

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



ENROLLED

Committee Substitute for
SENATE BILL NO. 109

(By Senators *Brackenhorn & Sears*)



PASSED March 5, 1990

In Effect from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 109

(By SENATORS BRACKENRICH AND SPEARS,
original sponsors)

[Passed March 5, 1990; in effect from passage.]

AN ACT to amend and reenact section ten, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend said article by adding thereto a new section, designated section thirteen; to amend and reenact section five, article five of said chapter; and to amend and reenact sections four, five, six, nine, nine-c and fifteen, article six of said chapter, all relating to responsibilities of state treasurer; removing certain reporting requirements; requiring monthly reconciliation of statements and records; authorizing payment for banking services; protection and handling of securities; requiring the board to appoint an executive secretary upon vacancy; term; organization; qualifications of executive secretary; allowing board of investments to appoint its own staff; powers of and removing board of investments; authorizing contracting with in or out-of-state banks; costs and expenses of board; special revenue account established; requiring the deposit of charges against earnings into the general revenue fund;

authorizing expenditure of certain funds for expenses for claims, for restructuring and expenses relating to third party liability for certain losses; permitting transfer of certain funds into special revenue account; permitting transfer of excess funds in liquidity investment pool; permissible investments; providing quarterly audits of transactions of board of investments; providing itemized accounts; and permitting state board of investments and removing authority of certain state agencies to make independent investments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPOSITORIES.

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

1 The treasurer shall keep in his or her office a record
2 showing the account of each depository. Under the
3 account of each depository entry shall be made show-
4 ing the amount and date of each deposit, the amount
5 and date of each withdrawal and the balance on
6 deposit. The treasurer shall cause the state's account
7 with each depository to be settled at the end of every
8 month of the year and the balance in the depository to
9 the credit of the treasury to be carried forward to the
10 account of the next month.

11 All the statements and records shall be reconciled
12 monthly and the reconciled reports showing the
13 average daily balances of each month shall be kept in
14 the treasurer's office. The reconciled records of the
15 average daily balance for each month shall be kept in

16 the treasurer's office for a period of five years.

§12-1-13. Payment of banking services.

1 The treasurer is authorized to pay for banking
2 services, and services ancillary thereto, by either a
3 compensating balance in a noninterest bearing account
4 maintained at the financial institution providing the
5 services or with a state warrant as described in section
6 one, article five of this chapter.

7 If payment is made by a state warrant, the board of
8 investments is authorized to establish within the
9 consolidated fund an investment pool which will
10 generate sufficient income to pay for all banking
11 service provided to the state. All income earned by the
12 investment pool shall be paid into a special account of
13 the state treasurer of West Virginia to be known as the
14 banking services account and shall be used solely for
15 the purpose of paying for all banking services, and
16 services ancillary thereto, provided to the state.

ARTICLE 5. PUBLIC SECURITIES.

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

1 The securities retained in the treasury shall be kept
2 in a vault. The treasurer shall use due diligence in
3 protecting the securities against loss from any cause.
4 The treasurer shall designate certain employees to
5 take special care of the securities. Only the treasurer
6 and the designated employees may have access to such
7 securities, and at least two of these persons shall be
8 present whenever the securities are handled in any
9 manner. The treasurer may, with the approval of the
10 board of investments, contract with one or more
11 banking institutions in or outside the state for the
12 custody, safekeeping and management of such securi-
13 ties, which contract shall prescribe the rules for the
14 handling and protection thereof.

ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

**§12-6-4. Officers; executive secretary; term; organization;
board staff; 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. The office of the state treasurer shall act as a
4 depository for all funds, that may, from time to time,
5 from whatever source, be made available to the board
6 for investment. The board shall elect an executive
7 secretary to serve for a term of six years, such election
8 to be held at the board's first meeting after the first
9 effective date of this article. Effective with any
10 vacancy in the position of executive secretary, the
11 board shall appoint an executive secretary to serve at
12 the will and pleasure of the board, which executive
13 secretary may not be a member of the board: *Pro-*
14 *vided*, That the executive secretary shall have at least
15 a bachelor's degree in either business administration
16 or accounting in an accredited program and/or have at
17 least five years' experience in investment manage-
18 ment or securities markets, said experience to have
19 occurred within the ten years next preceding the date
20 of appointment of the secretary: *Provided, however*,
21 That the executive secretary may be paid a salary as
22 determined by the board out of appropriations by the
23 legislature. The office of the state treasurer may act as
24 staff agency for the board: *Provided further*, That
25 effective the first day of July, one thousand nine
26 hundred ninety, the board may appoint a staff to act
27 for the board.

28 (b) The board shall meet quarterly and may include
29 in its bylaws procedures for the calling and holding of
30 additional meetings.

31 (c) Each member of the board shall give a separate
32 and additional fidelity bond from a surety company
33 qualified to do business within this state in a penalty
34 amount of two hundred fifty thousand dollars for the
35 faithful performance of his duties as a member of the
36 board. In addition, the board will purchase a blanket
37 bond for the faithful performance of its duties in the
38 amount of five million dollars excess of the two
39 hundred fifty thousand dollar individual bond
40 required of each member by the provisions of this
41 section. The board may require a fidelity bond from a
42 surety company qualified to do business in this state

43 for any person who has charge of, or access to, any
44 securities, funds or other moneys held by the board,
45 and the amount of such fidelity bond shall be fixed by
46 the board. The premiums payable on all fidelity bonds
47 shall be an expense of the board.

§12-6-5. Powers of the board.

1 The board may exercise all powers necessary or
2 appropriate to carry out and effectuate its corporate
3 purposes. The board may:

4 (1) Adopt and use a common seal and alter the same
5 at pleasure;

6 (2) Sue and be sued;

7 (3) Enter into contracts and execute and deliver
8 instruments;

9 (4) Acquire (by purchase, gift or otherwise), hold,
10 use and dispose of real and personal property, deeds,
11 mortgages and other instruments;

12 (5) Promulgate and enforce bylaws and rules for the
13 management and conduct of its affairs;

14 (6) Retain and employ legal, accounting, financial
15 and investment advisors and consultants;

16 (7) Acquire (by purchase, gift or otherwise), hold,
17 exchange, pledge, lend and sell or otherwise dispose of
18 securities and invest funds in interest earning deposits;

19 (8) Maintain accounts with banks, securities dealers
20 and financial institutions both within and outside this
21 state;

22 (9) Engage in financial transactions whereby secur-
23 ities are purchased by the board under an agreement
24 providing for the resale of such securities to the
25 original seller at a stated price;

26 (10) Engage in financial transactions whereby secur-
27 ities held by the board are sold under an agreement
28 providing for the repurchase of such securities by the
29 board at a stated price;

30 (11) Consolidate and manage moneys, securities and

31 other assets of the pension funds and other funds and
32 accounts of the state and the moneys of political
33 subdivisions which may be made available to it under
34 the provisions of this article;

35 (12) Enter into agreements with political subdivi-
36 sions of the state whereby moneys of such political
37 subdivisions are invested on their behalf by the board;

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

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

43 (15) Contract with one or more banking institutions
44 in or outside the state for the custody, safekeeping and
45 management of securities held by the board.

**§12-6-6. Costs and expenses; fees for services; special
revenue account; costs of determining third
parties' liability; recoupment of investment
losses.**

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. The charge
4 shall be on a pro rata basis of actual earnings of the
5 various funds managed by the board. The charge shall
6 be deposited to the credit of the general revenue fund.
7 All expenses relating to the responsibilities of the
8 office of the state treasurer as staff agency for the
9 board of investments shall be paid from the general
10 appropriation for that office.

11 (b) There is hereby created in the state treasury a
12 special revenue account to be known as the "loss
13 expenses account". The purpose of this account is to
14 pay costs, fees and expenses incurred, or to be
15 incurred, for the following: (1) Investigation and
16 pursuit of claims against third parties for the invest-
17 ment losses incurred during the period beginning the
18 first day of August, one thousand nine hundred
19 eighty-four and ending on the thirty-first day of
20 January, one thousand nine hundred eighty-nine; (2)

21 for consulting services regarding the restructuring of
22 office of the treasurer following said losses; and (3) for
23 implementation of the recommendations made as
24 result of the consultations regarding restructuring.
25 That special revenue account shall be funded by
26 depositing income derived by the board from securi-
27 ties lending and recoveries from third parties. The
28 board is authorized to deposit into the special revenue
29 account, and to expend in accordance with the provi-
30 sions of this section, those funds received from such
31 recoveries and not more than two million dollars
32 annually from income derived by the board from
33 securities lending. Funds in the loss expense account
34 in excess of reasonably estimated costs, fees and
35 expenses for any fiscal year and any funds remaining
36 in such special revenue account at the end of each
37 fiscal year after expenditures, for the purposes speci-
38 fied above, may be transferred by the board to its
39 "liquidity investment pool", to be used, in such
40 manner as the board determines, to eliminate the
41 present imbalance in the state accounts caused by the
42 investment losses described above in this subsection.
43 The authority for this special revenue account expires
44 on the thirtieth day of June, one thousand nine
45 hundred ninety-five.

§12-6-9. Permissible investments.

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

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

8 (b) Any evidence of indebtedness issued by any
9 United States government agency guaranteed as to the
10 payment of both principal and interest, directly or
11 indirectly, by the United States of America, including,
12 but not limited to, the following: Government National
13 Mortgage Association, Federal Land Banks, Federal
14 Home Loan Banks, Federal Intermediate Credit

15 Banks, Banks for Cooperatives, Tennessee Valley
16 Authority, United States Postal Service, Farmers
17 Home Administration, Export-Import Bank, Federal
18 Financing Bank, Federal Home Loan Mortgage Corpo-
19 ration, Student Loan Marketing Association and
20 Federal Farm Credit Banks;

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

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

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

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

38 (g) Any bond, note, debenture, commercial paper or
39 other evidence of indebtedness of any private corpora-
40 tion or association organized and operating in the
41 United States: *Provided*, That any such security is, at
42 the time of its acquisition, rated in one of the three
43 highest rating grades by an agency which is nationally
44 known in the field of rating corporate securities:
45 *Provided, however*, That if any commercial paper
46 and/or any such security will mature within one year
47 from the date of its issuance, it shall, at the time of its
48 acquisition, be rated in one of the two highest rating
49 grades by such an agency: *Provided further*, That any
50 such security not rated in one of the two highest
51 rating grades by any such agency and commercial
52 paper or other evidence of indebtedness of any private
53 corporation or association shall be purchased only
54 upon the written recommendation from an investment

55 adviser that has over three hundred million dollars in
56 other funds under its management;

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

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

§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, the state board of investments, all
4 administrators, custodians or trustees of pension funds,
5 each political subdivision of this state and each county
6 board of education is authorized to invest funds in the
7 securities of or any other interest in any investment
8 company or investment trust registered under the
9 Investment Company Act of 1940, 15 U.S.C. §80a, the
10 portfolio of which is limited to direct obligations of or
11 obligations guaranteed as to the payment of both
12 principal and interest by the United States of America
13 and to repurchase agreements fully collateralized by
14 United States Government obligations: *Provided*, That
15 the investment company or investment trust takes
16 delivery of the collateral either directly or through an
17 authorized custodian.

§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 quarterly internal audit, by the state
8 treasurer's staff using generally accepted government

9 auditing standards, of all investment transactions of
10 the board and an annual external audit, by a nation-
11 ally recognized accounting firm in conjunction with
12 the annual federal audit, of all investment transactions
13 of the board: *Provided*, That the board shall on a
14 monthly basis provide to each political subdivision,
15 state agency and any other entity investing moneys in
16 the consolidated fund or consolidated pension fund an
17 itemized account reflecting the portfolio value of the
18 investments of each said political subdivision, state
19 agency and any other entity in the consolidated fund
20 or consolidated pension fund. The board shall further
21 provide a monthly statement reflecting the interest
22 earned by each said political subdivision, state agency
23 or other investing entity and the method by which
24 said interest has been calculated.

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

Frederick L. Parker
.....
Chairman Senate Committee

Edward V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Harold E. Brown
.....
Clerk of the Senate

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

Neil Burdette
.....
President of the Senate

W. W. [Signature]
.....
Speaker House of Delegates

The within *is approved* this the *9th* day of *March* 1990.

Gaston Caperton
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 5/8/90

Time 5:00 PM

RECEIVED

1930 MAR -9 AM 11:07

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE