

1 **H. B. 3216**

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3 (By Delegates Canterbury, Nelson, T. Campbell, White,
4 Azinger, Pethtel, Anderson, Varner, Kominar and Evans)
5 [Introduced February 21, 2011; referred to the
6 Committee on Finance.]
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11 A BILL to amend and reenact §12-6-12 of the Code of West Virginia,
12 1931, as amended, relating to investment restrictions on
13 foreign securities.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §12-6-12 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

17 **ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.**

18 **§12-6-12. Investment restrictions.**

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

23 (b) In addition to any investments the board may make pursuant
24 to subsection ~~(h)~~ (g) of this section, the board shall hold in real

1 estate equity investments no more than twenty-five percent of the
2 assets managed by the board and no more than twenty-five percent of
3 the assets of any individual participant plan: *Provided*, That any
4 such investment be only made upon the recommendation by a
5 professional, third-party fiduciary investment adviser registered
6 with the Securities and Exchange Commission under the Investment
7 Advisors Act of 1940, as amended, upon the approval of the board or
8 a committee designated by the board, and upon the execution of the
9 transaction by a third-party investment manager: *Provided*,
10 *however*, That the board's ownership interest in any fund is less
11 than forty percent of the fund's assets at the time of purchase:
12 *Provided further*, That the combined investment of institutional
13 investors, other public sector entities and educational
14 institutions and their endowments and foundations in the fund is in
15 an amount equal to or greater than fifty percent of the board's
16 total investment in the fund at the time of acquisition. For the
17 purposes of this subsection, "fund" means a real estate investment
18 trust traded on a major exchange of the United States of America,
19 or a partnership, limited partnership, limited liability company or
20 other entity holding or investing in related or unrelated real
21 estate investments, at least three of which are unrelated and the
22 largest of which is not greater than forty percent of the entity's
23 holdings, at the time of purchase.

24 (c) ~~The board shall hold in international securities no more~~

1 ~~than thirty percent of the assets managed by the board and no more~~
2 ~~than thirty percent of the assets of any individual participant~~
3 ~~plan.~~

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

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

16 ~~(f)~~ (e) Notwithstanding the investment limitations set forth
17 in this section, it is recognized that the assets managed by the
18 board or the assets of the participant plans, whether considered in
19 the aggregate or individually, may temporarily exceed the
20 investment limitations in this section due to market appreciation,
21 depreciation and rebalancing limitations. Accordingly, the
22 limitations on investments set forth in this section shall not be
23 considered to have been violated if the board rebalances the assets
24 it manages or the assets of the participant plans, whichever is

1 applicable, to comply with the limitations set forth in this
2 section at least once every twelve months based upon the latest
3 available market information and any other reliable market data
4 that the board considers advisable to take into consideration,
5 except for those assets authorized by subsections (b) and ~~(h)~~ (g)
6 of this section for which compliance with the percentage
7 limitations shall be measured at such time as the investment is
8 made.

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

- 16 (1) Preservation of capital;
- 17 (2) Diversification;
- 18 (3) Risk tolerance;
- 19 (4) Rate of return;
- 20 (5) Stability;
- 21 (6) Turnover;
- 22 (7) Liquidity; and
- 23 (8) Reasonable cost of fees.

24 ~~(h)~~ (g) In addition to any and all other investments the board

1 may make under this article and all investment authority granted to
2 the board by this article, the board is expressly authorized to
3 invest no more than twenty percent of the assets managed by the
4 board and no more than twenty percent of the assets of any
5 individual participant plan, or any other endowment or other fund
6 managed by the board, as measured at the time of the investment, in
7 any one or more classes, styles or strategies of alternative
8 investments suitable and appropriate for investment by the board.

9 A suitable and appropriate alternative investment is a private
10 equity fund such as a venture capital, private real estate or buy-
11 out fund; commodities fund; distressed debt fund; mezzanine debt
12 fund; hedge fund; put or call on an individual security purchased
13 for the purpose of hedging an authorized investment position; or
14 fund consisting of any combination of private equity, distressed or
15 mezzanine debt, hedge funds, private real estate, commodities and
16 other types and categories of investment permitted under this
17 article: *Provided*, That any such investment be only made upon the
18 recommendation by a professional, third-party fiduciary investment
19 adviser registered with the Securities and Exchange Commission
20 under the Investment Advisors Act of 1940, as amended, upon the
21 approval of the board or a committee designated by the board and
22 upon the execution of the transaction by a third-party investment
23 manager: *Provided, however*, That if the standard confidentiality
24 agreements, policies or procedures of any firm, company or

1 organization through which the board invests in securities
2 prohibit, restrict or limit the disclosure of information
3 pertaining to the securities, the information shall be exempt from
4 disclosure, under the provisions of chapter twenty-nine-b of this
5 code or otherwise, to the extent of the prohibitions, restrictions
6 or limitations: *Provided further,* That the board's ownership
7 interest in any fund is less than forty percent of the fund's
8 assets at the time of purchase: *And provided further,* That the
9 combined investment of institutional investors, other public sector
10 entities, and educational institutions and their endowments and
11 foundations in the fund is in an amount equal to or greater than
12 fifty percent of the board's total investment in the fund at the
13 time of acquisition. For the purposes of this subsection, "fund"
14 means a partnership, limited partnership, limited liability company
15 or other form of entity holding or investing in a collection of
16 related or unrelated investments, at least three of which are
17 unrelated and the largest of which is not greater than forty
18 percent of the fund's composition at the time of purchase. To
19 facilitate access to markets, control, manage or diversify
20 portfolio risk, or enhance performance or efficiency in connection
21 with investments in alternative investments and all other types and
22 categories of investment permitted under this article, the board
23 may enter into commercially customary and prudent market
24 transactions consistent with the laws of the state: *And provided*

1 *further*, That neither the purpose nor the effect of such
2 transactions may materially increase market risk or market exposure
3 of the total portfolio of investments as adjusted, from time to
4 time, by the board. The investments described in this subsection
5 are subject to the requirements, limitations and restrictions set
6 forth in this subsection and the standard of care set forth in
7 section eleven of this article, but are not subject to any other
8 limitations or restrictions set forth elsewhere in this article or
9 code.

NOTE: The purpose of this bill is to remove restriction on
investments in foreign securities.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.