

SB 633

FILED

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**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-NINTH LEGISLATURE**  
**REGULAR SESSION, 2010**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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**ENROLLED**

**Senate Bill No. 633**

(BY SENATORS FANNING AND CHAFIN)

[Passed March 13, 2010; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-6-2a; to amend and reenact §8-13-22a of said code; to amend and reenact §12-1-4 of said code; and to amend and reenact §18-9-6 of said code, all relating to enabling counties, municipalities, the state and county boards of education to deposit public funds into deposit accounts that are swept periodically into multiple federally fully insured deposit accounts through a deposit placement program with full federal insurance in lieu of a bond or other collateral required of the depository institution.

*Be it enacted by the Legislature of West Virginia;*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-6-2a; that §8-13-22a of said code be amended and reenacted; that §12-1-4 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.**

**§7-6-2a. Further exception to bond requirement; fully insured cash sweep accounts.**

1 A banking institution is not required to provide a bond  
2 or security in lieu of bond pursuant to section two of this  
3 article if the deposit is placed in a designated state deposi-  
4 tory that is selected and authorized by the county to  
5 arrange for the redeposit of the funds through a deposit  
6 placement program that meets the following conditions:

7 (a) On or after the date that the county funds are re-  
8 ceived the selected depository: (i) Arranges for the rede-  
9 posit of the funds into deposit accounts in one or more  
10 federally insured banks or savings and loan associations  
11 that are located in the United States; and (ii) serves as  
12 custodian for the county with respect to the funds rede-  
13 posited into such accounts.

14 (b) County funds deposited in a selected depository in  
15 accordance with this section and held at the close of  
16 business in the selected depository in excess of the amount  
17 insured by the Federal Deposit Insurance Corporation  
18 shall be secured in accordance with section two of this  
19 article.

20 (c) The full amount of the funds of the county redepos-  
21 ited by the selected depository into deposit accounts in  
22 banks or savings and loan associations pursuant to this  
23 section (plus accrued interest, if any) shall be insured by  
24 the Federal Deposit Insurance Corporation.

25 (d) On the same date that the funds of the county are  
26 redeposited pursuant to this section, the selected deposi-  
27 tory receives an amount of deposits from customers of  
28 other financial institutions through the deposit placement

29 program that are equal to the amount of the county money  
30 redeposited by the selected depository.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.**

#### **§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  
3 for the payment of current obligations and not otherwise  
4 prohibited, may be invested and reinvested in:

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

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

19 (3) Any evidence of indebtedness issued by the Federal  
20 National Mortgage Association to the extent such indebt-  
21 edness is guaranteed by the government National Mort-  
22 gage Association;

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

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

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

36 (7) Any bond, note, debenture, commercial paper or  
37 other evidence of indebtedness of any private corporation  
38 or association: *Provided*, That any such security is, at the  
39 time of its acquisition, rated in one of the three highest  
40 rating grades by an agency which is nationally known in  
41 the field of rating corporate securities: *Provided, however*,  
42 That if any commercial paper or any such security will  
43 mature within one year from the date of its issuance, it  
44 shall, at the time of its acquisition, be rated in one of the  
45 two highest rating grades by any such nationally known  
46 agency and commercial paper or other evidence of indebt-  
47 edness of any private corporation or association shall be  
48 purchased only upon the written recommendation from an  
49 investment advisor that has over \$300 million in other  
50 funds under its management;

51 (8) Negotiable certificates of deposit issued by any bank,  
52 trust company, national banking association or savings  
53 institution which mature in less than one year and are  
54 fully collateralized;

55 (9) Interest earning deposits including certificates of  
56 deposit, with any duly designated state depository, which  
57 deposits are fully secured by a collaterally secured bond as  
58 provided in section four, article one, chapter twelve of this  
59 code: *Provided*, That a banking institution is not required  
60 to provide this collaterally secured bond, or other security  
61 in lieu of bond, if the deposits accepted are placed in  
62 certificates of deposit meeting the following requirements:

63 (A) The funds are invested through a designated state  
64 depository selected by the municipality; (B) the selected  
65 depository arranges for the deposit of the funds in certifi-  
66 cates of deposit in one or more banks or savings and loan  
67 associations wherever located in the United States, for the  
68 account of the municipality; (C) the full amount of princi-  
69 pal and accrued interest of each certificate of deposit is  
70 insured by the Federal Deposit Insurance Corporation; (D)  
71 the selected depository acts as custodian for the munici-  
72 pality with respect to such certificates of deposit issued for  
73 the municipality's account; and (E) at the same time that  
74 the municipality's funds are deposited and the certificates  
75 of deposit are issued, the selected depository receives an  
76 amount of deposits from customers of other financial  
77 institutions wherever located in the United States equal to  
78 or greater than the amount of the funds invested by the  
79 municipality through the selected depository;

80 (10) Mutual funds registered with the Securities and  
81 Exchange Commission which have assets in excess of \$300  
82 million; and

83 (11) Deposits with any duly designated state depository  
84 that is selected and authorized by the municipality to  
85 arrange for the redeposit of the funds through a deposit  
86 placement program that meets the following conditions:

87 (a) On or after the date that the municipal funds are  
88 received the selected depository: (i) Arranges for the  
89 redeposit of the funds into deposit accounts in one or more  
90 federally insured banks or savings and loan associations  
91 that are located in the United States; and (ii) serves as  
92 custodian for the municipality with respect to the funds  
93 deposited into such accounts.

94 (b) Municipal funds deposited in a selected depository in  
95 accordance with this section and held at the close of  
96 business in the selected depository in excess of the amount  
97 insured by the Federal Deposit Insurance Corporation

98 shall be secured in accordance with section four, article  
99 one, chapter twelve of this code.

100 (c) The full amount of the funds of the municipality  
101 redeposited by the selected depository into deposit ac-  
102 counts in banks or savings and loan associations pursuant  
103 to this subsection (plus accrued interest, if any) shall be  
104 insured by the Federal Deposit Insurance Corporation.

105 (d) On the same date that the funds of the municipality  
106 are redeposited pursuant to this subsection, the selected  
107 depository receives an amount of deposits from customers  
108 of other financial institutions through the direct place-  
109 ment program that are equal to the amount of the muni-  
110 cipality's funds redeposited by the selected depository.

## **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

### **ARTICLE 1. STATE DEPOSITORIES.**

#### **§12-1-4. Bonds to be given by depositories.**

1 (a) Before allowing any money to be deposited with any  
2 eligible depository in excess of the amount insured by an  
3 agency of the federal government or insured by a deposit  
4 guaranty bond issued by a valid bankers surety company  
5 acceptable to the treasurer, the State Treasurer shall  
6 require the depository to give a collaterally secured bond,  
7 in the amount of not less than \$10,000, payable to the  
8 State of West Virginia, conditioned upon the prompt  
9 payment, whenever lawfully required, of any state money,  
10 or part thereof, that may be deposited with that deposi-  
11 tory, or of any accrued interest on deposits. The bond  
12 shall be a continuous bond but may be increased or  
13 decreased in amount or replaced by a new bond with the  
14 approval of the State Treasurer. The collateral security  
15 for the bond shall consist of bonds of the United States, or  
16 bonds or letters of credit of the federal land banks, of the  
17 federal home loan banks, or bonds of the State of West

18 Virginia or of any county, district or municipality of this  
19 state, or other bonds, letters of credit, or securities ap-  
20 proved by the treasurer. All bonds so secured are here  
21 designated as collaterally secured bonds. Withdrawal or  
22 substitution of any collateral pledged as security for the  
23 performance of the conditions of the bond may be permit-  
24 ted with the approval in writing of the treasurer. All  
25 depository bonds shall be recorded by the treasurer in a  
26 book kept in his or her office for the purpose, and a copy  
27 of the record, certified by the treasurer, shall be prima  
28 facie evidence of the execution and contents of the bond in  
29 any suit or legal proceeding. All collateral securities shall  
30 be delivered to or deposited for the account of the trea-  
31 surer of the State of West Virginia and in the event said  
32 securities are delivered to the treasurer, he or she shall  
33 furnish a receipt therefor to the owner thereof. The  
34 treasurer and his or her bondsmen shall be liable to any  
35 person for any loss by reason of the embezzlement or  
36 misapplication of the securities by the treasurer or any of  
37 his or her employees, and for the loss thereof due to his or  
38 her negligence or the negligence of his or her employees;  
39 and the securities shall be delivered to the owner thereof  
40 when liability under the bond which they are pledged to  
41 secure has terminated. The treasurer may permit the  
42 deposit under proper receipt of the securities with one or  
43 more banking institutions within or outside the State of  
44 West Virginia and may contract with any institution for  
45 safekeeping and exchange of any collateral securities and  
46 may prescribe the rules for handling and protecting the  
47 collateral securities.

48 (b) A banking institution is not required to provide a  
49 bond or security in lieu of bond if the deposits accepted  
50 are placed in certificates of deposit meeting the following  
51 requirements: (1) The funds are invested through a desig-  
52 nated state depository selected by the treasurer; (2) the  
53 selected depository arranges for the deposit of the funds in

54 certificates of deposit in one or more banks or savings and  
55 loan associations wherever located in the United States,  
56 for the account of the state; (3) the full amount of princi-  
57 pal and accrued interest of each certificate of deposit is  
58 insured by the Federal Deposit Insurance Corporation; (4)  
59 the selected depository acts as custodian for the state with  
60 respect to such certificates of deposit issued for the state's  
61 account; and (5) at the same time that the state's funds are  
62 deposited and the certificates of deposit are issued, the  
63 selected depository receives an amount of deposits from  
64 customers of other financial institutions wherever located  
65 in the United States equal to or greater than the amount  
66 of the funds invested by the state through the selected  
67 depository.

68 (c) A banking institution is not required to provide a  
69 bond or security in lieu of bond pursuant to this section if  
70 the deposits accepted are placed in a designated state  
71 depository that is selected and authorized by the state to  
72 arrange for the redeposit of the funds through a deposit  
73 placement program that meets the following conditions:

74 (1) On or after the date that the funds are received the  
75 selected depository: (i) Arranges for the redeposit of the  
76 funds into deposit accounts in one or more federally  
77 insured banks or savings and loan associations that are  
78 located in the United States; and (ii) serves as custodian  
79 for the state with respect to the funds redeposited into  
80 such accounts.

81 (2) State funds deposited in a selected depository in  
82 accordance with this section and held at the close of  
83 business in the selected depository in excess of the amount  
84 insured by the Federal Deposit Insurance Corporation  
85 shall be secured in accordance with section two, article  
86 six, chapter seven of this code.

87 (3) The full amount of the funds of the state redeposited  
88 by the selected depository into deposit accounts in banks

89 or savings and loan associations pursuant to this section  
90 (plus accrued interest, if any) shall be insured by the  
91 Federal Deposit Insurance Corporation.

92 (4) On the same date that the funds of the state are  
93 redeposited pursuant to this section, the selected deposi-  
94 tory receives an amount of deposits from customers of  
95 other financial institutions through the deposit placement  
96 program that are equal to the amount of the state funds  
97 redeposited by the selected depository.

## CHAPTER 18. EDUCATION.

### ARTICLE 9. SCHOOL FINANCES.

#### **§18-9-6. Transfer of moneys; appointment of treasurer; bond- ing of treasurer; approval of bank accounts; author- ity 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  
3 behalf of the county board of education, whether or not  
4 deposited in a bank or depository, unless the sheriff has  
5 been designated treasurer of the board of education as  
6 provided in this section. The transfer of funds shall be  
7 made as of the balances on hand on June 30 of the year in  
8 which the board of education appoints a treasurer other  
9 than the sheriff, and shall be completed no later than  
10 August 1 of that year. The transfer shall be adjudged  
11 complete and final upon the approval of the sheriff's  
12 official settlement for the fiscal year ending on June 30 of  
13 the year in which the board of education appoints a  
14 treasurer other than the sheriff, and any minor adjustment  
15 made necessary by the actually known figures shall also be  
16 made at that time. All balances in all county school funds  
17 at the end of each month after June 30 of the year in which  
18 the board of Education appoints a treasurer other than the  
19 sheriff shall be transferred by the sheriff to the county  
20 board of education not later than the tenth day of the  
21 following month.

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

40 The board of education may open a bank account, or  
41 accounts, as required to adequately and properly transact  
42 the business of the district in a depository, or banks,  
43 within the county. The depositories, or banks, shall  
44 provide bond to cover the maximum amount to be depos-  
45 ited at any one time. However, the county board of  
46 education may, in lieu of such bond, accept as security for  
47 money deposited letters of credit from a federal home loan  
48 bank, securities of the United States, or of a state, county,  
49 district or municipal corporation, or federal agency  
50 securities: *Provided*, That a banking institution is not  
51 required to provide a bond or security in lieu of bond if the  
52 deposits accepted are placed in certificates of deposit  
53 meeting the following requirements: (1) The funds are  
54 invested through a designated state depository selected by  
55 the county board of education; (2) the selected depository  
56 arranges for the deposit of the funds in certificates of  
57 deposit in one or more banks or savings and loan associa-

58 tions wherever located in the United States, for the  
59 account of the county board of education; (3) the full  
60 amount of principal and accrued interest of each certifi-  
61 cate of deposit is insured by the Federal Deposit Insurance  
62 Corporation; (4) the selected depository acts as custodian  
63 for the county board of education with respect to such  
64 certificates of deposit issued for the county's account; and  
65 (5) at the same time that the county board of education's  
66 funds are deposited and the certificates of deposit are  
67 issued, the selected depository receives an amount of  
68 deposits from customers of other financial institutions  
69 wherever located in the United States equal to or greater  
70 than the amount of the funds invested by the county board  
71 of education through the selected depository: *Provided,*  
72 *however,* That a banking institution is not required to  
73 provide a bond or security in lieu of bond if the deposits  
74 accepted are placed in a designated state depository that  
75 is selected and authorized by the county board of educa-  
76 tion to arrange for the redeposit of the funds through a  
77 deposit placement program that meets the following  
78 conditions: (1) On or after the date that the county board  
79 of education funds are received the selected depository: (i)  
80 Arranges for the redeposit of the funds into deposit  
81 accounts in one or more federally insured banks or savings  
82 and loan associations that are located in the United States;  
83 and (ii) serves as custodian for the county with respect to  
84 the money redeposited into such accounts. (2) County  
85 board of education funds deposited in a selected deposi-  
86 tory in accordance with this section and held at the close  
87 of business in the selected depository in excess of the  
88 amount insured by the Federal Deposit Insurance Corpo-  
89 ration shall be secured in accordance with the second and  
90 third sentences of this paragraph. (3) The full amount of  
91 the funds of the county board of education redeposited by  
92 the selected depository into deposit accounts in banks or  
93 savings and loan associations pursuant to this section (plus  
94 accrued interest, if any) shall be insured by the Federal

95 Deposit Insurance Corporation. (4) On the same date that  
96 the funds of the county board of education are redeposited  
97 pursuant to this section, the selected depository receives  
98 an amount of deposits from customers of other financial  
99 institutions through the deposit placement program that  
100 are equal to the amount of the county board of education  
101 funds redeposited by the selected depository.

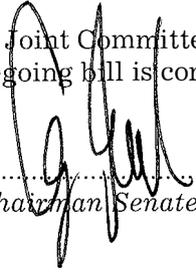
102 One hundred ten percent of the face or par value of the  
103 securities may not be less than the sum hereinbefore  
104 specified as the amount to be named in the bond in lieu of  
105 which the securities are accepted, or the county board of  
106 education may accept the securities as partial security to  
107 the extent of their face value for the money so deposited  
108 and require bond for the remainder of the full amount  
109 hereinbefore specified, to be named in the bond, and, in  
110 the bond so required, the acceptance of securities as  
111 partial security and the extent thereof shall be set forth.  
112 The hypothecation of the securities shall be by proper  
113 legal transfer as collateral security to protect and indem-  
114 nify by trust any and all loss in case of any default on the  
115 part of the banking institution in its capacity as depository  
116 as aforesaid. All such securities shall be delivered to or  
117 deposited for the account of the county board of educa-  
118 tion, and withdrawal or substitution thereof may be  
119 permitted from time to time upon approval by the county  
120 board of education by order of record, but the collateral  
121 security shall be released only by order of record of the  
122 county board of education when satisfied that full and  
123 faithful accounting and payment of all the moneys has  
124 been made under the provisions hereof. If actual posses-  
125 sion of the hypothecated securities is delivered to the  
126 county board of education, it shall make ample provision  
127 for the safekeeping thereof, and the interest thereon when  
128 paid shall be turned over to the banking institution, so  
129 long as it is not in default as aforesaid. The county board  
130 of education may permit the deposit under proper receipt

131 of such securities with one or more banking institutions  
132 within the State of West Virginia and may contract with  
133 any such institution for safekeeping and exchange of any  
134 such hypothecated securities, and may prescribe the rules  
135 for handling and protecting the same.

136 On and after July 1, 1973, all levies and any other school  
137 moneys received by the sheriff and paid to the treasurer of  
138 the county board of education shall be deposited in these  
139 accounts, and all proper payments from such funds shall  
140 be made by the designated depository or bank upon order  
141 or draft presented for payment and signed by the duly  
142 authorized signatories of the Board of Education: *Pro-*  
143 *vided*, That in determining the depository for Board of  
144 Education funds a board member who has a pecuniary  
145 interest in a bank within the county shall not participate  
146 in the determination of the depository for such funds.

147 If it is considered that sufficient funds are on hand in  
148 any account at any one time which may be more than are  
149 normally required for the payment of incurred expenses,  
150 the funds in the amount so considered available may be  
151 invested by the treasurer of the county board with the  
152 West Virginia Municipal Bond Commission, or in guaran-  
153 teed certificates of deposit issued by the depository or  
154 bank, or other guaranteed investments such as treasury  
155 bills, treasury notes or certificates of deposit issued by  
156 either the United States government or a banking institu-  
157 tion in which federal or state guarantees are applicable.  
158 Interest earned in such investments is to be credited to the  
159 fund from which the moneys were originally available.

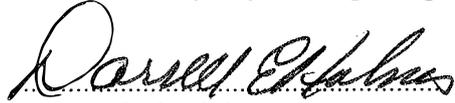
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

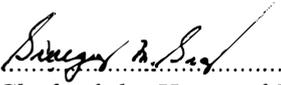
  
.....  
Chairman Senate Committee

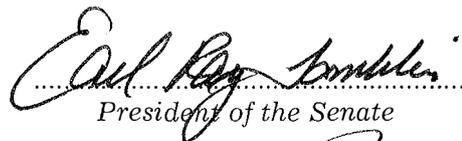
  
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Chairman House Committee

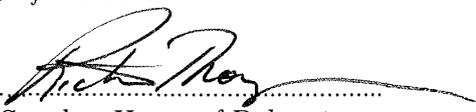
Originated in the Senate.

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 31<sup>st</sup> day of May, 2010.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 29 2010

Time 3:40 pm