WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

ENROLLED
Committee Substitute for
SENATE BILL NO. 559

(By Mr. Rogers)

PASSED March 16, 1979

In Effect July 1, 1975
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 559
(Mr. Rogers, original sponsor)

[Passed March 10, 1979; in effect July 1, 1979.]

AN ACT to amend and reenact sections two, three, ten and twelve, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three and four, article two of said chapter; to amend and reenact section one, article three of said chapter; and to amend and reenact sections two, nine, eleven and thirteen, article six of said chapter, all relating to the investment of state funds; depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by the treasurer; depositories for interest earning deposits; qualifications; accounts of depositories; settlements with depositories; reports showing depository balances; reconciliation of reports; when the treasurer may make funds available to the board of investments; record of receipts; regulations governing deposits; credit to state funds; exceptions; deposit by treasurer; duty of depositories; payment from treasury; checks; definitions; permissible investments; apportionment of interest bearing deposits among state depositories; interest rates on such deposits.

Be it enacted by the Legislature of West Virginia:

That sections two, three, ten and twelve, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two, three and four, article two of said chapter be amended and reenacted; that section one, article three of said
chapter be amended and reenacted; and that sections two, nine, eleven and thirteen, article six of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; 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 farm, single or multi-family residential units. For the purpose of making the foregoing calculation, the balances due the bank on the following loans shall be given effect: (1) qualifying residential loans held by the bank; (2) qualifying loans made in participation with other financial institutions; (3) qualifying loans made in participation with agencies of the state, federal, or local governments; and (4) qualifying loans originated and serviced by the bank but owned by an out-of-state investor. The calculation of the percent of total loans made by a bank in farm, single or multi-family residential units shall be made from the average daily balance of total loans and qualifying residential loans for the period being reported.

Demand deposit accounts shall consist of receipt, disbursement and investment accounts. Receipt accounts shall be those accounts in which are deposited moneys belonging to or due the state of West Virginia or any official, department, board, commission or agency thereof.

Disbursement accounts shall be those accounts from
which are paid moneys due from the state of West Virginia or any official, department, board, commission, political subdivision or agency thereof to any political subdivision, person, firm or corporation except moneys paid from investment accounts.

Investment accounts shall be those accounts established by the treasurer or board of investments for the buying and selling of securities for investment for the state of West Virginia or any official, department, board, commission or agency thereof to meet obligations to paying agents or for paying charges incurred for the custody, safekeeping and management of such securities pursuant to the provisions of section five, article five of this chapter, or for paying the charges of any bank or trust company acting as paying agent or copaying agent for a bond issue of the state pursuant to the provisions of section seven-a, article one, chapter fifty-seven of this code.

The board of investments shall promulgate rules and regulations in accordance with the provisions of chapter twenty-nine-a of the code of West Virginia, as amended, concerning depositories for receipt accounts and investment accounts prescribing the selection criteria, procedures, compensation and such other contractual terms as it considers to be in the best interests of the state 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 depositories; and (3) the value and importance of such deposits to the economy of the communities and the various areas of the state affected thereby.

The board of investments shall select depositories for disbursement accounts through competitive bidding by eligible banks in this state: Provided, however, That funds in disbursement accounts 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 in accordance with the provisions of chapter twenty-nine-a of the code of West Virginia, as amended, 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: Provided, further, That the depositories for such disbursement accounts 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 operation 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 disbursement accounts 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; qualifications.

Any state or national banks 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 one hundred 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 farm, single or multi-family residential units. For the purpose of making the foregoing calculation, the balances due the depository on the following loans shall be given effect: (1) qualifying residential loans held by the depository; (2) qualifying loans made in participation with other financial institutions; (3) qualifying loans made in participation with agencies of the state, federal, or local governments; and (4) qualifying loans originated and serviced by the depository but owned by an out-of-state investor. The calculation of the percent of total loans made by a depository in single or multi-family residential units shall be made from the average daily balance of total loans and qualifying residential loans for the period being reported.

§12-1-10. 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 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 average daily balances of the preceding month in each state depository, and keep available for their inspection in the treasurer's office a record of the daily balances for each day on the last day of the pre-
ceding month in each such depository: Provided, That all such statements and records shall be reconciled within ninety days and the reconciled reports showing the average daily balances of each month shall be distributed as prescribed above and the reconciled records of the daily balance for each day of each month shall be kept in the treasurer's office for a period of five years.

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

1 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.

7 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, disbursement accounts 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 therein in like manner as funds are deposited in depositories within the state under this article.

19 The treasurer may transfer funds to banks outside the state for investment purposes or to meet obligations to paying agents outside the state and any such transfer must meet the same bond requirements as set forth in this article.

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

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

1 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
shall promulgate rules and regulations, in accordance with
the provisions of chapter twenty-nine-a of this code of
West Virginia, as amended, governing the procedure for
such deposits. When so paid, such moneys shall be cred-
ited to the state fund and treated by the auditor and trea-
surer 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 government other than the farm management
commission;

(c) All endowment funds, bequests, donations, exe-
cutive 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 dormi-
tories, boardinghouses, cafeterias and road camps;

(f) All moneys received from counties by institu-
tions 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,
genereal 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 Vir-
ginia;

(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 ac-
counts 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 pay-
ments 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 pre-
scribed by the treasurer. The original of this report
shall accompany the deposit to the treasurer's office.
Certified or receipted copies shall be immediately for-
warded by the state treasurer to the state auditor and
to the commissioner of finance and administration, and
a copy shall be kept by the official or employee making
the report and shall become a part of his permanent
record.

§12-2-3. Deposit of moneys by treasurer.

1 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.
§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.

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 six months 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 depository 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 allow-
ance; and no such claim shall be audited and paid by the
auditor unless the seal of such court be thereto attached
as aforesaid. No tax or fee shall be charged by the clerk
for affixing his seal to the certificate referred to in this
section.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.
§12-6-2. Definitions.

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

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

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

3 (3) "Consolidated pension fund" means the invest-
ment fund managed by the board and established pur-
suant to subsection (a), section eight of this article;

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

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

6 (6) "Pension funds" means and includes the work-
men'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 (7) "Securities" means all bonds, notes, debentures
or other evidences of indebtedness, and shall not mean
corporate stock;
(8) "State account" means the account within the consolidated fund established pursuant to subsection (b), 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) and (b) the "school fund" established by section four, article XII of the state constitution.


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, Student Loan Marketing Association and Federal Farm Credit Banks;

(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.

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

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 distribution 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 commissioner's most recent report of financial institutions qualifying as state depositories.

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 prevailing rate of interest.

§12-6-13. Board as sole 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, 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 four of 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 to be invested by the commission as provided in article three, chapter thirteen of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Clarence E. Chresten, Jr.  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1979.

Jett Dillon Jr.  
Clerk of the Senate

O. A. Blankenship  
Clerk of the House of Delegates

W. W. Talbot  
President of the Senate

J. M. See, Jr.  
Speaker House of Delegates

The within _______ is approved _______ this the _______ day of March, 1979.

John J. Tugwell  
Governor