WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999

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ENROLLED

House Bill No. 2292
(By Delegates Jenkins, Hubbard, Campbell, J. Smith, Williams, Hall and Harrison)

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Passed February 16, 1999

In Effect from Passage.
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H. B. 2292

(BY DELEGATES JENKINS, HUBBARD, CAMPBELL, J. SMITH, WILLIAMS, HALL AND HARRISON)

[Passed February 16, 1999; in effect from passage.]

AN ACT to amend and reenact sections three and nine-a, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia investment management board and adding references to the deputy sheriff retirement system.

Be it enacted by the Legislature of West Virginia:

That sections three and nine-a, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-3. West Virginia investment management board created; body corporate; board created; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; annual and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.

(a) There is hereby created the West Virginia investment management board. The board is created as a public body corporate and established to provide prudent fiscal administra-
tion, investment and management for the pension funds, workers’ compensation and coal-workers’ pneumoconiosis funds and other state funds.

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

(1) Nominations made to the West Virginia trust fund board and the West Virginia board of investments shall remain in effect and are hereby specifically reauthorized and those members shall be members of the investment management board and shall serve out the remainder of their respective terms subject to the advice and consent of the Senate: Provided, That prior appointments which have been confirmed by the Senate are hereby specifically reauthorized without further action of the Senate.

(2) Any appointment 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. All appointees must have experience in pension management, institutional management or financial markets, and one trustee must be an attorney experienced in finance and investment matters, and one trustee must be a certified public accountant.

(3) The governor, the state auditor and the state treasurer or their designees shall serve as members of the board. They shall serve by virtue of their office and are not entitled to compensation under the provisions of this article. The governor, the auditor and the treasurer or their designees shall be subject to all duties, responsibilities and requirements of the provisions of this article, including, but not limited to, the provisions of subsections (e) and (f), section four of this article.

(c) At the end of each trustee’s term, the governor may reappoint or appoint a successor who shall serve for six-year terms. No more than six of the ten appointed 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.
(e) The governor may remove any trustee, other than trustees who serve by virtue of their elective office, 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, other than those enumerated in subsection (b), subdivision (3) of this section, 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, all 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 (i) 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 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.

(i) Pursuant to subsection (j) of this section, the board shall meet with committees representing the participant plans to
Representatives and committees shall be designated as follows:

(1) The West Virginia consolidated public retirement board shall promulgate procedural rules by which each pension system named in paragraphs (1) through (6), inclusive, subsection (c), section nine-a 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 shall designate an individual representative of each said fund.

(2) On or before the first day of June of each year, the consolidated public retirement board shall submit in writing to the board the names of the six designated representatives, and the workers’ compensation commission shall so submit the names of the two representatives.

(3) Each designated representative shall provide to the 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 of each year, the names of no more than three persons comprising a committee representing the beneficiaries of that representative’s participant plan.

(j) At its annual meeting, the board shall meet with each of the seven committees, formed pursuant to subdivision (1), subsection (i) 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 investment of the consolidated pension plan funds. In developing the 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 committees or any of them at its quarterly and additional meetings for the same purpose.

(k) All meetings of the board shall be open to the representatives of the participant plans as appointed pursuant to subdivision (f), subsection (i) 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 board 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.

§12-6-9a. Trust indenture.

On the effective date of this section, all assets of the irrevocable trust entered into by the governor on the first day of July, one thousand nine hundred ninety-six, with the West Virginia trust fund, inc., acting as the trustee shall constitute the corpus of an irrevocable trust with the board as its trustee: Provided, That the trust shall continue to be subject to the following provisions:

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

(b) The trustee shall establish a trust for the participant plans specified by this article 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 deputy sheriff retirement system;

(7) The pneumoconiosis fund; and

(8) The workers’ compensation fund.

(c) 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, notwithstanding the provisions of articles five and six, chapter forty-four of this code: Provided, That notwithstanding the provisions of this article to the contrary, the board shall not become a stockholder or owner of any company or association for any purpose whatsoever unless and until the provisions of section six, article X of the constitution of West Virginia are amended to permit those investments;
(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.

(d) 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.

(e) 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 Investment Management
Act".

(f) 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.

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

(h) The trust will not be 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.

(i) If any provision of the trust indenture is void, invalid or
unenforceable, the remaining provisions are nevertheless valid
and shall be carried into effect.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 4th day of November, 1999.

Governor