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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED

SENATE BILL NO. 621
(Originating in the Committee
By Senator on Small Business)



PASSED April 8, 1989
In Effect from Passage

ENROLLED

Senate Bill No. 621

(ORIGINATING IN THE COMMITTEE ON SMALL BUSINESS.)

[Passed April 8, 1989; in effect from passage.]

AN ACT to amend and reenact sections one, two, five and seven, article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, six, ten and fifteen, article six of said chapter twelve; to further amend said article by adding thereto a new section, designated section nine-c; and to amend and reenact section four, article twenty-two-d, chapter eighteen of said code, all relating to the linked deposit program and to the West Virginia state board of investments; providing definition of director; recognizing importance of involving state treasurer and director of governor's office of community and industrial development in linked deposit program to maximize impact of program; requiring director's approval of all linked deposit loan packages; providing that state, state treasurer and director not liable to any lending institution for payment of principal and interest on loans; expanding the membership of the West Virginia state board of investments; providing for appointment of members to the board by the governor; the qualifications for appointed members; the term of office for appointed members; providing for a support staff for

the board; the compensation for said staff; the creation of a special revenue account; allowing the board to make a charge against the earnings of the funds managed by the board; providing for yearly appropriations by the Legislature, and yearly reports to the Legislature by the board with respect to the status of the special revenue account; providing that any excess in the special revenue account after appropriations be disbursed to fund participants on a pro-rata basis; to authorize the participation of various entities in an investment company or investment trust registered under 15 U.S.C. §80a; providing for semiannual internal audits and annual external audits; and to limit linked deposits as provided for in section four, article twenty-two-d, chapter eighteen of the code of West Virginia, to two million dollars annually and in an aggregate amount of twenty million dollars.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.

- 1 (a) "Director" means the director of the governor's
- 2 office of community and industrial development.
- 3 (b) "Eligible small business" means any business
- 4 which employs two hundred or less employees or has
- 5 gross annual receipts of four million dollars or less.
- 6 (c) "Eligible lending institution" means a financial
- 7 institution that is eligible to make commercial loans, is
- 8 a public depository of state funds and agrees to

9 participate in the linked deposit program.

10 (d) "Linked deposit" means a certificate of deposit
11 placed by the state treasurer with an eligible lending
12 institution at up to three percent below current
13 market rates, as determined and calculated by the
14 state treasurer, provided the institution agrees to lend
15 the value of such deposit, according to the deposit
16 agreement provided for by this article, to eligible small
17 businesses at three percent below the present borrow-
18 ing rate applicable to each specific business at the time
19 of the deposit of state funds in the institution.

§12-1A-2. Legislative findings.

1 The Legislature finds that many small businesses
2 throughout the state are experiencing economic stag-
3 nation or decline, that high interest rates have caused
4 small businesses in this state to suffer disproportion-
5 ately in profitability and competition and that such
6 high interest rates have fostered a serious increase in
7 unemployment. The linked deposit program provided
8 for by this article is intended to provide a statewide
9 availability of lower cost funds for lending purposes
10 that will materially contribute to the economic revital-
11 ization of this state. Accordingly, it is declared to be
12 the public policy of the state through the linked
13 deposit program to create an availability of lower-cost
14 funds to inject needed capital into the business
15 community, sustain or improve business profitability,
16 protect the jobs of citizens of this state and assist
17 businesses located in any county declared to be a
18 federal disaster area by the Federal Emergency
19 Management Agency. The Legislature further finds
20 that the involvement of both the state treasurer and
21 the director in determining which businesses will
22 receive the benefits of the linked deposit program is
23 necessary in order for state funds to be used in the
24 most effective manner possible in assisting small
25 businesses throughout the state and thereby maximiz-
26 ing the impact of the program.

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

1 (a) The state treasurer may accept or reject a linked
2 deposit loan package or any portion thereof, based on
3 the ratio of state funds to be deposited to jobs sus-
4 tained or created: *Provided*, That notwithstanding any
5 provision of this article to the contrary, the state
6 treasurer may not accept any linked deposit loan
7 package or any portion thereof unless the same has
8 been reviewed and approved by the director in his sole
9 discretion.

10 (b) The state treasurer shall reject any linked
11 deposit loan package if the small business requesting
12 such loan is not in good standing with the state tax
13 department, department of employment security and
14 the workers' compensation fund, and these agencies
15 shall provide the state treasurer with such information
16 as to the standing of each small business loan appli-
17 cant, notwithstanding any provision of this code to the
18 contrary.

19 (c) Any linked deposit loan package that is being
20 made to refinance an existing debt, or any portion
21 thereof, must meet one of the following criteria:

22 (1) The small business can demonstrate in good faith
23 that it is experiencing a substantial loss in its current
24 (fiscal or calendar) tax year period;

25 (2) The small business recently experienced a natu-
26 ral disaster and suffered unreimbursable casualty
27 losses;

28 (3) The small business has filed to recover under the
29 federal bankruptcy act and meets the criteria in (1)
30 above; or

31 (4) The small business can provide compelling
32 information to the state treasurer that jobs will be
33 saved and/or created as a result of loan refinancing.

34 (d) Upon acceptance of the linked deposit loan
35 package or any portion thereof by the state treasurer
36 and the director, the state treasurer may place certifi-

37 icates of deposit with the eligible lending institution at
38 three percent below current market rates, as deter-
39 mined and calculated by the state treasurer. Upon
40 acceptance of the linked deposit loan package for flood
41 victims or any portion thereof, the state treasurer may
42 place certificates of deposit with the eligible lending
43 institution at five percent below current market rates,
44 as determined and calculated by the state treasurer.
45 When necessary, the treasurer may place certificates
46 of deposit prior to acceptance of a linked deposit loan
47 package.

48 (e) The eligible lending institution shall enter into a
49 deposit agreement with the state treasurer, which
50 shall include requirements necessary to carry out the
51 purposes of this article. Such requirements shall
52 reflect the market conditions prevailing in the eligible
53 lending institution's lending area. The agreement may
54 include a specification of the period of time in which
55 the lending institution is to lend funds upon the
56 placement of a linked deposit and shall include provi-
57 sions for the certificates of deposit to be placed for up
58 to two-year maturities that may be renewed for up to
59 an additional two years. Interest shall be paid at the
60 times determined by the state treasurer.

§12-1A-7. Liability of state, state treasurer and director.

1 The state, the state treasurer and the director are
2 not liable to any eligible lending institution in any
3 manner for payment of the principal or interest on the
4 loan to an eligible small business. Any delay in
5 payment or default on the part of an eligible small
6 business does not in any manner affect the deposit
7 agreement between the eligible lending institution and
8 the state treasurer.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

**§12-6-3. State board of investments continued; body corpo-
rate; members; appointment of certain
members; qualifications and term of office.**

1 (a) The state board of investments is hereby con-
2 tinued as a body corporate of the state authorized to

3 exercise all of the powers and functions granted to it
4 pursuant to this article. There shall be seven members
5 of the State Board of Investments. The governor, or
6 his designee, state treasurer and state auditor shall be
7 the members of the board. There shall be four
8 members appointed by the governor: *Provided*, That
9 no more than three such appointed members may
10 belong to the same political party.

11 (b) The members appointed by the governor shall be
12 appointed from a list of twelve persons submitted
13 jointly by the governor, the state treasurer, and the
14 state auditor. No more than two names submitted by
15 the governor may be appointed as members to the
16 board. Of the members appointed by the governor,
17 two shall be members of the financial community, one
18 shall be a certified public accountant, and one shall be
19 an attorney with experience in finance and invest-
20 ment matters. Appointments shall be made by the
21 governor with the advice and consent of the Senate.

22 (c) Appointed members shall serve for a term of six
23 years and may be reappointed at the expiration of
24 their terms. In the event of a vacancy among
25 appointed members, an appointment shall be made to
26 fill the unexpired term.

27 (d) Appointed members of the board shall serve
28 without compensation, but shall be entitled to their
29 reasonable and necessary expenses actually incurred
30 in discharging their duties under this article.

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

1 (a) The governor shall be the chairman and the
2 custodian of all funds, securities and assets held by the
3 board and the board shall elect an executive secretary
4 to serve for a term of six years, such election to be
5 held at the board's first meeting after the effective
6 date of this article. The office of the state treasurer
7 shall act as a depository for all funds, that may, from
8 time to time, from whatever source, be made available
9 to the board for investment. The office of the state
10 treasurer shall act as staff agency for the board.

11 (b) The board shall meet quarterly and may include
12 in its bylaws procedures for the calling and holding of
13 additional meetings.

14 (c) Each member of the board shall give a separate
15 and additional fidelity bond from a surety company
16 qualified to do business within this state in a penalty
17 amount of two hundred fifty thousand dollars for the
18 faithful performance of his duties as a member of the
19 board. In addition, the board will purchase a blanket
20 bond for the faithful performance of its duties in the
21 amount of five million dollars excess of the two
22 hundred fifty thousand dollar individual bond
23 required of each member by the provisions of this
24 section. The board may require a fidelity bond from a
25 surety company qualified to do business in this state
26 for any person who has charge of, or access to, any
27 securities, funds or other moneys held by the board,
28 and the amount of such fidelity bond shall be fixed by
29 the board. The premiums payable on all fidelity bonds
30 shall be an expense of the board.

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

1 (a) The board shall make a charge against the
2 earnings of the various funds managed by the board
3 for all necessary expenses of the board. Such charge
4 shall be on a pro rata basis of actual earnings of the
5 various funds managed by the board. Such charge
6 shall be payable into a special revenue account hereby
7 created in the state treasury and named the "board
8 management account". The board is authorized to
9 expend the moneys deposited in this account for all
10 costs and expenses of the board, including fees of
11 professional consultants, advisors and auditors, broker-
12 age commissions, and all other necessary expenses of
13 the board incurred in the performance of its functions:
14 *Provided*, That during any fiscal year in which the
15 board anticipates spending any money from the special
16 account, it shall submit to the executive department
17 during the budget preparation period prior to the
18 Legislature convening, before that fiscal year for
19 inclusion in the executive budget document and
20 budget bill the request for appropriations: *Provided*,

21 *however*, That no funds may be expended from this
22 account unless appropriated by the Legislature.

23 (b) The board shall make an annual report to the
24 Legislature on the status of the board management
25 account, including the previous year's expenditures
26 and projected expenditures for the next year. Any
27 amounts remaining in the special account after yearly
28 appropriations by the Legislature shall be distributed
29 on a pro-rata basis, taking into account average daily
30 balances, to the participants of the various funds
31 managed by the board.

§12-6-9c. Authorization of additional investments.

1 Notwithstanding the restrictions which may other-
2 wise be provided by law with respect to the invest-
3 ment of funds, each board, commission, department,
4 official or agency charged with the administration of
5 state funds, all administrators, custodians or trustees
6 of pension funds, each political subdivision of this state
7 and each county board of education is authorized to
8 invest funds in the securities of or any other interest
9 in any investment company or investment trust
10 registered under the Investment Company Act of 1940,
11 15 U.S.C. §80a, the portfolio of which is limited to
12 direct obligations of or obligations guaranteed as to the
13 payment of both principal and interest by the United
14 States of America and to repurchase agreements fully
15 collateralized by United States Government obliga-
16 tions: *Provided*, That the investment company or
17 investment trust takes delivery of the collateral either
18 directly or through an authorized custodian.

§12-6-10. Restrictions on investments.

1 Moneys on deposit in the consolidated fund and the
2 consolidated pension fund shall be invested as permit-
3 ted by section nine of this article subject to the
4 restrictions and conditions contained in this section:

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

8 (2) At no time shall more than twenty percent of the

9 portfolio of either fund be invested in securities
10 described in said subdivision (g) which mature within
11 one year from the date of issuance thereof;

12 (3) At no time shall more than three percent of the
13 portfolio of either fund be invested in securities issued
14 by a single private corporation or association.

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

§12-6-15. Audits.

1 There shall be a continuous postaudit conducted by
2 the legislative auditor of the investment transactions
3 of the board, and a copy thereof for the preceding
4 calendar year shall be furnished to each member of
5 the Legislature on or before the first day of February
6 of each year. The board shall further cause to be
7 conducted a semiannual internal audit of all invest-
8 ment transactions of the board and an annual external
9 audit of all investment transactions of the board:
10 *Provided*, That the board shall on a monthly basis
11 provide to each political subdivision, state agency and
12 any other entity investing moneys in the consolidated
13 investment fund an itemized account reflecting the
14 portfolio value of each said political subdivision, state
15 agency and any other entities investments in the
16 consolidated investment fund. The board shall further
17 provide a monthly statement reflecting the interest
18 earned by each said political subdivision, state agency
19 or other investing entity and the method by which
20 said interest has been calculated.

CHAPTER 18. EDUCATION.

ARTICLE 22D. HIGHER EDUCATION STUDENT ASSISTANCE LOAN PROGRAM.

§18-22D-4. Limitations on investment in linked deposits.

1 The state treasurer shall invest in linked deposits as
2 identified by the board through an approved applica-
3 tion, provided that at the time of placement of the

4 linked deposit, exclusive of the linked deposit program
5 provided for in article one-a, chapter twelve of this
6 code, not more than two percent of the state's total
7 investment portfolio is so invested. The total amount
8 initially deposited in any one year shall not exceed two
9 million dollars, and the total amount so deposited at
10 any one time shall not exceed, in the aggregate,
11 twenty million dollars.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Harsh
.....
Chairman Senate Committee

L. L. Satter
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Samuel C. Keith
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Samuel T. Tucker
.....
President of the Senate

Bob Caldwell
.....
Speaker House of Delegates

The within *is* approved this *27th*
day of *April* 1989.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 7/24/89

Time 2:47