WEST VIRGINIA LEGISLATURE
Regular Session 2001

ENROLLED
Committee Substitute for
SENATE BILL NO. 457

(By Senator Craig, et al)

PASSED April 14, 2001
In Effect from Passage
AN ACT to amend and reenact section eight, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one-a, two, three, four, five, six, eight, nine, nine-a, nine-e, ten, eleven and twelve, article six of said chapter, all relating to the West Virginia investment management board and its investment management and loans for business and industrial development and availability of funds and interest rates; correcting and clarifying inconsistencies; deleting outdated provisions regarding conflict of interest provision regarding board members and state depositories; providing for the common investment of pension, workers' compensa-
tion and other assets in board-created vehicles; changing date of annual meeting; providing for staggered terms of board members; conforming statutory trust language to trust indenture; providing for appropriate fees to be assessed against all assets invested and managed by the board; amending and clarifying certain restrictions on investments; requiring the board to make certain loans to the West Virginia economic development authority; specifying limits and conditions for same; clarifying that board members bear no fiduciary responsibility for such loans made to the economic development authority; and rebalancing of assets when investment limitations exceeded.

Be it enacted by the Legislature of West Virginia:

That section eight, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one-a, two, three, four, five, six, eight, nine, nine-a, nine-e, ten, eleven and twelve, article six of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-8. Conflict of interest.

1 No depository in this state may serve or be eligible for designation as a state depository if any employee of the treasurer's office, or a spouse or minor child of that employee, is an officer, director or employee of the depository or owns greater than two percent of the depository either in his or her own name or beneficially or an interest in the depository. An employee of the treasurer's office shall disclose the circumstance, if any, in the sworn statement required under the provisions of section one, article one, chapter six-b of this code.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-1a. Legislative findings.

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

(b) The Legislature finds and declares that teachers and other public employees throughout the state are experiencing economic difficulty and that in order to reduce this economic hardship on these dedicated public employees and to help foster sound financial practices, the West Virginia investment management board is given the authority to develop, implement and maintain an efficient and modern system for the investment and management of the state's money. The Legislature further finds that in order to implement these sound fiscal policies, the West Virginia investment management board shall operate as an independent board with its own full-time staff of financial professionals, immune to changing political climates, in order to provide a stable and continuous source of professional financial management.

(c) 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 to the 401(a) plans are declared to be made to an irrevocable trust on behalf of each plan, available for no use or purpose other than for the benefit of those public employees.
(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 an independent public body corporate with appropriate governance shall be the best means of assuring prudent financial management of these funds under rapidly changing market conditions and regulations.

(f) The Legislature hereby finds and declares further that in accomplishing this purpose, the West Virginia investment management board, created and established by 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 investment management board is empowered by this article to act as trustee of the irrevocable trusts created by this article and to manage and invest other state funds.

(g) The Legislature hereby finds and declares further that the standard of care and prudence applied to trustees, the conduct of the affairs of the irrevocable trusts created by this article and the investment of other state funds is intended to be that applied to the investment of funds as described in the "uniform prudent investor act" codified as article six-c, chapter forty-four of this code and as described in section eleven of this article.

(h) The Legislature further finds and declares that the West Virginia supreme court of appeals declared the "West Virginia Trust Fund Act" unconstitutional in its decision rendered on the twenty-eighth day of March, one thousand nine hundred ninety-seven, to the extent that it authorized investments in corporate stock, but the court also recog-
nized that there were other permissible constitutional purposes of the "West Virginia Trust Fund Act" and that it is the role of the Legislature to determine those purposes consistent with the court's decision and the constitution of West Virginia.

(i) The Legislature hereby further finds and declares that it is in the best interests of the state and its citizens to create a new investment management board in order to:

(1) Be in full compliance with the provisions of the constitution of West Virginia; and (2) protect all existing legal and equitable rights of persons who have entered into contractual relationships with the West Virginia board of investments and the West Virginia trust fund.

§12-6-2. Definitions.

As used in this article, unless a different meaning clearly appears from the context:

(1) "Beneficiaries" means those individuals entitled to benefits from the participant plans;

(2) "Board" means the governing body for the West Virginia investment management board and any reference elsewhere in this code to board of investments or West Virginia trust fund means the board as defined in this subdivision;

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

(4) "401(a) plan" means a plan which is described in section 401(a) of the Internal Revenue Code of 1986, as amended, and with respect to which the board has been designated to hold assets of the plan in trust pursuant to the provisions of section nine-a of this article;

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

23 (6) "Participant plan" means any plan or fund subject
24 now or hereafter to subsection (a), section nine-a, article
25 six of this chapter;

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

32 (8) "Trustee" means any member serving on the West
33 Virginia investment management board: Provided, That
34 in section nine-a of this article in which the terms of the
35 trusts are set forth, "trustee" means the West Virginia
36 investment management board;

37 (9) "Securities" means all bonds, notes, debentures or
38 other evidences of indebtedness and other lawful invest-
39 ment instruments; and

40 (10) "State funds" means all moneys of the state which
41 may be lawfully invested except the "school fund" estab-
42 lished by section four, article XII of the state constitution.

§12-6-3. West Virginia investment management board conti-
1 nued; body corporate; trust fund board; trustees;
2 nomination and appointment of trustees, qualifications and terms of appointment, advice and con-
3 sent; 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 continued the West Virginia invest-
2 ment management board. The board is created as a public
3 body corporate and established to provide prudent fiscal
4 administration, investment and management for the funds
of the participant plans and any other funds managed by the board.

(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: \textit{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 shall have experience in pension management, institutional management or financial markets and one trustee shall be an attorney experienced in finance and investment matters and one trustee shall 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 are 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 a term ending on the thirty-first day of January in the sixth year following the year of his or her appointment: \textit{Provided,}
That for all terms ending in the year two thousand one, two appointments shall be for two-year terms; two appointments shall be for three-year terms; one shall be for a four-year term; and two shall be for six-year terms. Except for vacancy appointments made pursuant to subsection (d) of this section, all subsequent appointments shall be for terms ending on the thirty-first day of January in the sixth year following the year of appointment. 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, is 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 before the
start of the fiscal year. 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 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) The West Virginia consolidated public retirement
board shall promulgate procedural rules by which each
401(a) plan for which the board is trustee, shall designate
an individual representative of each 401(a) plan 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 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 of the 401(a) plans and the workers’
compensation commission shall 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 funds of the participant plans. 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, section twelve of this article, in order to provide for the continuing financial security of the trusts 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 (1), subsection (i) of this section. The representatives are 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 are subject to the same code of conduct applicable to the trustees and are subject to all board rules and bylaws. The representatives are also subject to any requirements of confidentiality applicable to the trustees. Each representative is 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 trusts.

§12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.

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

(b) The governor shall be the chairman of the board and the trustees shall elect a vice chairman who may not be a constitutional officer or his or her designee to serve for a term of two years. Effective with any vacancy in the vice chairmanship, the board shall elect a vice chairman to a new two-year term. The vice chairman shall preside at all meetings in the absence of the chairman. Annually, 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 board 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 a combination 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. 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 is 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 board are not liable personally, either jointly or severally, for any debt or obligation created by the board: Provided, That the trustees and employees of the board are liable for acts of misfeasance or gross negligence.

(g) The board is exempt from the provisions of sections seven and eleven, article three, chapter twelve of this code and article three, chapter five-a of said code: Provided, That the trustees and employees of the board are subject
to purchasing policies and procedures which shall be
promulgated by the board. The purchasing policies and
procedures may be promulgated as emergency rules
pursuant to section fifteen, article three, chapter
twenty-nine-a of this code.

(h) Any employee of the West Virginia trust fund who
previously was an employee of another state agency may
return to the public employees retirement system pursuant
to section eighteen, article ten, chapter five of this code
and may elect to either: (1) Transfer to the public em-
ployee retirement system his or her employee contribu-
tions, with accrued interest and, if vested, his or her
employer contributions, with accrued interest and retain
as credited state service all time served as an employee of
the West Virginia trust fund; or (2) retain all employee
contributions with accrued interest and, if vested, his or
her employer contributions with interest and forfeit all
service credit for the time served as an employee of the
West Virginia trust fund.

§12-6-5. Powers of the board.

1 The board may exercise all powers necessary or appro-
priate to carry out and effectuate its corporate purposes.
2 The board may:
3
4 (1) Adopt and use a common seal and alter it at pleasure;
5 (2) Sue and be sued;
6 (3) Enter into contracts and execute and deliver instru-
7 ments;
8 (4) Acquire (by purchase, gift or otherwise), hold, use
9 and dispose of real and personal property, deeds, mort-
gages and other instruments;
10 (5) Promulgate and enforce bylaws and rules for the
11 management and conduct of its affairs;
(6) Notwithstanding any other provision of law, retain and employ legal, accounting, financial and investment advisors and consultants;

(7) Acquire (by purchase, gift or otherwise), hold, exchange, pledge, lend and sell or otherwise dispose of securities and invest funds in interest earning deposits and in any other lawful investments;

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

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

Develop, implement and maintain its own banking accounts and investments;

Do all things necessary to implement and operate the board and carry out the intent of this article;

Require the state auditor and treasurer to transmit state funds on a daily basis for investment: Provided, That money held for meeting the daily obligations of state government need not be transferred;

Upon request of the treasurer, transmit funds for deposit in the state treasury to meet the daily obligations of state government;

Establish one of more investment funds for the purpose of investing the funds for which it is trustee, custodian or otherwise authorized to invest pursuant to this article. Interests in each fund shall be designated as units and the board shall adopt industry standard accounting procedures to determine each fund's unit value. The securities in each investment fund are the property of the board and each fund shall be considered an investment pool or fund and may not be considered a trust nor may the securities of the various investment funds be considered held in trust. However, units in an investment fund established by or sold by the board and the proceeds from the sale or redemption of any unit may be held by the board in its role as trustee of the participant plans; and

Notwithstanding any other provision of the code to the contrary, conduct investment transactions, including purchases, sales, redemptions and income collections,
which shall not be treated by the auditor as recordable transactions on the state’s accounting system.

§12-6-6. 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 board shall cause an annual financial and compliance audit of the assets managed by the board to be made by a certified public accounting firm which has a minimum staff of ten certified public accountants and which is a member of the American institute of certified public accountants and, if doing business in West Virginia, a member of the West Virginia society of certified public accountants. The financial and compliance audit shall be made of the board’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 board shall produce monthly financial statements for the assets managed by the board and cause them to be delivered 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, chapter twenty-three of this code and section one, article three of said chapter and section seven, article four-b of said chapter.
(c) The board 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 401(a) plans.

(d) The board shall cause an annual audit of the reported returns of the assets managed by the board to be made by an investment consulting or a certified public accounting firm meeting the criteria set out in subsection (a) of this section. The board 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 board shall provide any other information requested in writing by the council of finance and administration.

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

§12-6-8. Investment funds established; management thereof.

(a) There is hereby continued 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 may make moneys available to the board for investment.

(c) Each political subdivision of this state through its treasurer or equivalent financial officer may 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 investment management board.
(d) Moneys held in the various funds and accounts administered by the board shall be invested as permitted by this article and subject to the restrictions contained in this article. For the consolidated fund, the treasurer shall maintain records of the deposits and withdrawals of each participant and the performance of the various funds and accounts. The board shall report the earnings on the various funds under management to the treasurer at the times determined by the treasurer. The board shall also establish rules 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 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.

§12-6-9. Fees for service.

1 The board may charge fees, which may be subtracted from the total return, for the reasonable and necessary expenses incurred by the investment management board in rendering services. All fees which are dedicated or identified or readily identifiable to an entity, plan or fund shall be charged to that entity, plan or fund 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.

§12-6-9a. Trust indenture.

1 The provisions of the trust indenture 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, are superseded by the following provisions:

(a) The board shall continue to hold each of the participant plans specified by this article in a separate irrevocable trust as trustee pursuant to the terms and provisions set forth in this section and with the earnings and losses accounted for and charged individually to each participant plan and trust: Provided, That the board shall be authorized to invest the assets held in each participant plan in any investment fund even though the board may also invest non-401(a) moneys in the investment fund. Participant plans, each declared by this section to be held in a separate irrevocable trust, include, but are not limited to, the following and any other plans that may be added to this section or otherwise designated by the Legislature from time to time:

(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 division of public safety;
(5) The judges' retirement system;
(6) The deputy sheriffs' retirement system;
(7) The pneumoconiosis fund;
(8) The workers' compensation fund; and
(9) The wildlife endowment fund.

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

(1) The right by supplemental agreement to amend, modify or alter the terms of the trusts established by this section without consent of the trustee, or any beneficiary,
except that no amendment to a trust which holds any 401(a) plan moneys may be made which allows at any time  for any part of the corpus or income (other than the part  that is required to pay taxes and administration expenses)  to be used for, or diverted to, purposes other than for the  exclusive benefit of the employees or their beneficiaries in  accordance with the requirements of section 401(a)(2) of  the Internal Revenue Code, as it may be amended from  time to time; and

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

(c) In the administration of the trusts created by this article, 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 of  the trust estate, in any kind of property, real or personal,  including, but not limited to, mortgage or mortgage  participations, common stocks, preferred stocks, common  trust funds, investment funds established by the board,  bonds, notes or other securities, notwithstanding the  provisions of articles five and six, chapter forty-four of  this code;

(3) To carry the securities and other property held in  trust 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 in  trust, to join in or to dissent from and oppose the reorganiza-  tion, 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 the securities; to deposit securities
in any voting trust or with any protective or like commit-
tee 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 advis-
able;

(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 trusts legal and invest-
ment counsel, brokers and any other assistants and agents
the trustee considers advisable; and

(7) To develop, implement and modify an asset alloca-
tion plan for each participant plan. The asset allocation
plans shall be implemented within the management and
investment of the individual trusts.

(d) All trust income shall be free from anticipation,
alienation, assignment or pledge by, and free from attach-
ment, execution, appropriation or control by or on behalf
of, any and all creditors of any beneficiary by any proceed-
ing at law, in equity, in bankruptcy or insolvency.

(e) Notwithstanding any other provision of this article,
in the case of a trust which holds any 401(a) plan's money,
it is impermissible at any time for any part of the corpus
or income to be (within the taxable year or thereafter) used
for, or diverted to, purposes other than the exclusive
benefit of the employees and their beneficiaries in accor-
dance with the requirements of section 401(a)(2) of the
Internal Revenue Code, as it may be amended from time to
time.

(f) The trustee may receive any other property, real or
personal, tangible or intangible, of any kind whatsoever,
that may be granted, conveyed, assigned, transferred,
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105 devised, bequeathed or made payable to the applicable trust, and all the properties shall be held, managed, invested and administered by the trustee as provided in this article.

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

113 (h) 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 each trust.

116 (i) No trust shall be invalid by reason of any existing law or rule against perpetuities or against accumulations or against restraints upon the power of alienation, but each trust shall continue for the time necessary to accomplish the purposes for which it is established.

§12-6-9e. Legislative findings; loans for industrial development; availability of funds and interest rates.

1 (a) The Legislature hereby finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state; that a business and industrial development loan program provides for economic growth and stimulation within the state; that loans from pools established in the consolidated fund will assist in providing the needed capital to assist business and industrial development; and that time constraints relating to business and industrial development projects prohibit duplicative review by both the board and West Virginia economic development authority board. This section is enacted in view of these findings.

13 (b) The board shall make available, subject to cash availability, in the form of a revolving loan, up to one hundred fifty million dollars from the consolidated fund to loan the West Virginia economic development authority for business or industrial development projects authorized
by section seven, article fifteen, chapter thirty-one of this
code and to consolidate existing loans authorized to be
made to the West Virginia economic development author-
ity pursuant to this section and pursuant to section twenty,
article fifteen, chapter thirty-one of this code which
authorizes a one hundred fifty million dollar revolving
loan and article eighteen-b, chapter thirty-one of this code
which authorizes a fifty million dollar investment pool:
Provided, That the West Virginia economic development
authority may not loan more than fifteen million dollars
for any one business or industrial development project.
The revolving loan authorized by this subsection shall be
secured by one note at a variable interest rate equal to the
twelve-month average of the board’s yield on its cash
liquidity pool. The rate shall be set on the first day of July
and the rate shall be adjusted annually on the same date.
The maximum annual adjustment may not exceed one
percent. Monthly payments made by the West Virginia
economic development authority to the board shall be
calculated on a one hundred twenty-month amortization.
The revolving loan shall be secured by a security interest
that pledges and assigns the cash proceeds of collateral
from all loans under this revolving loan pool. The West
Virginia economic development authority may also pledge
as collateral certain revenue streams from other revolving
loan pools which source of funds does not originate from
federal sources or from the board.

The outstanding principal balance of the revolving loan
from the board to the West Virginia economic development
authority may at no time exceed one hundred three
percent of the aggregate outstanding principal balance of
the business and industrial loans from the West Virginia
economic development authority to economic development
projects funded from this revolving loan pool. This
provision shall be certified annually by an independent
audit of the West Virginia economic development author-
ity financial records.
(c) The interest rates and maturity dates on the loans made by the West Virginia economic development authority for business and industrial development projects authorized by section seven, article fifteen, chapter thirty-one of this code shall be at competitive rates and maturities as determined by the West Virginia economic development authority board.

(d) Any and all outstanding loans made by the board, or any predecessor entity, to the West Virginia economic development authority shall be refunded by proceeds of the revolving loan contained in this section and no loans may be made hereafter by the board to the West Virginia economic development authority pursuant to section twenty, article fifteen, chapter thirty-one of this code or article eighteen-b of said chapter.

(e) The trustees of the board shall bear no fiduciary responsibility as provided in section eleven of this article with specific regard to the revolving loan contemplated in this section.

§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;

(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.


Any investments made under this article shall be made in accordance with the provisions of the “Uniform Prudent Investor Act” codified as article six-c, chapter forty-four of this code and is further subject to the following requirements:

(a) Trustees shall discharge their duties with respect to the 401(a) plans for the exclusive purpose of providing benefits to participants and their beneficiaries;

(b) Trustees shall diversify fund investment 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 funds under management; and

(d) Trustees shall discharge their duties in accordance with the documents and instruments governing the trusts or other funds under management insofar as the documents and instruments are consistent with the provisions of this article.

(e) The duties of the board apply only with respect to those assets deposited with or otherwise held by it.

§12-6-12. Investment restrictions.

(a) The board shall hold in equity investments no more than sixty percent of the assets managed by the board and no more than sixty percent of the assets of any individual participant plan or the consolidated fund.

(b) The board shall hold in international securities no more than twenty percent of the assets managed by the
board and no more than twenty percent of the assets of any individual participant plan or the consolidated fund.

(c) The board may not at the time of purchase hold more than five percent of the assets managed by the board 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 board may hold securities of that equity equal to its market weighting.

(d) The board shall at all times limit its asset allocation and types of securities to the following:

(1) The board may not hold more than twenty percent of the aggregate participant plan assets 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;

(2) At no time shall the board hold more than seventy-five percent of the assets managed by the board in corporate debt. Any corporate debt security at the time of its acquisition shall be rated in one of the six highest rating categories by a nationally recognized rating agency; and

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

(e) Notwithstanding the investment limitations set forth in this section, it is recognized that the assets managed by the board, or the assets of the consolidated fund or participant plans, whether considered in the aggregate or individually, may temporarily exceed the investment limitations in this section due to market appreciation, deprecia-
tion and rebalancing limitations. Accordingly, the limitations on investments set forth in this section shall not be considered to have been violated if the board rebalances the assets it manages or the assets of the consolidated fund or participant plans, whichever is applicable, to comply with the limitations set forth in this section at least once every six months based upon the latest available market information and any other reliable market data that the board considers advisable to take into consideration.

(f) The board, at the annual meeting provided for in subsection (h), section three of this article, shall review, establish and modify, if necessary, the investment objectives of the individual participant plans as incorporated in the investment policy statements of the respective trusts so as to provide for the financial security of the trust funds 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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 27th Day of April, 2001.

Governor