WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED
COMMITTEE SUBSTITUTE
FOR
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FOR
Senate Bill No. 499
(Senators Kirkendoll, McCabe, Edgell, Cann, M. Hall, Carmichael, Plymale, Palumbo and Nohe, Original Sponsors)

[Passed March 3, 2014; in effect ninety days from passage.]
AN ACT to repeal § 12-6-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact § 12-6-2 and § 12-6-11 of said code, all relating to investment of moneys by the West Virginia Investment Management Board; modifying the definition of the term “securities”; continuing the prudent investor standard of care set forth in the West Virginia Uniform Prudent Investor Act as the primary standard of care for the trustees of the West Virginia Investment Management Board; removing certain restrictions on investments by the Investment Management Board; limiting disclosure of information; and restating and adding certain restrictions on investments by the West Virginia Investment Management Board.

Be it enacted by the Legislature of West Virginia:
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 forms and types of investments, financial instruments or financial transactions which may be considered prudent for investment by the board under section eleven of this article; 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.

§12-6-11. Standard of care and investment requirements; disclosure of information.

(a) Any investments made under this article shall be made in accordance with the provisions of the Uniform Prudent Investor Act codified as article six-c, chapter forty-four of this code and is further subject to the following requirements:

(1) Trustees shall discharge their duties with respect to the 401(a) plans for the exclusive purpose of providing benefits to participants and their beneficiaries;
(2) Trustees shall diversify fund investment so as to minimize the risk of large losses unless, under the circumstances, it is clearly prudent not to do so;

(3) Trustees shall defray reasonable expenses of investing and operating the funds under management;

(4) Trustees shall discharge their duties in accordance with the documents and instruments governing the trusts or other funds under management insofar as the documents and instruments are consistent with the provisions of this article;

(5) Trustees, 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:

(A) Preservation of capital;

(B) Diversification;

(C) Risk tolerance;

(D) Rate of return;

(E) Stability;

(F) Turnover;

(G) Liquidity; and

(H) Reasonable cost of fees;
(6) The board may invest in a private real estate fund, a private equity fund or a hedge fund only if the investment satisfies the following conditions:

(A) A professional, third-party fiduciary investment adviser registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940, as amended, recommends the investment;

(B) The board or a committee designated by the board approves the investment;

(C) The board's ownership interest in the fund will be less than forty percent of the fund's assets at the time of acquisition;

(D) The combined investment of institutional investors, other public sector entities and educational institutions and their endowments and foundations in the fund is equal to or greater than fifty percent of the board's total investment in the fund at the time of acquisition; and

(E) The largest investment of such fund is not greater than forty percent of the fund's assets at the time of acquisition; and

(7) The total assets of the private real estate fund, private equity fund or hedge fund shall be used in calculating the percentage requirements and limitations set forth in subdivision (6) of this subsection without regard to any particular investment vehicle in which assets may be held pending investment.

(b) 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 is 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.

(c) The duties of the board apply only with respect to
those assets deposited with or otherwise held by it.
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 of the House of Delegates

The within was approved this the Day of, 2014.

Governor