposes of this article, unless the context clearly requires otherwise.

“Grantee” means any entity receiving a state grant, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity.

“Legitimate claim for payment” means:

(1) A notification of an entitlement to a disbursement of state funds pursuant to an awarded state grant; and

(2) A vendor’s legitimate uncontested invoice for commodities or services provided to any state spending unit.

“Payment” means:

(1) A disbursement of funds to a grantee pursuant to a state grant; and

(2) A state agency’s payment, via check, state warrant, purchasing card transaction, or electronic payment, of a legitimate uncontested invoice for commodities or services.

“State agency” means any agency, department, board, office, bureau, commission, authority or any other entity of the executive, judicial, elected, or legislative branch of state government.

“State grant” means funding provided by a grantor, regardless of the original source of the funds, to a grantee upon application for a specific purpose. The term “state grant” does not include:

(1) Payments for commodities and services purchased by a state spending unit;

(2) Compensation to state employees and public officials;

(3) Reimbursements to state employees and public officials for travel or incidental expenses;

(4) Grants of student aid;

(5) Government transfer payments;

(6) Direct benefits provided under state insurance and welfare programs;

(7) Funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds;

(8) Retirement benefits;

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(9) Federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq.*, and the funds required to match the federal funds;

(10) Distributions to volunteer and part-volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code;

(11) Money received from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code; and

(12) Grants made by the West Virginia Water Development Authority.

"Vendor" means any person or entity that may, through contract or other means, supply the state or its subdivisions with commodities or services, and lessors of real property: *Provided*, That employees of the state shall not be considered vendors under this article.

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§12-10-3. Payment of legitimate claims for payment.

(a) Every grantee and vendor shall be entitled to prompt payment upon presentation to a state agency of a legitimate claim for payment.

(b)(1) For grants awarded on or after July 1, 2025, and for purchases of commodities or services made on or after July 1, 2025, a payment shall be issued in payment thereof within 45 days after a legitimate claim for payment is received by the state agency that has awarded the grant or received the commodities or services.

(2) For purposes of this section, a legitimate claim for payment shall be deemed to be received by a state agency on the date on which the legitimate claim for payment is marked as received by the state agency, the date of the postmark made by the United States postal service as evidenced on the envelope in which the legitimate claim for payment is mailed, or the date the legitimate claim for payment is logged received or confirmed on an electronic mailbox or messaging system, whichever is earlier, unless the grantee or vendor can provide sufficient evidence that the legitimate claim for payment was received by the state agency on an earlier date: *Provided*, That in the event an invoice is received by a state agency prior to the date on which the commodities or services covered by the invoice are delivered and accepted or fully performed and accepted, the invoice shall be deemed to be received on the date on which the commodities or services covered by the invoice were actually delivered and accepted or fully performed and accepted.

(c) An agency that issues a payment after 45 days, in violation of this section, shall report the violation to the State Auditor. A vendor or grantee who has not received a payment within 45 days, in violation of this section, may report that violation to the State Auditor. The State Auditor shall make a list of state agencies that are in violation of this section publicly available on its website and update the list on at least a monthly basis.

(d) The state agency initially receiving a legitimate claim for payment shall disburse the grant funds or process the invoice within 10 business days from its receipt.

(e) Any other state agency charged by law with processing a state agency's requisition for payment of a legitimate uncontested invoice shall either process the claim or reject it for good cause within 10 business days after such processing state agency receives it.

(f) The provisions of this article do not apply to any grantee or vendor who is debarred, whose payments are required to be offset and intercepted to a state or federal agency, or who is otherwise ineligible to receive payment from the state by any act provided for in this code.

(g) Nothing in this article should be construed to limit the right of a state agency to refuse illegitimate, erroneous, fraudulent, or disputed claims for payment.

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