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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2007**

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**ENROLLED**

**Senate Bill No. 438**

(BY SENATORS FOSTER, McCABE, EDGELL,  
PLYMALE, HALL AND MCKENZIE)

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[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.**

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

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

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

10 (3) "401(a) plan" means a plan which is described in  
11 section 401(a) of the Internal Revenue Code of 1986, as  
12 amended, and with respect to which the board has been  
13 designated to hold assets of the plan in trust pursuant to  
14 the provisions of section nine-a of this article;

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

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

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

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

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

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

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

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

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

14 (c) The trustees shall appoint a chief executive officer

15 of the board and shall fix his or her duties and  
16 compensation. The chief executive officer shall have  
17 five years' experience in investment management with  
18 public or private funds within the ten years next  
19 preceding the date of appointment. The chief executive  
20 officer additionally shall have academic degrees,  
21 professional designations and other investment  
22 management or investment oversight or institutional  
23 investment experience in a combination the trustees  
24 consider necessary to carry out the responsibilities of  
25 the chief executive officer position as defined by the  
26 trustees.

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

34 (e) The board shall procure and maintain in effect  
35 commercially customary property, liability, crime and  
36 other insurance to cover risks of loss from its operations.  
37 The types and amounts of the insurance coverages shall  
38 be determined by the board, from time to time, in its  
39 reasonable discretion, with reference to the types and  
40 amounts of insurance coverages purchased or  
41 maintained by other public institutions performing  
42 functions similar to those performed by the board:  
43 *Provided*, That the board shall purchase a blanket bond  
44 for the faithful performance of its duties in the amount  
45 of at least ten million dollars. The board may require  
46 that appropriate types and amounts of insurance be  
47 procured and maintained by, or a fiduciary or surety

48 bond from a surety company qualified to do business in  
49 this state for, any person who has charge of, or access to,  
50 any securities, funds or other moneys held by the board  
51 and the amount of the fiduciary or surety bond shall be  
52 fixed by the board. The premiums payable on any  
53 insurance or fiduciary or surety bonds that the board  
54 may require, from time to time, shall be an expense of  
55 the board. In connection with the duties of the board  
56 under this subsection, the board may establish, fund and  
57 maintain a self-insurance account. If established, the  
58 board shall deposit and maintain moneys in the self-  
59 insurance account in amounts as may be determined by  
60 the board in consultation with one or more qualified  
61 insurance or actuarial consultants, and all moneys in  
62 any self-insurance account may be used only for the  
63 purpose of providing self-insurance, establishing  
64 reserves in connection with insurance deductibles, self-  
65 insured retentions or self-insurance, or helping to defray  
66 the costs of insurance procured under this subsection,  
67 and for no other purpose. The board may procure any  
68 and all insurance coverages and bonds deemed  
69 appropriate by the board or required by the provisions  
70 of this article, either through the state Board of Risk and  
71 Insurance Management or in the commercial markets, in  
72 the discretion of the board.

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

78 (g) The board is exempt from the provisions of sections  
79 seven and eleven, article three of this chapter and article  
80 three, chapter five-a of this code: *Provided*, That the

81 trustees and employees of the board are subject to  
82 purchasing policies and procedures which shall be  
83 promulgated by the board. The purchasing policies and  
84 procedures may be promulgated as emergency rules  
85 pursuant to section fifteen, article three, chapter  
86 twenty-nine-a of this code.

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

**§12-6-5. Powers of the board.**

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

8 (1) Adopt and use a common seal and alter it at  
9 pleasure;



10       (2) Sue and be sued;

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

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

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

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

21       (7) Acquire (by purchase, gift or otherwise), hold,  
22 exchange, pledge, lend and sell or otherwise dispose of  
23 securities and invest funds in interest earning deposits  
24 and in any other lawful investments;

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

28       (9) Engage in financial transactions whereby securities  
29 are purchased by the board under an agreement  
30 providing for the resale of the securities to the original  
31 seller at a stated price;

32       (10) Engage in financial transactions whereby  
33 securities held by the board are sold under an agreement  
34 providing for the repurchase of the securities by the  
35 board at a stated price;

36 (11) Consolidate and manage moneys, securities and  
37 other assets of the other funds and accounts of the state  
38 and the moneys of political subdivisions which may be  
39 made available to it under the provisions of this article;

40 (12) Enter into agreements with political subdivisions  
41 of the state whereby moneys of the political subdivisions  
42 are invested on their behalf by the board;

43 (13) Charge and collect administrative fees from  
44 political subdivisions for its services;

45 (14) Exercise all powers generally granted to and  
46 exercised by the holders of investment securities with  
47 respect to management of the investment securities;

48 (15) Contract with one or more banking institutions in  
49 or outside the state for the custody, safekeeping and  
50 management of securities held by the board;

51 (16) Make and, from time to time, amend and repeal  
52 bylaws, rules and procedures consistent with the  
53 provisions of this article;

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

57 (18) Develop, implement and maintain its own  
58 banking accounts and investments;

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

61 (20) Upon request of the State Treasurer, transmit

62 funds for deposit in the State Treasury to meet the daily  
63 obligations of state government;

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

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

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

1 Notwithstanding the restrictions which may otherwise  
2 be provided by law with respect to the investment of  
3 funds, all administrators, custodians or trustees of  
4 pension funds other than the board, each political  
5 subdivision of this state and each county board of  
6 education may invest funds in the securities of or any  
7 other interest in any investment company or investment

8 trust registered under the Investment Company Act of  
9 1940, 15 U. S. C. §80a, the portfolio of which is limited:  
10 (i) To obligations issued by or guaranteed as to the  
11 payment of both principal and interest by the United  
12 States of America or its agencies or instrumentalities;  
13 and (ii) to repurchase agreements fully collateralized by  
14 obligations of the United States government or its  
15 agencies or instrumentalities: *Provided*, That the  
16 investment company or investment trust takes delivery  
17 of the collateral either directly or through an authorized  
18 custodian: *Provided, however*, That the investment  
19 company or investment trust is rated within one of the  
20 top two rating categories of any nationally recognized  
21 rating service such as Moody's or Standard & Poor's.

**§12-6-12. Investment restrictions.**

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

6 (b) In addition to any investments the board may make  
7 pursuant to subsection (h) of this section, the board shall  
8 hold in real estate equity investments no more than  
9 twenty-five percent of the assets managed by the board  
10 and no more than twenty-five percent of the assets of  
11 any individual participant plan: *Provided*, That any  
12 such investment be only made upon the  
13 recommendation by a professional, third-party fiduciary  
14 investment adviser registered with the Securities and  
15 Exchange Commission under the Investment Advisors  
16 Act of 1940, as amended, upon the approval of the board  
17 or a committee designated by the board, and upon the

18 execution of the transaction by a third-party investment  
19 manager: *Provided, however,* That the board's  
20 ownership interest in any fund is less than forty percent  
21 of the fund's assets at the time of purchase: *Provided*  
22 *further,* That the combined investment of institutional  
23 investors, other public sector entities and educational  
24 institutions and their endowments and foundations in  
25 the fund is in an amount equal to or greater than fifty  
26 percent of the board's total investment in the fund at the  
27 time of acquisition. For the purposes of this subsection,  
28 "fund" means a real estate investment trust traded on a  
29 major exchange of the United States of America, or a  
30 partnership, limited partnership, limited liability  
31 company or other entity holding or investing in related  
32 or unrelated real estate investments, at least three of  
33 which are unrelated and the largest of which is not  
34 greater than forty percent of the entity's holdings, at the  
35 time of purchase.

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

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

48 (e) No security may be purchased by the board unless  
49 the type of security is on a list approved by the board.

50 The board may modify the securities list at any time and  
51 shall give notice of that action pursuant to subsection  
52 (g), section three of this article and shall review the list  
53 at its annual meeting.

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

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

81 (1) Preservation of capital;

82 (2) Diversification;

83 (3) Risk tolerance;

84 (4) Rate of return;

85 (5) Stability;

86 (6) Turnover;

87 (7) Liquidity; and

88 (8) Reasonable cost of fees.

89 (h) In addition to any and all other investments the  
90 board may make under this article and all investment  
91 authority granted to the board by this article, the board  
92 is expressly authorized to invest no more than twenty  
93 percent of the assets managed by the board and no more  
94 than twenty percent of the assets of any individual  
95 participant plan, or any other endowment or other fund  
96 managed by the board, as measured at the time of the  
97 investment, in any one or more classes, styles or  
98 strategies of alternative investments suitable and  
99 appropriate for investment by the board. A suitable and  
100 appropriate alternative investment is a private equity  
101 fund such as a venture capital, private real estate or  
102 buy-out fund; commodities fund; distressed debt fund;  
103 mezzanine debt fund; hedge fund; put or call on an  
104 individual security purchased for the purpose of hedging  
105 an authorized investment position; or fund consisting of  
106 any combination of private equity, distressed or  
107 mezzanine debt, hedge funds, private real estate,  
108 commodities and other types and categories of  
109 investment permitted under this article: *Provided*, That

110 any such investment be only made upon the  
111 recommendation by a professional, third-party fiduciary  
112 investment adviser registered with the Securities and  
113 Exchange Commission under the Investment Advisors  
114 Act of 1940, as amended, upon the approval of the board  
115 or a committee designated by the board and upon the  
116 execution of the transaction by a third-party investment  
117 manager: *Provided, however,* That if the standard  
118 confidentiality agreements, policies or procedures of any  
119 firm, company or organization through which the board  
120 invests in securities prohibit, restrict or limit the  
121 disclosure of information pertaining to the securities,  
122 the information shall be exempt from disclosure, under  
123 the provisions of chapter twenty-nine-b of this code or  
124 otherwise, to the extent of the prohibitions, restrictions  
125 or limitations: *Provided further,* That the board's  
126 ownership interest in any fund is less than forty percent  
127 of the fund's assets at the time of purchase: *And*  
128 *provided further,* That the combined investment of  
129 institutional investors, other public sector entities, and  
130 educational institutions and their endowments and  
131 foundations in the fund is in an amount equal to or  
132 greater than fifty percent of the board's total investment  
133 in the fund at the time of acquisition. For the purposes  
134 of this subsection, "fund" means a partnership, limited  
135 partnership, limited liability company or other form of  
136 entity holding or investing in a collection of related or  
137 unrelated investments, at least three of which are  
138 unrelated and the largest of which is not greater than  
139 forty percent of the fund's composition at the time of  
140 purchase. To facilitate access to markets, control,  
141 manage or diversify portfolio risk, or enhance  
142 performance or efficiency in connection with  
143 investments in alternative investments and all other  
144 types and categories of investment permitted under this



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

17 state or federal savings and loan association in this state  
18 and any member of the news media. The report shall be  
19 kept available for inspection by any citizen of this state.

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

**§12-6-18. Liberal construction.**

1 This article, being necessary to secure the public  
2 health, safety, convenience and welfare of the citizens of  
3 this state, shall be liberally construed to effect the  
4 public purposes of this article. The powers granted to  
5 the board in this article, including, without limitation,  
6 those granted in section five of this article, are intended  
7 to be broad and shall be construed broadly so as to vest  
8 in the board the power and authority necessary or  
9 appropriate to carry out and effectuate its corporate  
10 purposes in the financial markets of the world, as the  
11 same may evolve, from time to time, at all times in a  
12 fashion consistent with the prudent investor standard as  
13 provided by the West Virginia Uniform Prudent Investor  
14 Act, codified as article six-c, chapter forty-four of this  
15 code and section eleven of this article.

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

*C. White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Daniel Galinas*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within ..... *is approved* ..... this  
the *3<sup>rd</sup>* Day of *April* ....., 2007.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 02 2007

Time 3:25 pm