WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED
Committee Substitute for
SENATE BILL NO. 558

(By Senators Tomblin, Mr. President, and Sprouse,)
By Request of the Executive)

PASSED April 9, 2005

In Effect 90 days from Passage
AN ACT to repeal §12-6-10 and §12-6-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §12-1-2, §12-1-12 and §12-1-13 of said code; to amend said code by adding thereto a new section, designated §12-1-12b; to amend and reenact §12-2-2 and §12-2-3 of said code; to amend and reenact §12-3A-4 of said code; to amend and reenact §12-6-1a, §12-6-5, §12-6-8 and §12-6-13 of said code; to amend and reenact §12-6B-4 of said code; and to amend said code by adding thereto a new article, designated §12-6C-1, §12-6C-2, §12-6C-3, §12-6C-4, §12-6C-5, §12-6C-6, §12-6C-7, §12-6C-8, §12-6C-9, §12-6C-10, §12-6C-11, §12-6C-12, §12-6C-13, §12-6C-14, §12-6C-15, §12-6C-16, §12-6C-17, §12-6C-18, §12-6C-19 and §12-6C-20, all relating generally to the management and investment of public funds; authorizing investment accounts for the Board of Treasury Investments; adding State Treasurer to entities receiving
reports from depositories regarding accounts not approved by the State Treasurer; allowing the Board of Treasury Investments to accept funds remitted by the State Treasurer; codifying and clarifying the duties of the State Treasurer in administering the Federal Cash Management Improvement Act; authorizing the Federal Cash Management Interest Fund and the Federal Cash Management - Administration Fund; enabling the Board of Treasury Investments to invest moneys in the consolidated fund; codifying current method of handling receipts using the state accounting system; authorizing Legislature to transfer moneys; requiring spending units to comply with procedures for receipt and disbursement of moneys not due the state; clarifying roles and administration of the West Virginia pay card; transferring management of consolidated fund from Investment Management Board to West Virginia Board of Treasury Investments; removing provision that the Investment Management Board can order the State Auditor and the State Treasurer to transmit funds; creating West Virginia Board of Treasury Investments; changing the date the debt capacity report is due from the first day of October to the fifteenth day of January; providing purposes, legislative findings and definitions for the Board of Treasury Investments; specifying membership of Board, appointment of certain directors of Board, terms of office, vacancies in office, removal of directors, expenses of directors, meetings and powers of Board; transferring management, control and administration of consolidated fund to the Board of Treasury Investments; requiring annual review of asset allocation plans and investment policies; specifying requirements and restrictions on investments; authorizing loans for industrial development; handling of securities; establishing the standard of care for investments; transferring existing cash, securities and other investments to the Board of Treasury Investments; requiring audits, financial statements and reports; continuing the current powers of spending units as to investments; transferring all loans from the consolidated fund to the Board of Treasury Investments; creating the fee fund and the
investment fund; authorizing fees for administration and expenses; and termination of Board.

Be it enacted by the Legislature of West Virginia:

That §12-6-10 and §12-6-15 of the Code of West Virginia, 1931, as amended, be repealed; that §12-1-2, §12-1-12 and §12-1-13 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §12-1-12b; that §12-2-2 and §12-2-3 of said code be amended and reenacted; that §12-3A-4 of said code be amended and reenacted; that §12-6-1a, §12-6-5, §12-6-8 and §12-6-13 of said code be amended and reenacted; that §12-6B-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §12-6C-1, §12-6C-2, §12-6C-3, §12-6C-4, §12-6C-5, §12-6C-6, §12-6C-7, §12-6C-8, §12-6C-9, §12-6C-10, §12-6C-11, §12-6C-12, §12-6C-13, §12-6C-14, §12-6C-15, §12-6C-16, §12-6C-17, §12-6C-18, §12-6C-19 and §12-6C-20, all to read as follows:

ARTICLE 1. STATE DEPOSITORYs.

§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.

(a) 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.

(b) (1) 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 of the state.

(2) 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 of the state to any political subdivision, person, firm or corporation, except moneys paid from investment accounts.

(3) Investment accounts are accounts established by the West Virginia Investment Management Board, the West Virginia Board of Treasury Investments or the State Treasurer for the buying and selling of securities for investment purposes.

(c) The State Treasurer shall propose rules for legislative approval, 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 any other contractual terms it considers to be in the best interests of the state giving due consideration to: (1) The activity of the various accounts maintained in the depositories; (2) the reasonable value of the banking services rendered or to be rendered the state by the depositories; and (3) the value and importance of the deposits to the economy of the communities and the various areas of the state affected by the deposits.

(d) 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 State Treasurer may include eligible banks outside this state in the competitive bidding process. The State Treasurer shall propose rules for legislative approval 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 State Treasurer shall, in the invitations for bids, specify the approximate amounts of deposits, the duration of contracts to be awarded and any other contractual terms the State 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 financial institutions which have not been designated as depositories.

(e) Except as otherwise provided in this code, only banks and state and federal savings and loan associations designated by the State Treasurer as depositories may accept deposits of state funds. Only the Legislature and the State Treasurer may determine whether funds are state funds and only the State Treasurer may approve the opening of an account or processing of a transaction with a financial institution.

(f) 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 State 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 and the State Treasurer.

(g) 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 Authority.
§12-1-12. Investing funds in treasury; depositories outside the state.

(a) When the funds in the Treasury exceed the amount needed for current operational purposes, as determined by the State Treasurer, the State Treasurer shall make all excess funds available for investment by the Board of Treasury Investments 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.

(b) Spending units with authority to retain interest or earnings on a fund or account may submit requests to the State Treasurer to transfer moneys to a specific investment pool of the Investment Management Board or the Board of Treasury Investments 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.

(c) 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 State
Treasurer may designate depositories 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.

(d) The State Treasurer may transfer funds to financial institutions 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.

§12-1-12b. Cash management improvement act; administration; reports.

(a) The Cash Management Improvement Act of 1990, Public Law 101-453, October 24, 1990, 31 USCA Section 6501, et seq., (CMIA) and regulations, as amended, establishes requirements and techniques, including calculations, for the receipt and disbursement of federal funds by states. The authorized official and representative of the State of West Virginia for the CMIA is the State Treasurer.

(b) In administering the CMIA, the State Treasurer is authorized to do all things reasonably necessary, including without limitation, entering into agreements with, negotiating settlements with, refunding any interest due and satisfying any liability to the United States Treasury in accordance with the CMIA.

(c) Periodically the State Treasurer shall transfer to the Federal Cash Management Interest Fund, which is hereby authorized and continued, earnings on the State General Revenue Fund in an amount the State Treasurer estimates is needed to make refunds in accordance with the CMIA. After each annual settlement with the United States Treasury, the State Treasurer shall transfer to the State General Revenue Fund any moneys remaining in the
(d) The State Treasurer shall also transfer periodically to the Federal Cash Management – Administration Fund, which is hereby authorized and continued, earnings on the State General Revenue Fund in an amount the State Treasurer determines is needed to pay for the costs of administering the CMIA. The State Treasurer may pay the costs he or she incurs in administering the CMIA from the Federal Cash Management – Administration Fund.

(e) All state spending units shall cooperate fully with the State Treasurer in accumulating all the necessary data elements to fully comply with the CMIA.

(f) The State Treasurer shall send quarterly reports on the activities involving the CMIA to the Governor, State Auditor, Secretary of Revenue and Joint Committee on Government and Finance.

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

(a) The State Treasurer is authorized to pay for banking services, and goods and services ancillary to the banking services, by either a compensating 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 may 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 West Virginia Board of Treasury Investments, at the request of
the State Treasurer, may 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 State 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.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

(a) All officials and employees of the state authorized by statute to accept moneys due the State of West Virginia shall keep a daily itemized record of moneys received for deposit in the State Treasury and shall deposit within twenty-four hours with the State Treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. The State Treasurer may review the procedures and methods used by officials and employees authorized to accept moneys due the state and change the procedures and methods if he or she determines it is in the best interest of the state: Provided, That the State Treasurer may not review or amend the procedures by which the Department of Revenue accepts moneys due the state. The State Treasurer shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the procedure for deposits. The official or employee making deposits with the State Treasurer shall prepare deposit lists in the manner and upon report forms prescribed by the State Treasurer in the state accounting
system. The State Treasurer shall review the deposits in the state accounting system and forward the information to the State Auditor and to the Secretary of Revenue.

(b) All moneys received by the state from appropriations made by the Congress of the United States shall be recorded in special fund accounts, in the State Treasury apart from the general revenues of the state, and shall be expended in accordance with the provisions of article eleven, chapter four of this code. All moneys, other than federal funds, defined in section two, article eleven, chapter four of this code, shall be credited to the state fund and treated by the State Auditor and State Treasurer as part of the general revenue of the state except the following funds which shall be recorded in separate accounts:

(1) All funds excluded by the provisions of section six, article eleven, chapter four of this code;

(2) All funds derived from the sale of farm and dairy products from farms operated by any spending unit of the state;

(3) All endowment funds, bequests, donations, executive emergency funds and death and disability funds;

(4) All fees and funds collected at state educational institutions for student activities;

(5) All funds derived from collections from dormitories, boardinghouses, cafeterias and road camps;

(6) All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;

(7) All insurance collected on account of losses by fire and refunds;

(8) All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices;
(9) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking funds, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the Public Service Commission for the investigation and supervision of applications and all fees, money, interest or funds arising from the sales of all permits and licenses to hunt, trap, fish or otherwise hold or capture fish and wildlife resources and money reimbursed and granted by the federal government for fish and wildlife conservation; and

(10) All moneys collected or received under any act of the Legislature providing that funds collected or received under the act shall be used for specific purposes.

(c) All moneys, except as provided in subdivisions (1) through (9), inclusive, subsection (b) of this section, shall be paid into the State Treasury in the same manner as collections not excepted and recorded in separate accounts for receipt and expenditure for the purposes for which the moneys are authorized to be collected by law: Provided, That amounts collected pursuant to subdivision (10), subsection (b) of this section, which are found, from time to time, to exceed funds needed for the purposes set forth in general law may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The gross amount collected in all cases shall be paid into the State Treasury. Commissions, costs and expenses, including, without limitation, amounts charged for use of bank, charge, credit or debit cards, incurred in the collection process shall be paid from the gross amount collected in the same manner as other payments are made from the State Treasury.

(d) The State Treasurer may establish an imprest fund or funds in the office of any state spending unit upon receipt of a proper application. To implement this authority, the State Treasurer shall propose rules for legislative approval
in accordance with the provisions of article three, chapter twenty-nine-a of this code. The State Treasurer or his or her designee shall annually audit all imprest funds and prepare a list of the funds showing the location and amount as of fiscal year end, retaining the list as a permanent record of the State Treasurer until the Legislative Auditor has completed an audit of the imprest funds of all agencies and institutions involved.

(e) The State Treasurer may develop and implement a centralized receipts processing center. The State Treasurer may request the transfer of equipment and personnel from appropriate state agencies to the centralized receipts processing center in order to implement the provisions of this section: Provided, That the Governor or appropriate constitutional officer has authority to authorize the transfer of equipment or personnel to the centralized receipts processing center from the respective agency.

§12-2-3. Deposit of moneys not due the state.

All officials and employees of the state authorized to accept moneys that the State Treasurer determines or that this code specifies are not funds due the state pursuant to the provisions of section two of this article shall deposit the moneys, as soon as practicable, in the manner and in the depository specified by the State Treasurer. The State Treasurer shall prescribe the forms and procedures for depositing the moneys.

Notwithstanding any provision of this code to the contrary, including provisions stating funds collected are not state funds and provisions authorizing a spending unit to have one or more accounts outside the Treasury, a spending unit shall comply with the State Treasurer's procedures for the receipt and disbursement of moneys not due the state and obtain written authorization from the State Treasurer before depositing any moneys in an account outside the Treasury. Upon the State Treasurer's written revocation of the authorization, the spending unit
shall deposit funds deposited in an account outside the Treasury into the Treasury in the manner and in the depository specified by the State Treasurer. The State Treasurer is the final determining authority as to whether these funds are funds due or not due the state pursuant to section two of this article. The State Treasurer shall on a quarterly basis provide the Legislative Auditor with a report of all accounts authorized under this section.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-4. Payment by a West Virginia pay card.

The State Auditor and the State Treasurer may jointly establish a state stored value debit card program known as the “West Virginia Pay Card” for recipients of employee payroll, retirement benefits or entitlement programs who do not possess a federally insured depository institution account. The State Auditor and the State Treasurer shall use every reasonable effort to encourage all identified unbanked recipients to obtain a federally insured depository account. The State Auditor shall include an unbanked recipient in the program upon determining that good cause exists. Once an unbanked recipient is included in the program, the State Auditor shall provide the State Treasurer with an electronic file containing the necessary unbanked recipient information. The State Treasurer shall issue a request for proposals in accordance with section three of this article to aid in the administration of the program. The State Auditor shall assist in the review of pay card proposals. In carrying out the purposes of this article, the State Treasurer shall not compete with banks or other federally insured financial institutions, or for profit.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-la. Legislative findings.

(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 Sheriffs 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 may develop, implement and maintain an efficient and modern system for the investment and management of the state's money, except those moneys managed in accordance with article six-c of this chapter. 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 Fund 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 is 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 may 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 recognized that there were other permissible constitu-
tional 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.

§12-6-5. Powers of the Board.

The Board may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes. The Board may:

(1) Adopt and use a common seal and alter it at pleasure;
(2) Sue and be sued;
(3) Enter into contracts and execute and deliver instruments;
(4) Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;
(5) Promulgate and enforce bylaws and rules for the 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;
17  Enr. Com. Sub. for S. B. No. 558

(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;

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

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

(18) Develop, implement and maintain its own banking accounts and investments;
53  (19) Do all things necessary to implement and operate
54  the Board and carry out the intent of this article;
55  (20) Upon request of the State Treasurer, transmit funds
56  for deposit in the State Treasury to meet the daily obliga-
57  tions of state government;
58  (21) Establish one or more investment funds for the
59  purpose of investing the funds for which it is trustee,
60  custodian or otherwise authorized to invest pursuant to
61  this article. Interests in each fund shall be designated as
62  units and the Board shall adopt industry standard ac-
63  counting procedures to determine each fund’s unit value.
64  The securities in each investment fund are the property of
65  the Board and each fund shall be considered an investment
66  pool or fund and may not be considered a trust nor may
67  the securities of the various investment funds be consid-
68  ered held in trust. However, units in an investment fund
69  established by or sold by the Board and the proceeds from
70  the sale or redemption of any unit may be held by the
71  Board in its role as trustee of the participant plans; and
72  (22) Notwithstanding any other provision of the code to
73  the contrary, conduct investment transactions, including
74  purchases, sales, redemptions and income collections,
75  which shall not be treated by the State Auditor as record-
76  able transactions on the state’s accounting system.

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

1  (a) There is continued a special investment fund design-
2  nated as the Consolidated Fund. Effective the thirtieth
3  day of June, two thousand five, the power and authority of
4  the Board as to the consolidated fund terminates. On the
5  first day of July, two thousand five, the Board shall
6  transfer the consolidated fund, all moneys, obligations,
7  assets, securities and other investments of the consolidated
8  fund and all records, properties and any other document or
9  item pertaining to the consolidated fund in its possession
10  or under its control to the West Virginia Board of Treasury
11  Investments established in article six-c of this chapter.
(b) Each board, commission, department, official or agency charged with the administration of state funds may request the State Treasurer to 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 State Treasurer for the investment of moneys of the political subdivision. Any political subdivision may enter into an agreement with any state spending unit from which it receives funds to request transfer of the funds to their investment account with the Investment Management Board or the West Virginia Board of Treasury Investments.

(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. The Board shall report the earnings on the various funds under management to the State Treasurer at the times determined by the State 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.

§12-6-13. Board as agency for investments; exceptions.

All duties vested by law in any agency, commission, official or other board of the state relating to the investment of moneys, and the acquisition, sale, exchange or
disposal of securities or any other investment are hereby transferred to the Board: Provided, That neither this section nor any other section of this article applies to the duties vested by law in any agency, commission, official or other board of the state relating to the investment of moneys and the acquisition, sale, exchange or disposal of securities or any other investment by the West Virginia Board of Treasury Investments pursuant to article six-c of this chapter, to the Board of the School Fund or to the School Fund established by section 4, article XII of the State Constitution: Provided, however, That funds under the control of the Municipal Bond Commission may, in the discretion of the Commission, be made available to the Board for investment by the Commission as provided in article three, chapter thirteen of this code.

ARTICLE 6B. DEBT CAPACITY ADVISORY DIVISION.

§12-6B-4. Powers and duties.

The Division shall perform the following functions and duties:

(a) Promulgate rules pursuant to article three, chapter twenty-nine-a of this code, for the management and conduct of its affairs;

(b) Annually review the size and condition of the state's tax-supported debt and submit to the Governor and to the Legislature, on or before the fifteenth day of January of each year, an estimate of the maximum amount of new tax-supported debt that prudently may be authorized for the next fiscal year, together with a report explaining the basis for the estimate. The estimate shall be advisory and in no way restrict the Governor or the Legislature. In preparing its annual review and estimate, the Division shall, at a minimum, consider:

(1) The amount of net tax supported debt that, during the next fiscal year and annually for the following ten fiscal
(A) Will be outstanding; and (B) has been authorized but not yet issued;

(2) Projected debt service requirements during the next fiscal year and annually for the following ten fiscal years based upon: (A) Existing outstanding debt; (B) previously authorized but unissued debt; and (C) projected bond authorizations;

(3) Any information available from the budget section of the Department of Administration in connection with anticipated capital expenditures projected for the next five fiscal years;

(4) The criteria that recognized bond rating agencies use to judge the quality of state bonds;

(5) Any other factor that the Division finds as relevant to: (A) The ability of the state to meet its projected debt service requirements for the next fiscal year; (B) the ability of the state to meet its projected debt service requirement for the next five fiscal years; and (C) any other factor affecting the marketability of the bond; and

(6) The effect of authorizations of new tax-supported debt on each of the considerations of this subsection.

(c) Conduct ongoing review of the amount and condition of bonds, notes and other security obligations of the state’s spending units: (1) Not secured by the full faith and credit of the state or for which the Legislature is not obligated to replenish reserve funds or make necessary debt service payments; (2) for which the state has a contingent or limited liability or for which the Legislature is permitted to replenish reserve funds or make necessary debt service payments if deficiencies occur. When appropriate, the Division shall recommend limits on the additional obligations to the Governor and to the Legislature. The recommendation is advisory and in no way restricts the Governor, the Legislature or the spending unit.
(d) The State Treasurer may review all proposed offerings of debt, as defined in this article, submitted to the Division of Debt Management, as provided in section six, article six-a of this chapter. The Division may also request any additional information which may be needed to issue an advisory opinion to the Governor, the Speaker of the House of Delegates and the President of the Senate as to the impact of the proposed offering on the state's net tax-supported debt outstanding and any other criteria which the State Treasurer feels may be relevant to the market-ability of said offering and its impact on the state's credit rating. The advisory opinion shall in no way restrict the Governor, the Legislature or the spending unit.

(e) Do all things necessary or convenient to effectuate the intent of this article and to carry out its powers and functions.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-1. Purposes and objects; how article cited.

This article, cited as the West Virginia Treasury Investments Act, is enacted to provide for the investment and management of the Consolidated Fund for the purposes of making state moneys more accessible to state government and allowing the Investment Management Board to focus on long-term investment of the trust estates it manages pursuant to article six of this chapter.

§12-6C-2. Legislative findings.

(a) The Legislature finds and declares that the Consolidated Fund should benefit from financial professionals dedicated to and focused on the sound administration, investment and management of the Fund.

(b) The Legislature finds and declares that the State Treasurer currently enters into agreements on behalf of the West Virginia Investment Management Board with
political subdivisions and provides reporting services for participants in the Consolidated Fund.

(c) The Legislature finds and declares that the transfer of the Consolidated Fund to the West Virginia Board of Treasury Investments will allow for management of the fund within state government and will encourage better cash management of state moneys.

(d) The Legislature finds and declares that a public body corporate within state government with appropriate governance is the best means of assuring reasonable access to and prudent management and investment of the Consolidated Fund.

(e) The Legislature finds and declares that in accomplishing these purposes, the West Virginia Board of Treasury Investments is acting in all respects for the benefit of the citizens of the state in managing and investing the Consolidated Fund.

(f) The Legislature further finds and declares that it is in the best interests of the state, its citizens and the political subdivisions to create the West Virginia Board of Treasury Investments to manage and invest the Consolidated Fund to: (1) Provide focused investment services for the operating funds of the state and of its political subdivisions; (2) provide better management of all state funds within state government; and (3) allow the West Virginia Investment Management Board to focus on the long-term investment of the trust estates it manages pursuant to article six of this chapter.

§12-6C-3. Definitions.

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

1. “Board” means the governing body for the West Virginia Board of Treasury Investments. References in this code to the entity investing the moneys of the Consolidated...
Fund, to the West Virginia Board of Investments, to the West Virginia Trust Fund or to the West Virginia Investment Management Board in connection with investing moneys in the Consolidated Fund means the Board as defined in this subdivision;

(2) “Consolidated Fund” means the investment fund continued in section six of this article and transferred to the Board by the West Virginia Investment Management Board for Management and Investment;

(3) “Director” means any member serving on the Board;

(4) “Local government funds” means the moneys of a political subdivision, including policemen’s and firemen’s pension and relief funds, and volunteer fire department funds, transferred to the Board for deposit;

(5) “Participant” means any state government spending unit or political subdivision which transfers moneys to the Board for investment;

(6) “Political subdivision” means and includes a county, municipality or any agency, authority, board, county board of education, commission or instrumentality of a county or municipality and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;

(7) “Securities” means all bonds, notes, debentures or other evidences of indebtedness and other lawful investment instruments; and

(8) “State funds” means all moneys of the state which may be lawfully invested except for the “school fund” established by section four, article XII of the State Constitution.

§12-6C-4. West Virginia Board of Treasury Investments created; body corporate; board; directors; nomination and appointment of directors, qualifications and terms of appointment, advice and consent; annual and
other meetings; committees; board approval of investment policies required; open meetings, qualifications.

(a) The West Virginia Board of Treasury Investments is created as a public body corporate and established to provide prudent fiscal administration, investment and management for the Consolidated Fund.

(b) Any appointment to the Board is effective immediately upon appointment by the Governor with respect to voting, constituting a quorum, receiving expenses and all other rights and privileges of the Director position. A trustee of the West Virginia Investment Management Board other than the Governor, State Treasurer or State Auditor is not eligible to serve as a Director of the Board.

(c) The Board shall consist of five members, as follows:

(1) The Governor, the State Treasurer and the State Auditor or their designees. They shall serve by virtue of their offices and are not entitled to compensation under the provisions of this article. The Governor, State Treasurer and State Auditor or their designees are subject to all duties, responsibilities and requirements of the provisions of this article; and

(2) Two persons appointed by the Governor subject to the advice and consent of the Senate.

(d) Of the two persons appointed by the Governor, one shall be a certified public accountant with experience in finance, investing and management, and one shall be an attorney with experience in finance, investing and management.

(e) (1) Initial appointment of the appointed directors shall be for the following terms:

(A) One member shall be appointed for a term ending the thirtieth day of June, two thousand seven; and
(B) One member shall be appointed for a term ending the
thirtieth day of June, two thousand nine.

(2) Except for appointments to fill vacancies, each
subsequent appointment shall be for the term ending the
thirtieth day of June of the fourth year following the year
the preceding term expired. A Director may be reap-
pointed. In the event a vacancy occurs it shall be filled by
appointment for the unexpired term. A Director whose
term has expired shall continue in office until a successor
has been duly appointed and qualified. No appointed
member of the Board may be removed from office by the
Governor except for official misconduct, incompetency,
neglect of duty, gross negligence, misfeasance or gross
immorality.

(f) All directors shall receive reasonable and necessary
expenses actually incurred in discharging director's duties
pursuant to this article.

(g) The Board shall hold quarterly meetings. Board
bylaws may provide for calling and holding additional
meetings. Representatives of participants and members of
the public may attend any meeting held by the Board,
except during those meetings or part of meetings closed by
the Board as permitted by law. Attendees shall observe
standards of decorum established by board policy.

(h) The Board shall annually adopt a fee schedule and a
budget reflecting fee structures for the year.

(i) The Board chairman may appoint committees as
needed, including, but not limited to, an investment
policies committee to discuss drafting, reviewing or
modifying written investment policies. Each committee
shall seek input from participants before reporting its
recommendations to the Board. The Board may meet with
any or all committees during any of its meetings.

(j) Any meeting of the Board may be closed upon adop-
tion of a motion by any Director 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 participants.

§12-6C-5. Powers of the Board.

The Board may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes.

The Board may:

1. Adopt and use a common seal and alter it at pleasure;
2. Sue and be sued;
3. Enter into contracts and execute and deliver instruments using the policies and procedures of the State Treasurer's Office;
4. Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;
5. Promulgate and enforce bylaws and rules for the management and conduct of its affairs;
6. Notwithstanding any other provision of law to the contrary, specifically article three, chapter five-a of this code, retain and contract with legal, accounting, financial and investment managers, 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 investments authorized by this article;
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 consolidated fund 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) Abide by agreements entered into by the State Treasurer with political subdivisions of the state for investment of moneys of the political subdivisions by the Board;

(13) Charge and collect administrative fees from participants, including 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) Use any contract or agreement of the Investment Management Board or the State Treasurer's Office and enter into its own contracts or agreements, including, without limitation entering into a contract or agreement with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities held by the Board and with any investment manager and investment advisor needed;

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

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

(18) Develop, implement and maintain its own investment accounts;
(19) Offer assistance and seminars to spending units and to political subdivisions;

(20) Upon request of the State Treasurer, transmit funds for deposit to the State Treasury to meet the daily obligations of state government; and

(21) Establish one or more investment funds, pools or participant accounts within the consolidated fund for the purpose of investing the moneys and assets for which it is director, trustee, custodian or otherwise authorized to invest pursuant to this article. Interests in each fund, pool or participant account are designated as units and the Board shall adopt industry standard accounting procedures to determine the unit value of each fund, pool or participant account. The securities in each investment fund, pool or participant account are the property of the Board and each fund, pool or participant account is considered an investment pool, investment fund or investment participant account.

§12-6C-6. Consolidated fund continued; management.

(a) The consolidated fund is continued and notwithstanding any provision of this code to the contrary is vested in the West Virginia Board of Treasury Investments on the first day of July, two thousand five.

(b) Each spending unit authorized to invest moneys shall unless prohibited by law, request the State Treasurer to invest its moneys. Based upon spending unit representations, the State Treasurer shall send the moneys to the West Virginia Board of Treasury Investments or to the Investment Management Board for investment.

(c) Each political subdivision of this state through its State Treasurer or equivalent financial officer may enter into agreements with the State Treasurer for the investment of moneys of the political subdivision. Any political subdivision may enter into an agreement with the state
spending unit from which it receives moneys to allow the board to invest the moneys.

(d) Moneys held in the various funds and accounts administered by the Board are invested as permitted by this article and subject to the restrictions contained in this article.

(e) The State Treasurer shall maintain records of the deposits and withdrawals of each participant and the performance of the various funds, pools and accounts. The Board shall report the earnings on the funds, pools, and accounts under management to the State Treasurer at the times determined by the State Treasurer.

(f) The Board shall establish policies for the administration of the various funds, pools and accounts authorized by this article as it determines necessary. The policies may specify the minimum amounts and timing of deposits and withdrawals and any other matters authorized by the Board.

§12-6C-7. Management and control of fund; officers; staff; fiduciary or surety bonds for directors; liability of directors.

(a) The management and control of the Consolidated Fund is vested solely in the Board in accordance with the provisions of this article.

(b) The State Treasurer is the Chairman of the Board. The Board shall elect a vice chairman. Annually, the Directors shall elect a secretary to keep a record of the proceedings of the Board and provide any other duties required by the Board. The Board may elect a person who is not a member of the Board as secretary.

(c) The board may use the staff of the State Treasurer, employ personnel and contract with any person or entity needed to perform the tasks related to operating the Consolidated Fund.
(d) The Board shall retain an internal auditor to report directly to the Board and shall fix his or her compensation. As a minimum qualification, 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, internal controls and the security of transactions.

(e) The Board shall retain one employee with a chartered financial analyst designation or an employee who is a certified treasury manager.

(f) Each director 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 director. 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 director 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 are fixed by the Board. The premiums payable on all fiduciary or surety bonds are expenses of the Board.

(g) The Directors, employees of the Board and employees of the State Treasurer performing work for or on behalf of the Board are not liable personally, either jointly or severally, for any debt or obligation created by the Board: Provided, That the Directors and employees of the Board are liable for acts of misfeasance or gross negligence.

(h) The Board is exempt from the provisions of article three, chapter five-a, and sections seven and eleven, article
three, chapter twelve of this code. However, the Board is subject to the purchasing policies and procedures of the State Treasurer's Office.

§12-6C-8. Administration of Consolidated Fund.

(a) In the administration of the Consolidated Fund continued by this article, the Board may:

(1) Purchase, retain, hold, transfer and exchange and sell, at public or private sale, the whole or any part of the Fund or pools upon any terms and conditions it considers advisable;

(2) Invest and reinvest the fund and pools or any part thereof in fixed income securities as provided in this article;

(3) Carry the securities and other property held in trust either in the name of the Board or in the name of its nominee;

(4) Vote, in person or by proxy, all securities held; join in or dissent from and oppose the reorganization, recapitalization, consolidation, merger, liquidation or sale of corporations or property; exchange securities for other securities issued in connection with or resulting from any transaction; pay any assessment or expense which the Board considers advisable for the protection of its interest as holder of the securities; exercise any option appurtenant to any securities for the conversion of any securities into other securities; and exercise or sell any rights issued upon or with respect to the securities of any corporation, all upon terms the Board considers advisable;

(5) Prosecute, defend, compromise, arbitrate or otherwise adjust or settle claims in favor of or against the board or a director;

(6) Employ and pay from the Fund any investment advisors, brokers, counsel, managers and any other assistants and agents the Board considers advisable;
(7) Develop, implement and modify an asset allocation plan and investment policy for each fund or pool; and

(8) Create a local government investment pool, a program to purchase certificates of deposit from West Virginia financial institutions that are state depositories and any funds, pools or participant accounts needed.

(b) All income and earnings are free from anticipation, alienation, assignment or pledge by, and free from attachment, execution, appropriation or control by or on behalf of, any and all creditors of any beneficiary by any proceeding at law, in equity, in bankruptcy or insolvency.

(c) The Board shall render an annual accounting not more than one hundred twenty days following the close of the fiscal year.

§12-6C-9. Asset allocation; investment policies, authorized investments; restrictions.

(a) The Board shall develop, adopt, review or modify an asset allocation plan for the Consolidated Fund at each annual board meeting.

(b) The Board shall adopt, review, modify or cancel the investment policy of each fund or pool created at each annual board meeting. For each participant directed account authorized by the State Treasurer, staff of the Board shall develop an investment policy for the account and create the requested account. The Board shall review all existing participant directed accounts and investment policies at its annual meeting for modification.

(c) The Board shall consider the following when adopting, reviewing, modifying or canceling investment policies:

(1) Preservation of capital;

(2) Risk tolerance;

(3) Credit standards;
Enr. Com. Sub. for S. B. No. 558] 34

(4) Diversification;
(5) Rate of return;
(6) Stability and turnover;
(7) Liquidity;
(8) Reasonable costs and fees;
(9) Permissible investments;
(10) Maturity ranges;
(11) Internal controls;
(12) Safekeeping and custody;
(13) Valuation methodologies;
(14) Calculation of earnings and yields;
(15) Performance benchmarks and evaluation; and
(16) Reporting.

(d) No security may be purchased by the Board unless the type of security is on a list approved at a board meeting. The Board shall review the list at its annual meeting.

(e) Notwithstanding the restrictions which are otherwise provided by law with respect to the investment of funds, the Board and all participants, now and in the future, may invest funds in these securities:

(1) Obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency or corporation thereof and obligations and securities of the United States sponsored enterprises, including, without limitation:

(i) United States Treasury;
(ii) Export-Import Bank of the United States;
(iii) Farmers Home Administration;
(iv) Federal Farm Credit Banks;
(v) Federal Home Loan Banks;
(vi) Federal Home Loan Mortgage Corporation;
(vii) Federal Land Banks;
(viii) Government National Mortgage Association;
(ix) Merchant Marine bonds; and
(x) Tennessee Valley Authority Obligations.

(2) Obligations of the Federal National Mortgage Association;

(3) Commercial paper with one of the two highest commercial paper credit ratings by a nationally recognized investment rating firm;

(4) Corporate debt rated in one of the six highest rating categories by a nationally recognized rating agency;

(5) State and local government, or any instrumentality or agency thereof, securities with one of the three highest ratings by a nationally recognized rating agency;

(6) Repurchase agreements involving the purchase of United States Treasury securities and repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities;

(7) Reverse repurchase agreements involving the purchase of United States Treasury securities and reverse repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities;

(8) Asset-backed securities rated in the highest category by a nationally recognized rating agency, but excluding mortgage-backed securities; and
(9) Investments in accordance with the Linked Deposit Program, a program using financial institutions in West Virginia to obtain certificates of deposit, loans approved by the Legislature and any other programs authorized by the Legislature.

(f) In addition 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.

§12-6C-10. Investment authority for Consolidated Fund transferred to Board; exceptions.

Effective the first day of July, two thousand and five, all duties vested by law in state spending units and the West Virginia Investment Management Board relating to the Consolidated Fund are transferred to the Board, including without limitation the investment of moneys, and the acquisition, sale, exchange or disposal of securities or any other investment: Provided, That neither this section nor any other section of this article applies to the “board of the school fund” and the “school fund” established by section 4, article XII of the State Constitution: Provided, however, That the municipal bond commission may make funds under its control available to the board for investment.
§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.

(a) The Legislature finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state; that business and industrial development loan programs provide 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. The Legislature further finds and declares that an investment in the West Virginia Enterprise Capital Fund, LLC, of moneys in the Consolidated Fund as hereinafter provided will assist in creating jobs and businesses within the state and provide the needed risk capital to assist business and industrial development. This section is enacted in view of these findings.

(b) The West Virginia Board of Treasury Investments shall make available, subject to a liquidity determination, in the form of a revolving loan, up to one hundred seventy-five 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 Authority pursuant to this section and pursuant to section twenty, article fifteen, chapter thirty-one of this code which authorizes a one hundred seventy-five 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 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 is 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.

(c) 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. The independent audit of the West Virginia Economic Development Authority financial records shall annually certify that one hundred three-percent requirement.

(d) 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.

(e) Any and all outstanding loans made by the West Virginia Board of Treasury Investments, or any predecessor entity, to the West Virginia Economic Development Authority are refundable by proceeds of the revolving loan contained in this section and the Board shall make no
loans to the West Virginia Economic Development Author-
ity pursuant to section twenty, article fifteen, chapter
thirty-one of this code or article eighteen-b of said chap-
ter.

(f) The Directors of the Board shall bear no fiduciary
responsibility with regard to any of the loans contem-
plated in this section.

(g) Subject to cash availability, the Board shall make
available to the West Virginia Economic Development
Authority, from the Consolidated Fund, a nonresource
loan in an amount up to twenty-five million dollars, for
the purpose of the West Virginia Economic Development
Authority making a loan or loans from time to time to the
West Virginia Enterprise Advancement Corporation, an
affiliated nonprofit corporation of the West Virginia
Economic Development Authority. The respective loans
authorized by this subsection by the Board to the West
Virginia Economic Development Authority to the West
Virginia Enterprise Advancement Corporation shall each
be evidenced by one note and shall each bear interest at
the rate of three percent per annum. The proceeds of any
and all loans made by the West Virginia Economic Devel-
opment Authority to the West Virginia Enterprise Ad-
vancement Corporation pursuant to this subsection shall
be invested by the West Virginia Enterprise Corporation in
the West Virginia Enterprise Capital Fund, LLC, the
manager of which is the West Virginia Enterprise Ad-
vancement Corporation. The loan to West Virginia
Economic Development Authority authorized by this
subsection shall be nonrevolving, and advances under the
loan shall be made at times and in amounts requested or
directed by the West Virginia Economic Development
Authority, upon reasonable notice to the Board. The loan
authorized by this subsection is not subject to or included
in the limitations set forth in subsection (b) of this section
with respect to the fifteen million-dollar limitation for any
one business or industrial development project and
limitation of one hundred three percent of outstanding loans, and may not be included in the revolving fund loan principal balance for purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized by this subsection to the West Virginia Economic Development Authority shall be classified by the Board as a long-term fixed income investment, shall bear interest on the outstanding principal balance of the loan at the rate of three percent per annum payable annually on or before the thirtieth day of June of each year, and the principal of which shall be repaid no later than the thirtieth day of June, two thousand twenty-two in annual installments due on or before the thirtieth day of June of each year. The annual installments, which need not be equal shall commence no later than the thirtieth day of June, two thousand five, in annual principal amounts agreed upon between the Board and the West Virginia Economic Development Authority. The loan authorized by this subsection shall be nonrecourse and shall be payable by the West Virginia Economic Development Authority in respect of the loan authorized by this subsection to the West Virginia Enterprise Advancement Corporation, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which the Board shall have a security interest to secure repayment of the loan to the West Virginia Economic Development Authority authorized by this subsection. Any and all loans from the West Virginia Enterprise Advancement Corporation made pursuant to this subsection shall also bear interest on the outstanding principal balance of the loan at the rate of three percent per annum payable annually on or before the thirtieth day of June of each year, shall be nonrecourse and shall be payable by the West Virginia Enterprise Advancement Corporation solely from amounts of returns received by the West Virginia Enterprise Advancement Corporation in respect to its investment in the West
Virginia Enterprise Capital Fund, LLC, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which that Board shall have a security interest to secure repayment of the loan to the West Virginia Economic Development Authority authorized by this subsection. In the event the amounts or returns received by the West Virginia Enterprise Corporation in respect to its investment in the West Virginia Enterprise Capital Fund, LLC, are not adequate to pay when due the principal or interest installments, or both, with respect to the loan authorized by this subsection by the Board to the West Virginia Economic Development Authority, the principal or interest, or both, as the case may be, due on the loan made to the West Virginia Economic Development Authority pursuant to this subsection shall be deferred and any and all past-due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the West Virginia Enterprise Advancement Corporation of moneys in respect to its investments in the West Virginia Enterprise Capital Fund, LLC. The Directors or the Board shall bear no fiduciary responsibility as provided in section thirteen of this article with regard to the loan authorized by this subsection.

§12-6C-12. Securities handling.

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, the Board shall take physical possession of the securities, directly, by its custodian bank or through a neutral third party: Provided, That an agreement with a neutral third party may not waive liability for the handling of the securities: Provided, however, That when the board is unable to take possession, directly, by its custodian bank or through a mutual third party, the Board may leave securities in a segregated account with the original seller, provided the amount of the securities with any one seller may not exceed one hundred fifty million dollars.

(a) The Uniform Prudent Investor Act, codified in article six-c, chapter forty-four of this code, is the standard for any investments made under this article. Investments are further subject to the following:

1. The directors 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;

2. The directors shall defray reasonable expenses of investing and managing the Consolidated Fund by charging fees as provided in this article; and

3. The directors shall discharge their duties in accordance with the documents and instruments consistent with the provisions of this article.

(b) The duties of the directors apply only with respect to those assets deposited with or otherwise held by the Board.

§12-6C-14. Existing investments.

The Investments Management Board shall transfer the cash, securities and other investments of the Consolidated Fund it holds, maintains or administers to the West Virginia Board of Treasury investments on the first day of July, two thousand five, which will lawfully vest the West Virginia Board of Treasury Investments with ownership of all securities or other investments of the Consolidated Fund.

§12-6C-15. Annual audits; financial statements; information.

(a) The Board shall have an annual financial and compliance audit of the assets, funds, pools and participant accounts managed by the Board 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
Board shall have financial and compliance audits 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 com-
pleted annually.

(b) The Board shall produce monthly financial state-
ments for the assets managed by the Board and send them
to each member of the Board and provide copies as
reasonably requested.

(c) Each quarter the Board shall deliver a report for the
prior quarter to the Council of Finance and Administra-
tion.

(d) The Board shall contract with an investment consult-
ing or a certified public accounting firm meeting the
criteria set out in subsection (a) of this section for an
annual audit of the reported returns of the assets managed
by the Board.

(e) The Board shall prepare an annual report detailing all
fees charged by the Board under this article. The Board
shall furnish copies of the report to the Legislative Joint
Committee on Government and Finance.

(f) Unless specifically otherwise stated, copies of the
reports required in this section shall be furnished to the
Board, Governor, President of the Senate, Speaker of the
House of Delegates, Council of Finance and Administra-
tion, Legislative Librarian and upon request to any
legislator, legislative committee, financial institution,
member of the media and the public.

(g) The Board shall provide any other information
requested in writing by the Council of Finance and
Administration or any member of the Legislature.

§12-6C-16. Reports to participants.

(a) On a monthly basis, the Board shall timely provide
the State Treasurer with information to enable the State
Treasurer to provide an itemized statement of a spending unit's or other participant's account in the Consolidated Fund to each state spending unit and any other entity investing moneys in the Consolidated Fund. The statement shall include the beginning balance, contributions, withdrawals, income distributed, change in value and ending balance.

(b) The Board shall prepare annually, or more frequently if determined necessary by the Board, a report of its operations and the performance of the various funds, pools and participant accounts administered by it. The Board shall furnish copies of the report to each participant, the President of the Senate, Speaker of the House of Delegates, Legislative Auditor, and upon request to any legislative committee, any legislator, any banking institution or state or federal savings and loan association in this state and any member of the news media. The Board shall also keep the reports available for inspection by any citizen of this state.

§12-6C-17. Legal status of spending units continued.

Except as otherwise provided in this article, every state spending unit shall retain all of the powers and shall exercise all of the functions and duties vested in or imposed upon it by law, as to any fund or account.

§12-6C-18. Authorization for loans by the Board.

(a) Any loan made from the Consolidated Fund by a predecessor entity shall remain in existence and in accordance with the terms and conditions of the loan.

(b) The Board shall continue the work of the Investment Management Board in taking the steps necessary to increase the liquidity of the Consolidated Fund to allow for any loans authorized by the Legislature without increasing the risk of loss.
§12-6C-19. Creation of fee account and investment account; budget.

(a) The Board may charge fees, which are subtracted from the total return on investments, for the reasonable and necessary expenses incurred by the Board in rendering services. All fees collected shall be deposited in a special account in the State Treasury created and designated the Board of Treasury Investments Fee Fund. Expenditures from the Fund shall be for the purposes set forth in this article and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature, in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand six, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

(b) There is created in the State Treasury a special account designated the Board of Treasury Investments Investment Fund for use in receiving funds for investment, disbursing funds from investments and processing investment transactions.

(c) All fees dedicated, identified or readily identifiable to an entity, fund, pool or participant account shall be charged to that entity, fund, pool or participant account 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 schedules.

§12-6C-20. Termination of board.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Treasury Investments shall continue to exist until the first day of July, two thousand ten.
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 ninety days 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 3d Day of _______, 2005.

Governor
PRESENTED TO THE GOVERNOR

APR 27 2005

Time

[Signature]