

SB 211

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999

## ENROLLED

SENATE BILL NO. 211

(By Senator HELMICK, ET AL )

PASSED MARCH 11, 1999  
In Effect NINETY DAYS FROM Passage

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TELETYPE  
SEC. 11, 1999

**ENROLLED**

## **Senate Bill No. 211**

(BY SENATORS HELMICK, ROSS, MINARD, FANNING, SHARPE,  
SCHOONOVER AND SPROUSE)

[Passed March 11, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact section five, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article six, chapter seven of said code; and to amend and reenact section four, article one, chapter twelve of said code, all relating to the inclusion of letters of credit issued by federal land banks, or federal loan banks, or such letters of credit approved by the state treasurer as permissible collateral security for bonds to be given by depositories of public funds.

*Be it enacted by the Legislature of West Virginia:*

That section five, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article six, chapter seven of said code be amended and reenacted; and that section

four, article one, chapter twelve of said code be amended and reenacted, 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 6. STATE BUILDING COMMISSION.**

**§5-6-5. Deposit and disbursement of funds of commission;  
security for deposits; audits.**

1 Except as provided in sections five-a and eleven-a of this  
2 article, all moneys of the commission from whatever  
3 source derived shall be paid to the treasurer of the state of  
4 West Virginia who shall not commingle the moneys, but  
5 shall deposit them to a special revenue fund to be known  
6 as the "state building commission fund". The moneys in  
7 the account shall be impressed with and subject to the lien  
8 or liens on the moneys in favor of the bondholders pro-  
9 vided in the proceedings for issuance of bonds pursuant to  
10 this article. The moneys in the account shall be paid out  
11 on check of the treasurer on requisition of the chairman of  
12 the commission, or of such other person as the commission  
13 may authorize to make the requisition. All deposits of the  
14 moneys shall, if required by the treasurer or the commis-  
15 sion, be secured by obligations of the United States, of the  
16 state of West Virginia, or of the commission, of a market  
17 value equal at all times to the amount of the deposit, or  
18 letters of credit of the federal land banks, or federal home  
19 loan banks, or other letters of credit approved by the  
20 treasurer, and all banking institutions are authorized to  
21 give such security for the deposits. The legislative auditor  
22 and his or her legally authorized representatives are  
23 hereby authorized and empowered from time to time to  
24 examine the accounts and books of the commission,  
25 including its receipts, disbursements, contracts, leases,  
26 sinking funds, investments and any other matters relating  
27 to its financial standing.

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 6. COUNTY DEPOSITORIES.**

**§7-6-2. Bond of depositories.**

1 No such designation shall be binding on any county, nor  
2 shall any public money be deposited thereunder, until the  
3 banking institution designated shall execute bond with  
4 good and sufficient sureties, to be accepted and approved  
5 by the county commission, payable to the state of West  
6 Virginia, in a sum as the county commission shall direct,  
7 and which shall not be less than the maximum sum that  
8 shall be deposited in the depository at any one time. The  
9 bond shall be executed by at least four resident freeholders  
10 as sureties owning in the aggregate unencumbered real  
11 estate having an assessed valuation thereon equal to the  
12 penalty of the bond, or by a fidelity or indemnity company  
13 authorized to do business within the state, satisfactory to,  
14 and acceptable by the county commission, and having not  
15 less than six hundred thousand dollars capital; and the  
16 bond shall be conditioned for the receipt, safekeeping and  
17 payment over of all money which may be deposited in or  
18 come under the custody of the banking institution desig-  
19 nated a county depository under the provisions hereof,  
20 together with the interest thereon at the rate specified by  
21 this article; and the bond shall be further conditioned for  
22 the faithful performance, by the banking institution so  
23 designated, of all the duties imposed by this article upon  
24 a depository of public moneys: *Provided*, That the clerk of  
25 the county commission shall keep a record of each surety  
26 on all personal bonds given as hereinbefore provided for  
27 and the clerk shall notify the county commission of every  
28 recorded conveyance of real estate made by any surety on  
29 said personal bond.

30 An action shall lie on the bond at the instance of the  
31 county commission, or the sheriff, for the recovery of any  
32 money deposited in the depository, upon failure or default  
33 of the depository to fully and faithfully account for and  
34 pay over any and all public moneys deposited by the  
35 sheriff and of all interests earned and accrued thereon as  
36 required by this article. A bond shall not be accepted by  
37 the county commission until it shall have been submitted  
38 to the prosecuting attorney, and certified by him or her to  
39 be in due and legal form, and conformable to the provi-  
40 sions of this article, which certificate shall be indorsed

41 thereon: *Provided*, That the county commission may, in  
42 lieu of the bond provided for hereinbefore, accept as  
43 security for money deposited as aforesaid, interest-  
44 bearing securities of the United States, or of a state,  
45 county, district or municipal corporation, or of the federal  
46 land banks, or indorsed county and district warrants of the  
47 county in which the depository is located, or letters of  
48 credit of the federal land banks, or federal home loan  
49 banks, or such other letters of credit approved by the  
50 treasurer; the face value of which securities shall not be  
51 less than the sum hereinbefore specified as the amount to  
52 be named in the bond in lieu of which the securities are  
53 accepted; or the county commission may accept the  
54 securities as partial security to the extent of their face  
55 value for the money so deposited, and require bond for the  
56 remainder of the full amount hereinbefore specified, to be  
57 named in the bond, and in the bond so required, the  
58 acceptance of securities as partial security, and the extent  
59 thereof, shall be set forth. The hypothecation of the  
60 securities shall be by proper legal transfer as collateral  
61 security to protect and indemnify by trust any and all loss  
62 in case of any default on the part of the banking institu-  
63 tion in its capacity as depository as aforesaid. All the  
64 securities shall be delivered to or deposited for the account  
65 of the county commission, and withdrawal or substitution  
66 thereof may be permitted from time to time upon approval  
67 by the county commission by order or record, but the  
68 collateral security shall be released only by order of record  
69 of the county commission when satisfied that full and  
70 faithful accounting and payment of all the moneys has  
71 been made under the provisions hereof. In the event actual  
72 possession of the hypothecated securities are delivered to  
73 the county commission, it shall make ample provision for  
74 the safekeeping thereof and the interest thereon when paid  
75 shall be turned over to the banking institution, so long as  
76 it is not in default as aforesaid. The county commission  
77 may permit the deposit under proper receipt of the securi-  
78 ties with one or more banking institutions within or  
79 without the state of West Virginia and may contract with  
80 any institution for safekeeping and exchange of any  
81 hypothecated securities, and may prescribe the rules for  
82 handling and protecting the same.

## CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

### ARTICLE 1. STATE DEPOSITORIES.

#### §12-1-4. Bonds to be given by depositories.

1 Before allowing any money to be deposited with any  
2 eligible depository in excess of the amount insured by an  
3 agency of the federal government, the state treasurer shall  
4 require the depository to give a collaterally secured bond,  
5 in the amount of not less than ten thousand dollars,  
6 payable to the state of West Virginia, conditioned upon the  
7 prompt payment, whenever lawfully required, of any state  
8 money, or part thereof, that may be deposited with that  
9 depository, or of any accrued interest on deposits. The  
10 bond shall be a continuous bond but may be increased or  
11 decreased in amount or replaced by a new bond with the  
12 approval of the state treasurer. The collateral security for  
13 the bond shall consist of bonds of the United States, or  
14 bonds or letters of credit of the federal land banks, of the  
15 federal home loan banks, or bonds of the state of West  
16 Virginia or of any county, district or municipality of this  
17 state, or other bonds, letters of credit, or securities ap-  
18 proved by the treasurer. All bonds so secured are here  
19 designated as collaterally secured bonds. Withdrawal or  
20 substitution of any collateral pledged as security for the  
21 performance of the conditions of the bond may be permit-  
22 ted with the approval in writing of the treasurer. All  
23 depository bonds shall be recorded by the treasurer in a  
24 book kept in his or her office for the purpose, and a copy  
25 of the record, certified by the treasurer, shall be prima  
26 facie evidence of the execution and contents of the bond in  
27 any suit or legal proceeding. All collateral securities shall  
28 be delivered to or deposited for the account of the trea-  
29 surer of the state of West Virginia and in the event said  
30 securities are delivered to the treasurer, he or she shall  
31 furnish a receipt therefor to the owner thereof. The  
32 treasurer and his or her bondsmen shall be liable to any  
33 person for any loss by reason of the embezzlement or  
34 misapplication of the securities by the treasurer or any of  
35 his or her employees, and for the loss thereof due to his or  
36 her negligence or the negligence of his or her employees;  
37 and the securities shall be delivered to the owner thereof  
38 when liability under the bond which they are pledged to

39 secure has terminated. The treasurer may permit the  
40 deposit under proper receipt of the securities with one or  
41 more banking institutions within or outside the state of  
42 West Virginia and may contract with any institution for  
43 safekeeping and exchange of any collateral securities and  
44 may prescribe the rules for handling and protecting the  
45 collateral securities.

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

*Randy St. Honore*  
.....

Chairman Senate Committee

*Joe L. Smith*  
.....  
Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

*Darrell K. Brown*  
.....  
Clerk of the Senate

*Gregory A. Bush*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

*Tom*  
.....  
Speaker House of Delegates

The within..... *approved* ..... this the *7<sup>th</sup>* .....  
Day of *April* ....., 1999  
*Jeff Blanton*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date, 3/23/99

Time 10:08 am