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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# 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

FILED

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FOR

## **H. B. 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  
2 public money be deposited thereunder, until the banking  
3 institution designated executes a bond with good and sufficient  
4 sureties, to be accepted and approved by the county commis-  
5 sion, payable to the State of West Virginia, in a sum as the  
6 county commission shall direct, and which may not be less than  
7 the maximum sum that is deposited in the depository at any one  
8 time. The bond shall be executed by at least four resident  
9 freeholders as sureties owning in the aggregate unencumbered  
10 real estate having an assessed valuation thereon equal to the  
11 penalty of the bond, or by a fidelity or indemnity company  
12 authorized to do business within the State, satisfactory to, and  
13 acceptable by the county commission, and having not less than  
14 six hundred thousand dollars capital; and the bond shall be  
15 conditioned for the receipt, safekeeping and payment over of all  
16 money which may be deposited in or come under the custody  
17 of the banking institution designated a county depository under  
18 the provisions hereof, together with the interest thereon at the  
19 rate specified by this article; and the bond shall be further  
20 conditioned for the faithful performance, by the banking  
21 institution so designated, of all the duties imposed by this  
22 article upon a depository of public moneys: *Provided*, That the  
23 clerk of the county commission shall keep a record of each  
24 surety on all personal bonds given as hereinbefore provided and  
25 the clerk shall notify the county commission of every recorded  
26 conveyance of real estate made by any surety on said personal  
27 bond.

28 An action shall lie on the bond at the instance of the county  
29 commission, or the sheriff, for the recovery of any money  
30 deposited in the depository, upon failure or default of the

31 depository to fully and faithfully account for and pay over any  
32 and all public moneys deposited by the sheriff and of all  
33 interests earned and accrued thereon as required by this article.  
34 A bond may not be accepted by the county commission until it  
35 has been submitted to the prosecuting attorney, and certified by  
36 him or her to be in due and legal form, and conformable to the  
37 provisions of this article, which certificate shall be endorsed  
38 thereon: *Provided*, That the county commission may, in lieu of  
39 the bond provided hereinbefore, accept as security for money  
40 deposited as aforesaid, interest-bearing securities of the United  
41 States, or of a state, county, district or municipal corporation,  
42 or of the federal land banks, or endorsed county and district  
43 warrants of the county in which the depository is located, or  
44 letters of credit of the federal land banks, or federal home loan  
45 banks, or any other letters of credit approved by the treasurer;  
46 the face value of which securities may not be less than the sum  
47 hereinbefore specified as the amount to be named in the bond  
48 in lieu of which the securities are accepted; or the county  
49 commission may accept the securities as partial security to the  
50 extent of their face value for the money so deposited, and  
51 require bond for the remainder of the full amount hereinbefore  
52 specified, to be named in the bond, and in the bond so required,  
53 the acceptance of securities as partial security, and the extent  
54 thereof, shall be set forth: *Provided, however*, That a banking  
55 institution is not required to provide a bond or security in lieu  
56 of bond if the deposits accepted are placed in certificates of  
57 deposit meeting the following requirements: (1) the funds are  
58 invested through a designated state depository selected by the  
59 county; (2) the selected depository arranges for the deposit of  
60 the funds in certificates of deposit in one or more banks or  
61 savings and loan associations wherever located in the United  
62 States, for the account of the county; (3) the full amount of  
63 principal and accrued interest of each certificate of deposit is  
64 insured by the Federal Deposit Insurance Corporation; (4) the  
65 selected depository acts as custodian for the county with respect

66 to such certificates of deposit issued for the county's account;  
67 and (5) at the same time that the county's funds are deposited  
68 and the certificates of deposit are issued, the selected depository  
69 receives an amount of deposits from customers of other  
70 financial institutions wherever located in the United States  
71 equal to or greater than the amount of the funds invested by the  
72 county through the selected depository. The hypothecation of  
73 the securities shall be by proper legal transfer as collateral  
74 security to protect and indemnify by trust any and all loss in  
75 case of any default on the part of the banking institution in its  
76 capacity as depository as aforesaid. All the securities shall be  
77 delivered to or deposited for the account of the county commis-  
78 sion, and withdrawal or substitution thereof may be permitted  
79 from time to time upon approval by the county commission by  
80 order of record, but the collateral security shall be released only  
81 by order of record of the county commission when satisfied that  
82 full and faithful accounting and payment of all the moneys has  
83 been made under the provisions hereof. In the event actual  
84 possession of the hypothecated securities are delivered to the  
85 county commission, it shall make ample provision for the  
86 safekeeping thereof and the interest thereon when paid shall be  
87 turned over to the banking institution, so long as it is not in  
88 default as aforesaid. The county commission may permit the  
89 deposit under proper receipt of the securities with one or more  
90 banking institutions within or without the State of West  
91 Virginia and may contract with any institution for safekeeping  
92 and exchange of any hypothecated securities, and may prescribe  
93 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.**

1 All municipal funds, the investment of which is not  
2 governed by other provisions of this code and not required for  
3 the payment of current obligations and not otherwise prohib-  
4 ited, may be invested and reinvested in:

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

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

19 (3) Any evidence of indebtedness issued by the federal  
20 National Mortgage Association to the extent such indebtedness  
21 is guaranteed by the government National Mortgage Associa-  
22 tion;

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

28 (5) Direct and general obligations of this State;

29 (6) Any undivided interest in a trust, the corpus of which is  
30 restricted to mortgages on real property and, unless all of such  
31 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 collaterally secured 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 collaterally secured 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

65 United States, for the account of the municipality; (C) the full  
66 amount of principal and accrued interest of each certificate of  
67 deposit is insured by the Federal Deposit Insurance Corpora-  
68 tion; (D) the selected depository acts as custodian for the  
69 municipality with respect to such certificates of deposit issued  
70 for the municipality's account; and (E) at the same time that the  
71 municipality's funds are deposited and the certificates of  
72 deposit are issued, the selected depository receives an amount  
73 of deposits from customers of other financial institutions  
74 wherever located in the United States equal to or greater than  
75 the amount of the funds invested by the municipality through  
76 the selected depository; and

77 (10) Mutual funds registered with the securities and  
78 exchange commission which have assets in excess of three  
79 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.**

1 The sheriff of each county shall remit to the board of  
2 education all moneys in his or her possession held on behalf of  
3 the county board of education, whether or not deposited in a  
4 bank or depository, unless the sheriff has been designated  
5 treasurer of the board of education as provided in this section.  
6 The transfer of funds shall be made as of the balances on hand  
7 on the thirtieth day of June of the year in which the board of  
8 education appoints a treasurer other than the sheriff, and shall  
9 be completed no later than the first day of August of that year.  
10 The transfer shall be adjudged complete and final upon the  
11 approval of the sheriff's official settlement for the fiscal year  
12 ending on the thirtieth day of June of the year in which the



13 board of education appoints a treasurer other than the sheriff,  
14 and any minor adjustment made necessary by the actually  
15 known figures shall also be made at that time. All balances in  
16 all county school funds at the end of each month after the  
17 thirtieth day of June of the year in which the board of education  
18 appoints a treasurer other than the sheriff shall be transferred by  
19 the sheriff to the county board of education not later than the  
20 tenth day of the following month.

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

37 The board of education may open a bank account, or  
38 accounts, as required to adequately and properly transact the  
39 business of the district in a depository, or banks, within the  
40 county. The depositories, or banks, shall provide bond to cover  
41 the maximum amount to be deposited at any one time. How-  
42 ever, the county board of education may, in lieu of such bond,  
43 accept as security for money deposited securities of the United  
44 States, or of a state, county, district or municipal corporation,  
45 or federal agency securities: *Provided*, That a banking institu-  
46 tion is not required to provide a bond or security in lieu of bond

47 if the deposits accepted are placed in certificates of deposit  
48 meeting the following requirements: (1) the funds are invested  
49 through a designated state depository selected by the county  
50 board of education; (2) the selected depository arranges for the  
51 deposit of the funds in certificates of deposit in one or more  
52 banks or savings and loan associations wherever located in the  
53 United States, for the account of the county board of education;  
54 (3) the full amount of principal and accrued interest of each  
55 certificate of deposit is insured by the Federal Deposit Insur-  
56 ance Corporation; (4) the selected depository acts as custodian  
57 for the county board of education with respect to such certifi-  
58 cates of deposit issued for the county's account; and (5) at the  
59 same time that the county board of education's funds are  
60 deposited and the certificates of deposit are issued, the selected  
61 depository receives an amount of deposits from customers of  
62 other financial institutions wherever located in the United  
63 States equal to or greater than the amount of the funds invested  
64 by the county board of education through the selected depository.  
65 One hundred ten percent of the face or par value of the  
66 securities may not be less than the sum hereinbefore specified  
67 as the amount to be named in the bond in lieu of which  
68 the securities are accepted, or the county board of education  
69 may accept the securities as partial security to the extent of their  
70 face value for the money so deposited and require bond for the  
71 remainder of the full amount hereinbefore specified, to be  
72 named in the bond, and, in the bond so required, the acceptance  
73 of securities as partial security and the extent thereof shall be  
74 set forth. The hypothecation of the securities shall be by proper  
75 legal transfer as collateral security to protect and indemnify by  
76 trust any and all loss in case of any default on the part of the  
77 banking institution in its capacity as depository as aforesaid. All  
78 such securities shall be delivered to or deposited for the account  
79 of the county board of education, and withdrawal or substitution  
80 thereof may be permitted from time to time upon approval by  
81 the county board of education by order of record, but the

82 collateral security shall be released only by order of record of  
83 the county board of education when satisfied that full and  
84 faithful accounting and payment of all the moneys has been  
85 made under the provisions hereof. In the event actual posses-  
86 sion of the hypothecated securities is delivered to the county  
87 board of education, it shall make ample provision for the  
88 safekeeping thereof, and the interest thereon when paid shall be  
89 turned over to the banking institution, so long as it is not in  
90 default as aforesaid. The county board of education may permit  
91 the deposit under proper receipt of such securities with one or  
92 more banking institutions within the State of West Virginia and  
93 may contract with any such institution for safekeeping and  
94 exchange of any such hypothecated securities, and may  
95 prescribe the rules for handling and protecting the same.

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

107       If it is considered that sufficient funds are on hand in any  
108 account at any one time which may be more than are normally  
109 required for the payment of incurred expenses, the funds in the  
110 amount so considered available may be invested by the trea-  
111 surer of the county board with the West Virginia municipal  
112 bond commission, or in guaranteed certificates of deposit issued  
113 by the depository or bank, or other guaranteed investments such  
114 as treasury bills, treasury notes or certificates of deposit issued  
115 by either the United States government or a banking institution

116 in which federal or state guarantees are applicable. Interest  
117 earned in such investments is to be credited to the fund from  
118 which the moneys were originally available.

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

*Candy White*

Chairman Senate Committee

*D. Reed Brown*

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*Darrell Edlmeas*

Clerk of the Senate

*Gregg W. Gray*

Clerk of the House of Delegates

*Earl Ray Tomblin*

President of the Senate

*Robert H. Jass*

Speaker of the House of Delegates

The within is approved this the 20<sup>th</sup>  
day of April, 2005.

*[Signature]*

Governor

PRESENTED TO THE  
GOVERNOR

APR 14 2005

Time 3:10 