

HB 2292

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WEST VIRGINIA STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999



ENROLLED

House Bill No. 2292

(By Delegates Jenkins, Hubbard, Campbell,
J. Smith, Williams, Hall and Harrison)



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.

- 1 (a) There is hereby created the West Virginia investment
- 2 management board. The board is created as a public body
- 3 corporate and established to provide prudent fiscal administra-

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4 tion, investment and management for the pension funds,
5 workers' compensation and coal-workers' pneumoconiosis
6 funds and other state funds.

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

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

18 (2) Any appointment is effective immediately upon
19 appointment by the governor with respect to voting, constitut-
20 ing a quorum, receiving compensation and expenses, and all
21 other rights and privileges of the trustee position. All appoint-
22 ees must have experience in pension management, institutional
23 management or financial markets, and one trustee must be an
24 attorney experienced in finance and investment matters, and
25 one trustee must be a certified public accountant.

26 (3) The governor, the state auditor and the state treasurer or
27 their designees shall serve as members of the board. They shall
28 serve by virtue of their office and are not entitled to compensa-
29 tion under the provisions of this article. The governor, the
30 auditor and the treasurer or their designees shall be subject to
31 all duties, responsibilities and requirements of the provisions of
32 this article, including, but not limited to, the provisions of
33 subsections (e) and (f), section four of this article.

34 (c) At the end of each trustee's term, the governor may
35 reappoint or appoint a successor who shall serve for six-year
36 terms. No more than six of the ten appointed trustees may
37 belong to the same political party.

38 (d) In the event of a vacancy among the trustees, an
39 appointment shall be made by the governor to fill the unexpired
40 term.

41 (e) The governor may remove any trustee, other than
42 trustees who serve by virtue of their elective office, in case of
43 gross negligence or misfeasance and may declare that position
44 vacant and may appoint a person for the vacancy as provided in
45 subsection (d) of this section.

46 (f) Each trustee, other than those enumerated in subsection
47 (b), subdivision (3) of this section, shall be entitled to receive,
48 and, at the trustee's option, the board shall pay to the trustee,
49 compensation in the amount of five thousand dollars per year
50 and additional compensation in the amount of five hundred
51 dollars per meeting attended by the trustee in excess of the four
52 quarterly meetings required by this section. In addition, all
53 trustees shall receive reasonable and necessary expenses
54 actually incurred in discharging trustee duties pursuant to this
55 article.

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

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

76 (i) Pursuant to subsection (j) of this section, the board shall
77 meet with committees representing the participant plans to

78 discuss the board's drafting, reviewing or modifying the written
79 investment policy of the trust with respect to that committee's
80 participant plan pursuant to section twelve of this article.
81 Representatives and committees shall be designated as follows:

82 (1) The West Virginia consolidated public retirement board
83 shall promulgate procedural rules by which each pension
84 system named in paragraphs (1) through (6), inclusive, subsec-
85 tion (c), section nine-a of this article, shall designate an
86 individual representative of each said pension system, and the
87 West Virginia workers' compensation commission shall
88 promulgate procedural rules by which the pneumoconiosis fund
89 and the workers' compensation fund shall designate an individ-
90 ual representative of each said fund.

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

96 (3) Each designated representative shall provide to the
97 board his or her current address, updated each year on or before
98 the first day of July, to which address the board shall provide
99 notice of meetings of the board pursuant to subsection (g) of
100 this section.

101 (4) Each designated representative shall submit in writing
102 to the board on or before the first day of July of each year, the
103 names of no more than three persons comprising a committee
104 representing the beneficiaries of that representative's partici-
105 pant plan.

106 (j) At its annual meeting, the board shall meet with each of
107 the seven committees, formed pursuant to subdivision (1),
108 subsection (i) of this section, for the purpose of receiving input
109 from the committees regarding the board's drafting, reviewing
110 or modifying its written investment policy statement for
111 investment of the consolidated pension plan funds. In develop-
112 ing the investment policy statement, the trustees shall receive
113 each committee's stated objectives and policies regarding the
114 risk tolerances and return expectations of each participant plan,

115 with attention to the factors enumerated in subsection (g),
116 section twelve of this article, in order to provide for the
117 continuing financial security of the trust and its participant
118 plans. The board may meet with the committees or any of them
119 at its quarterly and additional meetings for the same purpose.

120 (k) All meetings of the board shall be open to the represen-
121 tatives of the participant plans as appointed pursuant to subdivi-
122 sion (1), subsection (i) of this section. The representatives shall
123 be subject to any rules, bylaws, guidelines, requirements and
124 standards promulgated by the board. The representatives shall
125 observe standards of decorum established by the board. The
126 representatives shall be subject to the same code of conduct
127 applicable to the trustees and shall be subject to all board rules
128 and bylaws. The representatives shall also be subject to any
129 requirements of confidentiality applicable to the trustees. Each
130 representative shall be liable for any act which he or she
131 undertakes which violates any rule, bylaw or statute governing
132 ethical standards, confidentiality or other standard of conduct
133 imposed upon the trustees or the representatives. Any meeting
134 of the board may be closed, upon adoption of a motion by any
135 trustee, when necessary to preserve the attorney-client privi-
136 lege, to protect the privacy interests of individuals, to review
137 personnel matters or to maintain confidentiality when confiden-
138 tiality is in the best interest of the beneficiaries of the trust.

§12-6-9a. Trust indenture.

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

8 (a) The Legislature hereby reserves the following rights and
9 powers:

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

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

15 (b) The trustee shall establish a trust for the participant
16 plans specified by this article with the earnings and losses
17 accounted for and charged individually to each participant plan,
18 including, but not limited to, the following:

19 (1) The public employees retirement system;

20 (2) The teachers retirement system;

21 (3) The West Virginia state police retirement system;

22 (4) The death, disability and retirement fund of the depart-
23 ment of public safety;

24 (5) The judges' retirement system;

25 (6) The deputy sheriff retirement system;

26 (7) The pneumoconiosis fund; and

27 (8) The workers' compensation fund.

28 (c) In the administration of the trust created by the trust
29 indenture, the trustee has the following powers:

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

33 (2) To invest and reinvest the trust estate or any part
34 thereof, in any kind of property, real or personal, including, but
35 not limited to, mortgage or mortgage participations, common
36 stocks, preferred stocks, common trust funds, bonds, notes or
37 other securities, notwithstanding the provisions of articles five
38 and six, chapter forty-four of this code: *Provided*, That notwith-
39 standing the provisions of this article to the contrary, the board
40 shall not become a stockholder or owner of any company or
41 association for any purpose whatsoever unless and until the
42 provisions of section six, article X of the constitution of West
43 Virginia are amended to permit those investments;

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

47 (4) To vote, in person or by proxy, all securities held under
48 the trust indenture, to join in or to dissent from and oppose the
49 reorganization, recapitalization, consolidation, merger, liquida-
50 tion or sale of corporations or property; to exchange securities
51 for other securities issued in connection with or resulting from
52 any transaction; to pay any assessment or expense which the
53 trustee considers advisable for the protection of its interest as
54 holder of any such securities; to deposit securities in any voting
55 trust or with any protective or like committee, or with a trustee
56 depository; to exercise any option appurtenant to any securities
57 for the conversion of any securities into other securities; and to
58 exercise or sell any rights issued upon or with respect to the
59 securities of any corporation, all upon terms the trustee consid-
60 ers advisable;

61 (5) To prosecute, defend, compromise, arbitrate or other-
62 wise adjust or settle claims in favor of or against the trustee or
63 other trust estate;

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

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

71 (d) All trust income shall be free from anticipation,
72 alienation, assignment or pledge by, and free from attachment,
73 execution, appropriation or control by or on behalf of, any and
74 all creditors of any beneficiary by any proceeding at law, in
75 equity, in bankruptcy or insolvency.

76 (e) The trustee may receive any other property, real or
77 personal, tangible or intangible, of any kind whatsoever, that
78 may be granted, conveyed, assigned, transferred, devised,
79 bequeathed or made payable to it by the state, or by any other

80 person or entity, for the purposes of the trust created by the trust
81 indenture, and all such properties shall be held, managed,
82 invested and administered by the trustee as provided in the trust
83 indenture and in the "West Virginia Investment Management
84 Act".

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

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

91 (h) The trust will not be invalid by reason of any existing
92 law or rule against perpetuities or against accumulations or
93 against restraints upon the power of alienation, but the trust
94 may continue for such time as necessary to accomplish the
95 purposes for which it is established.

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

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

Paul Schoover
Chairman Senate Committee

John F. Smith
Chairman House Committee

Originating in the House.

Takes effect from passage.

Russell E. Helms
Clerk of the Senate

Burgan M. Bray
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

John
Speaker of the House of Delegates

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

Tom Riffe
Governor

PRESENTED TO THE

GOVERNOR

Date 2/26/99

Time 3:45pm