WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

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ENROLLED
Committee Substitute for
HOUSE BILL No. 1321

(By Mr. Speaker, Mr. Kopp, and Mr. Testy)

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PASSED March 11, 1978

In Effect July 1, 1978

C 641
AN ACT to amend article six, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a; to amend and reenact section twenty-two-a, article thirteen, chapter eight of said code; to amend and reenact article one, chapter twelve; to amend and reenact sections one, two, three and four, article two, chapter twelve; to amend and reenact sections one and four, article three, chapter twelve; to further amend said article three by adding thereto a new section, designated section one-a; to amend and reenact sections two and three, article four, chapter twelve; to further amend said article four by adding thereto two new sections, designated sections eleven and twelve; to amend and reenact sections two and five, article five, chapter twelve; to amend and reenact article six, chapter twelve; to amend article nine, chapter eighteen, by adding thereto a new section designated section six-a and to amend and reenact section seven-a, article one, chapter fifty-seven, all of said code, all relating to public moneys and securities generally; legislative findings and purpose; designation of depositories for demand deposits of state funds; requiring a depository for demand deposits to have a loan to deposit ratio of fifty percent or more and twenty-five percent of its loans in single or multi-family residential units, excluding mobile homes; requiring board of investments to
select such depositories through competitive bidding; requiring demand funds in both disbursements and receipts to be proportionately distributed among certain categories of state depositories based upon total assets of such depository; rules and regulations for bidding; depositories for interest earning deposits; requiring a depository for interest earning deposits to have a loan to deposit ratio of fifty percent or more and twenty-five percent of its loan in single or multi-family residential units, excluding mobile homes; relating to depository bonds; providing limitation on the amount of deposits and making it unlawful for depositories to exceed such limitations; general authority of board of investments to promulgate rules and regulations; depositors' agreements; ineligibility of depositories to serve as depositories in cases of conflict of interest of member of board of investments; methods for transfer of funds; treasurer's accounts and settlement of accounts with depositories; treasurer's reports of account balances; requiring reports by depositories to board of investments; authorizing board to discontinue depositories for certain causes; authorizing treasurer to make funds available to board of investments; requiring board to invest such funds for general revenue fund; relating to payment and deposit of moneys due the state; authorizing treasurer to promulgate rules and regulations prescribing procedure for deposits; deposit lists and report forms; duties of depositories upon receipt of deposits; relating to payment of moneys from the treasury; authorizing treasurer to make payments by deposit to payee's bank account in state depository only; use of bank wires; relating to certification of condition of revenues and funds by auditor; establishing an exceptional items fund; specifying purposes of such fund; authorizing issuance of substitute checks in certain instances; authorizing treasurer to provide check-cashing service; relating to custody, protection and handling of securities belonging to or deposited with the state; relating to the state board of investments; purposes and objects; providing definitions; continuation of board; membership and organization; bonds of the state board of investments, its members and employees; powers of the board; disposition of fees collected from political subdivisions; continuing the legal status of all agencies and boards; establishing consolidated pension fund for combined investment of moneys made available from work-
men's compensation and retirement system funds; establishing consolidated fund for combined investment of other state moneys and moneys made available to board by political subdivisions; authorizing treasurers of political subdivisions to make funds available and enter into agreements with board; authorizing board to adopt rules and regulations for administration of funds; specifying permissible investments and restrictions on investments; requiring board to apportion offers to invest in interest earning deposits among state depositories; providing basis for apportionment authorizing board to fix interest rates on such investments; relating to investment policy and standard of care imposed on board; requiring treasurer to administer policy; making board of investments sole agency for investment of state moneys with certain exceptions; reports by board; audits; authorizing retention of existing investments; providing a severability clause; relating to investment of funds by counties, county boards of education and municipalities, authorizing county treasurer, municipal treasurer and treasurer of each county board of education to make funds available to board of investments; relating to public records; authorizing treasurer to destroy certain canceled checks and certain canceled bonds and coupons, and authorizing treasurer to contract for the destruction of certain bonds and coupons.

Be it enacted by the Legislature of West Virginia:

That article six, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-a; that section twenty-two-a, article thirteen, chapter eight of said code be amended and reenacted; that article one, chapter twelve be amended and reenacted; that sections one, two, three and four, article two, chapter twelve be amended and reenacted; that sections one and four, article three, chapter twelve be amended and reenacted; that article three be further amended by adding thereto a new section, designated section one-a; that sections two and three, article four, chapter twelve be amended and reenacted; that said article four be further amended by adding thereto two new sections, designated sections eleven and twelve; that sections two and five, article five, chapter twelve be amended and reenacted, that article six, chapter twelve be amended and reenacted; that article nine, chapter eighteen be amend-
ed by adding thereto a new section, designated section six-a; and that section seven-a, article one, chapter fifty-seven of said code, be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COURTS AND OFFICERS.

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-5a. County treasurer authorized to make funds available to state board of investments.

1 Notwithstanding any other provision of this code, when it appears to any of the various fiscal bodies of the county that funds on deposit in its demand deposit account exceed the current requirements or demands, and it further be determined by the county treasurer that the available interest rate offered by an acceptable depository in such treasurer's county be less than the interest rate, net of administrative fees referred to in article six, chapter twelve of this code, offered it through the state board of investments, the county treasurer may, with the approval in writing of each fiscal body whose funds are involved, make such funds available to the state board of investments for investment in accordance with the provisions of said article six, chapter twelve of the code.

Any income earned on such investment shall be allocated by such treasurer to the fiscal body whose funds were made available, such allocation to be made in accordance with the accounting and allocation principles established by the board of investments.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-22a. Investment of municipal funds.

1 All municipal funds the investment of which is not governed by other provisions of this code and not required for the payment of current obligations and not otherwise prohibited, may be:

5 (1) made available by the municipal treasurer to the state board of investments for investment in accordance with the provisions of article six, chapter twelve of this code, if it be
determined by such municipal treasurer that the available in-
ner's municipality be less than the interest rate, net of adminis-
offered it through the state board of investments; or

(2) Invested by such treasurer in the following classes of
securities and accounts which securities and accounts mature
on such dates as will make available such amount of cash
as is required:

(a) Obligations of the United States or any agency thereof,
which are guaranteed by the United States or for which the
full faith and credit of the United States is pledged for the
payment of principal and interest, or any obligation of an
agency of the United States designated in section nine, article
tsix, chapter twelve of this code.

(b) Certificates of deposit secured by (1) obligations as
listed in the preceding paragraph of this subdivision, (2)
general obligation or revenue bonds of the state of West Vir-
ginia, (3) general obligation bonds of any other state, (4)
general obligation bonds of any county in this state or of any
county board of education in this state, or (5) general obliga-
tions of any municipality in this state.

(c) Interest bearing savings accounts in banking institu-
tions, the accounts of which are insured by the federal deposit
insurance corporation, or in federal savings and loan associa-
tions, the accounts of which are insured by the federal savings
and loan insurance corporation, or in building and loan associa-
tions, the accounts of which are insured by the federal savings
and loan insurance corporation: Provided, That an investment
in any such savings account in excess of the amount insured
by the federal deposit insurance corporation or the federal
savings and loan insurance corporation, as the case may be,
shall not be made unless such banking institu-

(b) Certificates of deposit secured by (1) obligations as
listed in the preceding paragraph of this subdivision, (2)
general obligation or revenue bonds of the state of West Vir-
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general obligation bonds of any county in this state or of any
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and loan insurance corporation, or in building and loan associa-
tions, the accounts of which are insured by the federal savings
and loan insurance corporation: Provided, That an investment
in any such savings account in excess of the amount insured
by the federal deposit insurance corporation or the federal
savings and loan insurance corporation, as the case may be,
CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§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 of this state by reducing the costs of government and providing sources of increased revenue without the necessity of increased taxation; and to this end, the state board of investments and the state treasurer should 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.

§12-1-2. Depositories for demand deposits; apportionment of deposits; board authorized to select depositaries through competitive bidding; maintenance of deposits by treasurer.

The state board of investments shall designate the state and national banks in this state which shall serve as depositaries for all state funds placed in demand deposits. Any such state or national bank shall, upon request to such board, be designated as a state depository for such deposits, if such bank meets the requirements set forth in this chapter: Provided, That notwithstanding any provision of this article to the contrary, no state funds may be deposited in any bank which has been in existence over a period of five years which does not have a loan to deposit ratio of fifty percent or more and twenty-five percent of its loans shall be in single or multi-family residential units, excluding mobile homes.

The state treasurer shall apportion demand deposits among such depositaries, giving due consideration to: (1) The activity of the various accounts maintained therein; (2) the reasonable value of the banking services rendered or to be rendered the state by such depositaries, and (3) the value and importance of such deposits to the economy of the communities and the various areas of the state affected thereby: Provided, That on and after the first day of July, one thousand nine hundred
seventy-eight, the board shall select depositories for demand deposits through competitive bidding by banks in this state: Provided, however, That demand funds in both disbursements and receipts shall be proportionately distributed among the following categories of such depositories, based upon the total assets of such depository: (a) Depositories whose total assets are not greater than twenty-five million dollars, (b) depositories whose total assets are greater than twenty-five million dollars but not greater than fifty million dollars, or (c) depositories whose total assets are greater than fifty million dollars. The board shall promulgate rules and regulations prescribing the procedures and criteria for such bidding and selection. It shall, in its invitations for bids, specify the approximate amounts of deposits, the duration of contracts to be awarded and such other contractual terms as it considers to be in the best interests of the state, consistent with obtaining the most efficient service at the lowest cost. The board shall provide for and invite bids on separate or combined classifications of services including, but not limited to depositories for receipts, depositories for disbursements, and depositories for moneys to be invested by the state: Provided, Further that the depositories for such demand deposits shall be determined by the board through competitive bidding separately for each category of depositories created in this section.

The amount of money needed for current operational purposes of the state government, as determined by the state treasurer, shall be maintained at all times in the state treasury in cash or in demand deposits with banks designated as depositories in accordance with the provisions of this section. No state officer or employee shall make or cause to be made any deposits of state funds in banks not so designated.

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

Any state or national bank or any state or federal savings and loan association in this state shall, upon request made to the board of investments, 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. The board of investments, acting through the treasurer, shall make and apportion such interest earning deposits and shall prescribe the interest rates, terms and conditions of such deposits, all in accordance with the provisions of article six 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 forty thousand dollars: Provided, however, That notwithstanding any provision of this article to the contrary, no such interest earning deposits may be deposited in any depository which has been in existence over a period of five years which does not have a loan to deposit ratio of fifty percent or more and twenty-five percent of its loans shall be in single or multi-family residential units, excluding mobile homes.

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

Before allowing any money to be deposited with any eligible depository in excess of the amount insured by an agency of the federal government, the board of investments shall require such depository to give a collaterally secured bond, in the amount of not less than ten thousand dollars, 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 such depository, or of any accrued interest on deposits. Such 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 board of investments. The collateral security for such bond shall consist of bonds of the United States, 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 or securities approved by the board of investments. 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 such bond may be permitted with the approval in writing of the treasurer who shall report such withdrawal or substitution at the next meeting of the board. All depository bonds shall be recorded by the treasurer in a book kept in his office for the purpose,
and a copy of such record, certified by him, shall be prima
facie evidence of the execution and contents of such 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 shall furnish a receipt
therefor to the owner thereof. The treasurer and his bonds-
men shall be liable to any person for any loss by reason of
the embezzlement or misapplication of said securities by the
treasurer or any of his employees, and for the loss thereof
due to his negligence or the negligence of any of his employees;
and such 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 such securities with one or more banking
institutions within or outside the state of West Virginia
and may contract with any such institution for safekeeping
and exchange of any such collateral securities, and may
prescribe the rules and regulations for handling and protecting
the same, subject to the approval of the board of investments.

§12-1-5. Limitation on amount of deposits.

The amount of state funds on deposit in any depository in
excess of the amount insured by an agency of the federal gov-
ernment, shall not exceed ninety percent of the value of
collateral pledged on the collaterally secured bond given by
such depository. The value of such collateral shall be de-
termined by the board of investments.

§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.

§12-1-7. Rules and regulations of the board of investments; de-
positors' agreements.

In addition to rules and regulations specially authorized in
this article, the board of investments is generally authorized
to promulgate any rules and regulations it deems necessary
to protect the interests of the state, its depositories and taxpayers. All rules and regulations promulgated by the board shall be subject to the provisions of article three, chapter twenty-nine-a of this code. Any rules and regulations previously established by the board of public works pursuant to this article shall remain in effect until amended, superseded or rescinded by the board of investments.

The board of investments 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 such depository to any other lawful depository when, in the judgment of the board, the interests of the state will be promoted thereby, and upon condition that no right of the state to preferred payment be waived.

§12-1-8. Conflict of interest.

No depository in this state may serve or be eligible for designation as a state depository if any member of the board of investments, or a spouse, child or parent of such member, is an officer, director or employee thereof, or owns, either in his or their own name or beneficially, an interest in such depository. A member of the board shall disclose such circumstance, if any, in the sworn statement required under the provisions of section one, article one, chapter six-b of this code.

§12-1-9. Transfer of funds by check or bank wire; requirements.

Subject to applicable banking regulations or state law, the treasurer may transfer funds by check or bank wire 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 wire, the bank wire and supporting documents shall be marked “for transfer of funds only.”

§12-1-10. Treasurer to keep accounts with depositories; settlements with depositories; reports showing depository balances.

The treasurer shall keep in his office a record showing the
account of each depository, under which account entry shall be made showing the amount and date of each deposit, the amount and date of each withdrawal, and the balance on deposit. He shall cause his account with each depository to be settled at the end of every quarter of the year and the balance in such depository to the credit of the treasury to be carried forward to the account of the next quarter.

The treasurer shall furnish the board of investments and the president and minority leader of the Senate and the speaker and minority leader of the House of Delegates, not later than the tenth day of each month, a statement showing the daily balances for each day on the last day of the preceding month in each state depository.

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

Each depository of state funds shall at the end of each quarter cause its president or cashier to report to the board of investments the amount of state funds on deposit and such report shall be verified by the affidavit of the officer making it. The form and contents of such report shall be prescribed by the board. For the failure to file such report, or for other good cause, the board may discontinue any depository as an eligible depository and cause all state funds to be withdrawn from any depository or depositories so discontinued. When a depository is discontinued, the board of investments shall immediately notify such depository of its discontinuance, and shall also issue its order to the treasurer, directing him immediately to withdraw by current checks or by transfer to another depository or depositories the full amount of the deposits held by any depository so discontinued. After such discontinuance it shall be unlawful for the treasurer to deposit any state funds in any depository so discontinued until such time as the depository may be reinstated to eligibility.

§12-1-12. Treasurer may make funds available to the board of investments; depositories outside the state.

When the funds in the treasury exceed the amount needed for current operational purposes as determined by the treasurer, he may make all or part of such excess available for
investment by the board of investments, which shall invest
the same for the benefit of the general revenue fund.

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 board of investments may
designate depositories outside the state, demand deposits being bid for in the same manner as required by depositories
within the state, and when such depositories outside the
state have qualified by giving the bond prescribed in section
four of this article, the state treasurer shall deposit funds there-
in in like manner as funds are deposited in depositories within
the state under this article.

The treasurer may transfer funds to banks outside the
state for investment purposes or to meet obligations to paying
agents outside the state and such transfers although not con-
sidered to be deposits for purposes of this section, must meet
the same bond requirements as set forth in this article for such
deposits.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER
AMOUNTS DUE THE STATE OR ANY POLITICAL
SUBDIVISION.

§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 same, in money, United States currency or by check, bank
draft, certified check, cashier’s check, post-office money order,
or express money order payable and delivered to the official,
department, board, commission or collecting agency thereof
authorized by law to collect the same and having the account
upon which such taxes or amounts are chargeable against the
payer thereof. 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 taxes or other amounts are chargeable against the
payer thereof and authorized by law to collect the same, and
their respective agents, deputies, assistants and employees
shall in no case be the agent of the payer in and about the
collection of such 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 such taxes
or amounts are chargeable against the payer thereof and
authorized by law to collect the same.

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

All officials and employees of the state authorized by
statute to accept moneys due the state of West Virginia shall
keep a daily itemized record of such moneys so received for
deposit in the state treasury and shall deposit promptly with
the state treasurer all moneys received or collected by them
for or on behalf of the state for any purpose whatsoever. The
treasurer may promulgate rules and regulations governing
the procedure for such deposits. When so paid, such moneys
shall be credited to the state fund and treated by the auditor
and treasurer as part of the general revenue of the state,
and shall not be used for any purpose whatsoever unless and
until authorized and directed by the Legislature, except the
following funds:

(a) All moneys received out of appropriations made by
the Congress of the United States;

(b) All funds derived from the sale of farm and dairy
products from farms operated by any agency of state govern-
ment other than the farm management commission;

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

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

(e) All funds derived from collections from dormitories,
boardinghouses, cafeterias and road camps;
(f) All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;

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

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

(i) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking funds, 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 licenses under article nine, chapter thirty-one of this code, and all funds and moneys payable to or received by the natural resources commission of West Virginia;

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

All moneys, excepted as aforesaid, shall be paid into the state treasury in the same manner as collections not so excepted, and shall be carried in separate accounts to be used and expended only for the purposes for which the same are authorized to be collected by law. The gross amount collected in all cases shall be paid into the state treasury, and commissions, costs and expenses of collection authorized by general law to be paid out of the gross collection are hereby authorized to be paid out of the moneys collected and paid into the state treasury in the same manner as other payments are made from the state treasury.

The official or employee making such deposits in the state treasury shall prepare such deposit lists in such manner and upon such report forms as may be prescribed by the treasurer. The original of this report shall accompany the deposit to the treasurer's office. Certified or receipted copies shall be immediately forwarded by the official or employee making
§12-2-3. Deposit of moneys by treasurer; deposit report to be sent by treasurer to auditor and director of budget.

The treasurer shall promptly transmit or cause to be transmitted such deposits, together with a certificate of deposit, as soon as practicable to the depository in which he desires to make the deposit, and shall retain and record the deposit lists. A copy of each deposit report received by the treasurer shall be sent to the auditor and the director of the budget daily.

§12-2-4. Duty of depositories.

Immediately upon the receipt of such deposit, it shall be the duty of the depository to credit the state 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 such certificate to the state treasurer, who shall immediately transmit a copy thereof to the state auditor.

ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.

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

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 shall find to be justly due from the state, if payment thereof be authorized by law, and if there be an appropriation not exhausted or expired out of which it is properly payable, he shall issue his warrant on the treasurer, specifying to whom and on what account the money mentioned therein is to be paid, and to what appropriation the same is to be charged. On the presentation of such warrant to the treasurer, he shall ascertain whether the same has been drawn in pursuance of an appropriation made by law, and if he finds it to be so, he shall in that case, but
not otherwise, endorse his check upon such warrant, directed
to some depository, which check shall be payable to the order
of the person who is to receive the money therein specified; or
he may issue a bank wire in payment of such warrant. If such
check shall not be presented for payment within three years
after it is drawn, it shall then be the duty of the treasurer to
credit it to the depository on which it was drawn, to credit the
state fund with the amount, and immediately notify the auditor
to make corresponding entries on his books. No state deposi-
tory shall 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." 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
same affixed by the clerk of such court to his certificate of
its allowance; and no such claim shall be audited and paid
by the auditor unless the seal of such court be thereto at-
tached as aforesaid. No tax or fee shall be charged by the clerk
for affixing his seal to the certificate referred to in this section.

§12-3-la. Payment by deposit in bank account.

The treasurer may pay any person claiming to receive
money from the treasury by deposit to such person’s account
in any bank or other financial institution within the state
authorized to receive deposits, if such person furnishes to the
treasurer written authorization of such method of payment. The
treasurer shall prescribe the form of such authorization. This
section shall not be construed to require the treasurer to
utilize the method of payment authorized by this section; but
such method is authorized only as an alternative method of
payment to persons claiming to receive money from the
treasury. A written authorization furnished pursuant to this
section may be revoked by written notice furnished to the
treasurer.

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

The treasurer shall draw no check on any depository unless
there be money enough therein to the credit of the treasury
to pay such check when duly presented for payment. No de-
pository holding money to the credit of the treasury shall pay
out the same, or any part thereof, except upon a check of the
treasurer indorsed on a warrant of the auditor authorizing
such check or a duly authorized bank wire drawn in place of
such check.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-2. Accounts of treasurer and auditor; auditor to certify con-
dition of revenues and funds of the state.

The treasurer shall keep in his office separate accounts
with each depository, and also a general account of receipts
and disbursements for the state, and when money is paid into
the treasury, it shall be charged to the proper depository and
credited to such general account. The auditor shall keep in
his office separate accounts of the particular heads or sources
of revenue, and a general 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 re-
ceipts on account of the capital of the school fund and those
on account of the income of said fund subject to annual dis-
tribution. The auditor shall certify annually to the commis-
sioner of finance and administration the condition of the state
revenues and the several funds of the state. Such certification
shall be used by the commissioner in the preparation of a
tentative state budget as required of him by article two, chap-
ter five-a of this code.

§12-4-3. Accounts of appropriations.

The auditor and treasurer shall each keep in books to
be used for that purpose exclusively an account of every
appropriation made by law, and of the several sums drawn
thereon, so that such books may show at all times the balance
undrawn on each appropriation. The account so kept shall
be compared every quarter and the errors, if any, corrected.
§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 fifty dollars 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.

§12-4-12. Treasurer authorized to provide check-cashing service.

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

The fees received for such service shall be deposited in the cash funds and itemized accounts of such receipts shall be maintained. Any check determined by the treasurer to be uncollectible shall be charged against the fund from which it was cashed. The legislative auditor shall, at least annually,
but may at any time, 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 fifty thousand dollars at the conclusion of any audit, the treasurer shall transfer such excess to the general revenue fund.

ARTICLE 5. PUBLIC SECURITIES.

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

The treasurer of this state, unless otherwise expressly provided by law, shall be custodian of all securities belonging to the state of West Virginia or by law required 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.

The board of investments 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 and such charges shall be collected from such companies by the state treasurer and deposited by him in the general revenue fund: Provided, That no such charge shall be made against any such company having securities of the par value of less than three hundred thousand dollars deposited hereunder.

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

The treasurer shall use due diligence in protecting such securities against loss from any cause. The securities retained in the treasury shall be kept in a vault. The treasurer shall designate certain of his employees to take special care of such securities. Only the treasurer and such designated employees, shall have access to such securities, and at least two of these persons shall be present whenever such securities are handled in any manner. The employees so designated by the treasurer to take care of such securities shall, before entering
upon the discharge of their duties under this article, execute a bond to be approved by the board of investments in a penalty to be fixed by said board. When the treasurer has designated the employees to take special care of such securities, he shall not remove or replace any of such employees until due notice in writing of his intention so to do has been given to the surety or sureties on such employee's bond: Provided, That the treasurer may, with the approval of the board of investments, contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of such securities, which contract shall prescribe the rules and regulations for the handling and protection thereof.

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 Management Law" 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 such funds.

§12-6-2. Definitions.

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

(1) "Board" means the West Virginia state board of investments;

(2) "Consolidated fund" means the investment fund managed by the board and established pursuant to subsection (b) section eight of this article;

(3) "Consolidated pension fund" means the investment fund managed by the board and established pursuant to subsection (a), section eight of this article;

(4) "Local government account" means the account within the consolidated fund established pursuant to subsection (b), section eight of this article;

(5) "Local government funds" means the moneys of a
political subdivision transferred to the board for deposit in the local government account;

(6) "Pension funds" means and includes 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 such other retirement or pension funds and systems as may be hereafter established on behalf of public employees of the state or of its political subdivisions and administered by the state;

(7) "Securities" means all bonds, notes, debentures or other evidences of indebtedness;

(8) "State account" means the account within the consolidated fund established pursuant to subsection (b), of section eight of this article; and

(9) "State funds" means all moneys of the state which may be lawfully invested except (a) the pension funds (as defined in subdivision (6) of this section), (b) the "school fund" established by section four, Article XII of the state constitution and (c) the sinking funds administered and controlled by the state municipal bond commission.

§12-6-3. State board of investments continued; body corporate; members.

The state board of investments is hereby continued as a body corporate of the state authorized to exercise all of the powers and functions granted to it pursuant to this article. The governor, state treasurer and state auditor shall be the members of the board.

§12-6-4. Officers; organization; surety bonds for members and employees.

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 held by the board. The office of the state treasurer shall act as staff agency for the board. The board shall meet quarterly and may include in its by-
laws procedures for the calling and holding of additional meetings.

Each member of the board shall give a separate and additional fidelity bond from a surety company qualified to do business within this state in a penalty amount of two hundred fifty thousand dollars for the faithful performance of his duties as a member of the board. In addition, the board will purchase a blanket bond for the faithful performance of its duties in the amount of five million dollars excess of the two hundred fifty thousand dollar individual bond required of each member by the provisions of this section. The board may require a fidelity 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 such fidelity bond shall be fixed by the board. The premiums payable on all fidelity bonds shall be an expense of the board.

§12-6-5. 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 the same 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, rules and regulations for the management and conduct of its affairs;
(6) 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;
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(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 such 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 such securities by the board at a stated price;

(11) Consolidate and manage moneys, securities and other assets of the pension funds and 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 such political subdivisions are invested on their behalf by the board;

(13) Charge and collect administrative fees from political subdivisions for its services; and

(14) Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management thereof.

§12-6-6. Costs and expenses; fees for services.

All costs and expenses of the board including fees of professional consultants, advisors and auditors, brokerage commissions and all other necessary expenses of the board incurred in the performance of its functions shall be proper charges against, and payable on a pro rata basis from, the earnings of the various funds managed by the board.

The fees collected by the board for its services to political subdivisions shall be deposited in the general revenue fund of this state.

§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 im-
posed upon it by law, as to any fund, and shall continue to be constituted as provided by existing law.

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

(a) There is hereby established a special investment fund to be managed by the board and designated as the “consolidated pension fund” for the common investment of pension funds. All administrators, custodians or trustees of the various pension funds are hereby authorized to make moneys available to the board for investment. Pension funds received by the board shall be deposited in the consolidated pension fund. Any security deposited by the various pension funds shall be valued at the prevailing market price on the day of deposit.

(b) There is hereby also established a special investment fund to be managed by the board and designated as the “consolidated fund”. The consolidated fund shall consist of a special account for the common investment of state funds designated as the “state account” and a special account for the common investment of local government funds designated as the “local government account”. Moneys in both accounts may be combined for the common investment of the consolidated fund on an equitable basis.

(c) Each board, commission, department, official or agency charged with the administration of state funds is hereby authorized to make moneys available to the board for investment. State funds received by the board shall be deposited in the state account.

(d) Each political subdivision of this state through its treasurer or equivalent financial officer is hereby authorized to enter into agreements with the board for the investment of moneys of such political subdivision: Provided, That it first be determined by the treasurer for such political subdivision that the available interest rate offered by an acceptable depository in such treasurer’s county be less than the interest rate, net of administrative fees referred to in article six, chapter twelve of this code, offered it through the state board of investments. Local government funds received by the board pursuant to such agreements shall be deposited in the local government account.
(e) Each county board of education through its treasurer is hereby authorized to enter into agreements with the board of investments for the investment of moneys of such county board of education: Provided, however, That it first be determined by the treasurer for such county board of education that the available interest rate offered by an acceptable depository in such treasurer's county be less than the interest rate, net of administrative fees referred to in article six, chapter twelve of this code, offered it through the state board of investments.

(f) Moneys held in the various funds and accounts administered by the board shall be invested as permitted in section nine and subject to the restrictions contained in section ten of this article. The board shall maintain records of the deposits and withdrawals of each participant and the performance of the various funds and accounts. The board shall also establish such rules and regulations for the administration of the various funds and accounts established by this section as it shall deem necessary for the administration thereof, including but not limited to (1) the specification of minimum amounts which may be deposited in any fund or account and minimum periods of time for which deposits will be retained; (2) creation of reserves for losses; (3) provision for payment of expenses from earnings; and (4) distribution of the earnings in excess of such expenses or allocation of losses to the several participants in an equitable manner: 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 such moneys in accordance with the restrictions specially applicable thereto.


Notwithstanding the restrictions which may otherwise be provided by law as to the investment of funds, the board may invest funds made available to it in any of the following:

(a) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;
(b) Any evidence of indebtedness issued by any of the following agencies: Government National Mortgage Association, Federal Land Banks, Federal Home Loan Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Tennessee Valley Authority, United States Postal Service, Farmers Home Administration, Export-Import Bank, Federal Financing Bank, Federal Home Loan Mortgage Corporation and Student Loan Marketing Association;

(c) Any evidence of indebtedness issued by the Federal National Mortgage Association to the extent such indebtedness is guaranteed by the Government National Mortgage Association;

(d) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this state, if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof;

(e) Direct and general obligations of this state;

(f) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, such trust at the time of the acquisition of such undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;

(g) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association organized and operating in the United States: Provided, That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: Provided, however, That if any commercial paper and/or any such security will mature within one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by such an agency: Provided further, That any such security not rated in one of the two highest rating grades by any such agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon the
written recommendation from an investment adviser that has over three hundred million dollars in other funds under its management;

(h) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution organized and operating in the United States, which mature in less than one year and are fully collateralized; and

(i) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are fully secured by a collaterally secured bond as provided in section four, article one of this chapter.

§12-6-10. Restrictions on investments.

1 Moneys on deposit in the consolidated fund and the consolidated pension fund shall be invested as permitted by section nine of this article subject to the restrictions and conditions contained in this section:

   (1) At no time shall more than seventy-five percent of the portfolio of either fund be invested in securities described in subdivision (g) of said section nine;

   (2) At no time shall more than twenty percent of the portfolio of either fund be invested in securities described in said subdivision (g) which mature within one year from the date of issuance thereof;

   (3) At no time shall more than three percent of the portfolio of either fund be invested in securities issued by a single private corporation or association, including for purposes of computation, all consolidated subsidiaries of such corporation or association.

   For the purpose of making the computations required by this section, securities shall be valued in accordance with generally accepted accounting principles.

§12-6-11. Apportionment of interest earning deposits among state depositories; interest rate on such deposits.

1 Whenever the board determines that funds should be invested in interest earning deposits, including certificates of
deposit, with depositories eligible in this state to receive such
deposits, it shall equitably apportion its offering of such funds
among all such depositories in this state. The board shall
make such apportionment by considering first the total assessed
value of all property within each county, and as to the dis-
tribution of the offering within the county, by considering
the net loans outstanding of each bank and the mortgage loans
(exclusive of mortgage participations) of each state and federal
savings and loan association as set forth in the banking com-
missioner's most recent annual report of financial institutions.

The annual rate of interest on funds placed in interest
earning deposits with state depositories, including certificates
of deposit, shall be determined by the board and may be
adjusted by it from time to time according to the then pre-
vailing rate of interest. The board may offer such deposits
to state depositories at a rate less than the prevailing rate of
interest if it determines that such action will foster economic
development in the state.

§12-6-12. Investment policy; duties of board and state treasurer;
standard of care.

The board shall establish policy guidelines for the invest-
ment of moneys on deposit in each of the funds managed
by the board based on the needs of the participants in the
various funds: Provided, That the board shall review such in-
vestments at least every three months and may require the
purchase or sale of any investments. In order to effectuate its
investment policies, the board may require from each partici-
pant a schedule, on an annual or more frequent basis, of
anticipated deposits and withdrawals.

The office of the state treasurer shall administer the in-
vestment of each of such funds subject at all times to the policy
guidelines established by the board.

Any investment made under this article shall be made with
the exercise of that degree of judgment and care, under cir-
cumstances then prevailing, which men of experience, pru-
dence, discretion and intelligence exercise in the management
of their own affairs, not for speculation but for investment, con-
sidering the probable safety of their capital as well as the probable income to be derived.

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

1 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, and the board shall be the sole agency for the investment of pension funds and state funds: Provided, That neither this section nor any other section of this article shall apply to the “board of the school fund” and the “school fund” established by section 4 of Article XII of the State Constitution or the state municipal bond commission.

§12-6-14. Reports of board.

1 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 funds administered by it. A copy thereof shall be furnished to the chief financial officer of each participant, the president of the senate, speaker of the house, legislative auditor, and upon request to any legislative committee, banking institution or state or federal savings and loan association in this state, and any member of the news media, and such report shall be kept available for inspection by any citizen of this state.

§12-6-15. Audits.

1 There shall be a continuous postaudit conducted by the legislative auditor of the investment transactions of the board, and a copy thereof for the preceding calendar year shall be furnished to each member of the legislature on or before the first day of February of each year.

§12-6-16. Existing investments.

1 The board shall not be required to dispose of any securities or other investments lawfully held by it as of the effective date of this act.

§12-6-17. Severability of provisions.

1 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.

CHAPTER 18. EDUCATION.

ARTICLE 9. SCHOOL FINANCES.

§18-9-6a. County board of education treasurer authorized to make funds available to state board of investments.

Notwithstanding any other provision of this code, when it appears to any of the various county boards of education that funds on deposit in its demand deposit account exceed the current requirements or demands, and it further be determined by the treasurer for such county board of education that the available interest rate offered by an acceptable depository in such treasurer's county be less than the interest rate, net of administrative fees referred to in article six, chapter twelve of this code, offered it through the state board of investments, the county board of education treasurer may, with the approval in writing of each county board of education whose funds are involved, make such funds available to the state board of investments for investment in accordance with the provisions of said article six, chapter twelve of the code.

Any income earned on such investment shall be allocated by such treasurer to the board of education whose funds were made available, such allocation to be made in accordance with the accounting and allocation principles established by the board of investments.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 1. LEGISLATIVE ACTS AND RESOLUTIONS; PUBLIC RECORDS.

§57-1-7a. Use of photographic copies in evidence—state records, papers or documents; destruction or transfer to archives of originals; destruction of cancelled checks and paid and cancelled bonds and coupons.

Any public officer of the state may, with the approval of the board of public works, cause any or all records, papers or
documents kept by him to be photographed, microphotographed or reproduced on film. Such photographic film shall be of durable material and the device used to reproduce such records on such film shall be one which accurately reproduces the original thereof in all details.

Such photographs, microphotographs or photographic film shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification, or certified copy of the original.

Whenever photographs, microphotographs or reproductions on film have been made and put in conveniently accessible fire-proof files, and provision has been made for preserving, examining and using the same, the respective heads of the departments, divisions, institutions and agencies of the state may, with the approval of the board of public works, cause the records and papers so photographed, microphotographed or reproduced on film, or any part thereof, to be destroyed; but before any such records, papers or documents are authorized to be destroyed, the board of public works shall obtain the advice and counsel of the state historian and archivist, or his designated representative, as to the desirability of placing the said records, papers and documents in the archives of that department, whereupon the board of public works may cause such records, papers and documents to be so transferred: Provided, That the state treasurer may at his discretion destroy any cancelled checks of the state after ten years have elapsed since the date of the check, whether or not such checks have been photographed, microphotographed or reproduced on film: Provided, however, That any cancelled bonds or interest coupons of any bond issues of this state in the custody of the treasurer, or for which the treasurer acts as fiscal agent or paying agent, may at his discretion be destroyed by one of the two methods described below:

Method I—The treasurer shall maintain a permanent record for the purpose of recording the destruction of bonds and coupons, showing the following: (1) With respect to bonds, the purpose of issuance, the date of issue, denomination, ma-
turity date, and total principal amount; and (2) with respect to
coupons, the purpose of issue and date of the bonds to which
the coupons appertain, the maturity date of the coupons, and,
as to each maturity date, the denomination, quantity, and total
amount of coupons.

After recording the specified information, the treasurer
shall have the cancelled bonds and coupons destroyed either
by burning or shredding, in the presence of an employee of the
treasurer and an employee of the legislative auditor, each of
whom shall certify that he saw the cancelled bonds and cou-
pons destroyed. Such certificates shall be made a part of the
permanent record. Cancelled bonds or coupons shall not be
destroyed until after one year from the date of payment.

Method II—The treasurer may contract with any bank
or trust company acting as paying agent or copaying agent for
a bond issue of the state for the destruction of bonds and in-
terest coupons which have been cancelled by the paying agent.
The contract shall require that the paying agent give the
treasurer a written certificate containing the same information
required by Method I. Such certificate shall include a sworn
statement that the described bonds or coupons have been de-
stroyed. The certificate shall be made a part of the trea-
surer’s permanent record.

Each contract shall also require that the paying agent be
responsible for proper payment and disposition of all bonds
and coupons, and for any duplicate payments to unauthorized
persons and nonpayment to authorized persons occurring as a
result of destruction of bonds or coupons under this section.
In addition, the treasurer may require the paying agent to sub-
mitt an indemnity bond, in an amount to be determined by the
treasurer, to assure performance of the duties specified in this
section. Cancelled bonds or coupons may not be destroyed
until one year from the date of payment.

For purposes of this section, the term “bonds” shall include
interim certificates.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect July 1, 1978.

J. C. W. Hill, Jr.  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

W. T. Battle  
President of the Senate

Donald L. Zieg  
Speaker House of Delegates

The within ___________ is approved this the _______ day of ___________, 1978.

John D. Rhoades  
Governor