WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2570

(By Delegates Ron Thompson, Perry and H. White)

Passed April 7, 2005

In Effect Ninety Days from Passage
AN ACT to amend and reenact §7-6-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-13-22a of said code; to amend and reenact §18-9-6 of said code, all relating generally to depositories for county, municipal or county board of education funds; excepting banking institutions from the requirement to post bond or other security for the deposit of county, municipal or county board of education funds when the deposits are placed in certificates of deposits through a designated state depository; and conditions.

Be it enacted by the Legislature of West Virginia:

That §7-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-13-22a of said code be amended and reenacted; and that §18-9-6 of said code be amended and reenacted, all to read as follows:
CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.
ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-2. Bond of depositories.

1 No designation is binding on any county, nor shall any public money be deposited thereunder, until the banking institution designated executes a bond with good and sufficient sureties, to be accepted and approved by the county commission, payable to the State of West Virginia, in a sum as the county commission shall direct, and which may not be less than the maximum sum that is deposited in the depository at any one time. The bond shall be executed by at least four resident freeholders as sureties owning in the aggregate unencumbered real estate having an assessed valuation thereon equal to the penalty of the bond, or by a fidelity or indemnity company authorized to do business within the State, satisfactory to, and acceptable by the county commission, and having not less than six hundred thousand dollars capital; and the bond shall be conditioned for the receipt, safekeeping and payment over of all money which may be deposited in or come under the custody of the banking institution designated a county depository under the provisions hereof, together with the interest thereon at the rate specified by this article; and the bond shall be further conditioned for the faithful performance, by the banking institution so designated, of all the duties imposed by this article upon a depository of public moneys: Provided, That the clerk of the county commission shall keep a record of each surety on all personal bonds given as hereinbefore provided and the clerk shall notify the county commission of every recorded conveyance of real estate made by any surety on said personal bond.

2 An action shall lie on the bond at the instance of the county commission, or the sheriff, for the recovery of any money deposited in the depository, upon failure or default of the
depository to fully and faithfully account for and pay over any
and all public moneys deposited by the sheriff and of all
interests earned and accrued thereon as required by this article.
A bond may not be accepted by the county commission until it
has been submitted to the prosecuting attorney, and certified by
him or her to be in due and legal form, and conformable to the
provisions of this article, which certificate shall be endorsed
thereon: Provided, That the county commission may, in lieu of
the bond provided hereinbefore, accept as security for money
deposited as aforesaid, interest-bearing securities of the United
States, or of a state, county, district or municipal corporation,
or of the federal land banks, or endorsed county and district
warrants of the county in which the depository is located, or
letters of credit of the federal land banks, or federal home loan
banks, or any other letters of credit approved by the treasurer;
the face value of which securities may not be less than the sum
hereinbefore specified as the amount to be named in the bond
in lieu of which the securities are accepted; or the county
commission may accept the securities as partial security to the
extent of their face value for the money so deposited, and
require bond for the remainder of the full amount hereinbefore
specified, to be named in the bond, and in the bond so required,
the acceptance of securities as partial security, and the extent
thereof, shall be set forth: Provided, however, That a banking
institution is not required to provide a bond or security in lieu
of bond if the deposits accepted are placed in certificates of
deposit meeting the following requirements: (1) the funds are
invested through a designated state depository selected by the
county; (2) the selected depository arranges for the deposit of
the funds in certificates of deposit in one or more banks or
savings and loan associations wherever located in the United
States, for the account of the county; (3) the full amount of
principal and accrued interest of each certificate of deposit is
insured by the Federal Deposit Insurance Corporation; (4) the
selected depository acts as custodian for the county with respect
to such certificates of deposit issued for the county’s account;
and (5) at the same time that the county’s funds are deposited
and the certificates of deposit are issued, the selected depository
receives an amount of deposits from customers of other
financial institutions wherever located in the United States
equal to or greater than the amount of the funds invested by the
county through the selected depository. The hypothecation of
the securities shall be by proper legal transfer as collateral
security to protect and indemnify by trust any and all loss in
case of any default on the part of the banking institution in its
capacity as depository as aforesaid. All the securities shall be
delivered to or deposited for the account of the county commis-
sion, and withdrawal or substitution thereof may be permitted
from time to time upon approval by the county commission by
order of record, but the collateral security shall be released only
by order of record of the county commission when satisfied that
full and faithful accounting and payment of all the moneys has
been made under the provisions hereof. In the event actual
possession of the hypothecated securities are delivered to the
county commission, it shall make ample provision for the
safekeeping thereof and the interest thereon when paid shall be
turned over to the banking institution, so long as it is not in
default as aforesaid. The county commission may permit the
deposit under proper receipt of the securities with one or more
banking institutions within or without the State of West
Virginia and may contract with any institution for safekeeping
and exchange of any hypothecated securities, and may prescribe
the rules for handling and protecting the same.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

PART VI. ACCOUNTING PRINCIPLES;
FUNDS; DISBURSEMENTS.

§8-13-22a. Investment of municipal funds.
All municipal funds, the investment of which is not governed by other provisions of this code and not required for the payment of current obligations and not otherwise prohibited, may be invested and reinvested in:

(1) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;

(2) Any evidence of indebtedness issued by any United States government agency guaranteed as to the payment of both principal and interest, directly or indirectly, by the United States of America including, but not limited to, the following: Government national mortgage association, federal land banks, federal home loan banks, federal intermediate credit banks, banks for cooperatives, Tennessee Valley Authority, United States postal service, farmers home administration, export-import bank, federal financing bank, federal home loan mortgage corporation, student loan marketing association and federal farm credit banks;

(3) Any evidence of indebtedness issued by the federal National Mortgage Association to the extent such indebtedness is guaranteed by the government National Mortgage Association;

(4) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this State, if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof;

(5) Direct and general obligations of this State;

(6) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the State and insured, the trust at the
32. time of the acquisition of the undivided interest, is rated in one
33. of the three highest rating grades by an agency which is
34. nationally known in the field of rating pooled mortgage trusts;

35. (7) Any bond, note, debenture, commercial paper or other
36. evidence of indebtedness of any private corporation or associa-
37. tion: Provided, That any such security is, at the time of its
38. acquisition, rated in one of the three highest rating grades by an
39. agency which is nationally known in the field of rating corpo-
40. rate securities: Provided, however, That if any commercial
41. paper or any such security will mature within one year from the
42. date of its issuance, it shall, at the time of its acquisition, be
43. rated in one of the two highest rating grades by any such
44. nationally known agency and commercial paper or other
45. evidence of indebtedness of any private corporation or associa-
46. tion shall be purchased only upon the written recommendation
47. from an investment advisor that has over three hundred million
48. dollars in other funds under its management;

49. (8) Negotiable certificates of deposit issued by any bank,
50. trust company, national banking association or savings institu-
51. tion which mature in less than one year and are fully collateral-
52. ized;

53. (9) Interest earning deposits including certificates of
54. deposit, with any duly designated state depository, which
55. deposits are fully secured by a collateralized bond as
56. provided in section four, article one, chapter twelve of this
57. code: Provided, That a banking institution is not required to
58. provide this collateralized bond, or other security in lieu
59. of bond, if the deposits accepted are placed in certificates of
60. deposit meeting the following requirements: (A) the funds are
61. invested through a designated state depository selected by the
62. municipality; (B) the selected depository arranges for the
63. deposit of the funds in certificates of deposit in one or more
64. banks or savings and loan associations wherever located in the
United States, for the account of the municipality; (C) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (D) the selected depository acts as custodian for the municipality with respect to such certificates of deposit issued for the municipality’s account; and (E) at the same time that the municipality’s funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the municipality through the selected depository; and

(10) Mutual funds registered with the securities and exchange commission which have assets in excess of three hundred million dollars.

CHAPTER 18. EDUCATION.

ARTICLE 9. SCHOOL FINANCES.

§18-9-6. Transfer of moneys; appointment of treasurer; bonding of treasurer; approval of bank accounts; authority to invest; security for funds invested.

The sheriff of each county shall remit to the board of education all moneys in his or her possession held on behalf of the county board of education, whether or not deposited in a bank or depository, unless the sheriff has been designated treasurer of the board of education as provided in this section. The transfer of funds shall be made as of the balances on hand on the thirtieth day of June of the year in which the board of education appoints a treasurer other than the sheriff, and shall be completed no later than the first day of August of that year. The transfer shall be adjudged complete and final upon the approval of the sheriff’s official settlement for the fiscal year ending on the thirtieth day of June of the year in which the
board of education appoints a treasurer other than the sheriff, and any minor adjustment made necessary by the actually known figures shall also be made at that time. All balances in all county school funds at the end of each month after the thirtieth day of June of the year in which the board of education appoints a treasurer other than the sheriff shall be transferred by the sheriff to the county board of education not later than the tenth day of the following month.

On or before the first Monday in May each county board of education shall upon recommendation of the county superintendent appoint a treasurer for the board. The treasurer is the fiscal officer of the board, or an employee commonly designated as the person in charge of the financial affairs of the county board, or the county sheriff: Provided, That once a board of education has appointed a treasurer other than the sheriff, the sheriff may not be named treasurer of the board in a subsequent year. Upon appointment this person shall be titled and referred to as treasurer of the board of education. For the faithful performance of this duty, the treasurer shall execute a bond, to be approved by the board of education, in the penalty to be fixed by the board of education, not to exceed the amount of school funds which it is estimated the treasurer will handle within any period of two months. The premium on the bond shall be paid by the board of education.

The board of education may open a bank account, or accounts, as required to adequately and properly transact the business of the district in a depository, or banks, within the county. The depositories, or banks, shall provide bond to cover the maximum amount to be deposited at any one time. However, the county board of education may, in lieu of such bond, accept as security for money deposited securities of the United States, or of a state, county, district or municipal corporation, or federal agency securities: Provided, That a banking institution is not required to provide a bond or security in lieu of bond
if the deposits accepted are placed in certificates of deposit meeting the following requirements: (1) the funds are invested through a designated state depository selected by the county board of education; (2) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the county board of education; (3) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for the county board of education with respect to such certificates of deposit issued for the county’s account; and (5) at the same time that the county board of education’s funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the county board of education through the selected depository. One hundred ten percent of the face or par value of the securities may not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted, or the county board of education may accept the securities as partial security to the extent of their face value for the money so deposited and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and, in the bond so required, the acceptance of securities as partial security and the extent thereof shall be set forth. The hypothecation of the securities shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as depository as aforesaid. All such securities shall be delivered to or deposited for the account of the county board of education, and withdrawal or substitution thereof may be permitted from time to time upon approval by the county board of education by order of record, but the
collateral security shall be released only by order of record of
the county board of education when satisfied that full and
faithful accounting and payment of all the moneys has been
made under the provisions hereof. In the event actual posses-
sion of the hypothecated securities is delivered to the county
board of education, it shall make ample provision for the
safekeeping thereof, and the interest thereon when paid shall be
turned over to the banking institution, so long as it is not in
default as aforesaid. The county board of education may permit
the deposit under proper receipt of such securities with one or
more banking institutions within the State of West Virginia and
may contract with any such institution for safekeeping and
exchange of any such hypothecated securities, and may
prescribe the rules for handling and protecting the same.

On and after the first day of July, one thousand nine
hundred seventy-three, all levies and any other school moneys
received by the sheriff and paid to the treasurer of the county
board of education shall be deposited in these accounts, and all
proper payments from such funds shall be made by the desig-
nated depository or bank upon order or draft presented for
payment and signed by the duly authorized signatories of the
board of education: Provided, That in determining the depository
for board of education funds a board member who has a
pecuniary interest in a bank within the county shall not partici-
pate in the determination of the depository for such funds.

If it is considered that sufficient funds are on hand in any
account at any one time which may be more than are normally
required for the payment of incurred expenses, the funds in the
amount so considered available may be invested by the trea-
surer of the county board with the West Virginia municipal
bond commission, or in guaranteed certificates of deposit issued
by the depository or bank, or other guaranteed investments such
as treasury bills, treasury notes or certificates of deposit issued
by either the United States government or a banking institution
in which federal or state guarantees are applicable. Interest earned in such investments is to be credited to the fund from which the moneys were originally available.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Originating in the House.

In effect ninety days from passage.

The within is approved this the 20th day of April, 2005.