WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

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ENROLLED

House Bill No. 4746

(By Delegates Michael, R. M. Thompson, H. White, Hall, Campbell and Leach)

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Passed March 13, 2004

In Effect Ninety Days from Passage
AN ACT to amend and reenact §12-1-2, §12-1-7, §12-1-12 and §12-1-13 of the code of West Virginia, 1931, as amended; to amend and reenact §12-2-1 of said code; to amend and reenact §12-3-1 and §12-3-1a of said code; to amend and reenact §12-3A-3, §12-3A-4 and §12-3A-6 of said code; to amend and reenact §12-5-1 and §12-5-5 of said code; and to amend and reenact §18-30-4 of said code, all relating generally to the state treasurer's office; designating financial institutions as depositaries for state funds; adding state and federal savings and loan associations as candidates for depository banks; exceptions; defining spending unit for the purposes of chapter twelve of the code; allowing only the treasurer to enter into contracts for banking goods and services; exceptions; requiring financial institutions outside the state with state funds to meet the same collateral requirements for other depositories; clarifying that the treasurer may pay for banking goods and services by maintaining a compensating balance in an account other than only accounts that do not earn interest; adding electronic funds transfers to the methods the state uses to receive moneys; amending procedures for stale dated checks and requiring the treasurer to search for the
payee; requiring spending units which have payments in which the checks have become stale to inform the treasurer's office when the stale dated checks contain federal funds, the amount of the federal funds and which account should receive the funds; specifying legal effect of documents and electronic signatures; adding the treasurer as additional administrator of the West Virginia check card; allowing the state treasurer to authorize spending units to assess and collect fees for electronic commerce receipts; requiring the state treasurer to issue legislative rules to authorize spending units to assess and collect fees for electronic commerce receipts; adding cash to the definition of securities; creating fund in treasury to allow for the deposit of cash into safekeeping and allowing the treasurer to invest the money and to prescribe forms and procedures for processing the moneys; changing the qualifications for certain members of the West Virginia college prepaid tuition and savings program and changing the appointment process of two members of the West Virginia college prepaid tuition and savings program.

Be it enacted by the Legislature of West Virginia:

That §12-1-2, §12-1-7, §12-1-12 and §12-1-13 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §12-2-1 of said code be amended and reenacted; that §12-3-1 and §12-3-1a of said code be amended and reenacted; that §12-3A-3, §12-3A-4 and §12-3A-6 of said code be amended and reenacted; that §12-5-1 and §12-5-5 of said code be amended and reenacted; and that §18-30-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORY.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer; definition of spending unit.
The state treasurer shall designate the state and national banks and the state and federal savings and loan associations in this state meeting the requirements of this chapter as depositories for all state funds placed in demand deposits.

Demand deposit accounts shall consist of receipt and disbursement accounts. Receipt accounts are accounts in which are deposited moneys belonging to or due the state of West Virginia or any official, department, board, commission or agency thereof.

Disbursement accounts are accounts from which are paid moneys due from the state of West Virginia or any official, department, board, commission, political subdivision or agency thereof to any political subdivision, person, firm or corporation, except moneys paid from investment accounts.

Investment accounts are accounts established by the West Virginia investment management board or the state treasurer for the buying and selling of securities for investment purposes.

The state treasurer shall promulgate rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, concerning depositories for receipt accounts prescribing the selection criteria, procedures, compensation and such other contractual terms as it considers to be in the best interests of the state giving due consideration to: (1) The activity of the various accounts maintained therein; (2) the reasonable value of the banking services rendered or to be rendered the state by such depositories; and (3) the value and importance of such deposits to the economy of the communities and the various areas of the state affected thereby.

The state treasurer shall select depositories for disbursement accounts through competitive bidding by eligible banks in this state. If none of the eligible banks in this state are able to provide the needed services, then the treasurer may include
eligible banks outside this state in the competitive bidding process. The treasurer shall promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, prescribing the procedures and criteria for the bidding and selection. The treasurer shall, in the invitations for bids, specify the approximate amounts of deposits, the duration of contracts to be awarded and such other contractual terms as the treasurer considers to be in the best interests of the state, consistent with obtaining the most efficient service at the lowest cost.

The amount of money needed for current operation purposes of the state government, as determined by the state treasurer, shall be maintained at all times in the state treasury, in cash, in short term investments not to exceed five days, or in disbursement accounts with financial institutions designated as depositories in accordance with the provisions of this section. No state officer or employee shall make or cause to be made any deposits of state funds in banks not so designated. Only banks and state and federal savings and loan associations designated by the treasurer as depositories may accept deposits of state funds. Boards, commissions and spending units with authority pursuant to this code to deposit moneys in a financial institution without approval of the state treasurer shall retain that authority and are not required to have the treasurer designate a financial institution as a depository: Provided, That boards, commissions and spending units with moneys deposited in financial institutions not approved for that purpose by the state treasurer shall submit a report on those moneys annually to the legislative auditor. The provisions of this section shall not apply to the proceeds from the sale of general obligation bonds or bonds issued by the school building authority, the parkways, economic development and tourism authority, the housing development fund, the economic development authority, the infrastructure and jobs development council, the water development authority or the hospital finance authority.
As used in this chapter, “spending unit” means a department, agency, board, commission or institution of state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

§12-1-7. Rules; banking contracts and agreements; depositors; agreements.

In addition to rules specially authorized in this article, the West Virginia investment management board and the state treasurer are generally authorized to promulgate any rules necessary to protect the interests of the state, its depositories and taxpayers. All rules promulgated are subject to the provisions of article three, chapter twenty-nine-a of this code. Any rules previously established by the board of public works, the board of investments, the investment management board or the state treasurer pursuant to this article shall remain in effect until amended, superseded or rescinded.

Only the treasurer may enter into contracts or agreements with financial institutions for banking goods or services required by spending units. Boards, commissions and spending units with authority pursuant to this code to enter into contracts or agreements with financial institution for banking goods and services without approval of the state treasurer shall retain that authority and are not required to have the treasurer designate a financial institution as a depository. The provisions of this section shall not apply to trust and investment accounts and activities for general obligation bonds or bonds issued by the school building authority, the parkways, economic development and tourism authority, the housing development fund, the economic development authority, the infrastructure and jobs development council, the water development authority or the hospital finance authority. A state spending unit requiring banking goods or services shall submit a request for the goods or services to the treasurer. If the treasurer enters into a contract
or agreement for the required goods or services, spending units using the contract or agreement shall pay either the vendor or the treasurer for the goods or services used.

The treasurer is also authorized to enter into any depositors’ agreements for the purpose of reorganizing or rehabilitating any depository in which state funds are deposited, and for the purpose of transferring the assets, in whole or in part, of any depository to any other lawful depository when, in the judgment of the treasurer, the interests of the state are promoted thereby, and upon condition that no right of the state to preferred payment is waived.

§12-1-12. Investing funds in treasury; depositories outside the state.

When the funds in the treasury exceed the amount needed for current operational purposes, as determined by the treasurer, the treasurer shall make all of such excess available for investment by the investment management board which shall invest the excess for the benefit of the general revenue fund: Provided, That the state treasurer, after reviewing the cash flow needs of the state, may withhold and invest amounts not to exceed one hundred twenty-five million dollars of the operating funds needed to meet current operational purposes. Investments made by the state treasurer under this section shall be made in short term investments not to exceed five days. Operating funds means the consolidated fund established in section eight, article six of this chapter, including all cash and investments of the fund.

Spending units with authority to retain interest or earnings on a fund or account may submit requests to the treasurer to transfer moneys to a specific investment pool of the investment management board and retain any interest or earnings on the money invested. The general revenue fund shall receive all
interest or other earnings on money invested that are not
designated for a specific fund or account.

Whenever the funds in the treasury exceed the amount for
which depositories within the state have qualified, or the
depositories within the state which have qualified are unwilling
to receive larger deposits, the treasurer may designate deposito-
ries outside the state, disbursement accounts being bid for in the
same manner as required by depositories within the state, and
when depositories outside the state have qualified by giving the
bond prescribed in section four of this article, the state treasurer
shall deposit funds in the same manner as funds are deposited
in depositories within the state under this article.

The state treasurer may transfer funds to financial institu-
tions outside the state to meet obligations to paying agents
outside the state if the financial institution meets the same
collateral requirements as set forth in this article.

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

(a) The treasurer is authorized to pay for banking services,
and goods and services ancillary thereto, by either a compensat-
ing balance in an account maintained at the financial institution
providing the services or with a state warrant as described in
section one, article three of this chapter.

(b) The investment management board 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 investment management board, at the request of the treasurer, 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 treasurer known as the banking services account to pay for all banking services and goods and services ancillary to the banking services provided to the state, for the investigation and pursuit of the prior investment loss claims, and for amortization of the balance in the investment imbalance fund.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-1. How and to whom taxes and other amounts due the state or any political subdivision, official, department, board, commission or other collecting agency thereof may be paid.

All persons, firms and corporations shall promptly pay all taxes and other amounts due from them to the state, or to any political subdivision, official, department, board, commission or other collecting agency thereof authorized by law to collect the taxes and other amounts due by any authorized commercially acceptable means, in money, United States currency or by check, bank draft, certified check, cashier’s check, post office money order, express money order or electronic funds transfer payable and delivered to the official, department, board, commission or collecting agency thereof authorized by law to collect the taxes and other amounts due and having the account upon which the taxes or amounts due are chargeable against the payer of the taxes or amounts due. The duly elected or appointed officers of the state and of its political subdivisions, departments, boards, commissions and collecting agencies
having the account on which the taxes or other amounts due are chargeable against the payer of the taxes or other amounts due and authorized by law to collect the taxes or other amounts due, and their respective agents, deputies, assistants and employees shall in no case be the agent of the payer and about the collection of the taxes or other amounts, but shall at all times and under all circumstances be the agent of the state, its political subdivision, official, department, board, commission or collecting agency having the account on which the taxes or amounts are chargeable against the payer of the taxes or other amounts due and authorized by law to collect the same.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-1. Manner of payment from treasury; form of checks.

(a) Every person claiming to receive money from the treasury of the state shall apply to the auditor for a warrant for same. The auditor shall thereupon examine the claim, and the vouchers, certificates and evidence, if any, offered in support thereof, and for so much thereof as he or she finds to be justly due from the state, if payment thereof is authorized by law, and if there is an appropriation not exhausted or expired out of which it is properly payable, the auditor shall issue his or her warrant on the treasurer, specifying to whom and on what account the money mentioned therein is to be paid, and to what appropriation it is to be charged. The auditor shall present to the treasurer daily reports on the number of warrants issued, the amounts of the warrants and the dates on the warrants for the purpose of effectuating the investment policies of the state treasurer and the investment management board. On the presentation of the warrant to the treasurer, the treasurer shall ascertain whether there are sufficient funds in the treasury to pay that warrant, and if he or she finds it to be so, he or she shall in that case, but not otherwise, endorse his or her check upon the warrant, directed to some depository, which check
auditor and the treasurer. Upon execution of the authorization and its receipt by the office of the auditor, the warrant shall be created in the manner specified on the authorization and forwarded to the treasurer for further disposition to the designated bank or other financial institution specified on the electronic warrant: Provided, That after the first day of July, two thousand two, the state auditor shall cease issuing paper warrants except for income tax refunds. After that date all warrants except for income tax refunds, shall be issued by electronic funds transfer: Provided, however, That the auditor, in his or her discretion, may issue paper warrants on an emergency basis.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.


The state auditor and the state treasurer shall implement electronic commerce capabilities for each of their offices to facilitate the performance of their duties under this code. The state treasurer shall competitively bid the selection of vendors needed to provide the necessary banking, investment and related goods and services, and the provisions of article one-b, chapter five, and articles three and seven, chapter five-a of this code shall not apply, unless requested by the state auditor or state treasurer.

A record, an authentication, a document or a signature issued or used by the auditor, the treasurer shall be considered an original and may not be denied legal effect on the ground that it is in electronic form.

The head of each spending unit is responsible for adopting and implementing security procedures to ensure adequate integrity, security, confidentiality, and auditability of the business transactions of his or her spending unit when utilizing electronic commerce.
§12-3A-4. Payment by the West Virginia check card.

The state auditor and the state treasurer may establish a state debit card known as the “West Virginia Check Card” for recipients of employee payroll or of retirement, benefits or entitlement programs who are considered unbanked and who do not possess a federally insured depository institution account. The state auditor and the state treasurer shall use every reasonable effort to make a federally insured depository account available to a recipient, and to encourage all recipients to obtain a federally insured depository account. Prior to issuing the West Virginia check card, the state auditor and the state treasurer shall first make a determination that a recipient has shown good cause that an alternative method to direct deposit is necessary. The state auditor and the state treasurer shall jointly issue a request for proposals in accordance with section three of this article to aid in the administration of the program and in the establishment of state owned bank accounts and accommodate accessible locations for use of the West Virginia check card. In carrying out the purposes of this article, the state auditor and state treasurer shall not compete with banks or other federally insured financial institutions, or for profit.

§12-3A-6. Receipting of electronic commerce purchases.

(a) The state treasurer may establish a system for acceptance of credit card and other payment methods for electronic commerce purchases from spending units. Notwithstanding any other provision of this code to the contrary, each spending unit utilizing WEB commerce, electronic commerce or other method that offers products or services for sale shall utilize the state treasurer’s system for acceptance of payments.

(b) To facilitate electronic commerce, the state treasurer may charge a spending unit for the banking and other expenses incurred by the treasurer on behalf of the spending unit and for
any work performed, including, without limitation, assisting in
the development of a website and utilization of the treasurer’s
payment gateway. A special revenue account, entitled the
“Treasurer’s Financial Electronic Commerce Fund,” is created
in the state treasury to receive the amounts charged by the
treasurer. The treasurer may expend the funds received in the
Treasurer’s Financial Electronic Commerce Fund only for the
purposes of this article and for other purposes as determined by
the Legislature.

(c) The state treasurer may authorize a spending unit to
assess and collect a fee to recover or pay the cost of accepting
bank, charge, check, credit or debit cards from amounts
collected. The state treasurer shall propose legislative rules for
promulgation in accordance with the provisions of article three
of chapter twenty-nine-a of this code to establish the criteria
and procedures involved in granting the authorization and may
promulgate emergency rules in accordance with the provisions
of article three of chapter twenty-nine-a of the code to imple-
ment the provisions of this section prior to authorization of the
legislative rules.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-1. Securities defined.

The term “securities” when used in this article shall include
all bonds, securities, debentures, notes or other evidences of
indebtedness, and for purposes of this chapter all cash received
by any state spending unit intended to serve as security for a
legal obligation, whether pursuant to court order or otherwise.

§12-5-5. Protection and handling of securities.

(a) The noncash securities retained in the treasury shall be
kept in a vault. The treasurer shall use due diligence in protect-
ing the securities against loss from any cause. The treasurer
shall designate certain employees to take special care of the securities. Only the treasurer and the designated employees may have access to the securities, and at least two of these persons shall be present whenever the securities are handled in any manner. The treasurer may contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities. The contract shall prescribe the rules for the handling and protection of the securities.

(b) The “Treasurer’s Safekeeping Fund” is established in the state treasury. The treasurer shall deposit moneys received pursuant to this article in the Treasurer’s Safekeeping Fund. The treasurer is authorized to invest the money in accordance with this code and the restrictions placed on the money, with earnings accruing to the moneys in the fund. The treasurer shall prescribe the forms and procedures for processing the moneys.

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.

(a) The West Virginia college prepaid tuition and savings program is continued. The program consists of a prepaid tuition plan and a savings plan.

(b) The board of the college prepaid tuition and savings program is continued and all powers, rights and responsibilities of the board of trustees of the prepaid tuition trust fund are vested in the board of the college prepaid tuition and savings program.

(c) The board consists of nine members and includes the following:
(1) The secretary of education and the arts, or his or her designee;

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

(3) Two representatives of the higher education policy commission, who may or may not be members of the higher education policy commission, appointed by the commission who serve as voting members of the board, one of whom shall represent the interests of the universities of West Virginia and the state colleges and one of whom shall represent the interests of community and technical colleges of West Virginia;

(4) Five other members, appointed by the governor, with knowledge, skill and experience in an academic, business or financial field, to be appointed as follows:

(A) Two private citizens not employed by, or an officer of, the state or any political subdivision of the state;

(B) One member representing the interests of private institutions of higher education located in this state appointed from one or more nominees of the West Virginia association of private colleges; and

(C) Two members representing the public.

(d) The public members and the member representing the interests of private institutions of higher education are appointed by the governor with the advice and consent of the Senate.

(e) Only state residents are eligible for appointment to the board.

(f) Members appointed by the governor serve a term of five years and are eligible for reappointment at the expiration of
their terms. In the event of a vacancy among appointed members, the governor shall appoint a person representing the same interests to fill the unexpired term.

(g) Members of the board serve until the later of the expiration of the term for which the member was appointed or the appointment of a successor. Members of the board serve without compensation. The treasurer may pay all expenses, including travel expenses, actually incurred by board members in the conduct of their official duties. Expense payments are made from the college prepaid tuition and savings program administrative account, and are made at the same rate paid to state employees.

(h) The treasurer may provide support staff and office space for the board.

(i) The treasurer is the chairman and presiding officer of the board, and may appoint the employees the board considers advisable or necessary. A majority of the members of the board constitute a quorum for the transaction of the business of the board.
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.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the ______ day of ______, 2004.

Governor
PRESENTED TO THE
GOVERNOR
DATE 4/1/04
TIME 4:35 P.M.