WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

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ENROLLED

HOUSE BILL No. 4132

(By Delegate Mr. Speaker, Mr. Chambers, )
and Delegate Ashley [By Request of the Executive]

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Passed March 4, 1996

In Effect from Passage
AN ACT to repeal sections six, nine, nine-a, nine-b, nine-d, nine-f and eleven, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article ten-d, chapter five of said code; to amend and reenact section thirteen, article one, chapter twelve of said code; to amend and reenact sections two, three, five, eight, ten, twelve, thirteen and fifteen, article six of said chapter; to further amend said article by adding thereto a new section, designated section nine-g; and to amend chapter forty-four of said code by adding thereto a new article, designated article six-b, all relating to transferring from the board of investments to the newly created West Virginia trust fund for the purpose of investment the funds formerly known as the consolidated pension fund and hereafter known as the consolidated pension plan and being within the West Virginia public employees retirement system established in article ten, chapter five of this code, and within the state teachers retirement system established in article seven-a, chapter eighteen of this code, and within the West Virginia state police retirement system established in article two-a, chapter fifteen of this code, and within the death, disability and
retirement fund for the division of public safety established in article two, chapter fifteen of this code, and within the judges' retirement system established in article nine, chapter fifty-one of this code, and within the workers' compensation fund established in article three, chapter twenty-three of this code, and within the coal-workers' pneumoconiosis fund established in article four-b, chapter twenty-three of this code; consolidated public retirement board transferring public retirement plans' employee and employer contributions except defined contribution and voluntary deferred compensation funds; payment for services relating to the pursuit of claims against third party investment losses; board of investments; definitions; board composition; removal of authority to invest public retirement funds; management of consolidated fund; purchase of loans from the workers' compensation loan pool, from the public employees retirement system loan pool, and from the teachers retirement system loan pool; restrictions on investments; investment policy; standard of care; exceptions to the board of investments; audits; West Virginia trust fund; how article cited; legislative findings and purpose; public employee and employer contributions declared to be an irrevocable trust; disclaimer of state ownership; workers' compensation and pneumoconiosis funds declared to be trust funds; definitions; West Virginia trust fund created; body corporate; board created; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; operational, annual, and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications; management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees; corporate powers; annual audits; reports and information to constitutional and legislative officers, council of finance and administration, consolidated public retirement board, workers' compensation fund, and coal-workers' pneumoconiosis fund; statements and reports open for inspection; fees for service; transfers to the trust; trust indenture; standard of care; and limitations on investments.

Be it enacted by the Legislature of West Virginia:
That sections six, nine, nine-a, nine-b, nine-d, nine-f and eleven, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article ten-d, chapter five of said code be amended and reenacted; that section thirteen, article one, chapter twelve of said code be amended and reenacted; that sections two, three, five, eight, ten, twelve, thirteen and fifteen, article six of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section nine-g; and that chapter forty-four of said code be amended by adding thereto a new article, designated article six-b, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-1. Consolidated public retirement board created; transition; members; vacancies.

(a) There is hereby created a consolidated public retirement board to administer all public retirement plans in this state. It shall administer the public employees retirement system established in article ten of this chapter; the teachers retirement system established in article seven-a, chapter eighteen of this code; the teachers' defined contribution retirement system created by article seven-b, chapter eighteen of this code; the death, disability and retirement fund of the department of public safety created by article two, chapter fifteen of this code; and the judges' retirement system created under article nine, chapter fifty-one of this code.

(b) The consolidated public retirement board shall begin administration of the systems listed in subsection (a) of this section on the first day of July, one thousand nine hundred ninety-one. Provided, That the board shall begin administration of the teachers' defined contribution retirement system established in article seven-b, chapter
eighteen of this code on the first day of January, one
thousand nine hundred ninety-one. Prior to that date the
existing entities which administer the system shall
cooperate with the board in the orderly transition of all
duties, responsibilities, records and other materials in their
possession.

(c) The membership of the consolidated public
retirement board consists of:

(1) The governor or his or her designee;

(2) The state treasurer or his or her designee;

(3) The state auditor or his or her designee;

(4) The secretary of the department of administration
or his or her designee;

(5) Four residents of the state, who are not members,
retirants or beneficiaries of any of the public retirement
systems, to be appointed by the governor, with the advice
and consent of the Senate; and

(6) A member, annuitant or retirant of the public
employees retirement system who is or was a state
employee; a member, annuitant or retirant of the public
employees retirement system who is not or was not a state
employee; a member, annuitant or retirant of the teachers
retirement system; a member, annuitant or retirant of the
department of public safety death, disability and
retirement fund; and a member, annuitant or retirant of
the teachers' defined contribution retirement system, all to
be appointed by the governor, with the advice and consent
of the Senate.

(d) The appointed members of the board shall serve
five-year terms. A member appointed pursuant to
subdivision (5), subsection (c) of this section ceases to be a
member of the board if he or she ceases to be a member
of the represented system. If a vacancy occurs in the
appointed membership, the governor, within sixty days,
shall fill the vacancy by appointment for the unexpired
term. No more than five appointees shall be of the same
political party.
(e) The consolidated public retirement board shall have all the powers, duties, responsibilities and liabilities of the public employees retirement system established pursuant to article ten of this chapter; the teachers retirement system established pursuant to article seven-a, chapter eighteen of this code; the teachers' defined contribution system established pursuant to article seven-b, chapter eighteen of this code; the death, disability and retirement fund of the department of public safety created pursuant to article two, chapter fifteen of this code; and the judges' retirement system created pursuant to article nine, chapter fifty-one of this code and their appropriate governing boards. The consolidated public retirement board may propose for promulgation all rules necessary to effectuate its powers, duties and responsibilities pursuant to article three, chapter twenty-nine-a of this code: Provided, That the board may adopt any or all of the rules, previously promulgated, of a retirement system which it administers.

(f) Effective on the first day of July, one thousand nine hundred ninety-six, the consolidated public retirement board shall, within two business days of receipt, transfer all funds received by the consolidated public retirement board for the benefit of the retirement systems within the consolidated pension plan as defined in section three-c, article six-b, chapter forty-four of this code, including, but not limited to, all employer and employee contributions, to the West Virginia trust fund: Provided, That the employer and employee contributions of the teachers' defined contribution system, established in section three, article seven-b, chapter eighteen of this code, and voluntary deferred compensation funds invested by the West Virginia consolidated public retirement board pursuant to section five, article ten-b, of this chapter, shall not be transferred to the West Virginia trust fund.

(g) The consolidated public retirement board shall be a trustee for all public retirement plans, except with regard to the investment of funds: Provided, That the consolidated public retirement board shall be a trustee with regard to the investments of the teachers' defined contribution system, and voluntary deferred compensation
CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-13. Payment of banking services and litigation costs for prior investment losses.

(a) The board of investments 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.

(b) The board of investments is authorized to pay for the investigation and pursuit of claims against third parties for the investment losses incurred during the period beginning on the first day of August, one thousand nine hundred eighty-four, and ending on the thirty-first day of August, one thousand nine hundred eighty-nine. The payment may be in the form of a state warrant.

(c) 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 services provided to the state and to pay for the investigation and pursuit of the prior investment loss claims. All income earned by the investment pool shall be paid into a special account of the state board of investments 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 to the banking services provided to the state and for the investigation and pursuit of the prior investment loss claims.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-2. Definitions.

As used in this article, unless a different meaning clearly appears from the context:
(1) "Board" means the West Virginia state board of investments;

(2) "Consolidated fund" means the investment fund managed by the board and established pursuant to subsection (a), section eight of this article;

(3) "Local government funds" means the moneys of a political subdivision, including policemen's pension and relief funds, firemen's pension and relief funds and volunteer fire departments, transferred to the board for deposit;

(4) "Political subdivision" means and includes a county, municipality or any agency, authority, board, county board of education, commission or instrumentality of a county or municipality and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;

(5) "Securities" means all bonds, notes, debentures or other evidences of indebtedness;

(6) "State funds" means all moneys of the state which may be lawfully invested except the "school fund" established by section four, article XII of the state constitution; and

(7) "West Virginia trust fund" means the entity created by the provisions of article six-b, chapter forty-four of this code.

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

(a) The state board of investments is hereby continued 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 or her designee, state treasurer and state auditor shall be 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. Upon the expiration of terms on the thirtieth day of April, two thousand one, the governor shall appoint or reappoint one member to a three-year term; one to a four-year term; one to a five-year term; and one to a six-year term. Thereafter, all terms shall be six years.

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

§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, lead 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 the 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 the securities by the board at a stated price;

(11) Consolidate and manage moneys, securities and other assets of the 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 subdivisions of the state whereby moneys of the 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 of the investment securities;

(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; and

(16) Develop and implement a centralized receipts processing center.

§12-6-8. Investment funds established; management thereof.
(a) There is hereby established a special investment fund to be managed by the board and designated as the "consolidated fund".

(b) Each board, commission, department, official or agency charged with the administration of state funds is hereby authorized to make moneys available to the board for investment.

(c) Each political subdivision of this state through its treasurer or equivalent financial officer is hereby authorized to enter into agreements with the board for the investment of moneys of the political subdivision. Any political subdivision may enter into an agreement with any state agency from which it receives funds to allow the funds to be transferred to their investment account with the state board of investments.

(d) Moneys held in the various funds and accounts administered by the board shall be invested as permitted in section twelve of this article and subject to the restrictions contained in section ten of this article. The board shall maintain records of the deposits and withdrawals of each participant and the performance of the various funds and accounts. The board shall also establish such rules and regulations for the administration of the various funds and accounts established by this section as it considers necessary for the administration of the funds and accounts, including, but not limited to: (1) The specification of minimum amounts which may be deposited in any fund or account and minimum periods of time for which deposits will be retained; and (2) creation of reserves for losses. Provided, That in the event any moneys made available to the board may not lawfully be combined for investment or deposited in the consolidated funds established by this section, the board may create special accounts and may administer and invest those moneys in accordance with the restrictions specially applicable to those moneys.

§12-6-9g. Transfer of loans to consolidated fund.

The Legislature hereby finds and declares that with the establishment of the West Virginia trust fund as provided in article six-b, chapter forty-four of this code, and the transfer of the retirement systems' and workers'
compensation and pneumoconiosis funds' investments to
the West Virginia trust fund, those mortgage and
economic development loans which the board determines
cannot be actively traded and which are currently held by
the retirement systems and workers' compensation and
pneumoconiosis funds should remain as investments of
the state.

Effective on the thirtieth day of June, one thousand
nine hundred ninety-six, the board of investments is
hereby directed to purchase the workers' compensation
loan pool, public employees retirement system loan pool
and teachers retirement loan pool. The amount to be paid
shall be the loan's current amortized cost value plus any
accrued interest as of the purchase date. The purchased
loans shall then be recorded in the consolidated fund's
state loan pool.

§12-6-10. Restrictions on investments.

Notwithstanding any other provision in this code,
moneys on deposit in the consolidated fund shall be
invested as permitted by section twelve 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 consolidated fund be invested in any bond, note,
debenture, commercial paper or other evidence of
indebtedness of any private corporation or association.
Any such security, at the time of its acquisition, shall be
investment grade paper;

(2) At no time shall more than five percent of the
consolidated fund be invested in securities issued by a
single private corporation or association; and

(3) At no time shall less than fifteen percent of the
consolidated fund be invested in any direct obligation of
or obligation guaranteed as to the payment of both
principal and interest by the United States of America.

§12-6-12. Investment policy; standard of care.

The board shall establish policy guidelines for the
investment of moneys on deposit in each of the funds
managed by the board based on the needs of the
participants in the various funds. The board shall review
the investments at least every three months and may
require the purchase or sale of any investments. In order
to effectuate its investment policies, the board shall require
from each participant a schedule, on an annual or more
frequent basis, of anticipated deposits and withdrawals.

Any investments made under this article shall be made
with the care, skill, prudence and diligence under the
circumstances then prevailing that a prudent person acting
in a like capacity and familiar with such matters would use
in the conduct of an enterprise of a like character and with
like aims. Fiduciaries shall diversify plan investments so
as to minimize the risk of large losses, unless under the
circumstances it is clearly prudent not to do so.

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

All duties vested by law in any agency, commission,
official or other board of the state relating to the
investment of moneys, and the acquisition, sale, exchange
or disposal of securities or any other investment are
hereby transferred to the board: Provided, That the West
Virginia trust fund is the sole entity for the investment of
the consolidated pension plan funds in accordance with
article six-b, chapter forty-four of this code: Provided,
however, That neither this section nor any other section of
this article applies to the "board of the school fund" and
the "school fund" established by section 4, article XII of
the state constitution: Provided further, That funds under
the control of the municipal bond commission may, in the
discretion of the commission, be made available to the
board for investment to be invested by the commission as
provided in article three, chapter thirteen of this code.

§12-6-15. Audits.

The board shall cause to be conducted an annual
external audit, by a nationally recognized accounting firm
in conjunction with the annual federal audit, of all
investment transactions of the board: Provided, That the
board shall on a monthly basis provide to each state
agency and any other entity investing moneys in the consolidated fund an itemized statement of the agency's or the entity's account in the consolidated fund. The statement shall include the beginning balance, contributions, withdrawals, income distributed, change in value and ending balance.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 6B. WEST VIRGINIA TRUST FUND.

§44-6B-1. How article cited.

1 This article shall be known and may be cited as the "West Virginia Trust Fund Act".

§44-6B-2. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that all the public employees covered by the public employees retirement system, the teachers retirement system, the West Virginia state police retirement system, the death disability and retirement fund of the division of public safety and the judges' retirement system should benefit from a prudent and conscientious staff of financial professionals dedicated to the administration, investment and management of those employees' and employer's financial contributions and that an independent trust fund board and staff should be immune to changing political climates and should provide a stable and continuous source of professional financial investment and management.

14 (b) The Legislature hereby finds and declares further that experience has demonstrated that prudent investment provides diversification and beneficial return not only for public employees but for all citizens of the state and that in order to have access to this sound fiscal policy, public employee and employer contributions are declared to be an irrevocable trust, available for no use or purpose other than for the benefit of those public employees.

1 (c) The Legislature hereby finds and declares further that the state and other public employers that made or make contributions to the West Virginia irrevocable trust
fund have no proprietary interest in the fund or in the contributions made to the fund by them and that the state and other public employers disclaim any right to reclaim those contributions and waive any right of reclamation they may have in the fund: Provided, That the provisions of this subsection do not prohibit alterations or refunds of employer contributions in the event of erroneous payment.

(d) The Legislature hereby finds and declares further that the workers' compensation funds and coal-workers' pneumoconiosis fund are trust funds to be used exclusively for those workers, miners and their beneficiaries who have sacrificed their health in the performance of their jobs, and further finds that the assets available to pay awarded benefits should be prudently invested so that awards may be paid.

(e) The Legislature hereby finds and declares further that a not-for-profit, nonstock corporate structure with appropriate governance shall be the best means of assuring prudent financial management of this nonstate trust fund under rapidly changing market conditions and regulations.

(f) The Legislature hereby finds and declares further that in accomplishing this purpose, the West Virginia trust fund, created and established by section four of this article, is acting in all respects for the benefit of the state's public employees and ultimately the citizens of the state, and the West Virginia trust fund is empowered by this article to act as trustee for the irrevocable trust created by this article, and the interests of citizens of the state shall be best met by carrying out the provisions of this trust.

(g) The Legislature hereby finds and declares further that the standard of care and prudence applied to trustees and the conduct of the affairs of the irrevocable trust created by this article is intended to be that applied to the administration of private pension plans as described in federal statutory law and by the common law of the United States.

§44-6B-3. Definitions.
As used in this article unless a different meaning clearly appears from the context:

(a) "Beneficiaries" means those individuals entitled to benefits from the consolidated pension plan;

(b) "Board" means the governing body for the West Virginia trust fund;

(c) "Consolidated pension plan" means the public employees retirement system established in article ten, chapter five of this code, the teachers retirement system established in article seven-a, chapter eighteen of this code, the West Virginia state police retirement system established in article two-a, chapter fifteen of this code, the death, disability and retirement fund of the department of public safety established in article two, chapter fifteen of this code, the judges' retirement system established in article nine, chapter fifty-one of this code, the workers' compensation fund established in article three, chapter twenty-three and the coal-workers' pneumoconiosis plan established in article four-b, chapter twenty-three of this code;

(d) "Participant plan" means any component system, plan or fund of the consolidated pension plan within the definition set forth in subdivision (c) of this section;

(e) "Political subdivision" means and includes a county, municipality or any agency, authority, board, county board of education, commission or instrumentality of a county or municipality and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;

(f) "State" means the state of West Virginia;

(g) "Trust fund" means the West Virginia trust fund;

and

(h) "Trustee" means any member serving on the West Virginia trust fund board: Provided, That in section ten of this article wherein the terms of the trust indenture are set forth, "trustee" means the West Virginia trust fund.

§44-6B-4. West Virginia trust fund created; body corporate; board created; trustees; nomination and ap-

pointment of trustees, qualifications and terms of
appointment, advice and consent; annual and
other meetings; designation of representatives
and committees; board meetings with commit­
tees regarding investment policy statement re­
quired; open meetings, qualifications.

(a) There is hereby created the West Virginia trust
fund. The fund is created as a public body corporate and
established to provide prudent fiscal administration,
investment and management for the pension funds and
workers' compensation and pneumoconiosis funds
formerly invested by this state. The corporation shall be
organized as a nonprofit, nonstock corporation under the
general corporation laws of the state.

(b) The trust fund shall be governed by a board of
trustees, consisting of seven members:

(1) Four members shall be appointed by the governor
from a list of twelve persons having experience in pension
management, institutional management or financial
markets. The list of twelve shall consist of four groups of
three nominations, and no more than two of the three
nominations in each group may be from the same political
party. The president of the Senate, speaker of the House
of Delegates, state auditor and state treasurer each shall
submit one group of three nominations to the governor,
who shall appoint one member from each group of three,
which appointments shall be subject to the advice and
consent of the Senate.

(2) The remaining three members shall be appointed
from the general public by the governor, which
appointments shall be subject to the advice and consent of
the Senate. Of the members of the general public
appointed by the governor, one shall be an attorney
experienced in finance and investment matters, one shall
be a certified public accountant and one shall be
experienced in pension management, institutional
management or financial markets.

(3) The governor shall make appointments to the trust
fund board within sixty days of the effective date of this
Nominations for the appointments shall be submitted to the governor within thirty days of the effective date of this act.

(4) Any appointment made by the governor subject to the advice and consent of the Senate is effective immediately upon appointment by the governor with respect to voting, constituting a quorum, receiving compensation and expenses, and all other rights and privileges of the trustee position.

(c) Two members shall serve for a term of three years, two members for a term of four years and three members for a term of five years respectively as the governor shall designate. Thereafter, at the end of each term, the governor may reappoint or appoint a successor following the same procedure as specified in subsection (b) of this section, who shall serve for five-year terms. No more than four of the trustees may belong to the same political party.

(d) In the event of a vacancy among the trustees, an appointment shall be made by the governor to fill the unexpired term. The governor shall fill the vacancy, by appointment from a new list of nominees, following the same procedure established in subsection (b) of this section.

(e) The governor may remove any trustee in case of gross negligence or misfeasance and may declare that position vacant and may appoint a person for the vacancy as provided in subsection (d) of this section.

(f) Each trustee shall be entitled to receive, and, at the Trustee's option, the board shall pay to the Trustee, compensation in the amount of five thousand dollars per year and additional compensation in the amount of five hundred dollars per meeting attended by the trustee in excess of the four quarterly meetings required by this section. In addition, trustees shall receive reasonable and necessary expenses actually incurred in discharging trustee duties pursuant to this article.

(g) The board shall meet quarterly and may include in its bylaws procedures for the calling and holding of
additional meetings. For any quarterly or additional meeting in which the board shall review or modify its securities list or its investment objectives pursuant to subsection (f), section twelve of this article, the board shall give ten days' notice in writing to the designated representative of each participant plan selected pursuant to subdivision (1), subsection (j) of this section, and the meeting shall be open to the members and beneficiaries of the participant plans for that portion of the meeting in which the board undertakes the review or modification.

(h) The West Virginia trust fund board shall meet prior to the first day of July, one thousand nine hundred ninety-six, to organize and structure its operations.

(i) The board shall hold an annual meeting within forty-five days after the issuance of the year-end financial report. The annual meeting may also serve as a quarterly meeting. The annual meeting shall be open to the public, and the board shall receive oral and written comments from representatives, members and beneficiaries of the participant plans and from other citizens of the state. At the annual meeting, the board shall adopt a fee schedule and a budget reflecting fee structures for the year.

(j) Pursuant to subsection (k) of this section, the board shall meet with committees representing the participant plans to discuss the board's drafting, reviewing or modifying the written investment policy of the trust with respect to that committee's participant plan pursuant to section twelve of this article. Representatives and committees shall be designated as follows:

(1) On or before the first day of May, one thousand nine hundred ninety-six, the West Virginia consolidated public retirement board shall promulgate procedural rules by which each pension system named in paragraphs one through five, subdivision (c), section ten of this article, shall designate an individual representative of each said pension system, and the West Virginia workers' compensation commission shall promulgate procedural rules by which the pneumoconiosis fund and the workers' compensation fund named in paragraphs six and seven, subdivision (c), section ten of this article, shall designate
an individual representative of each said fund.

(2) On or before the first day of June, one thousand nine hundred ninety-six, and on or before the same date each year thereafter, the consolidated public retirement board shall submit in writing to the West Virginia trust fund board the names of the five designated representatives, and the workers' compensation commission shall so submit the names of the two representatives.

(3) Each designated representative shall provide to the West Virginia trust fund board his or her current address, updated each year on or before the first day of July, to which address the board shall provide notice of meetings of the board pursuant to subsection (g) of this section.

(4) Each designated representative shall submit in writing to the board on or before the first day of July, one thousand nine hundred ninety-six, and on or before the same date each year thereafter, the names of no more than three persons comprising a committee representing the beneficiaries of that representative's participant plan.

(k) At its initial meeting, and thereafter at its annual meeting, the board shall meet with each of the seven committees, formed pursuant to subsection (j) of this section, for the purpose of receiving input from the committees regarding the board's drafting, reviewing or modifying its written investment policy statement for the trust. In developing the trust investment policy statement, the trustees shall receive each committee's stated objectives and policies regarding the risk tolerances and return expectations of each participant plan, with attention to the factors enumerated in subsection (g), section twelve of this article, in order to provide for the continuing financial security of the trust and its participant plans. The board may meet with the said committees or any of them at its quarterly and additional meetings for the same purpose.

(l) All meetings of the board shall be open to the representatives of the participant plans as appointed pursuant to subsection (j) of this section. The representatives shall be subject to any rules, bylaws, guidelines, requirements, and standards promulgated by
the board. The representatives shall observe standards of decorum established by the board. The representatives shall be subject to the same code of conduct applicable to the trustees and shall be subject to all trust fund rules and bylaws. The representatives shall also be subject to any requirements of confidentiality applicable to the trustees. Each representative shall be liable for any act which he or she undertakes which violates any rule, bylaw, or statute governing ethical standards, confidentiality, or other standard of conduct imposed upon the trustees or the representatives. Any meeting of the board may be closed, upon adoption of a motion by any trustee, when necessary to preserve the attorney-client privilege, to protect the privacy interests of individuals, to review personnel matters, or to maintain confidentiality when confidentiality is in the best interest of the beneficiaries of the trust.

§44-6B-5. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.

(a) The management and control of the fund shall be vested solely in the board of trustees in accordance with the provisions of this article.

(b) The board of trustees shall elect a chairman to serve for a term of two years. The election shall be held at the board's first meeting after the effective date of this article. Effective with any vacancy in the chairmanship, the board shall elect a chairman to a new two-year term. Annually, beginning with the first meeting, the trustees shall elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the board.

(c) The trustees shall appoint a chief executive officer of the trust fund and shall fix his or her duties and compensation. The chief executive officer shall have five years' experience in investment management with public or private funds within the ten years next preceding the date of appointment. The chief executive officer additionally shall have academic degrees, professional designations and other investment management or investment oversight or institutional investment experience in such combination as the trustees consider necessary to
carry out the responsibilities of the chief executive officer position as defined by the trustees.

(d) The trustees shall retain an internal auditor to report directly to the trustees and shall fix his or her compensation. The internal auditor shall be a certified public accountant with at least three years' experience as an auditor. The internal auditor shall develop an internal audit plan, with board approval, for the testing of procedures and the security of transactions.

(e) Each trustee shall give a separate fiduciary or surety bond from a surety company qualified to do business within this state in a penalty amount of one million dollars for the faithful performance of his or her duties as a trustee of the fund. The board shall purchase a blanket bond for the faithful performance of its duties, in the amount of fifty million dollars or in an amount equivalent to one percent of the assets under management, whichever is greater. The amount of the blanket bond shall be in addition to the one million dollar individual bond required of each trustee by the provisions of this section. The board may require a fiduciary or surety 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 the fiduciary or surety bond shall be fixed by the board. The premiums payable on all fiduciary or surety bonds shall be an expense of the board.

(f) The trustees and employees of the West Virginia trust fund are not liable personally, either jointly or severally, for any debt or obligation created by the West Virginia trust fund: Provided, That the trustees and employees of the West Virginia trust fund are liable for acts of misfeasance or gross negligence.

§44-6B-6. Corporate powers.

The fund may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes. The fund may:
(1) Adopt and use a common seal and alter the same at pleasure;

(2) Sue;

(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, managers and consultants;

(7) Acquire (by purchase, gift or otherwise), hold, exchange, pledge, lend and sell or otherwise dispose of securities and invest funds;

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

(9) Consolidate and manage moneys, securities and other assets of the pension plans 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;

(10) Enter into agreements with political subdivisions of the state whereby moneys of the political subdivisions are invested on their behalf by the fund;

(11) Charge and collect administrative investment and management fees for its services;

(12) Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management of the securities;

(13) Make, and from time to time, amend and repeal bylaws, regulations and procedures not inconsistent with the provisions of this article;

(14) Hire its own employees, consultants, managers
and advisors as it considers necessary, and fix their compensation and prescribe their duties;

(15) Develop, implement and maintain its own banking accounts, investments and employee benefit plans;

(16) Borrow or open lines of credit; and

(17) Do all things necessary to implement and operate the trust fund and carry out the intent of this article.

§44-6B-7. Annual audits; reports and information to constitutional and legislative officers, council of finance and administration, consolidated public retirement board, workers' compensation fund, and coal-workers' pneumoconiosis fund; statements and reports open for inspection.

(a) The trust fund shall cause an annual financial and compliance audit to be made by a certified public accounting firm having a minimum staff of ten certified public accountants and being a member of the American institute of certified public accountants, and, if doing business in West Virginia, being a member of the West Virginia society of certified public accountants. The financial and compliance audit shall be made of the trust fund's books, accounts and records, with respect to its receipts, disbursements, investments, contracts and all other matters relating to its financial operations. Copies of the audit report shall be furnished to the governor, state treasurer, state auditor, president of the Senate, speaker of the House of Delegates, council of finance and administration and consolidated public retirement board.

(b) The trust fund shall produce monthly financial statements and deliver them to each member of the board and the executive secretary of the consolidated public retirement board as established in sections one and two, article ten-d, chapter five of this code and to the commissioner of the bureau of employment programs as administrator of the workers' compensation fund and coal-workers' pneumoconiosis fund, as established in section one, article one, and section one, article three, and
section seven, article four-b, chapter twenty-three of this code.

(c) The trust fund shall deliver in each quarter to the council of finance and administration and the consolidated public retirement board a report detailing the investment performance of the retirement plans.

(d) The trust fund shall cause an annual performance audit to be made by a nationally recognized fiduciary service. The trust fund shall furnish copies of the audit report to the governor, state treasurer, state auditor, president of the Senate, speaker of the House of Delegates, council of finance and administration and consolidated public retirement board.

(e) The trust fund shall provide any other information requested in writing by the council of finance and administration.

(f) All statements and reports required in this section shall be available for inspection by the members and beneficiaries and designated representatives of the participant plans.

§44-6B-8. Fees for service.

The trust fund shall charge fees, as adopted at the annual meeting, for the reasonable and necessary expenses incurred by the trust fund in rendering services to the participant plans. The fees shall be subtracted from the total return of the trust fund, and the net return shall be credited to the participant plans. All fees which are dedicated or identified or readily identifiable to an individual participant plan shall be charged against that plan, and all other fees shall be charged as a percentage of assets under management. At its annual meeting, the board shall adopt a fee schedule and a budget reflecting fee structures.

§44-6B-9. Transfers to the trust.

(a) The West Virginia state board of investments shall transfer to the West Virginia trust fund the computers, and other necessary items of equipment associated with each
position at the board of investments whose responsibilities
and obligations shall as of the effective date of this section
be performed by the West Virginia trust fund.

(b) Any state employee who terminates his or her state
employment and becomes employed by the West Virginia
trust fund may at his or her option defer retirement within
the public employees retirement system pursuant to
section twenty-one, article ten, chapter five of this code, or,
may elect to transfer to the West Virginia trust fund his or
her employee contributions, with accrued interest, and, if
vested, his or her employer contributions, with accrued
interest. The West Virginia consolidated public retirement
board shall transfer to the West Virginia trust fund the said
contributions and accrued interest of terminating
employees who so elect. The trust fund shall establish a
private, nonstate retirement plan for the West Virginia trust
fund employees, and the said transferred employee and
employer contributions and interest shall be deposited to
the private retirement plan.

(c) Upon the effective date of this article, no more
than seven hundred thousand dollars of those funds
remaining in the special revenue accounts known as the
"loss legal expense fund" and the "security lending fund"
and further known as WVFIMS accounts 8563 and 8565
shall be transferred to the West Virginia trust fund board
for its use in the beginning operations of the trust fund.

§44-6B-10. Trust indenture.

The governor, on behalf of the state, shall enter into a
trust indenture with the West Virginia trust fund as trustee,
effective on the first day of July, one thousand nine
hundred ninety-six. The trust indenture shall contain the
following provisions:

(a) Simultaneously with the execution of the trust
indenture, the state shall have delivered to the trustee all
the assets of the consolidated pension fund with any other
property that may be transferred hereafter to the trustee
by the state, or by any other person or entity, which shall
be used as provided in the trust indenture and which
constitutes the trust estate. The trustee shall acknowledge
receipt of the assets and agree to hold the assets, and any
other property that later may be added to the trust, and to
perform the duties of trustee, according to the terms and
conditions set forth in this trust indenture and in the
provisions of the "West Virginia Trust Fund Act."

(b) The Legislature hereby reserves the following
rights and powers:

(1) The right by supplemental agreement to amend,
modify or alter the terms of this trust without consent of
the trustee, or any beneficiary; and

(2) The right to request and receive additional
information from the trustee at any time.

c) The state directs the trustee to establish a trust for
the participant plans specified by the state with the
earnings and losses accounted for and charged
individually to each participant plan, including, but not
limited to, the following:

(1) The public employees retirement system;

(2) The teachers retirement system;

(3) The West Virginia state police retirement system;

(4) The death, disability and retirement fund of the
department of public safety;

(5) The judges' retirement system;

(6) The pneumoconiosis fund; and

(7) The workers' compensation fund.

d) In the administration of the trust created by the
trust indenture, the trustee has the following powers:

(1) To purchase, retain, hold, transfer and exchange,
and to sell, at public or private sale, the whole or any part
of the trust estate upon such terms and conditions as it
considers advisable;

(2) To invest and reinvest the trust estate or any part
thereof, in any kind of property, real or personal,
including, but not limited to, mortgage or mortgage
participations, common stocks, preferred stocks, common
trust funds, bonds, notes or other securities, not-
withstanding the provisions of articles five and six of the
code of West Virginia, one thousand, nine hundred and
thirty-one, as amended;

(3) To carry the securities and other property held
under the trust indenture either in the name of the trustee
or in the name of its nominee;

(4) To vote, in person or by proxy, all securities held
under the trust indenture, to join in or to dissent from and
oppose the reorganization, recapitalization, consolidation,
merger, liquidation or sale of corporations or property; to
exchange securities for other securities issued in
connection with or resulting from any transaction; to pay
any assessment or expense which the trustee considers
advisable for the protection of its interest as holder of any
such securities; to deposit securities in any voting trust or
with any protective or like committee, or with a trustee
depository; to exercise any option appurtenant to any
securities for the conversion of any securities into other
securities; and to exercise or sell any rights issued upon or
with respect to the securities of any corporation, all upon
terms the trustee considers advisable;

(5) To prosecute, defend, compromise, arbitrate or
otherwise adjust or settle claims in favor of or against the
trustee or other trust estate;

(6) To employ and pay from the trust estate legal and
investment counsel, brokers and such other assistants and
agents as the trustee considers advisable; and

(7) To develop, implement and modify an asset
allocation plan for each participant plan. The asset
allocation plans shall be implemented within the
management and investment of the trust fund.

(e) All trust income shall be free from anticipation,
alienation, assignment or pledge by, and free from
attachment, execution, appropriation or control by or on
behalf of, any and all creditors of any beneficiary by any
proceeding at law, in equity, in bankruptcy or insolvency.
The trustee may receive any other property, real or personal, tangible or intangible, of any kind whatsoever, that may be granted, conveyed, assigned, transferred, devised, bequeathed or made payable to it by the state, or by any other person or entity, for the purposes of the trust created by the trust indenture, and all such properties shall be held, managed, invested and administered by the trustee as provided in the trust indenture and in the "West Virginia Trust Fund Act."

(g) The trustee shall promptly cause to be paid to the state the amounts certified by the governor as necessary for the monthly payment of benefits to the beneficiaries of the trust.

(h) The trustees shall render an annual accounting to the state not more than one hundred twenty days following the close of the fiscal year of the trust.

(i) The trust created by this indenture is not invalid by reason of any existing law or rule against perpetuities or against accumulations or against restraints upon the power of alienation, but the trust may continue for such time as necessary to accomplish the purposes for which it is established.

(j) If any provision of the trust indenture is void, invalid or unenforceable, the remaining provisions are nevertheless valid and shall be carried into effect.


Any investments made under this article shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(a) Trustees shall discharge their duties for the exclusive purpose of providing benefits to participants and their beneficiaries;

(b) Trustees shall diversify fund investments so as to minimize the risk of large losses unless, under the
circumstances, it is clearly prudent not to do so;

(c) Trustees shall defray reasonable expenses of investing and operating the fund; and

(d) Trustees shall discharge their duties in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this article.

§44-6B-12. Limitations on investments.

The trust fund shall limit its asset allocation and types of securities to the following:

(a) Through the first day of July, one thousand nine hundred ninety-seven, the trust fund shall hold in equity investments no more than twenty percent of its total portfolio and no more than twenty percent of the assets of any individual participant plan; after the first day of July, one thousand nine hundred and ninety-seven, and through the first day of July, two thousand, the trust fund shall hold in equity investments no more than forty percent of its total portfolio and no more than forty percent of the assets of any individual participant plan; after the first day of July, two thousand, the trust fund shall hold in equity investments no more than sixty percent of its total portfolio and no more than sixty percent of the assets of any individual participant plan.

(b) The trust fund shall hold in international securities no more than twenty percent of its portfolio and no more than twenty percent of the assets of any individual participant plan.

(c) The trust fund may not at the time of purchase hold more than five percent of its equity portfolio in the equity securities of any single company or association. Provided, That if a company or association has a market weighting of greater than five percent in the standard & poor's 500 index of companies, the trust fund may hold securities of that equity equal to its market weighting.

(d) The trust fund may not hold more than twenty percent of its portfolio in commercial paper. Any
commercial paper at the time of its acquisition shall be in one of the two highest rating categories by an agency nationally known for rating commercial paper.

(e) At no time shall the trust fund hold more than seventy-five percent of its portfolio in corporate debt. Any corporate debt security at the time of its acquisition shall be rated in one of the four highest rating categories by a nationally recognized rating agency.

(f) No security may be purchased by the trust fund unless the type of security is on a list approved by the trust fund board. The board may modify the securities list at any time, and must give notice of that action pursuant to subsection (g), section four of this article, and must review the said list at its annual meeting.

(g) The board, at the annual meeting provided for in subsection (i), section four of this article, shall review, establish and modify, if necessary, the investment objectives of the individual participant plans, as incorporated in the investment policy statement of the trust, so as to provide for the financial security of the trust fund, giving consideration to the following:

(1) Preservation of capital;
(2) Diversification;
(3) Risk tolerance;
(4) Rate of return;
(5) Stability;
(6) Turnover;
(7) Liquidity; and
(8) Reasonable cost of fees.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schoomover
Chairman Senate Committee

Chairman House Committee

Originating in the House.

 Takes effect from passage

Clerk of the Senate

Gregory A. Rings
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Robert C. Atchison
Speaker of the House of Delegates

The within is approved this the 13th day of March, 1996.

Governor

Walter J. Jones