WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

ENROLLED
Committee Substitute for
SENATE BILL NO. 109

(By Senators Brackenridge & Spears)

PASSED March 5, 1990
In Effect from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 109
(BY SENATORS BRACKENRICH AND SPEARS,
original sponsors)

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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 showing the account of each depository. Under the account of each depository entry shall be made showing the amount and date of each deposit, the amount and date of each withdrawal and the balance on deposit. The treasurer shall cause the state's account with each depository to be settled at the end of every month of the year and the balance in the depository to the credit of the treasury to be carried forward to the account of the next month.

11 All the statements and records shall be reconciled monthly and the reconciled reports showing the average daily balances of each month shall be kept in the treasurer's office. The reconciled records of the average daily balance for each month shall be kept in
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 services, and services ancillary thereto, by either a compensating balance in a noninterest bearing account maintained at the financial institution providing the services or with a state warrant as described in section one, article five of this chapter.

7 If payment is made by a state warrant, the board of investments is authorized to establish within the consolidated fund an investment pool which will generate sufficient income to pay for all banking service provided to the state. All income earned by the investment pool shall be paid into a special account of the state treasurer of West Virginia to be known as the banking services account and shall be used solely for the purpose of paying for all banking services, and 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 in a vault. The treasurer shall use due diligence in protecting the securities against loss from any cause. The treasurer shall designate certain employees to take special care of the securities. Only the treasurer and the designated employees may have access to such securities, and at least two of these persons shall be present whenever the securities are handled in any manner. The treasurer may, with the approval of the board of investments, contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of such securities, which contract shall prescribe the rules for the 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
custodian of all funds, securities and assets held by the board. 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 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 first effective date of this article. Effective with any vacancy in the position of executive secretary, the board shall appoint an executive secretary to serve at the will and pleasure of the board, which executive secretary may not be a member of the board: Provided, That the executive secretary shall have at least a bachelor's degree in either business administration or accounting in an accredited program and/or have at least five years' experience in investment management or securities markets, said experience to have occurred within the ten years next preceding the date of appointment of the secretary: Provided, however, That the executive secretary may be paid a salary as determined by the board out of appropriations by the legislature. The office of the state treasurer may act as staff agency for the board: Provided further, That effective the first day of July, one thousand nine hundred ninety, the board may appoint a staff to act 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.

§12-6-5. Powers of the board.

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

1. Adopt and use a common seal and alter the same at pleasure;
2. Sue and be sued;
3. Enter into contracts and execute and deliver instruments;
4. Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;
5. Promulgate and enforce bylaws and rules for the management and conduct of its affairs;
6. Retain and employ legal, accounting, financial and investment advisors and consultants;
7. Acquire (by purchase, gift or otherwise), hold, exchange, pledge, lend and sell or otherwise dispose of securities and invest funds in interest earning deposits;
8. Maintain accounts with banks, securities dealers and financial institutions both within and outside this state;
9. Engage in financial transactions whereby securities are purchased by the board under an agreement providing for the resale of such securities to the original seller at a stated price;
10. Engage in financial transactions whereby securities held by the board are sold under an agreement providing for the repurchase of such securities by the board at a stated price;
11. Consolidate and manage moneys, securities and
other assets of the pension funds and other funds and
accounts of the state and the moneys of political
subdivisions which may be made available to it under
the provisions of this article;
(12) Enter into agreements with political subdivi-
sions of the state whereby moneys of such political
subdivisions are invested on their behalf by the board;
(13) Charge and collect administrative fees from
political subdivisions for its services;
(14) Exercise all powers generally granted to and
exercised by the holders of investment securities with
respect to management thereof; and
(15) Contract with one or more banking institutions
in or outside the state for the custody, safekeeping and
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.
(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. The charge
shall be on a pro rata basis of actual earnings of the
various funds managed by the board. The charge shall
be deposited to the credit of the general revenue fund.
All expenses relating to the responsibilities of the
office of the state treasurer as staff agency for the
board of investments shall be paid from the general
appropriation for that office.
(b) There is hereby created in the state treasury a
special revenue account to be known as the “loss
expenses account”. The purpose of this account is to
pay costs, fees and expenses incurred, or to be
incurred, for the following: (1) Investigation and
pursuit of claims against third parties for the invest-
ment losses incurred during the period beginning the
first day of August, one thousand nine hundred
eighty-four and ending on the thirty-first day of
January, one thousand nine hundred eighty-nine; (2)
for consulting services regarding the restructuring of
office of the treasurer following said losses; and (3) for
implementation of the recommendations made as
result of the consultations regarding restructuring.
That special revenue account shall be funded by
depositing income derived by the board from securi-
ties lending and recoveries from third parties. The
board is authorized to deposit into the special revenue
account, and to expend in accordance with the provi-
sions of this section, those funds received from such
recoveries and not more than two million dollars
annually from income derived by the board from
securities lending. Funds in the loss expense account
in excess of reasonably estimated costs, fees and
expenses for any fiscal year and any funds remaining
in such special revenue account at the end of each
fiscal year after expenditures, for the purposes speci-
fied above, may be transferred by the board to its
"liquidity investment pool", to be used, in such
manner as the board determines, to eliminate the
present imbalance in the state accounts caused by the
investment losses described above in this subsection.
The authority for this special revenue account expires
on the thirtieth day of June, one thousand nine
hundred ninety-five.


1 Notwithstanding the restrictions which may other-
wise 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
United States government agency guaranteed as to the
payment of both principal and interest, directly or
indirectly, by the United States of America, including,
but not limited to, the following: 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.

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

Notwithstanding the restrictions which may other-
wise be provided by law with respect to the invest-
ment of funds, the state board of investments, 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.

§12-6-15. Audits.

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 quarterly internal audit, by the state
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.

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 day of 1990.

Governor