WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

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 or security in lieu of bond pursuant to section two of this article if the deposit is placed in a designated state depository that is selected and authorized by the county to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:

7 (a) On or after the date that the county funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the county with respect to the funds redeposited into such accounts.

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

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

(d) On the same date that the funds of the county are redeposited pursuant to this section, the selected depository receives an amount of deposits from customers of other financial institutions through the deposit placement
program that are equal to the amount of the county money 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.

All municipal funds, the investment of which is not governed by other provisions of this code and not required for the payment of current obligations and not otherwise prohibited, may be invested and reinvested in:

1. Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;

2. Any evidence of indebtedness issued by any United States government agency guaranteed as to the payment of both principal and interest, directly or indirectly, by the United States of America including, but not limited to, the following: Government National Mortgage Association, federal land banks, federal home loan banks, federal intermediate credit banks, banks for cooperatives, Tennessee Valley Authority, United States postal service, farmers home administration, export-import bank, federal financing bank, federal home loan mortgage corporation, student loan marketing association and federal farm credit banks;

3. Any evidence of indebtedness issued by the Federal National Mortgage Association to the extent such indebtedness is guaranteed by the government National Mortgage Association;

4. Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this state, if the payment thereof is substantially insured or guaranteed by the United States of 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:
(A) The funds are invested through a designated state depository selected by the municipality; (B) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the municipality; (C) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (D) the selected depository acts as custodian for the municipality with respect to such certificates of deposit issued for the municipality’s account; and (E) at the same time that the municipality’s funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the municipality through the selected depository;

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

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

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

(b) Municipal funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation.
shall be secured in accordance with section four, article
one, chapter twelve of this code.

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

(d) On the same date that the funds of the municipality
are redeposited pursuant to this subsection, the selected
depository receives an amount of deposits from customers
of other financial institutions through the direct place-
ment program that are equal to the amount of the munici-
pality'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.

(a) Before allowing any money to be deposited with any
eligible depository in excess of the amount insured by an
agency of the federal government or insured by a deposit
guaranty bond issued by a valid bankers surety company
acceptable to the treasurer, the State Treasurer shall
require the depository to give a collaterally secured bond,
in the amount of not less than $10,000, payable to the
State of West Virginia, conditioned upon the prompt
payment, whenever lawfully required, of any state money,
or part thereof, that may be deposited with that deposi-
tory, or of any accrued interest on deposits. The bond
shall be a continuous bond but may be increased or
decreased in amount or replaced by a new bond with the
approval of the State Treasurer. The collateral security
for the bond shall consist of bonds of the United States, or
bonds or letters of credit of the federal land banks, of the
federal home loan banks, or bonds of the State of West
Virginia or of any county, district or municipality of this state, or other bonds, letters of credit, or securities approved by the treasurer. All bonds so secured are here designated as collaterally secured bonds. Withdrawal or substitution of any collateral pledged as security for the performance of the conditions of the bond may be permitted with the approval in writing of the treasurer. All depository bonds shall be recorded by the treasurer in a book kept in his or her office for the purpose, and a copy of the record, certified by the treasurer, shall be prima facie evidence of the execution and contents of the bond in any suit or legal proceeding. All collateral securities shall be delivered to or deposited for the account of the treasurer of the State of West Virginia and in the event said securities are delivered to the treasurer, he or she shall furnish a receipt therefor to the owner thereof. The treasurer and his or her bondsmen shall be liable to any person for any loss by reason of the embezzlement or misapplication of the securities by the treasurer or any of his or her employees, and for the loss thereof due to his or her negligence or the negligence of his or her employees; and the securities shall be delivered to the owner thereof when liability under the bond which they are pledged to secure has terminated. The treasurer may permit the deposit under proper receipt of the securities with one or more banking institutions within or outside the State of West Virginia and may contract with any institution for safekeeping and exchange of any collateral securities and may prescribe the rules for handling and protecting the collateral securities.

(b) A banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements: (1) The funds are invested through a designated state depository selected by the treasurer; (2) the selected depository arranges for the deposit of the funds in
certificates of deposit in one or more banks or savings and
loan associations wherever located in the United States,
for the account of the state; (3) the full amount of principal
and accrued interest of each certificate of deposit is
insured by the Federal Deposit Insurance Corporation; (4)
the selected depository acts as custodian for the state with
respect to such certificates of deposit issued for the state’s
account; and (5) at the same time that the state’s funds are
deposited and the certificates of deposit are issued, the
selected depository receives an amount of deposits from
customers of other financial institutions wherever located
in the United States equal to or greater than the amount
of the funds invested by the state through the selected
depository.

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

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

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

(3) The full amount of the funds of the state redeposited
by the selected depository into deposit accounts in banks
or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation.

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

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 education all moneys in his or her possession held on behalf of the county board of education, whether or not deposited in a bank or depository, unless the sheriff has been designated treasurer of the board of education as provided in this section. The transfer of funds shall be made as of the balances on hand on June 30 of the year in which the board of education appoints a treasurer other than the sheriff, and shall be completed no later than August 1 of that year. The transfer shall be adjudged complete and final upon the approval of the sheriff's official settlement for the fiscal year ending on June 30 of the year in which the board of education appoints a treasurer other than the sheriff, and any minor adjustment made necessary by the actually known figures shall also be made at that time. All balances in all county school funds at the end of each month after June 30 of the year in which the board of Education appoints a treasurer other than the sheriff shall be transferred by the sheriff to the county board of education not later than the tenth day of the following month.
On or before the first Monday in May each county board of education shall upon recommendation of the county superintendent appoint a treasurer for the board. The treasurer is the fiscal officer of the board, or an employee commonly designated as the person in charge of the financial affairs of the county board, or the county sheriff: Provided, That once a board of education has appointed a treasurer other than the sheriff, the sheriff may not be named treasurer of the board in a subsequent year. Upon appointment this person shall be titled and referred to as treasurer of the board of education. For the faithful performance of this duty, the treasurer shall execute a bond, to be approved by the board of education, in the penalty to be fixed by the board of education, not to exceed the amount of school funds which it is estimated the treasurer will handle within any period of two months. The premium on the bond shall be paid by the board of education.

The board of education may open a bank account, or accounts, as required to adequately and properly transact the business of the district in a depository, or banks, within the county. The depositories, or banks, shall provide bond to cover the maximum amount to be deposited at any one time. However, the county board of education may, in lieu of such bond, accept as security for money deposited letters of credit from a federal home loan bank, securities of the United States, or of a state, county, district or municipal corporation, or federal agency securities: Provided, That a banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements: (1) The funds are invested through a designated state depository selected by the county board of education; (2) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associa-
tions wherever located in the United States, for the account of the county board of education; (3) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for the county board of education with respect to such certificates of deposit issued for the county's account; and (5) at the same time that the county board of education's funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the county board of education through the selected depository: Provided, however, That a banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in a designated state depository that is selected and authorized by the county board of education to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions: (1) On or after the date that the county board of education funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the county with respect to the money redeposited into such accounts. (2) County board of education funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with the second and third sentences of this paragraph. (3) The full amount of the funds of the county board of education redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be insured by the Federal
Deposit Insurance Corporation. (4) On the same date that the funds of the county board of education are redeposited pursuant to this section, the selected depository receives an amount of deposits from customers of other financial institutions through the deposit placement program that are equal to the amount of the county board of education funds redeposited by the selected depository.

One hundred ten percent of the face or par value of the securities may not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted, or the county board of education may accept the securities as partial security to the extent of their face value for the money so deposited and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and, in the bond so required, the acceptance of securities as partial security and the extent thereof shall be set forth. The hypothecation of the securities shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as depository as aforesaid. All such securities shall be delivered to or deposited for the account of the county board of education, and withdrawal or substitution thereof may be permitted from time to time upon approval by the county board of education by order of record, but the collateral security shall be released only by order of record of the county board of education when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. If actual possession of the hypothecated securities is delivered to the county board of education, it shall make ample provision for the safekeeping thereof, and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid. The county board of education may permit the deposit under proper receipt
of such securities with one or more banking institutions
within the State of West Virginia and may contract with
any such institution for safekeeping and exchange of any
such hypothecated securities, and may prescribe the rules
for handling and protecting the same.

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

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

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 Day of 2010.

Governor
PRESENTED TO THE GOVERNOR

MARCH 29, 2010

Time 3:40 pm