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
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(Originating in the Committee on Small Business.)

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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 office of community and industrial development.

3 (b) “Eligible small business” means any business which employs two hundred or less employees or has gross annual receipts of four million dollars or less.

6 (c) “Eligible lending institution” means a financial institution that is eligible to make commercial loans, is a public depository of state funds and agrees to
participate in the linked deposit program.

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

§12-1A-2. Legislative findings.

The Legislature finds that many small businesses throughout the state are experiencing economic stagnation or decline, that high interest rates have caused small businesses in this state to suffer disproportionately in profitability and competition and that such high interest rates have fostered a serious increase in unemployment. The linked deposit program provided for by this article is intended to provide a statewide availability of lower cost funds for lending purposes that will materially contribute to the economic revitalization of this state. Accordingly, it is declared to be the public policy of the state through the linked deposit program to create an availability of lower-cost funds to inject needed capital into the business community, sustain or improve business profitability, protect the jobs of citizens of this state and assist businesses located in any county declared to be a federal disaster area by the Federal Emergency Management Agency. The Legislature further finds that the involvement of both the state treasurer and the director in determining which businesses will receive the benefits of the linked deposit program is necessary in order for state funds to be used in the most effective manner possible in assisting small businesses throughout the state and thereby maximizing the impact of the program.
§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

(a) The state treasurer may accept or reject a linked deposit loan package or any portion thereof, based on the ratio of state funds to be deposited to jobs sustained or created: Provided, That notwithstanding any provision of this article to the contrary, the state treasurer may not accept any linked deposit loan package or any portion thereof unless the same has been reviewed and approved by the director in his sole discretion.

(b) The state treasurer shall reject any linked deposit loan package if the small business requesting such loan is not in good standing with the state tax department, department of employment security and the workers' compensation fund, and these agencies shall provide the state treasurer with such information as to the standing of each small business loan applicant, notwithstanding any provision of this code to the contrary.

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

1. The small business can demonstrate in good faith that it is experiencing a substantial loss in its current (fiscal or calendar) tax year period;
2. The small business recently experienced a natural disaster and suffered unreimbursable casualty losses;
3. The small business has filed to recover under the federal bankruptcy act and meets the criteria in (1) above; or
4. The small business can provide compelling information to the state treasurer that jobs will be saved and/or created as a result of loan refinancing.

(d) Upon acceptance of the linked deposit loan package or any portion thereof by the state treasurer and the director, the state treasurer may place certif-
icates of deposit with the eligible lending institution at
three percent below current market rates, as deter-
mined and calculated by the state treasurer. Upon
acceptance of the linked deposit loan package for flood
victims or any portion thereof, the state treasurer may
place certificates of deposit with the eligible lending
institution at five percent below current market rates,
as determined and calculated by the state treasurer.
When necessary, the treasurer may place certificates
of deposit prior to acceptance of a linked deposit loan
package.

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

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

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

(a) The state board of investments is hereby con-
tinued as a body corporate of the state authorized to
exercise all of the powers and functions granted to it pursuant to this article. There shall be seven members of the State Board of Investments. The governor, or his designee, state treasurer and state auditor shall be the members of the board. There shall be four members appointed by the governor: Provided, That no more than three such appointed members may belong to the same political party.

(b) The members appointed by the governor shall be appointed from a list of twelve persons submitted jointly by the governor, the state treasurer, and the state auditor. No more than two names submitted by the governor may be appointed as members to the board. Of the members appointed by the governor, two shall be members of the financial community, one shall be a certified public accountant, and one shall be an attorney with experience in finance and investment matters. Appointments shall be made by the governor with the advice and consent of the Senate.

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

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

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

(a) The governor shall be the chairman and the custodian of all funds, securities and assets held by the board and the board shall elect an executive secretary to serve for a term of six years, such election to be held at the board's first meeting after the effective date of this article. The office of the state treasurer shall act as a depository for all funds, that may, from time to time, from whatever source, be made available to the board for investment. The office of the state treasurer shall act as staff agency for the board.
(b) The board shall meet quarterly and may include in its bylaws procedures for the calling and holding of additional meetings.

c) 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.

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

(a) The board shall make a charge against the earnings of the various funds managed by the board for all necessary expenses of the board. Such charge shall be on a pro rata basis of actual earnings of the various funds managed by the board. Such charge shall be payable into a special revenue account hereby created in the state treasury and named the "board management account". The board is authorized to expend the moneys deposited in this account for 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: Provided, That during any fiscal year in which the board anticipates spending any money from the special account, it shall submit to the executive department during the budget preparation period prior to the Legislature convening, before that fiscal year for inclusion in the executive budget document and budget bill the request for appropriations: Provided,
however, That no funds may be expended from this account unless appropriated by the Legislature.

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

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

Notwithstanding the restrictions which may otherwise be provided by law with respect to the investment of funds, each board, commission, department, official or agency charged with the administration of state funds, all administrators, custodians or trustees of pension funds, each political subdivision of this state and each county board of education is authorized to invest funds in the securities of or any other interest in any investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. §80a, the portfolio of which is limited to direct obligations of or obligations guaranteed as to the payment of both principal and interest by the United States of America and to repurchase agreements fully collateralized by United States Government obligations: Provided, That the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

§12-6-10. Restrictions on investments.

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

12 (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.

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

§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. The board shall further cause to be
conducted a semiannual internal audit of all invest-
ment transactions of the board and an annual external
audit of all investment transactions of the board:
Provided, That the board shall on a monthly basis
provide to each political subdivision, state agency and
any other entity investing moneys in the consolidated
investment fund an itemized account reflecting the
portfolio value of each said political subdivision, state
agency and any other entities investments in the
consolidated investment fund. The board shall further
provide a monthly statement reflecting the interest
earned by each said political subdivision, state agency
or other investing entity and the method by which
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
identified by the board through an approved applica-
tion, provided that at the time of placement of the
linked deposit, exclusive of the linked deposit program provided for in article one-a, chapter twelve of this code, not more than two percent of the state's total investment portfolio is so invested. The total amount initially deposited in any one year shall not exceed two million dollars, and the total amount so deposited at any one time shall not exceed, in the aggregate, twenty million dollars.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor