WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED
CON. SUB. IN
SENATE BILL NO. 300

(By Mr. Cass.)

PASSED MARCH 1, 1967

In Effect from... Passage

# 300

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-17-67
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 300
(MR. CARSON [MR. PRESIDENT] original sponsor)

[Passed March 11, 1967; in effect from passage.]

AN ACT to amend chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six, establishing a state board of investments; specifying its membership, officers, duties, powers and functions; defining certain terms used in article; providing for the promulgation of rules and regulations and the services of consultants and experts; transferring to the board the duties of state agencies respecting investment of public funds; establishing the classes of securities in which funds made
available for investment for periods in excess of one year
may be invested; establishing the classes of securities in
which funds may be invested for periods of one year or
less; imposing restrictions on the purchase, sale or exchange
of securities; specifying certain duties of the state treas­
urer with respect to the collection of interest and principal
of securities in his custody; authorizing boards, officials,
agencies, etc., charged with the administration of funds
to determine the part thereof available for investment and
to direct board to realize on investment whenever neces­
sary or expedient to use the funds invested; providing for
a continuous post-audit and reports of the investment
transactions of the board; declaring the provisions of this
article to be controlling in the event of the inconsistency
of provisions of any other law; and providing a severability
clause.

Be it enacted by the Legislature of West Virginia:

That chapter twelve of the code of West Virginia, one thou­
sand nine hundred thirty-one, as amended, be amended by
adding thereto a new article, designated article six, to read
as follows:
ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

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

This article, which may be cited as the "Investment of State Funds Law", is enacted to provide a centralization of the investment responsibility for state funds and to enlarge the classes of securities in which public funds may be invested.

§12-6-2. Definitions.

The following terms, whenever used or referred to in this article, shall have the following meanings:

(a) The term "board" shall mean the West Virginia state board of investments.

(b) The term "fund" or "funds" shall include the workmen's compensation fund; the state teachers' retirement system funds; the death, disability and retirement fund for members of the department of public safety; the public employees' retirement system funds; the judges' retirement fund; and any other public funds of this state which may lawfully be invested: Provided, That "fund" or "funds" shall not be construed to include (1) the
“School Fund”, established by section four, article twelve of the state’s constitution and legislation adopted thereunder, or (2) the sinking funds which are administered and controlled by the state sinking fund commission.

(c) The term “securities” shall include all bonds, notes, debentures or other evidences of indebtedness.

§12-6-3. State board of investments established; members.

There is hereby created and established a state board of investments, to be known as the “West Virginia State Board of Investments”, and the same is hereby made a body corporate, and by that name the board may adopt and use a seal; contract and be contracted with; acquire and dispose of personal property; sue and be sued; and otherwise exercise all powers and functions necessary and germane to its public corporate existence and purposes. The board shall consist of the governor, state treasurer and state auditor.

§12-6-4. Chairman and executive secretary; custodian of funds and securities; staff agency; bonds of board members.

The governor shall be the chairman, and the state treasurer shall be the executive secretary of the board
and the custodian of all funds, securities and assets designated or described in this article; and the office of the state treasurer shall act as staff agency for the board.

Each member of the state board of investments shall give a separate and additional bond from a surety company qualified to do business within the state of West Virginia in the penalty of two hundred fifty thousand dollars for the faithful performance of his duties as a member of said board.

§12-6-5. Rules and regulations; consultant services and advice; costs; brokerage commission.

The board shall formulate and adopt rules and regulations for the protection of funds invested and obtain such consultant services and expert advice from a nationally recognized investment advisor or advisors as are necessary for the prudent and proper management and investment of said funds.

All costs for consulting services, expert advice, the bonds provided for in the preceding section, and other lawful costs shall be proper charges against and payable
on a pro rata basis from the earnings of the various funds
subject to investment under the provisions of this article.
Any brokerage commission that may be paid shall
follow specifically the generally accepted brokerage com-
mission as set forth by the rules of fair practice of the
national association of security dealers or a recognized
national security exchange.
All expert advice and consultant opinions shall be re-
duced to writing and be always available for use in the
continuous post-audit provided for in section seventeen
hereof, and all such expert advice and consultant opin-
ions shall be filed in the office of the state treasurer and
made available for public inspection upon completion
of the transaction.
§12-6-6. Legal opinions.

Prior to making any investment in the classes of securi-
ties specified in paragraphs (b) excluding direct general
obligation securities of this state, (c), (d) and (e) of
section nine of this article, and paragraph (c) of section
ten of this article, the board shall require an original or
certified copy of the written opinion of a nationally recog-
nized bond attorney or attorneys certifying to the legality of such securities.

§12-6-7. Transfer of duties of state agencies to board respecting investment of public funds.

All duties vested by law in any agency or board of the state relating to the investment or reinvestment of monies, and the purchase, sale or exchange of any investment or securities, of and for any funds, are hereby transferred to and shall be exercised and performed for such fund by the board: Provided, That neither this nor any other section of this article shall in any manner apply (1) to the "Board of the School Fund" and "School Fund" established by section four, article twelve of the state's constitution and legislation adopted thereunder, or (2) to the state sinking fund commission.

§12-6-8. 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.
§12-6-9. Investments for periods in excess of one year.

Notwithstanding the restrictions which may otherwise be provided by law as to the securities in which funds may be invested, funds made available for investment for periods in excess of one year may be invested by the board, without the approval of any other state agency or official other than as required in section six-a of this article, in the following classes of securities, and not otherwise:

(a) Securities of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency thereof is pledged for the payment of the principal and interest thereof.

(b) Direct general obligation securities of this state, or any other state or territory of the United States, or the District of Columbia, unconditionally guaranteed as to the principal and interest by such other state or territory of the United States, or the District of Columbia: Provided, That (1) such other state, territory, or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such securities, and (2)
at the time of investment such other state, territory, or
the District of Columbia is not in default in the payment
of any part of the principal or interest owing by it upon
any part of its funded indebtedness.

c) Securities issued by a federal land bank, or by a
federal intermediate credit bank, under the act of Con-
gress of July seventeen, one thousand nine hundred six-
teen, known as the "Federal Farm Loan Act", as amended
or supplemented from time to time, or by the federal
home loan bank system, federal national mortgage associa-
tion, or banks for cooperatives.

d) Securities issued, assumed or unconditionally guar-
anteed by the International Bank for Reconstruction and
Development, or Tennessee Valley Authority.

e) Any fixed interest bond, note or debenture of any
corporation organized and operating within the United
States: Provided, That such corporation shall have a
minimum net worth of fifteen million dollars and its
securities or its parent corporation's securities are listed
on one or more of the national stock exchanges: Pro-
vided however, That (1) such corporation has earned a
profit in eight of the preceding ten fiscal years as reflected in its statements, and (2) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years, and (3) the bonds, notes or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating services, such as Standard and Poor's, Dun & Bradstreet, or Moody's.

§12-6-10. Investments for short-term periods.

Notwithstanding the restrictions which may otherwise be provided by law as to the securities in which funds may be invested, funds made available for investment for periods of one year or less may be invested by the board, without the approval of any other state agency or official other than the written opinion as required in section six-a of this article, in the following classes of securities and not otherwise.

(a) Certificates or other obligations of the United States or for which the full faith and credit of the United
States is pledged, which mature on such dates as will make available such amount of cash as required.

(b) Obligations of the United States which are redeemable by the United States treasury at the owner's option at fixed redemption values within one year from the date of such investment.

(c) Securities issued by any corporation which will meet the requirements of section nine-e hereof and mature within one year.

§12-6-11. Purchase, sale or exchange of securities; restrictions.

The board shall not invest more than five per cent of each fund placed with it for investment in any bonds, notes or debentures of any one corporation meeting the requirements of paragraph (e) of section nine of this article; nor shall the board invest more than thirty-five per cent of each fund placed with it for investment in bonds, notes or debentures of corporations meeting the requirements of paragraph (e) of section nine of this article.

Securities purchased or held under the provisions of this article may be sold or exchanged for other securities:
Provided, That (1) no security shall be purchased, sold or exchanged without the concurrence of a majority of all members of the board, (2) no security shall be purchased at a price above, nor sold or exchanged at a price below, its prevailing fair market value, (3) no security shall be purchased, sold, or exchanged for the purpose of aiding any individual, firm or corporation by the payment of brokerage commissions or fees thereto, (4) no security shall be received in exchange which does not comply with the requirements of sections nine or ten of this article, and (5) the board shall not engage in any arbitrage practices.

§12-6-12. Exercise of judgment in making investments.

Any investment made under this article shall be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which men of experience, prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.
§12-6-13. Duties of state treasurer.

It shall be the duty of the state treasurer to collect the interest, or other income on, and the principal of such securities in his custody as said sums become due and payable, and to credit same when so collected, to the fund to which the investments belong. Whenever a given investment is owned by two or more funds, the income received shall be prorated in accordance with the ownership of the respective funds.

§12-6-14. Records of investments.

The board shall keep for each such fund for which investments are made a separate account, to be designated by name and number, in which shall be recorded the individual amounts and the totals of all investments belonging to such fund. Every receipt and collection or disbursement when received or made shall be immediately recorded to the account of the particular fund to which it belongs.

§12-6-15. Reports of board.

The board shall prepare quarterly a complete and full report of its operations and its investments and furnish
3 a copy thereof to the governing authority of each fund,
4 the president of the Senate, speaker of the house, legis-
5 lative auditor, and upon request to any legislative com-
6 mittee, any banking institution in this state, and any
7 member of any news media, and such report shall be
8 kept available for inspection by any citizen of this state.

§12-6-16. Making funds available for investment.

The board, commission, department, official or agency
2 charged with the administration of any fund shall, con-
3 sistent with other provisions of law, determine what part
4 thereof is available for investment and shall, consistent
5 with other provisions of law, have the authority to direct
6 the board to collect, sell or otherwise realize upon any
7 investment whenever it becomes necessary or expedient
8 to use any of the funds invested.

§12-6-17. Post-audit.

There shall be a continuous post-audit conducted by
2 the legislative auditor of the investment transactions of
3 the board, and a copy of said post-audit for the preceding
4 calendar year shall be furnished to each member of the
5 Legislature upon its convening in January of each year.

If any provisions 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 provisions to other persons or circumstances shall not be affected thereby.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompkins
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect from passage.

James Repey
Clerk of the Senate

Clerk of the House of Delegates

Howard W. Carson
President of the Senate

W. Leebo White
Speaker House of Delegates

The within approved this the 17th day of March, 1967.

M. E. Smith
Governor
PRESENTED TO THE GOVERNMENT

Date 3/12/69
Time 11:08 a.m.