

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-28-79

Time 9:45 a.m.

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979



ENROLLED

Committee Substitute for
SENATE BILL NO. 539

(By Mr. Rogers)



PASSED March 10, 1979

In Effect July 1, 1979 **Passage**



No. 559



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.

1 The state board of investments shall designate the
2 state and national banks in this state which shall serve
3 as depositories for all state funds placed in demand
4 deposits. Any such state or national bank shall, upon
5 request to such board, be designated as a state depository
6 for such deposits, if such bank meets the requirements
7 set forth in this chapter: *Provided*, That notwithstanding
8 any provision of this article to the contrary, no state
9 funds may be deposited in any bank which has been in
10 existence over a period of five years which does not have
11 a loan to deposit ratio of fifty percent or more and twenty-
12 five percent of its loans shall be in farm, single or multi-
13 family residential units. For the purpose of making the
14 foregoing calculation, the balances due the bank on the
15 following loans shall be given effect: (1) qualifying
16 residential loans held by the bank; (2) qualifying loans
17 made in participation with other financial institutions;
18 (3) qualifying loans made in participation with agencies
19 of the state, federal, or local governments; and (4)
20 qualifying loans originated and serviced by the bank
21 but owned by an out-of-state investor. The calculation of
22 the percent of total loans made by a bank in farm, single
23 or multi-family residential units shall be made from the
24 average daily balance of total loans and qualifying resi-
25 dential loans for the period being reported.

26 Demand deposit accounts shall consist of receipt, dis-
27 bursement and investment accounts. Receipt accounts
28 shall be those accounts in which are deposited moneys
29 belonging to or due the state of West Virginia or any
30 official, department, board, commission or agency, there-
31 of.

32 Disbursement accounts shall be those accounts from


33 which are paid moneys due from the state of West
34 Virginia or any official, department, board, commission,
35 political subdivision or agency thereof to any political
36 subdivision, person, firm or corporation except moneys
37 paid from investment accounts.

38 Investment accounts shall be those accounts estab-
39 lished by the treasurer or board of investments for the
40 buying and selling of securities for investment for the
41 state of West Virginia or any official, department, board,
42 commission or agency thereof or to meet obligations to
43 paying agents or for paying charges incurred for the
44 custody, safekeeping and management of such securities
45 pursuant to the provisions of section five, article five of
46 this chapter, or for paying the charges of any bank or
47 trust company acting as paying agent or copaying agent
48 for a bond issue of the state pursuant to the provisions
49 of section seven-a, article one, chapter fifty-seven of this
50 code.

51 The board of investments shall promulgate rules and
52 regulations in accordance with the provisions of chapter
53 twenty-nine-a of the code of West Virginia, as amended,
54 concerning depositories for receipt accounts and invest-
55 ment accounts prescribing the selection criteria, proce-
56 dures, compensation and such other contractual terms as
57 it considers to be in the best interests of the state giving
58 due consideration to: (1) The activity of the various ac-
59 counts maintained therein; (2) the reasonable value of
60 the banking services rendered or to be rendered the state
61 by such depositories; and (3) the value and importance of
62 such deposits to the economy of the communities and the
63 various areas of the state affected thereby.

64 The board of investments shall select depositories for
65 disbursement accounts through competitive bidding by
66 eligible banks in this state: *Provided, however,* That
67 funds in disbursement accounts shall be proportionately
68 distributed among the following categories of such de-
69 positories, based upon the total assets of such depository:
70 (a) Depositories whose total assets are not greater than
71 twenty-five million dollars; (b) depositories whose total
72 assets are greater than twenty-five million dollars but
73 not greater than fifty million dollars; or (c) depositories

74 whose total assets are greater than fifty million dollars.
75 The board shall promulgate rules and regulations in ac-
76 cordance with the provisions of chapter twenty-nine-a of
77 the code of West Virginia, as amended, prescribing the
78 procedures and criteria for such bidding and selection. It
79 shall, in its invitations for bids, specify the approximate
80 amounts of deposits, the duration of contracts to be
81 awarded and such other contractual terms as it considers
82 to be in the best interests of the state, consistent with
83 obtaining the most efficient service at the lowest cost:
84 *Provided, further,* That the depositories for such disburse-
85 ment accounts shall be determined by the board through
86 competitive bidding separately for each category of de-
87 positories created in this section.

88 The amount of money needed for current operation
89 purposes of the state government, as determined by the
90 state treasurer, shall be maintained at all times in the
91 state treasury, in cash or in disbursement accounts with
92 banks designated as depositories in accordance with the 
93 provisions of this section. No state officer or employee
94 shall make or cause to be made any deposits of state
95 funds in banks not so designated.

**§12-1-3. Depositories for interest earning deposits; qualifica-
tions.**

1 Any state or national banks or any state or federal
2 savings and loan association in this state shall, upon re-
3 quest made to the board of investments, be designated
4 as an eligible depository for interest earning deposits of
5 state funds if such bank or state or federal savings and
6 loan association meets the requirements set forth in
7 this chapter. For purposes of this article, the term "in-
8 terest earning deposits" includes certificates of deposit.
9 The board of investments, acting through the treasurer,
10 shall make and apportion such interest earning deposits
11 and shall prescribe the interest rates, terms and condi-
12 tions of such deposits, all in accordance with the provi-
13 sions of article six of this chapter: *Provided,* That state
14 or federal savings and loan associations insured by an
15 agency of the federal government shall be eligible for
16 such deposits not in excess of one hundred thousand

17 dollars: *Provided, however,* That notwithstanding any
 18 provision of this article to the contrary, no such interest
 19 earning deposits may be deposited in any depository
 20 which has been in existence over a period of five years
 21 which does not have a loan to deposit ratio of fifty percent
 22 or more and twenty-five percent of its loans shall be in
 23 farm, single or multi-family residential units. For the
 24 purpose of making the foregoing calculation, the balances
 25 due the depository on the following loans shall be given
 26 effect: (1) qualifying residential loans held by the deposi-
 27 tory; (2) qualifying loans made in participation with oth-
 28 er financial institutions; (3) qualifying loans made in
 29 participation with agencies of the state, federal, or local
 30 governments; and (4) qualifying loans originated and
 31 serviced by the depository but owned by an out-of-state
 32 investor. The calculation of the percent of total loans
 33 made by a depository in ^{single or multi-family residential} units shall be made from the average daily balance of
 34 total loans and qualifying residential loans for the period
 35 being reported.
 36

**§12-1-10. Treasurer to keep accounts with depositories; settle-
 ments with depositories; statements of depository
 balances; reconciliation of statements and records.**

1 The treasurer shall keep in his office a record showing
 2 the account of each depository, under which account entry
 3 shall be made showing the amount and date of each de-
 4 posit, the amount and date of each withdrawal, and the
 5 balance on deposit. He shall cause his account with each
 6 depository to be settled at the end of every quarter of the
 7 year and the balance in such depository to the credit of
 8 the treasury to be carried forward to the account of the
 9 next quarter.

10 The treasurer shall furnish the board of investments
 11 and the president and minority leader of the Senate and
 12 the speaker and minority leader of the House of Delegates,
 13 not later than the tenth day of each month, a statement
 14 showing the average daily balances of the preceding
 15 month in each state depository, and keep available for
 16 their inspection in the treasurer's office a record of the
 17 daily balances for each day on the last day of the pre-

18 ceding month in each such depository: *Provided*, That all
19 such statements and records shall be reconciled within
20 ninety days and the reconciled reports showing the aver-
21 age daily balances of each month shall be distributed
22 as prescribed above and the reconciled records of the
23 daily balance for each day of each month shall be kept
24 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
2 needed for current operational purposes as determined by
3 the treasurer, he may make all or part of such excess
4 available for investment by the board of investments,
5 which shall invest the same for the benefit of the general
6 revenue fund.

7 Whenever the funds in the treasury exceed the amount
8 for which depositories within the state have qualified, or
9 the depositories within the state which have qualified are
10 unwilling to receive larger deposits, the board of invest-
11 ments may designate depositories outside the state, dis-
12 bursement accounts being bid for in the same manner as
13 required by depositories within the state, and when such
14 depositories outside the state have qualified by giving the
15 bond prescribed in section four of this article, the state
16 treasurer shall deposit funds therein in like manner as
17 funds are deposited in depositories within the state under
18 this article.

19 The treasurer may transfer funds to banks outside the
20 state for investment purposes or to meet obligations to
21 paying agents outside the state and any such transfer must
22 meet the same bond requirements as set forth in this
23 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

2 by statute to accept moneys due the state of West
3 Virginia shall keep a daily itemized record of such
4 moneys so received for deposit in the state treasury
5 and shall deposit promptly with the state treasurer all
6 moneys received or collected by them for or on behalf
7 of the state for any purpose whatsoever. The treasurer
8 shall promulgate rules and regulations, in accordance with
9 the provisions of chapter twenty-nine-a of ~~this~~ ^{the} code of
10 West Virginia, as amended, governing the procedure for
11 such deposits. When so paid, such moneys shall be cred-
12 ited to the state fund and treated by the auditor and trea-
13 surer as part of the general revenue of the state, and shall
14 not be used for any purpose whatsoever unless and until
15 authorized and directed by the Legislature, except the
16 following funds:

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

19 (b) All funds derived from the sale of farm and
20 dairy products from farms operated by any agency of
21 state government other than the farm management
22 commission;

23 (c) All endowment funds, bequests, donations, exe-
24 cutive emergency funds, and death and disability funds;

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

27 (e) All funds derived from collections from dormi-
28 tories, boardinghouses, cafeterias and road camps;

29 (f) All moneys received from counties by institu-
30 tions for the deaf and blind on account of clothing for
31 indigent pupils;

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

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

37 (i) All moneys collected and belonging to the capitol
38 building fund, state road fund, state road sinking funds,
39 general school fund, school fund, state fund (moneys
40 belonging to counties, districts and municipalities), state

the

41 interest and sinking funds, state compensation funds,
42 the fund maintained by the public service commission
43 for the investigation and supervision of applications and
44 licenses under article nine, chapter thirty-one of this
45 code, and all funds and moneys payable to or received
46 by the natural resources commission of West Vir-
47 ginia;

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

51 All moneys, excepted as aforesaid, shall be paid into
52 the state treasury in the same manner as collections
53 not so excepted, and shall be carried in separate ac-
54 counts to be used and expended only for the purposes
55 for which the same are authorized to be collected by
56 law. The gross amount collected in all cases shall be
57 paid into the state treasury, and commissions, costs and
58 expenses of collection authorized by general law to be
59 paid out of the gross collection are hereby authorized
60 to be paid out of the moneys collected and paid into
61 the state treasury in the same manner as other pay-
62 ments are made from the state treasury.

63 The official or employee making such deposits in the
64 state treasury shall prepare such deposit lists in such
65 manner and upon such report forms as may be pre-
66 scribed by the treasurer. The original of this report
67 shall accompany the deposit to the treasurer's office.
68 Certified or receipted copies shall be immediately for-
69 warded by the state treasurer to the state auditor and
70 to the commissioner of finance and administration, and
71 a copy shall be kept by the official or employee making
72 the report and shall become a part of his permanent
73 record.

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

1 The treasurer shall promptly transmit or cause to be
2 transmitted such deposits, together with a certificate of
3 deposit, as soon as practicable to the depository in which
4 he desires to make the deposit, and shall retain and
5 record the deposit lists.

§12-2-4. Duty of depositories.

1 Immediately upon the receipt of such deposit, it shall
 2 be the duty of the depository to credit the state trea-
 3 surer with the amount of the deposit, to date and sign
 4 the certificate of deposit by some legally constituted offi-
 5 cial of the depository and promptly transmit such cer-
 6 tificate to the state treasurer.

ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.**§12-3-1. Manner of payment from treasury; form of checks.**

1 Every person claiming to receive money from the
 2 treasury of the state shall apply to the auditor for a
 3 warrant for same. The auditor shall thereupon examine
 4 the claim, and the vouchers, certificates and evidence, if
 5 any, offered in support thereof, and for so much thereof as
 6 he shall find to be justly due from the state, if payment
 7 thereof be authorized by law, and if there be an appro-
 8 priation not exhausted or expired out of which it is
 9 properly payable, he shall issue his warrant on the
 10 treasurer, specifying to whom and on what account the
 11 money mentioned therein is to be paid, and to what
 12 appropriation the same is to be charged. On the presenta-
 13 tion of such warrant to the treasurer, he shall ascertain
 14 whether the same has been drawn in pursuance of an
 15 appropriation made by law, and if he finds it to be so, he
 16 shall in that case, but not otherwise, endorse his check
 17 upon such warrant, directed to some depository, which
 18 check shall be payable to the order of the person who is
 19 to receive the money therein specified; or he may issue a
 20 bank wire in payment of such warrant. If such check shall
 21 not be presented for payment within six months after it
 22 is drawn, it shall then be the duty of the treasurer to
 23 credit it to the depository on which it was drawn, to
 24 credit the state fund with the amount, and immediately
 25 notify the auditor to make corresponding entries on his
 26 books. No state depository shall pay a check unless it is
 27 presented within six months after it is drawn and every
 28 check shall bear upon its face the words, "Void, unless
 29 presented for payment within six months." All claims
 30 required by law to be allowed by any court, and payable

31 out of the state treasury, shall have the seal of the court
32 allowing or authorizing the payment of the same affixed
33 by the clerk of such court to his certificate of its allow-
34 ance; and no such claim shall be audited and paid by the
35 auditor unless the seal of such court be thereto attached
36 as aforesaid. No tax or fee shall be charged by the clerk
37 for affixing his seal to the certificate referred to in this
38 section.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-2. Definitions.

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

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

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

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

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

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

17 (6) "Pension funds" means and includes the work-
18 men's compensation fund; the state teachers retirement
19 system funds; the death, disability and retirement fund
20 for members of the department of public safety; the
21 public employees retirement system funds; the judges
22 retirement fund; and such other retirement or pension
23 funds and systems as may be hereafter established on
24 behalf of public employees of the state or of its political
25 subdivisions and administered by the state;

26 (7) "Securities" means all bonds, notes, debentures
27 or other evidences of indebtedness, and shall not mean
28 corporate stock;

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

32 (9) "State funds" means all moneys of the state which
 33 may be lawfully invested except (a) the pension funds
 34 (as defined in subdivision (6) of this section) and (b)
 35 the "school fund" established by section four, article XII
 36 of the state constitution.

§12-6-9. Permissible investments.

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

5 (a) Any direct obligation of, or obligation guaranteed
 6 as to the payment of both principal and interest by, the
 7 United States of America;

8 (b) Any evidence of indebtedness issued by any of
 9 the following agencies: Government National Mortgage
 10 Association, Federal Land Banks, Federal Home Loan
 11 Banks, Federal Intermediate Credit Banks, Banks for Co-
 12 operatives, Tennessee Valley Authority, United States
 13 Postal Service, Farmers Home Administration, Export-
 14 Import Bank, Federal Financing Bank, Federal Home
 15 Loan Mortgage Corporation, Student Loan Marketing As-
 16 sociation and Federal Farm Credit Banks;

17 (c) Any evidence of indebtedness issued by the Federal
 18 National Mortgage Association to the extent such in-
 19 debtedness is guaranteed by the Government National
 20 Mortgage Association;

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

26 (e) Direct and general obligations of this state;

27 (f) Any undivided interest in a trust, the corpus of
 28 which is restricted to mortgages on real property and,
 29 unless all of such property is situate within the state
 30 and insured, such trust at the time of the acquisition

31 of such undivided interest, is rated in one of the three
32 highest rating grades by an agency which is nationally
33 known in the field of rating pooled mortgage trusts;

34 (g) Any bond, note, debenture, commercial paper or
35 other evidence of indebtedness of any private corpora-
36 tion or association organized and operating in the United
37 States: *Provided*, That any such security is, at the time
38 of its acquisition, rated in one of the three highest rat-
39 ing grades by an agency which is nationally known in
40 the field of rating corporate securities: *Provided, however*,
41 That if any commercial paper and/or any such security
42 will mature within one year from the date of its issuance,
43 it shall, at the time of its acquisition, be rated in one of
44 the two highest rating grades by such an agency:
45 *Provided further*, That any such security not rated in
46 one of the two highest rating grades by any such agency
47 and commercial paper or other evidence of indebtedness
48 of any private corporation or association shall be pur-
49 chased only upon the written recommendation from an
50 investment adviser that has over three hundred million
51 dollars in other funds under its management;

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

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

**§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
2 invested in interest earning deposits, including certifi-
3 cates of deposit, with depositories eligible in this state
4 to receive such deposits, it shall equitably apportion
5 its offering of such funds among all such depositories
6 in this state. The board shall make such apportionment
7 by considering first the total assessed value of all prop-
8 erty within each county, and as to the distribution of

9 the offering within the county, by considering the net
10 loans outstanding of each bank and the mortgage loans
11 (exclusive of mortgage participations) of each state and
12 federal savings and loan association as set forth in the
13 banking commissioner's most recent report of financial
14 institutions qualifying as state depositories.

15 The annual rate of interest on funds placed in interest
16 earning deposits with state depositories, including cer-
17 tificates of deposit, shall be determined by the board
18 and may be adjusted by it from time to time according
19 to the then prevailing rate of interest.

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

1 All duties vested by law in any agency, commission,
2 official or other board of the state relating to the invest-
3 ment of moneys, and the acquisition, sale, exchange or
4 disposal of securities or any other investment are here-
5 by transferred to the board, and the board shall be
6 the sole agency for the investment of pension funds
7 and state funds: *Provided*, That neither this section
8 nor any other section of this article shall apply to the
9 "board of the school fund" and the "school fund" estab-
10 lished by section four of article XII of the state constitu-
11 tion: *Provided, however*, That funds under the control of
12 the municipal bond commission may, in the discretion of
13 the commission, be made available to the board for in-
14 vestment to be invested by the commission as provided
15 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 C. Chestnut Jr.
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1979.

J. Dillough
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. V. Walker
President of the Senate

Charles G. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *27*
day of *March*, 1979.

John R. Rhyne
Governor



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