WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 438

(By Senators Foster, McCabe, Edgell, Plymale, Hall and McKenzie)

[Passed March 18, 2007; in effect ninety days from passage.]
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AN ACT to amend and reenact §12-6-2, §12-6-4, §12-6-5, §12-6-9c, §12-6-12 and §12-6-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §12-6-18, all relating to investment of moneys by the West Virginia Investment Management Board; modifying the type and amount of bonds or insurance coverage that may be obtained and maintained by the Investment Management Board; authorizing the establishment and maintenance of a self-insurance account in connection with the procurement and maintenance of insurance coverage by the Investment Management Board; clarifying powers of the board;
modifying provisions relating to authority of the board to make certain investments in investment companies or investment trusts registered under the Investment Company Act of 1940; modifying restrictions and limitations on permissible investments by the West Virginia Investment Management Board; authorizing investment in real estate investment funds and alternative investment funds and establishing conditions and limitations on the same; providing an exemption from disclosure under the Freedom of Information Act with respect to information concerning which disclosure is prohibited, restricted or limited by standard confidentiality agreements, policies or procedures of firms, companies or organizations through which the West Virginia Investment Management Board invests, to the extent of the prohibitions, restrictions or limitations; requiring certain additional information be part of the Investment Management Board's annual report; providing authority for the Legislature to commission or direct audits, reviews and studies as it considers necessary; and specifying that the provisions of the article are to be liberally construed to effect the public purposes of the article.

Be it enacted by the Legislature of West Virginia:

That §12-6-2, §12-6-4, §12-6-5, §12-6-9c, §12-6-12 and §12-6-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §12-6-18, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-2. Definitions.
As used in this article, unless a different meaning clearly appears from the context:

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

(2) "Board" means the governing body for the West Virginia Investment Management Board and any reference elsewhere in this code to board of investments or West Virginia Trust Fund means the board as defined in this subdivision;

(3) "401(a) plan" means a plan which is described in section 401(a) of the Internal Revenue Code of 1986, as amended, and with respect to which the board has been designated to hold assets of the plan in trust pursuant to the provisions of section nine-a of this article;

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

(5) "Participant plan" means any plan or fund subject now or hereafter to subsection (a), section nine-a of this article;

(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) "Trustee" means any member serving on the West Virginia Investment Management Board: Provided, That in section nine-a of this article in which the terms of the trusts are set forth, "trustee" means the West Virginia Investment Management Board;

(8) "Securities" means all bonds, notes, debentures or other evidences of indebtedness and other lawful investment instruments; and

(9) "State funds" means all moneys of the state which may be lawfully invested except the "school fund" established by section four, article XII of the state constitution.

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

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

(b) The Governor shall be the chairman of the board and the trustees shall elect a vice chairman who may not be a constitutional officer or his or her designee to serve for a term of two years. Effective with any vacancy in the vice chairmanship, the board shall elect a vice chairman to a new two-year term. The vice chairman shall preside at all meetings in the absence of the chairman. Annually, the trustees shall elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the board.

(c) The trustees shall appoint a chief executive officer
of the board and shall fix his or her duties and compensation. The chief executive officer shall have five years' experience in investment management with public or private funds within the ten years next preceding the date of appointment. The chief executive officer additionally shall have academic degrees, professional designations and other investment management or investment oversight or institutional investment experience in a combination the trustees consider necessary to carry out the responsibilities of the chief executive officer position as defined by the trustees.

(d) The trustees shall retain an internal auditor to report directly to the trustees and shall fix his or her compensation. The internal auditor shall be a certified public accountant with at least three years' experience as an auditor. The internal auditor shall develop an internal audit plan, with board approval, for the testing of procedures and the security of transactions.

(e) The board shall procure and maintain in effect commercially customary property, liability, crime and other insurance to cover risks of loss from its operations. The types and amounts of the insurance coverages shall be determined by the board, from time to time, in its reasonable discretion, with reference to the types and amounts of insurance coverages purchased or maintained by other public institutions performing functions similar to those performed by the board: Provided, That the board shall purchase a blanket bond for the faithful performance of its duties in the amount of at least ten million dollars. The board may require that appropriate types and amounts of insurance be procured and maintained by, or a fiduciary or surety
bond from a surety company qualified to do business in this state for, any person who has charge of, or access to, any securities, funds or other moneys held by the board and the amount of the fiduciary or surety bond shall be fixed by the board. The premiums payable on any insurance or fiduciary or surety bonds that the board may require, from time to time, shall be an expense of the board. In connection with the duties of the board under this subsection, the board may establish, fund and maintain a self-insurance account. If established, the board shall deposit and maintain moneys in the self-insurance account in amounts as may be determined by the board in consultation with one or more qualified insurance or actuarial consultants, and all moneys in any self-insurance account may be used only for the purpose of providing self-insurance, establishing reserves in connection with insurance deductibles, self-insured retentions or self-insurance, or helping to defray the costs of insurance procured under this subsection, and for no other purpose. The board may procure any and all insurance coverages and bonds deemed appropriate by the board or required by the provisions of this article, either through the state Board of Risk and Insurance Management or in the commercial markets, in the discretion of the board.

(f) The trustees and employees of the board are not liable personally, either jointly or severally, for any debt or obligation created by the board: Provided, That the trustees and employees of the board are liable for acts of misfeasance or gross negligence.

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

(h) Any employee of the West Virginia Trust Fund who previously was an employee of another state agency may return to the Public Employees Retirement System pursuant to section eighteen, article ten, chapter five of this code and may elect to either: (1) Transfer to the Public Employees Retirement System his or her employee contributions, with accrued interest and, if vested, his or her employer contributions, with accrued interest and retain as credited state service all time served as an employee of the West Virginia Trust Fund; or (2) retain all employee contributions with accrued interest and, if vested, his or her employer contributions with interest and forfeit all service credit for the time served as an employee of the West Virginia Trust Fund.

§12-6-5. Powers of the board.

The board may exercise all powers necessary or appropriate, in accordance with the provisions of the West Virginia Uniform Prudent Investor Act, codified as article six-c, chapter forty-four of this code and section eleven of this article, to carry out and effectuate its corporate purposes, including, but not limited to, the power to:

(1) Adopt and use a common seal and alter it at pleasure;
10 (2) Sue and be sued;

11 (3) Enter into contracts and execute and deliver instruments;

13 (4) Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;

16 (5) Promulgate and enforce bylaws and rules for the management and conduct of its affairs;

18 (6) Notwithstanding any other provision of law, retain and employ legal, accounting, financial and investment advisors and consultants;

21 (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;

25 (8) Maintain accounts with banks, securities dealers and financial institutions both within and outside this state;

28 (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;

32 (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 consistent 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;

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

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

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

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

§12-6-9c. Authorization of additional investments.

Notwithstanding the restrictions which may otherwise
be provided by law with respect to the investment of
funds, all administrators, custodians or trustees of
pension funds other than the board, each political
subdivision of this state and each county board of
education may invest funds in the securities of or any
other interest in any investment company or investment
trust registered under the Investment Company Act of 1940, 15 U. S. C. §80a, the portfolio of which is limited:

(i) To obligations issued by or guaranteed as to the payment of both principal and interest by the United States of America or its agencies or instrumentalities;

and (ii) to repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities: Provided, That the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian: Provided, however, That the investment company or investment trust is rated within one of the top two rating categories of any nationally recognized rating service such as Moody's or Standard & Poor's.

§12-6-12. Investment restrictions.

(a) The board shall hold in nonreal estate equity investments no more than seventy-five percent of the assets managed by the board and no more than seventy-five percent of the assets of any individual participant plan.

(b) In addition to any investments the board may make pursuant to subsection (h) of this section, the board shall hold in real estate equity investments no more than twenty-five percent of the assets managed by the board and no more than twenty-five percent of the assets of any individual participant plan: Provided, That any such investment be only made upon the recommendation by a professional, third-party fiduciary investment adviser registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940, as amended, upon the approval of the board or a committee designated by the board, and upon the
execution of the transaction by a third-party investment
manager: Provided, however, That the board's
ownership interest in any fund is less than forty percent
of the fund's assets at the time of purchase: Provided
further, That the combined investment of institutional
investors, other public sector entities and educational
institutions and their endowments and foundations in
the fund is in an amount equal to or greater than fifty
percent of the board's total investment in the fund at the
time of acquisition. For the purposes of this subsection,
"fund" means a real estate investment trust traded on a
major exchange of the United States of America, or a
partnership, limited partnership, limited liability
companty or other entity holding or investing in related
or unrelated real estate investments, at least three of
which are unrelated and the largest of which is not
greater than forty percent of the entity's holdings, at the
time of purchase.

(c) The board shall hold in international securities no
more than thirty percent of the assets managed by the
board and no more than thirty percent of the assets of
any individual participant plan.

(d) The board may not at the time of purchase hold
more than five percent of the assets managed by the
board in the nonreal estate equity securities of any
single company or association: Provided, That if a
company or association has a market weighting of
greater than five percent in the Standard & Poor's 500
index of companies, the board may hold securities of
that nonreal estate equity equal to its market weighting.

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

(f) Notwithstanding the investment limitations set forth in this section, it is recognized that the assets managed by the board or the assets of the participant plans, whether considered in the aggregate or individually, may temporarily exceed the investment limitations in this section due to market appreciation, depreciation and rebalancing limitations. Accordingly, the limitations on investments set forth in this section shall not be considered to have been violated if the board rebalances the assets it manages or the assets of the participant plans, whichever is applicable, to comply with the limitations set forth in this section at least once every twelve months based upon the latest available market information and any other reliable market data that the board considers advisable to take into consideration, except for those assets authorized by subsections (b) and (h) of this section for which compliance with the percentage limitations shall be measured at such time as the investment is made.

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

(1) Preservation of capital;
(2) Diversification;

(3) Risk tolerance;

(4) Rate of return;

(5) Stability;

(6) Turnover;

(7) Liquidity; and

(8) Reasonable cost of fees.

(h) In addition to any and all other investments the board may make under this article and all investment authority granted to the board by this article, the board is expressly authorized to invest no more than twenty percent of the assets managed by the board and no more than twenty percent of the assets of any individual participant plan, or any other endowment or other fund managed by the board, as measured at the time of the investment, in any one or more classes, styles or strategies of alternative investments suitable and appropriate for investment by the board. A suitable and appropriate alternative investment is a private equity fund such as a venture capital, private real estate or buy-out fund; commodities fund; distressed debt fund; mezzanine debt fund; hedge fund; put or call on an individual security purchased for the purpose of hedging an authorized investment position; or fund consisting of any combination of private equity, distressed or mezzanine debt, hedge funds, private real estate, commodities and other types and categories of investment permitted under this article: Provided, That
any such investment be only made upon the recommendation by a professional, third-party fiduciary investment adviser registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940, as amended, upon the approval of the board or a committee designated by the board and upon the execution of the transaction by a third-party investment manager: Provided, however, That if the standard confidentiality agreements, policies or procedures of any firm, company or organization through which the board invests in securities prohibit, restrict or limit the disclosure of information pertaining to the securities, the information shall be exempt from disclosure, under the provisions of chapter twenty-nine-b of this code or otherwise, to the extent of the prohibitions, restrictions or limitations: Provided further, That the board's ownership interest in any fund is less than forty percent of the fund's assets at the time of purchase: And provided further, That the combined investment of institutional investors, other public sector entities, and educational institutions and their endowments and foundations in the fund is in an amount equal to or greater than fifty percent of the board's total investment in the fund at the time of acquisition. For the purposes of this subsection, "fund" means a partnership, limited partnership, limited liability company or other form of entity holding or investing in a collection of related or unrelated investments, at least three of which are unrelated and the largest of which is not greater than forty percent of the fund's composition at the time of purchase. To facilitate access to markets, control, manage or diversify portfolio risk, or enhance performance or efficiency in connection with investments in alternative investments and all other types and categories of investment permitted under this
Enr. S. B. No. 438] 16

145 article, the board may enter into commercially
146 customary and prudent market transactions consistent
147 with the laws of the state: And provided further, That
148 neither the purpose nor the effect of such transactions
149 may materially increase market risk or market exposure
150 of the total portfolio of investments as adjusted, from
151 time to time, by the board. The investments described
152 in this subsection are subject to the requirements,
153 limitations and restrictions set forth in this subsection
154 and the standard of care set forth in section eleven of
155 this article, but are not subject to any other limitations
156 or restrictions set forth elsewhere in this article or code.

§12-6-14. Reports of board; legislative audits, reviews and studies.

1  (a) The board shall prepare annually, or more
2 frequently if considered necessary by the board, a report
3 of its operations and the performance of the various
4 funds administered by it. The report shall include all
5 operational costs, including, but not limited to,
6 investment advisor fees, transaction costs, custody fees,
7 and administrative salaries and costs.

8  (b) A copy shall be furnished to the chief financial
9 officer of each participant.

10  (c) Within the first seven calendar days of each
11 calendar year, the board shall file the annual report
12 with the Joint Committee on Government and Finance,
13 with copies to the President of the Senate, Speaker of
14 the House and Legislative Auditor.

15  (d) Upon request, the report shall be made available to
16 any legislative committee, any banking institution or
state or federal savings and loan association in this state and any member of the news media. The report shall be kept available for inspection by any citizen of this state.

(e) The board shall cooperate with any legislative audits, performance and consultant reviews and studies of the board as may be directed by the Joint Committee on Government and Finance.

§12-6-18. Liberal construction.

This article, being necessary to secure the public health, safety, convenience and welfare of the citizens of this state, shall be liberally construed to effect the public purposes of this article. The powers granted to the board in this article, including, without limitation, those granted in section five of this article, are intended to be broad and shall be construed broadly so as to vest in the board the power and authority necessary or appropriate to carry out and effectuate its corporate purposes in the financial markets of the world, as the same may evolve, from time to time, at all times in a fashion consistent with the prudent investor standard as provided by the West Virginia Uniform Prudent Investor Act, codified as article six-c, chapter forty-four of this code and section eleven of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]
Chairman Senate Committee
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signatures]
Clerk of the Senate
Clerk of the House of Delegates

[Signatures]
President of the Senate
Speaker House of Delegates

The within .................. approved .................. this 3rd Day of April ................., 2007.

[Signature]
Governor