

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 432**

4 (By Senators Jenkins, Kessler (Mr. President), Barnes,
5 Beach, Cann, Carmichael, Edgell, Facemire, Fitzsimmons,
6 Green, D. Hall, M. Hall, Kirkendoll, McCabe, Palumbo,
7 Snyder, Stollings, Unger, Wells, Williams, Yost and Plymale)

8
9 _____
10 [Originating in the Committee on Pensions;

11 reported March 11, 2013.]

12 A BILL to repeal §12-1-12c of the Code of West Virginia, 1931, as
13 amended; to repeal §12-6B-1, §12-6B-2, §12-6B-3 and §12-6B-4
14 of said code; to repeal §48-2-604 of said code; to amend and
15 reenact §5-10B-3 and §5-10B-13 of said code; to amend said
16 code by adding thereto a new section, designated §5-10B-14; to
17 amend and reenact §12-1-3, §12-1-8, §12-1-11 and §12-1-12b of
18 said code; to amend and reenact §12-2-2 and §12-2-3 of said
19 code; to amend and reenact §12-3-1 of said code; to amend and
20 reenact §12-3A-3 of said code; to amend and reenact §12-5-4 of
21 said code; to amend and reenact §12-6A-1, §12-6A-2, §12-6A-3,
22 §12-6A-4, §12-6A-5, §12-6A-6 and §12-6A-7 of said code; to
23 amend and reenact §12-6C-7 and §12-6C-9 of said code; to amend
24 and reenact §33-3-14d of said code; and to amend and reenact

1 §36-8-13 of said code, all relating to the State Treasurer's
2 Office; authorizing certain organizations exempt from taxation
3 within West Virginia to participate in the deferred
4 compensation plan in accordance with the Internal Revenue
5 Code; authorizing qualified domestic relations orders and Roth
6 accounts within the deferred compensation plan in accordance
7 with the Internal Revenue Code; authorizing financial
8 institutions to offer products in addition to certificates of
9 deposit; updating references to investing authorities to
10 include the Board of Treasury Investments; raising the amount
11 of eligible deposits from \$100,000 to the amount insured by a
12 federal agency; deleting archaic language pertaining to
13 eligible depositories; amending language pertaining to what
14 constitutes a conflict of interest for applicants and
15 employees of the Treasurer's Office in connection with
16 financial institutions by prohibiting those persons with a
17 defined conflict from participating in the selection of or in
18 contract negotiations with a depository; authorizing
19 depositories to submit reports in an electronic format;
20 clarifying that payments under the CMIA are interest payments;
21 changing the CMIA report from a quarterly report to an annual
22 report since the calculation is only prepared annually;
23 changing the requirement that deposits are required within
24 twenty-four hours to one business day; establishing standards

1 for receipting of moneys, including reviewing of internal
2 controls by auditors and the Treasurer and ensuring copies of
3 audits are submitted to the Legislative Auditor; ensuring
4 confidential information in internal control procedures is
5 redacted before release; clarifying the definitions of
6 federal, special and general revenue funds; eliminating
7 reference to the chief inspector of public offices; changing
8 the report to the Legislative Auditor for accounts outside the
9 Treasury from quarterly to an annual report; clarifying that
10 investments are managed by the Board of Treasury Investments
11 in addition to the Investment Management Board; conforming
12 language pertaining to determining the amount of federal funds
13 in state state checks to the capabilities of the Enterprise
14 Resource Planning System; clarifying that the Treasurer
15 determines the competitive bidding of banking, investment and
16 related goods and services required for treasury operations;
17 authorizing the Treasurer to develop procedures for storing,
18 retaining and disposing of records for his or her office;
19 ensuring the Director of the Division of Archives and History
20 receives records with historical value; clarifying that the
21 Treasurer is responsible for earnings received on securities,
22 not just interest; consolidating the Debt Capacity Division
23 into the Debt Management Division; amending legislative
24 findings to acknowledge the importance of monitoring the debt

1 of the state and its spending units; continuing Division of
2 Debt Management as the central information source for debt
3 issued by the state and its spending units; expanding the
4 definition of "debt" to include debentures, lease purchases,
5 mortgages, securitizations and other types of obligations with
6 specific amounts owed and payable on demand or on determinable
7 dates; defining "debt impact report", "moral obligation bond",
8 "net tax supported debt" and "tax supported debt"; amending
9 definition of "spending unit"; eliminating requirement for
10 developing a long-term debt plan; clarifying the division is
11 responsible for continuously evaluating debt and debt service
12 requirements and reviewing all proposed debt offerings of the
13 state and its spending units; clarifying the division is to
14 issue a debt impact report if requested by the Governor,
15 Senate President or Speaker of the House of Delegates and that
16 the report shall not restrict the Governor, Legislature or
17 spending unit; requiring the division to monitor continuing
18 disclosure requirements and post-issuance compliance issues;
19 eliminating requirement that the Debt Management Division
20 provide staff for the Debt Capacity Division; clarifying the
21 reporting requirements of the division and the spending units;
22 requiring the division to prepare and issue the debt capacity
23 report; clarifying the Treasurer promulgates the rules;
24 reducing the blanket bond amount required for the Board of

1 Treasury Investments from \$50 million to at least \$10 million,
2 as set by the board; updating language pertaining to rating
3 agencies to nationally recognized statistical rating
4 organizations; permitting investment in corporate debt in
5 investment-grade securities and in money-market and other
6 fixed-income funds; authorizing the board to make loans
7 specified by the Legislature and to offer an equipment and
8 software financing program for state government entities;
9 removing requirement that direct or guaranteed obligations of
10 the United States constitute at least fifteen percent of the
11 consolidated fund; providing that securities falling out of
12 compliance with the code do not have to be sold if the
13 investment manager and investment consultant recommend
14 retention; satisfying amounts due to and from policemen's and
15 firemen's pension and relief funds and the Teachers Retirement
16 System; authorizing expenses related to operations and
17 programs of the Office of the Treasurer from the Unclaimed
18 Property Fund; authorizing transfer of moneys from the
19 Unclaimed Property Trust Fund for payment to policemen's and
20 firemen's pension and relief funds; and making various
21 technical clean-up revisions.

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

23 That §12-1-12c of the Code of West Virginia, 1931, as amended,
24 be repealed; that §12-6B-1, §12-6B-2, §12-6B-3 and §12-6B-4 of said

1 code be repealed; that §48-2-604 of said code be repealed; that
2 §5-10B-3 and §5-10B-13 of said code be amended and reenacted; that
3 said code be amended by adding thereto a new section, designated
4 §5-10B-14; that §12-1-3, §12-1-8, §12-1-11 and §12-1-12b of said
5 code be amended and reenacted; that §12-2-2 and §12-2-3 of said
6 code be amended and reenacted; that §12-3-1 of said code be amended
7 and reenacted; that §12-3A-3 of said code be amended and reenacted;
8 that §12-5-4 of said code be amended and reenacted; that §12-6A-1,
9 §12-6A-2, §12-6A-3, §12-6A-4, §12-6A-5, §12-6A-6 and §12-6A-7 of
10 said code be amended and reenacted; that §12-6C-7 and §12-6C-9 of
11 said code be amended and reenacted; that §33-3-14d of said code be
12 amended and reenacted; and that §36-8-13 of said code be amended
13 and reenacted, all to read as follows:

14 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**
15 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS,**
16 **MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**
17 **ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.**

18 **§5-10B-3. Powers; contracts; meetings.**

19 (a) Notwithstanding any provision of this code to the
20 contrary, including, without limitation, this chapter and chapter
21 five-a of this code, the state employer and a public employer have
22 the power necessary or appropriate to carry out the provisions and
23 objectives of this article and to operate the trust, including,
24 without limitation, entering into contracts and executing and

1 delivering instruments; engaging consultants, auditors, counsel,
2 managers, advisors, trustees or any other contractors or
3 professionals; and charging and collecting administrative fees.

4 (b) The state employer or any public employer may, by
5 contract, agree with any of its employees to defer and hold in
6 trust any portion of that employee's compensation and may
7 subsequently purchase or acquire from vendors licensed to do
8 business in the State of West Virginia investment products for the
9 purpose of carrying out the objectives of the deferred compensation
10 plan as described in this article.

11 (c) Employees are authorized to attend meetings called by the
12 state employer or public employer for the purpose of explaining a
13 plan during regular working hours.

14 (d) Notwithstanding any provision of this code to the contrary
15 and in accordance with the Internal Revenue Code, the Treasurer may
16 extend participation in the plan to organizations that participate
17 in any retirement system administered by the West Virginia
18 Consolidated Public Retirement Board and that are exempt from
19 taxation and located within West Virginia.

20 **§5-10B-13. Moneys not subject to legal process; qualified domestic**
21 **relations orders.**

22 No account, benefit or right, created pursuant to this
23 article, accrued or accruing, is subject to execution, garnishment,
24 attachment, sale to satisfy a judgment or order, the operation of

1 bankruptcy or insolvency laws, or other process of law and shall be
2 unassignable, except that accounts, benefits and contributions
3 under the plan are subject to "qualified domestic relations orders"
4 as that term is defined in Internal Revenue Code §414(p).

5 **§5-10B-14. Roth Accounts.**

6 The Treasurer or any public employer may authorize Roth
7 accounts within the plan in accordance with the Internal Revenue
8 Code, including, without limitation, conversions, deferrals,
9 rollovers and transfers.

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

11 **ARTICLE 1. STATE DEPOSITORIES.**

12 **§12-1-3. Depositories for interest earning deposits;**
13 **qualifications.**

14 Any state or national bank or any state or federal savings and
15 loan association in this state shall, upon request made to the
16 State Treasurer, be designated as an eligible depository for
17 interest earning deposits of state funds if such bank or state or
18 federal savings and loan association meets the requirements set
19 forth in this chapter. For purposes of this article, the term
20 "interest earning deposits" includes certificates of deposit or
21 other financial institution products. The State Treasurer shall
22 make and apportion such interest earning deposits and shall
23 prescribe the interest rates, terms and conditions of ~~such~~
24 deposits, all in accordance with the provisions of ~~article six~~

1 articles six and six-c of this chapter: *Provided*, That state or
2 federal savings and loan associations insured by an agency of the
3 federal government shall be eligible for such deposits not in
4 excess of ~~one hundred thousand dollars~~ the amount insured by any
5 agency of the federal government. ~~Provided, however, That~~
6 ~~notwithstanding any provision of this article to the contrary, no~~
7 ~~such interest earning deposits may be deposited in any depository~~
8 ~~which has been in existence over a period of five years which does~~
9 ~~not have a loan to deposit ratio of fifty percent or more and which~~
10 ~~does not have farm, single or multifamily residential unit loans in~~
11 ~~an amount greater than twenty five percent of the amount of loans~~
12 ~~representing a loan-to-deposit ratio of fifty percent. For the~~
13 ~~purpose of making the foregoing calculation, the balances due the~~
14 ~~depository on the following loans shall be given effect: (1)~~
15 ~~Qualifying residential loans held by the depository; (2) qualifying~~
16 ~~loans made in participation with other financial institutions; (3)~~
17 ~~qualifying loans made in participation with agencies of the state,~~
18 ~~federal or local governments; and (4) qualifying loans originated~~
19 ~~and serviced by the depository but owned by an out-of-state~~
20 ~~investor. The computation of the criteria for eligibility specified~~
21 ~~above shall be based on the average daily balances of deposits, the~~
22 ~~average daily balances of total loans and qualifying residential~~
23 ~~loans for the period being reported.~~

24 **§12-1-8. Conflict of interest.**

1 ~~No depository in this State may serve or be eligible for~~
2 ~~designation as a State Depository if any employee of the~~
3 ~~Treasurer's office, or a spouse or minor child of that employee, is~~
4 ~~an officer, director or employee of the depository or owns greater~~
5 ~~than two percent of the depository either in his or her own name or~~
6 ~~beneficially or an interest in the depository. An employee of the~~
7 ~~Treasurer's office shall disclose the circumstance, if any, in the~~
8 ~~sworn statement required under the provisions of section one,~~
9 ~~article one, chapter six b of this code. An employee or a person~~
10 applying for a position with the office of the Treasurer shall
11 disclose to the Treasurer if he or she, or his or her spouse, is an
12 officer, director or employee of a depository or owns greater than
13 two percent of a depository. Any employee of the office of the
14 Treasurer who, or whose spouse, is an officer, director or employee
15 of a depository or owns greater than two percent of a depository
16 may not participate in any selection of or in any contract
17 negotiations with any depository.

18 **§12-1-11. Reports by depositories to Treasurer; discontinuance of**
19 **depositories.**

20 (a) Each depository of state funds shall at the end of each
21 quarter cause its president or ~~cashier~~ designated officer to report
22 to the Treasurer the amount of state funds on deposit and the
23 report shall be verified by the affidavit of the officer making it.
24 The form and contents of the report shall be prescribed by the

1 Treasurer and may be in an electronic format.

2 (b) For the failure to file the report, or for other good
3 cause, the Treasurer may discontinue any depository as an eligible
4 depository and cause all state funds to be withdrawn from any
5 depository or depositories ~~so~~ discontinued.

6 (c) When a depository is discontinued, the Treasurer shall
7 immediately notify such depository of its discontinuance, and shall
8 immediately withdraw by current checks or by transfer to another
9 depository or depositories the full amount of the deposits held by
10 any depository ~~so~~ discontinued. After discontinuance, it shall be
11 unlawful for the Treasurer to deposit any state funds in any
12 depository ~~so~~ discontinued until such time as the depository may be
13 reinstated to eligibility.

14 **§12-1-12b. Cash Management Improvement Act; administration;**
15 **reports.**

16 (a) The Cash Management Improvement Act of 1990, Public Law
17 101-453, October 24, 1990, 31 U.S.C. Section 6501 et. seq. (CMIA)
18 and regulations, as amended, establishes requirements and
19 techniques, including calculations, for the receipt and
20 disbursement of federal funds by states. The authorized official
21 and representative of the State of West Virginia for the CMIA is
22 the State Treasurer.

23 (b) In administering the CMIA, the State Treasurer is
24 authorized to do all things reasonably necessary, including without

1 limitation, entering into agreements with, negotiating settlements
2 with, ~~refunding~~ paying any interest due and satisfying any
3 liability to the United States Treasury in accordance with the
4 CMIA.

5 (c) Periodically, the State Treasurer shall transfer to the
6 "Federal Cash Management Fund", which is hereby authorized and
7 continued, earnings on the State General Revenue Fund in an amount
8 the Treasurer estimates is needed to make ~~refunds~~ interest payments
9 in accordance with the CMIA. After each annual settlement with the
10 United States Treasury, the State Treasurer shall transfer to the
11 State General Revenue Fund any moneys remaining in the Federal Cash
12 Management Interest Fund for the period just settled.

13 (d) The State Treasurer shall also transfer periodically to
14 the "Federal Cash Management - Administration Fund," which is
15 hereby authorized and continued, earnings on the State General
16 Revenue Fund in an amount the Treasurer determines is needed to pay
17 for the costs of administering the CMIA. The State Treasurer may
18 pay the costs he or she incurs in administering the CMIA from the
19 Federal Cash Management-Administration Fund.

20 (e) All state spending units shall cooperate fully with the
21 State Treasurer in accumulating all the necessary data elements to
22 fully comply with the CMIA.

23 (f) The State Treasurer shall send ~~quarterly reports~~ an annual
24 report on the activities involving the CMIA to the Governor,

1 Auditor, Secretary of Revenue and Joint Committee on Government and
2 Finance.

3 **ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE**
4 **STATE OR ANY POLITICAL SUBDIVISION.**

5 **§12-2-2. Itemized record of moneys received for deposit;**
6 **regulations governing deposits; credit to state**
7 **fund; exceptions.**

8 (a) All officials and employees of the state authorized by
9 statute to accept moneys on behalf of the State of West Virginia
10 shall keep a daily itemized record of moneys received for deposit
11 in the State Treasury and shall deposit within one business day
12 with the State Treasurer all moneys received or collected by them
13 for or on behalf of the state for any purpose whatsoever. The
14 State Treasurer may grant an exception to the one business day rule
15 when circumstances make compliance difficult or expensive.

16 (b) The State Treasurer shall establish standards for internal
17 controls for spending units receipting moneys, assist spending
18 units in developing and improving their internal control procedures
19 for receipting moneys and provide training. State spending units
20 accepting moneys shall establish and at least annually review
21 internal control procedures for receipting moneys that safeguard
22 assets, minimize fraud, waste and abuse, and comply with applicable
23 laws, rules and regulations. Upon request of the State Treasurer,
24 spending units, except the Department of Revenue, shall submit the

1 internal control procedures and any revisions to the internal
2 control procedures to the State Treasurer for review. The State
3 Treasurer may make revisions to or suggestions for the internal
4 control procedures if he or she believes the procedures do not
5 provide reasonable protection for moneys collected. A spending
6 unit shall adopt any revisions made by the Treasurer.

7 (c) Any confidential information in internal control
8 procedures shall be redacted before release of the internal control
9 procedures in accordance with a request pursuant to §29B-1-1 et
10 seq. of this code.

11 (d) The Treasurer may also audit the receipting of moneys by
12 a spending unit, except spending units within the Department of
13 Revenue. A copy of any audit performed by the Treasurer shall be
14 submitted to the Legislative Auditor. Any audit of a spending unit
15 by an internal auditor or by an auditing firm shall include an
16 evaluation of and report on the adequacy of internal control
17 procedures for receipting moneys, with a copy of the audit being
18 sent to the Treasurer and to the Legislative Auditor within thirty
19 days of receipt of the audit by the spending unit.

20 (e) The State Treasurer shall propose rules for legislative
21 approval, in accordance with the provisions of article three,
22 chapter twenty-nine-a of this code governing the procedure for
23 deposits.

24 (f) The official or employee making deposits with the State

1 Treasurer shall prepare deposit lists in the manner and upon report
2 forms prescribed by the State Treasurer in the state accounting
3 system. The State Treasurer shall review the deposits in the state
4 accounting system and forward the information to the State Auditor
5 and to the Secretary of Revenue.

6 (g) All moneys received by the state shall be recorded in
7 federal, general revenue and special fund accounts in the State
8 Treasury, as follows:

9 (1) All federal funds, defined in section two, article eleven,
10 chapter four of this code, received shall be recorded in federal
11 fund accounts in the state treasury apart from the general and
12 special revenues of the state, and shall be expended in accordance
13 with the provisions of article eleven, chapter four of this code.

14 (2) All moneys, other than federal and special revenue funds,
15 shall be credited to the state fund and treated by the State
16 Auditor and State Treasurer as part of the general revenue of the
17 state.

18 (3) All moneys from specific revenue sources which by
19 legislative enactments are not required to be accounted for as
20 general revenue funds or federal funds, are special revenue funds,
21 and include, but are not limited to the following funds which shall
22 be recorded in separate accounts:

23 (A) All funds excluded by the provisions of section six,
24 article eleven, chapter four of this code;

1 (B) All funds derived from the sale of farm and dairy products
2 from farms operated by any spending unit of the state;

3 (C) All endowment funds, bequests, donations, executive
4 emergency funds and death and disability funds;

5 (D) All fees and funds collected at state educational
6 institutions for student activities;

7 (E) All funds derived from collections from dormitories,
8 boardinghouses, cafeterias and road camps;

9 (F) All moneys received from counties by institutions for the
10 deaf and blind on account of clothing for indigent pupils;

11 (G) All insurance collected on account of losses by fire and
12 refunds;

13 (H) All funds derived from bookstores;

14 (I) All moneys collected and belonging to the capitol building
15 fund, state road fund, general school fund, school fund, political
16 subdivisions, state compensation funds, the fund maintained by the
17 Public Service Commission for the investigation and supervision of
18 applications and all fees, money, interest or funds arising from
19 the sales of all permits and licenses to hunt, trap, fish or
20 otherwise hold or capture fish and wildlife resources and money
21 reimbursed and granted by the federal government for fish and
22 wildlife conservation; and

23 (J) All moneys collected or received under any act of the
24 Legislature providing that funds collected or received under the

1 act shall be used for specific purposes.

2 (K) All moneys, except as provided in paragraphs (A) through
3 (I), inclusive, subdivision (3), subsection (g) of this section,
4 shall be paid into the State Treasury in the same manner as
5 collections not excepted and recorded in separate accounts for
6 receipt and expenditure for the purposes for which the moneys are
7 authorized to be collected by law: *Provided*, That amounts
8 collected pursuant to, paragraph (J), subdivision (3), subsection
9 (g) of this section, which are found, from time to time, to exceed
10 funds needed for the purposes set forth in general law may be
11 transferred to other accounts or funds and redesignated for other
12 purposes by appropriation of the Legislature.

13 (L) The gross amount collected in all cases shall be paid into
14 the State Treasury. Commissions, costs and expenses, including,
15 without limitation, amounts charged for use of bank, charge, credit
16 or debit cards, incurred in the collection process shall be paid
17 from the gross amount collected in the same manner as other
18 payments are made from the State Treasury.

19 (M) The State Treasurer may establish an imprest fund or funds
20 in the office of any state spending unit upon receipt of a proper
21 application. To implement this authority, the State Treasurer shall
22 propose rules for legislative approval in accordance with the
23 provisions of article three, chapter twenty-nine-a of this code.
24 The State Treasurer or his or her designee shall annually audit all

1 imprest funds and prepare a list of the funds showing the location
2 and amount as of fiscal year end, retaining the list as a permanent
3 record of the State Treasurer until the Legislative Auditor has
4 completed an audit of the imprest funds of all agencies and
5 institutions involved.

6 (N) The State Treasurer may develop and implement a
7 centralized receipts processing center. The State Treasurer may
8 request the transfer of equipment and personnel from appropriate
9 state agencies to the centralized receipts processing center in
10 order to implement the provisions of this section: Provided, That
11 the Governor or appropriate constitutional officer has authority to
12 authorize the transfer of equipment or personnel to the centralized
13 receipts processing center from the respective agency.

14 **§12-2-3. Deposit of moneys not due the state.**

15 (a) All officials and employees of the state authorized to
16 accept moneys that the State Treasurer determines or that this code
17 specifies are not funds due the state pursuant to the provisions of
18 section two of this article shall deposit the moneys, as soon as
19 practicable, in the manner and in the depository specified by the
20 State Treasurer. The State Treasurer shall prescribe the forms and
21 procedures for depositing the moneys.

22 (b) Notwithstanding any provision of this code to the
23 contrary, including provisions stating funds collected are not
24 state funds and provisions authorizing a spending unit to have one

1 or more accounts outside the Treasury, a spending unit shall comply
2 with the State Treasurer's procedures for the receipt and
3 disbursement of moneys not due the state and obtain written
4 authorization from the State Treasurer before depositing any moneys
5 in an account outside the Treasury. Upon the State Treasurer's
6 written revocation of the authorization, the spending unit shall
7 deposit funds deposited in an account outside the Treasury into the
8 Treasury in the manner and in the depository specified by the State
9 Treasurer. The State Treasurer is the final determining authority
10 as to whether these funds are funds due or not due the state
11 pursuant to section two of this article.

12 (c) The State Treasurer shall ~~on a quarterly basis~~ provide the
13 Legislative Auditor with ~~a~~ an annual report of all accounts
14 authorized under this section.

15 **ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

16 **§12-3-1. Manner of payment from Treasury; form of checks.**

17 (a) Every person claiming to receive money from the Treasury
18 of the state shall apply to the Auditor for a warrant for same. The
19 Auditor shall thereupon examine the claim, and the vouchers,
20 certificates and evidence, if any, offered in support thereof, and
21 for so much thereof as he or she finds to be justly due from the
22 state, if payment thereof is authorized by law, and if there is an
23 appropriation not exhausted or expired out of which it is properly
24 payable, the Auditor shall issue his or her warrant on the

1 Treasurer, specifying to whom and on what account the money
2 mentioned therein is to be paid, and to what appropriation it is to
3 be charged. The Auditor shall present to the Treasurer daily
4 reports on the number of warrants issued, the amounts of the
5 warrants and the dates on the warrants for the purpose of
6 effectuating the investment policies of the State Treasurer, ~~and~~
7 the West Virginia Investment Management Board and the West Virginia
8 Board of Treasury Investments. On the presentation of the warrant
9 to the Treasurer, the Treasurer shall ascertain whether there are
10 sufficient funds in the Treasury to pay that warrant, and if he or
11 she finds it to be so, he or she shall in that case, but not
12 otherwise, endorse his or her check upon the warrant, directed to
13 some depository, which check shall be payable to the order of the
14 person who is to receive the money therein specified.

15 (b) If a check is not presented for payment within six months
16 after it is drawn, it is the duty of the Treasurer to credit it to
17 the depository on which it was drawn, to credit the "Treasurer's
18 Stale Check Fund," which is hereby created in the State Treasury,
19 and immediately notify the Auditor to make corresponding entries on
20 the Auditor's books. If the State Treasurer determines any funds
21 deposited in the stale check account are federal funds, the State
22 Treasurer shall notify the spending unit authorizing the payment.
23 Within six months following issuance of the notice, the spending
24 unit shall inform the State Treasurer of the amount of federal

1 funds included in the check, the account from which the federal
2 funds were disbursed, and the current fiscal year account to which
3 the federal funds are to be transferred. After receiving the
4 information, the State Treasurer shall transfer the amount of
5 federal funds specified as a reimbursement to the current fiscal
6 year account specified to receive federal funds by the spending
7 unit. For a period of up to six months, the State Treasurer shall
8 endeavor to pay the money in the stale check account to the payee.
9 The Treasurer shall credit the money that has been in the stale
10 check account for six months, or for a shorter period as determined
11 by the Treasurer, to the unclaimed property fund pursuant to the
12 provisions of article eight, chapter thirty-six of this code, and
13 shall immediately notify the Auditor to make corresponding entries
14 on the Auditor's books.

15 (c) No state depository may pay a check issued by the State
16 Treasurer unless ~~it~~ the check is presented within six months after
17 it is drawn. ~~and every~~ Every check shall bear upon its face the
18 words "Void, unless presented for payment within six months." If
19 a state check is not presented for payment within six months after
20 it is drawn, the state check is presumed to be a stale check and
21 shall be reported as unclaimed property, in accordance with §36-8-1
22 et seq. of this code.

23 All state spending units shall regularly monitor checks issued
24 on their behalf in accordance with procedures established by the

1 Treasurer. Factors to be reviewed and reported to the Treasurer
2 include, but are not limited to, whether any outstanding check
3 contains federal funds, whether good-faith efforts have been made
4 to locate the payees, and whether the outstanding check still
5 constitutes a valid obligation owed to the payee. If an
6 outstanding state check contains any federal funds, the spending
7 unit shall advise the Treasurer of the amount of federal funds
8 included in the check, the account from which the federal funds
9 were disbursed and the current fiscal year account to which the
10 federal funds are to be transferred. If the check remains
11 outstanding and becomes a stale check, the Treasurer shall credit
12 the amount of the check to the state depository on which the check
13 was issued, notify the Auditor to make corresponding entries on his
14 or her books, and transfer the amount of federal funds reported as
15 a reimbursement to the current fiscal year account specified to
16 receive federal funds by the spending unit. The Treasurer shall
17 transfer any funds from stale checks that are not federal funds
18 into the Unclaimed Property Fund.

19 (d) Any information or records maintained by the Treasurer
20 concerning any check not presented for payment within six months of
21 the date of issuance is confidential and exempt from disclosure
22 under the provisions of ~~article one, chapter twenty-nine-b~~ §29B-1-1
23 et seq. of this code, and is disclosable only to the state spending
24 unit authorizing the check, or to the payee, his or her personal

1 representative, next of kin or attorney-at-law.

2 (e) All claims required by law to be allowed by any court, and
3 payable out of the State Treasury, shall have the seal of the court
4 allowing or authorizing the payment of the claim affixed by the
5 clerk of the court to his or her certificate of its allowance. No
6 claim may be audited and ~~paid~~ payment authorized by the Auditor
7 unless the seal of the court is ~~thereto~~ attached. ~~as aforesaid.~~ No
8 tax or fee may be charged by the clerk for affixing his or her seal
9 to the certificate, referred to in this section. The Treasurer
10 shall propose rules in accordance with the provisions of article
11 three, chapter twenty-nine-a of this code governing the procedure
12 for such payments from the treasury.

13 **ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.**

14 **§12-3A-3. Financial electronic commerce.**

15 (a) The State Auditor and the State Treasurer shall implement
16 electronic commerce capabilities for each of their offices to
17 facilitate the performance of their duties under this code. The
18 State Treasurer shall competitively bid the selection of vendors
19 needed to provide the necessary banking, investment and related
20 goods and services, and the provisions of article one-b, chapter
21 five, and articles three and seven, chapter five-a of this code
22 shall not apply, unless requested by the ~~State Auditor or State~~
23 Treasurer.

24 (b) A document or a signature received, issued or used by the

1 Auditor or the Treasurer shall be considered an original and may
2 not be denied legal effect on the ground that it is in electronic
3 form.

4 (c) The Auditor or Treasurer may, in his or her discretion,
5 require documents filed with or submitted to his or her respective
6 office be filed or submitted in a prescribed electronic format.

7 (d) The Auditor or Treasurer, in his or her discretion, may
8 waive:

9 (1) Any requirements for a document filed or submitted in an
10 electronic format; or

11 (2) Any requirements for the certification, notarization or
12 verification of a document filed or submitted in an electronic
13 format.

14 (e) The head of each spending unit is responsible for adopting
15 and implementing security procedures to ensure adequate integrity,
16 security, confidentiality, and auditability of the business
17 transactions of his or her spending unit when utilizing electronic
18 commerce.

19 (f) The Treasurer shall develop procedures for the storage,
20 retention and disposal of state records, as defined in section
21 three, article eight, chapter five-a of this code, filed with or
22 submitted to his or her office, and for the reproduction and
23 preservation of essential state records, as defined in section
24 four, article eight, chapter five-a of this code, filed with or

1 submitted to his or her office. Preservation duplicates, as
2 defined in section three, article eight, chapter five-a of this
3 code, shall be maintained in an unalterable readable electronic
4 media in accordance with industry standards, reviewed for accuracy
5 and indexed, and shall have the same force and effect as the
6 original records whether the original records are in existence or
7 not. The procedures shall provide for the maintenance of the
8 confidentiality of the records and ensure the Director of the
9 Division of Archives and History receives the records the director
10 identifies as having historic value. The Treasurer shall purchase
11 the equipment and supplies needed for record retention as part of
12 his or her electronic commerce activities.

13 **ARTICLE 5. PUBLIC SECURITIES.**

14 **§12-5-4. Treasurer to keep accounts and make collections.**

15 ~~It shall be the duty of the Treasurer to~~ The Treasurer shall
16 keep an accurate account of all securities received by him or her
17 and collect and account for ~~the interest as it becomes due and~~
18 ~~payable~~ earnings received and the principal whenever it is due.

19 **ARTICLE 6A. THE DEBT MANAGEMENT ACT.**

20 **§12-6A-1. Short title.**

21 This article shall be known and may be cited as "The Debt
22 Management Act ~~of 1991~~".

23 **§12-6A-2. Legislative findings and declaration of public**
24 **necessity.**

1 ~~(a) The Legislature hereby finds and declares that efficient~~
2 ~~and effective state government requires the procuring, maintaining~~
3 ~~and reporting of pertinent information relating to the debt of the~~
4 ~~state and its agencies, boards, commissions and authorities. The~~
5 ~~State Treasurer shall perform the functions and duties necessary to~~
6 ~~serve as a central information source concerning the incurrence,~~
7 ~~recording and reporting of debt issued by the state, its agencies,~~
8 ~~boards, commissions and authorities.~~

9 ~~(b) The Legislature hereby finds:~~

10 ~~(1) The credit rating and acceptance of bonds, notes,~~
11 ~~certificates of participation and other securities and indebtedness~~
12 ~~of the State and its spending units have been unstable as a result~~
13 ~~of the instability in traditional national and international~~
14 ~~markets of goods and services produced by the citizens of the~~
15 ~~State.~~

16 ~~(2) In order to finance essential capital projects for the~~
17 ~~benefit of the citizens of the State at the lowest possible cost,~~
18 ~~the State must maintain high levels of acceptance of the~~
19 ~~indebtedness of the State and its spending units in the financial~~
20 ~~markets.~~

21 ~~(3) In order to attain these goals, authorization of State~~
22 ~~debt must be based on the ability of the State to meet its total~~
23 ~~debt service requirements, in light of other uses of its fiscal~~
24 ~~resources. in order to maintain the strong financial management of~~

1 the state, to meet the fiscal needs of state government and to
2 facilitate financing essential capital projects at the lowest
3 possible cost to the citizens of the state, the state must
4 regularly monitor the amount of debt issued by the state and its
5 spending units, ensure the state and its spending units meet all
6 debt service requirements, monitor the credit rating of the state
7 and analyze the acceptance of debt issued by the state and its
8 spending units. The Legislature further finds that in order to
9 meet these important goals, the Division of Debt Management needs
10 to be continued.

11 **§12-6A-3. Division of Debt Management continued; director.**

12 ~~There is hereby created within the office of the State~~
13 ~~Treasurer, the~~ (a) The Division of Debt Management is continued in
14 the office of the State Treasurer.

15 (b) The Division shall serve as a central information source
16 concerning the incurrence, recording and reporting of debt issued
17 by the state and its spending units, and shall prepare reports
18 pertaining to the capacity of the state and its spending units to
19 issue debt.

20 ~~(c) The division shall be under the control of a Director to~~
21 ~~be appointed by the Treasurer and who shall be~~ shall appoint a
22 director, qualified by reason of exceptional training and
23 experience in the field of activities of his or her respective
24 division, and who shall serve at the will and pleasure of the

1 Treasurer.

2 **§12-6A-4. Definitions.**

3 For the purpose of this article:

4 "Debt" means bonds, notes, certificates of participation,
5 certificate transactions, capital leases, debentures, lease
6 purchases, mortgages, securitizations and all other forms of
7 securities and indebtedness obligations evidencing specific amounts
8 owed and payable on demand or on determinable dates.

9 "Debt impact report" means a report prepared by the division
10 which includes information pertaining to a proposed issuance of
11 debt by the state or its spending units.

12 "Division" means the Division of Debt Management.

13 "Moral obligation bond" means a debt obligation for which the
14 state or a spending unit has made a nonbinding covenant to make up
15 any deficiency in debt service.

16 "Net tax supported debt" means the amount of tax supported
17 debt less any applicable refundings, defeasances, escrow accounts,
18 reserve requirements and sinking funds.

19 "State" means the State of West Virginia.

20 "Spending unit" means ~~any of the state's agencies, boards,~~
21 ~~commissions, committees, authorities or other of its entities with~~
22 ~~the power to issue debt and secure such debt, and not including~~
23 ~~local political subdivisions of the State~~ a state department,
24 agency, board, commission, committee, authority or other entity of

1 the state with the power to issue and secure debt. Spending unit
2 does not include local political subdivisions.

3 "Tax supported debt" means: (1) General obligation bonds of
4 the state; (2) moral obligation bonds of the state or a spending
5 unit; (3) capital leases, installment purchases, lease purchases,
6 mortgages, certificates of participation and any other similar debt
7 financing transaction extending beyond one year issued by the state
8 or its spending units; and (4) any other debt issued by the state
9 or a spending unit which is not self-supporting. Tax supported
10 debt does not include any debt issued by the West Virginia housing
11 development fund, economic development authority, hospital finance
12 authority, parkway authority, public energy authority, solid waste
13 management board and water development authority, with the
14 exception of debt issued by the entities listed in this definition
15 secured by lottery revenues or secured by a lease with the
16 Secretary of Administration.

17 **§12-6A-5. Powers and duties.**

18 The Division of Debt Management shall perform the following
19 functions and duties:

20 (1) ~~Develop a long-term debt plan including criteria for the~~
21 ~~issuance of debt by the State and its spending units and the~~
22 ~~continuous evaluation of~~ Continuously evaluate the current and
23 projected debt and debt service requirements of the state and its
24 spending units.

1 (2) Evaluate cash flow projections relative to proposed and
2 existing revenue bond issues.

3 (3) Review all proposed offerings of debt of the state and its
4 spending units, requesting any additional information needed to
5 issue a debt impact report if requested by the Governor, the
6 President of the Senate or the Speaker of the House of Delegates.
7 A debt impact report shall in no way restrict the Governor, the
8 Legislature or the spending unit.

9 ~~(3)~~ (4) Act as liaison with the Legislature on all debt
10 matters, including, but not limited to, new debt issues and the
11 status of debt issued by the State and its spending units.

12 ~~(4)~~ (5) Assist the State and its spending units regarding the
13 issuance of debt if requested.

14 ~~(5)~~ (6) Establish reporting requirements for the issuance of
15 debt by the state and its spending units pursuant to the provisions
16 of this article.

17 (7) Monitor continuing disclosure requirements and
18 post-issuance compliance issues with federal and state tax and
19 securities law, including, without limitation, arbitrage, rebate
20 and remedial measures.

21 ~~(6)~~ (8) Make and execute contracts and other instruments and
22 pay the reasonable value of services or commodities rendered to the
23 division pursuant to those contracts.

24 ~~(7)~~ (9) Contract, cooperate or join with any one or more other

1 governments or public agencies, ~~or~~ with any political subdivision
2 of the state, or with the United States, to perform any
3 administrative service, activity or undertaking which ~~any such~~ the
4 contracting party is authorized by law to perform, ~~and to charge~~
5 for providing ~~such~~ services and expend any fees collected.

6 ~~(8)~~ (10) Do all things necessary or convenient to effectuate
7 the intent of this article and to carry out its powers and
8 functions.

9 ~~(9) Provide staff services to the debt capacity advisory~~
10 ~~division established in article six-b of this chapter.~~

11 **§12-6A-6. Reporting.**

12 (a) Within fifteen days following the end of each calendar
13 quarter, each state spending unit shall provide the division and
14 the Legislative Auditor, in the manner provided by this article and
15 in such form and detail as the State Treasurer may ~~by regulation~~
16 ~~require, a statement of the total debt of each such state spending~~
17 ~~unit incurred during the calendar quarter and owing at the end of~~
18 ~~such calendar quarter, which statement shall include report~~
19 including, but not ~~be~~ limited to, the name of the state spending
20 unit, the amounts and types of debt incurred during the calendar
21 quarter and outstanding at the end of the calendar quarter, the
22 cost and expenses of incurring the debt, the maturity date of each
23 debt, the terms and conditions of the debt, the current debt
24 service on the debt, the ~~current~~ interest rate on the debt, the

1 source of the proceeds utilized for repayment of the debt, the
2 amounts of repayment during the calendar quarter, the repayment
3 schedule and the security for the debt. A state spending unit
4 having no outstanding debt shall not be required to provide the
5 quarterly report but shall file an annual report, on forms
6 established by the Division of Debt Management: *Provided*, That the
7 state spending unit shall immediately notify the Division of Debt
8 Management of any change in the spending unit's outstanding debt or
9 financial condition.

10 (b) Not less than thirty days prior to a proposed offering of
11 debt ~~to be issued by the state or~~ a state spending unit, written
12 notice of ~~such the~~ proposed offering and the terms thereof shall be
13 given to the Division by ~~such the~~ state spending unit in the form
14 as the Division may ~~by regulation~~ require.

15 (c) Within thirty days after closing on an offering, the
16 ~~terms shall be reported to the~~ responsible spending unit shall
17 report to the division the information pertaining to the offering
18 required by the division in the form ~~as~~ the division may ~~by~~
19 ~~regulation~~ require.

20 (c) (d) On or before ~~the thirty first day of~~ January 31 and
21 ~~the thirty first day of~~ July 31 of each year, the ~~Treasurer~~
22 division shall prepare and issue a report of all debt of the State
23 and its spending units and of all proposed debt issuances of which
24 the ~~Treasurer~~ division has received notice and shall furnish a copy

1 of ~~such~~ the report to the Governor, the President of the Senate,
2 the Speaker of the House of Delegates, the members of the Joint
3 Committee on Government and Finance, the Legislative Auditor and
4 upon request to any other legislative committee and any member of
5 the Legislature. The report shall be kept available for inspection
6 by any citizen of the state. The ~~Treasurer~~ division shall also
7 prepare updated reports of all debt of the state and its spending
8 units as of March 31 and September 30 each year, which shall be
9 available for inspection at the office of the State Treasurer ~~on or~~
10 ~~before the thirty-first day of March and the thirtieth day of~~
11 ~~September of each year~~ within thirty days of the end of the
12 respective calendar quarter.

13 (e) On or before the fifteenth day of January 15 each year,
14 the division shall report to the Governor and to the Legislature on
15 the capacity of the state to issue additional debt. In preparing
16 its annual review and estimate, the division shall, at a minimum,
17 consider:

18 (1) The amount of net tax supported debt outstanding and debt
19 authorized but not issued during the current and next fiscal year
20 and annually for the following ten fiscal years;

21 (2) Debt service requirements during the current and next
22 fiscal year and annually for the following ten fiscal years based
23 upon existing outstanding debt, previously authorized but unissued
24 debt and projected bond authorizations;

1 (3) Any information available from the budget office of the
2 Department of Revenue in connection with projected revenues and
3 anticipated capital expenditures projected for at least the next
4 five fiscal years;

5 (4) The amount of debt the state and its spending units may
6 prudently issue;

7 (5) What is needed to keep West Virginia within an average to
8 low range of nationally recognized debt limits;

9 (6) The debt ratios rating agencies and analysts use; and

10 (7) The effect of authorizations of new tax supported debt on
11 each of the considerations in this subsection.

12 **§12-6A-7. Promulgation of rules.**

13 ~~The Division of Debt Management~~ Treasurer shall ~~promulgate~~
14 propose rules for legislative approval relating to reporting
15 requirements and it's the duties under this article ~~and the rules~~
16 ~~shall be promulgated~~ in accordance with the provisions of article
17 three, chapter twenty-nine-a of this Code.

18 **ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.**

19 **§12-6C-7. Management and control of fund; officers; staff;**
20 **fiduciary or surety bonds for directors; liability**
21 **of directors.**

22 (a) The management and control of the Consolidated Fund is
23 vested solely in the Board in accordance with the provisions of
24 this article.

1 (b) The State Treasurer is the chairperson of the Board. The
2 Board shall elect a vice chairperson. Annually, the directors shall
3 elect a secretary to keep a record of the proceedings of the Board
4 and provide any other duties required by the board. The board may
5 elect a person who is not a member of the board as secretary.

6 (c) The board may use the staff of the State Treasurer, employ
7 personnel and contract with any person or entity needed to perform
8 the tasks related to operating the Consolidated Fund.

9 (d) The board shall retain an internal auditor to report
10 directly to the board and shall fix his or her compensation. As a
11 minimum qualification, the internal auditor shall be a certified
12 public accountant with at least three years' experience as an
13 auditor. The internal auditor shall develop an internal audit plan,
14 with board approval, for the testing of procedures, internal
15 controls and the security of transactions.

16 (e) The board may retain one employee with a chartered
17 financial analyst designation or an employee who is a certified
18 treasury manager.

19 (f) Each director shall give a separate fiduciary or surety
20 bond from a surety company qualified to do business within this
21 state in a penalty amount of ~~one~~ \$1 million ~~dollars~~ for the
22 faithful performance of his or her duties as a director. The Board
23 shall purchase a blanket bond for the faithful performance of its
24 duties in the amount ~~of fifty~~ set by the board of at least \$10

1 million ~~dollars~~: Provided, That the Board shall modify the blanket
2 bond amount anytime the blanket bond amount for the West Virginia
3 investment management board is increased or decreased pursuant to
4 §12-6-4 of this code. ~~or in an amount equivalent to one percent of~~
5 ~~the assets under management, whichever is greater.~~ The amount of
6 the blanket bond is in addition to the \$1 ~~one~~ million ~~dollar~~
7 individual bond required of each director by the provisions of this
8 section. The board may require a fiduciary or surety bond from a
9 surety company qualified to do business in this state for any
10 person who has charge of, or access to, any securities, funds or
11 other moneys held by the board and the amount of the fiduciary or
12 surety bond are fixed by the board. The premiums payable on all
13 fiduciary or surety bonds are expenses of the board.

14 (g) The directors, employees of the board and employees of the
15 State Treasurer performing work for or on behalf of the board are
16 not liable personally, either jointly or severally, for any debt or
17 obligation created by the board: *Provided, That the directors and*
18 *employees of the board are liable for acts of misfeasance or gross*
19 *negligence.*

20 (h) The board is exempt from the provisions of article three,
21 chapter five-a, and sections seven and eleven, article three,
22 chapter twelve of this code. However, the board is subject to the
23 purchasing policies and procedures of the State Treasurer's Office.

24 **§12-6C-9. Asset allocation; investment policies, authorized**

1 **investments; restrictions.**

2 (a) The board shall develop, adopt, review or modify an asset
3 allocation plan for the Consolidated Fund at each annual board
4 meeting.

5 (b) The board shall adopt, review, modify or cancel the
6 investment policy of each fund or pool created at each annual board
7 meeting. For each participant directed account authorized by the
8 State Treasurer, staff of the board shall develop an investment
9 policy for the account and create the requested account. The Board
10 shall review all existing participant directed accounts and
11 investment policies at its annual meeting for modification.

12 (c) The board shall consider the following when adopting,
13 reviewing, modifying or canceling investment policies:

- 14 (1) Preservation of capital;
- 15 (2) Risk tolerance;
- 16 (3) Credit standards;
- 17 (4) Diversification;
- 18 (5) Rate of return;
- 19 (6) Stability and turnover;
- 20 (7) Liquidity;
- 21 (8) Reasonable costs and fees;
- 22 (9) Permissible investments;
- 23 (10) Maturity ranges;
- 24 (11) Internal controls;

- 1 (12) Safekeeping and custody;
- 2 (13) Valuation methodologies;
- 3 (14) Calculation of earnings and yields;
- 4 (15) Performance benchmarks and evaluation; and
- 5 (16) Reporting.

6 (d) No security may be purchased by the board unless the type
7 of security is on a list approved at a board meeting. The board
8 shall review the list at its annual meeting.

9 (e) Notwithstanding the restrictions which are otherwise
10 provided by law with respect to the investment of funds, the board
11 and all participants, now and in the future, may invest funds in
12 these securities:

13 (1) Obligations of, or obligations that are insured as to
14 principal and interest by, the United States of America or any
15 agency or corporation thereof and obligations and securities of the
16 United States sponsored enterprises, including, without limitation:

- 17 (I) United States Treasury;
- 18 (ii) Export-Import Bank of the United States;
- 19 (iii) Farmers Home Administration;
- 20 (iv) Federal Farm Credit Banks;
- 21 (v) Federal Home Loan Banks;
- 22 (vi) Federal Home Loan Mortgage Corporation;
- 23 (vii) Federal Land Banks;
- 24 (viii) Government National Mortgage Association;

- 1 (ix) Merchant Marine bonds; and
- 2 (x) Tennessee Valley Authority Obligations;
- 3 (2) Obligations of the Federal National Mortgage Association;
- 4 (3) Commercial paper with one of the two highest commercial
- 5 paper credit ratings by a nationally recognized ~~investment rating~~
- 6 ~~firm~~ statistical rating organization;
- 7 (4) Corporate debt rated ~~in one of the six highest rating~~
- 8 ~~categories by a nationally recognized rating agency~~ investment
- 9 grade by a nationally recognized statistical rating organization;
- 10 (5) State and local government, or any instrumentality or
- 11 agency thereof, securities with one of the three highest ratings by
- 12 a nationally recognized ~~rating agency~~ statistical rating
- 13 organization;
- 14 (6) Repurchase agreements involving the purchase of United
- 15 States Treasury securities and repurchase agreements fully
- 16 collateralized by obligations of the United States Government or
- 17 its agencies or instrumentalities;
- 18 (7) Reverse repurchase agreements involving the purchase of
- 19 United States Treasury securities and reverse repurchase agreements
- 20 fully collateralized by obligations of the United States Government
- 21 or its agencies or instrumentalities;
- 22 (8) Asset-backed securities rated in the highest category by
- 23 a nationally recognized ~~rating agency~~ statistical rating
- 24 organization;

1 (9) Certificates of deposit; ~~and~~
2 (10) Money market and other fixed income funds; and
3 ~~(10)~~ (11) Investments in accordance with the Linked Deposit
4 Program, ~~a program~~ loans authorized under this article, programs
5 using financial institutions in West Virginia to ~~obtain~~
6 ~~certificates of deposit, loans approved by the Legislature~~ invest
7 moneys, equipment and software financing program for West Virginia
8 State Government entities that authorize the board to capture
9 revenues in the event of default and any other programs authorized
10 by the Legislature.

11 (f) In addition to the restrictions and conditions contained
12 in this section:

13 (1) At no time shall more than seventy-five percent of the
14 Consolidated Fund be invested in any bond, note, debenture,
15 commercial paper or other evidence of indebtedness of any private
16 corporation or association; and

17 (2) At no time shall more than five percent of the
18 Consolidated Fund be invested in securities issued by a single
19 private corporation or association. ~~and~~

20 ~~(3) At no time shall less than fifteen percent of the~~
21 ~~Consolidated Fund be invested in any direct obligation of or~~
22 ~~obligation guaranteed as to the payment of both principal and~~
23 ~~interest by the United States of America.~~

24 (g) Securities purchased in compliance with this article that

1 become noncompliant may be retained upon recommendation of the
2 investment manager of the security and the board investment
3 consultant.

4 **CHAPTER 33. INSURANCE**

5 **ARTICLE 3. LICENSING, FEES, AND TAXATION OF INSURANCE.**

6 **§33-3-14d. Additional fire and casualty insurance premium tax;**
7 **allocation of proceeds; effective date.**

8 (a) (1) For the purpose of providing additional revenue for
9 municipal policemen's and firemen's pension and relief funds and
10 the Teachers Retirement System Reserve Fund and for volunteer and
11 part-volunteer fire companies and departments, there is hereby
12 levied and imposed an additional premium tax equal to one percent
13 of taxable premiums for fire insurance and casualty insurance
14 policies. For purposes of this section, casualty insurance does not
15 include insurance on the life of a debtor pursuant to or in
16 connection with a specific loan or other credit transaction or
17 insurance on a debtor to provide indemnity for payments becoming
18 due on a specific loan or other credit transaction while the debtor
19 is disabled as defined in the policy.

20 (2) All moneys collected from this additional tax shall be
21 received by the commissioner and paid by him or her into a special
22 account in the State Treasury, designated the Municipal Pensions
23 and Protection Fund: *Provided*, That on or after January 1, 2010,
24 the commissioner shall pay ten percent of the amount collected to

1 the Teachers Retirement System Reserve Fund created in section
2 eighteen, article seven-a, chapter eighteen of this code,
3 twenty-five percent of the amount collected to the Fire Protection
4 Fund created in section thirty-three of this article for allocation
5 by the Treasurer to volunteer and part-volunteer fire companies and
6 departments and sixty-five percent of the amount collected to the
7 Municipal Pensions and Protection Fund: *Provided, however,* That
8 upon notification by the Municipal Pensions Oversight Board
9 pursuant to the provisions of section eighteen-b, article
10 twenty-two, chapter eight of this code, on or after January 1,
11 2010, or as soon thereafter as the Municipal Pensions Oversight
12 Board is prepared to receive the funds, sixty-five percent of the
13 amount collected by the commissioner shall be deposited in the
14 Municipal Pensions Security Fund created in section eighteen-b,
15 article twenty-two, chapter eight of this code. The net proceeds of
16 this tax after appropriation thereof by the Legislature is
17 distributed in accordance with the provisions of this section,
18 except for distribution from proceeds pursuant to subsection (d),
19 section eighteen-a, article twenty-two, chapter eight of this code.

20 (b) (1) Before ~~the first day of~~ August 1 of each year, the
21 Treasurer of each municipality in which a municipal policemen's or
22 firemen's pension and relief fund is established shall report to
23 the State Treasurer the average monthly number of members who
24 worked at least one hundred hours per month and the average monthly

1 number of retired members of municipal policemen's or firemen's
2 pension and relief fund or the Municipal Police Officers and
3 Firefighters Retirement System during the preceding fiscal year:
4 Provided, That beginning in the year 2010 and continuing
5 thereafter, the report shall be made to the oversight board created
6 in section eighteen-a, article twenty-two, chapter eight of this
7 code. These reports received by the oversight board shall be
8 provided annually to the State Treasurer by September 1.

9 (2) Before ~~the first day of~~ September 1 of each calendar year,
10 the State Treasurer, or the Municipal Pensions Oversight Board,
11 once in operation, shall allocate and authorize for distribution
12 the revenues in the Municipal Pensions and Protection Fund which
13 were collected during the preceding calendar year for the purposes
14 set forth in this section. Before ~~the first day of~~ September 1 of
15 each calendar year and after the Municipal Pensions Oversight Board
16 has notified the Treasurer and commissioner pursuant to section
17 eighteen-b, article twenty-two, chapter eight of this code, the
18 Municipal Pensions Oversight Board shall allocate and authorize for
19 distribution the revenues in the Municipal Pensions Security Fund
20 which were collected during the preceding calendar year for the
21 purposes set forth in this section. In any year the actuarial
22 report required by section twenty, article twenty-two, chapter
23 eight of this code indicates no actuarial deficiency in the
24 Municipal Policemen's or Firemen's Pension and Relief Fund, no

1 revenues may be allocated from the Municipal Pensions and
2 Protection Fund or the Municipal Pensions Security Fund to that
3 fund. The revenues from the Municipal Pensions and Protection Fund
4 shall then be allocated to all other pension and relief funds which
5 have an actuarial deficiency.

6 (3) The moneys, and the interest earned thereon, in the
7 Municipal Pensions and Protection Fund allocated to volunteer and
8 part-volunteer fire companies and departments shall be allocated
9 and distributed quarterly to the volunteer fire companies and
10 departments. Before each distribution date, the State Fire Marshal
11 shall report to the State Treasurer the names and addresses of all
12 volunteer and part-volunteer fire companies and departments within
13 the state which meet the eligibility requirements established in
14 section eight-a, article fifteen, chapter eight of this code.

15 (c) (1) Each municipal pension and relief fund shall have
16 allocated and authorized for distribution a pro rata share of the
17 revenues allocated to municipal policemen's and firemen's pension
18 and relief Funds based on the corresponding municipality's average
19 monthly number of police officers and firefighters who worked at
20 least one hundred hours per month during the preceding fiscal year.
21 On and after July 1, 1997, from the growth in any moneys collected
22 pursuant to the tax imposed by this section and interest thereon
23 there shall be allocated and authorized for distribution to each
24 municipal pension and relief fund, a pro rata share of the revenues

1 allocated to municipal policemen's and firemen's pension and relief
2 funds based on the corresponding municipality's average number of
3 police officers and firefighters who worked at least one hundred
4 hours per month and average monthly number of retired police
5 officers and firefighters. For the purposes of this subsection, the
6 growth in moneys collected from the tax collected pursuant to this
7 section is determined by subtracting the amount of the tax
8 collected during the fiscal year ending June 30, 1996, from the tax
9 collected during the fiscal year for which the allocation is being
10 made and interest thereon. All moneys received by municipal pension
11 and relief funds under this section may be expended only for those
12 purposes described in sections sixteen through twenty-eight,
13 inclusive, article twenty-two, chapter eight of this code.

14 (2) Each volunteer fire company or department shall receive an
15 equal share of the revenues allocated for volunteer and
16 part-volunteer fire companies and departments.

17 (3) In addition to the share allocated and distributed in
18 accordance with subdivision (1) of this subsection, each municipal
19 fire department composed of full-time paid members and volunteers
20 and part-volunteer fire companies and departments shall receive a
21 share equal to the share distributed to volunteer fire companies
22 under subdivision (2) of this subsection reduced by an amount equal
23 to the share multiplied by the ratio of the number of full-time
24 paid fire department members who are also members of a municipal

1 firemen's pension and relief fund or the Municipal Police Officers
2 and Firefighters Retirement System to the total number of members
3 of the fire department.

4 (d) The allocation and distribution of revenues provided for
5 in this section are subject to the provisions of section twenty,
6 article twenty-two, and sections eight-a and eight-b, article
7 fifteen, chapter eight of this code.

8 (e) Based on the findings of an audit by the Treasurer, the
9 Legislature hereby finds and declares that during the period from
10 1982 through April 27, 2012, allocations from the Municipal
11 Pensions and Protection Fund were miscalculated and errors were
12 made in amounts transferred, resulting in overpayments and
13 underpayments to the relief and pension funds and to the Teachers
14 Retirement System, and that the relief and pension funds and the
15 Teachers Retirement System were not at fault for any of the
16 overpayments and underpayments. The Legislature hereby further
17 finds and declares that any attempt by the Municipal Pension
18 Oversight Board or other entity to recover any of the overpayments
19 would be unjust and create economic hardship for the entities that
20 received overpayments. No entity, including, without limitation,
21 the Municipal Pension Oversight Board, may seek to recover from a
22 relief or pension fund, the Teachers Retirement System or the state
23 any overpayments received from the Municipal Pensions and
24 Protection Fund and the overpayments are not subject to recovery,

1 offset or litigation. Pursuant to the audit by the Treasurer, the
2 amount of \$3,631,846.55 is determined owed to specific relief and
3 pension funds. The Treasurer is hereby authorized to transfer the
4 amount of \$3,631,846.55 from the Unclaimed Property Trust Fund to
5 the Municipal Pensions and Protection Fund, which is hereby
6 reopened for the sole purpose of the transfer and remittances
7 pursuant to this subsection (e), and to use the amount transferred
8 to remit the amounts due to the pension and relief funds. The
9 payment of the \$3,631,846.55 to the pension and relief funds is
10 complete satisfaction of any amounts due, and no entity, including,
11 without limitation, the Municipal Pension Oversight Board and any
12 pension or relief fund, may seek to recover any further amounts.

13 **CHAPTER 36. ESTATES AND PROPERTY.**

14 **ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.**

15 **§36-8-13. Deposit of funds.**

16 (a) The administrator shall record the name and last known
17 address of each person appearing from the holders reports to be
18 entitled to the property and the name and last known address of
19 each insured person or annuitant and beneficiary and with respect
20 to each policy or annuity listed in the report of an insurance
21 company, its number, the name of the company and the amount due.

22 (b) The Unclaimed Property Fund is continued. The
23 administrator shall deposit all funds received pursuant to this
24 article in the Unclaimed Property Fund, including the proceeds from

1 the sale of abandoned property under section twelve of this
2 article. In addition to paying claims of unclaimed property duly
3 allowed, the administrator may ~~deduct~~ pay the following expenses
4 from the Unclaimed Property Fund:

5 (1) Expenses of the sale of abandoned property;

6 (2) Expenses incurred in returning the property to owners,
7 including without limitation the costs of mailing and publication
8 to locate owners;

9 (3) Reasonable service charge; ~~and~~

10 (4) Expenses incurred in examining records of holders of
11 property and in collecting the property from those holders; and

12 (5) Expenses related to the operations and programs of the
13 Treasurer's office: *Provided, That all expenses paid from the*
14 Unclaimed Property Fund shall be appropriated by line item by the
15 Legislature.

16 (c) The Unclaimed Property Trust Fund is continued within the
17 State Treasury. The administrator may invest the Unclaimed Property
18 Trust Fund with the West Virginia Board of Treasury Investments and
19 all earnings shall accrue to the fund and are available for
20 expenditure in accordance with this article. After deducting the
21 expenses specified in subsection (b) of this section and
22 maintaining a sum of money from which to pay claims duly allowed,
23 the administrator shall transfer the remaining moneys in the
24 Unclaimed Property Fund to the Unclaimed Property Trust Fund.

1 (d) (1) On July 1, 2009, the unclaimed property administrator
2 shall transfer the amount of \$8 million from the Unclaimed Property
3 Trust Fund to the Prepaid Tuition Trust Escrow Fund.

4 (2) On or before December 15 of each year, notwithstanding any
5 provision of this code to the contrary, the administrator shall
6 transfer the sum of \$1 million from the Unclaimed Property Trust
7 Fund to the Prepaid Tuition Trust Escrow Fund, until the actuary
8 certifies there are sufficient funds to pay out all contracts.

9 (e) On or before June 1, 2007, the unclaimed property
10 administrator shall transfer the amount of \$2 million from the
11 Unclaimed Property Trust Fund to the Deferred Compensation Matching
12 Fund for operation of the deferred compensation matching program
13 for state employees. On or before June 1, 2008, the unclaimed
14 property administrator shall transfer the amount of \$1 million from
15 the Unclaimed Property Trust Fund to the Deferred Compensation
16 Matching Fund for operation of the matching program.

17 (f) On or before June 1, 2013, the unclaimed property
18 administrator shall transfer the amount of \$3,631,846.55 from the
19 Unclaimed Property Trust Fund to the Municipal Pensions and
20 Protection Fund for the purpose of satisfying any amounts due as of
21 April 27, 2012 to policemen's and firemen's pension and relief
22 funds in accordance with §33-3-14d of this Code.

23 ~~(f)~~ (g) After transferring any money required by subsections
24 (d) ~~and (e)~~ through (f) of this section, the administrator shall

1 transfer moneys remaining in the Unclaimed Property Trust Fund to
2 the General Revenue Fund.

NOTE: The purpose of this bill is to amend various provisions of the Code affecting the Treasurer's Office. In addition to various technical clean up revisions, the bill authorizes organizations exempt from taxation within West Virginia to participate in the deferred compensation plan Retirement Plus in accordance with the Internal Revenue Code and authorizes Roth accounts within the deferred compensation plan Retirement Plus in accordance with the Internal Revenue Code. Financial institutions would be permitted to offer products in addition to certificates of deposit. The bill updates references to investing authorities to include the Board of Treasury Investments, raises the amount of eligible deposits from \$100,000 to the amount insured by a federal agency, deletes archaic language pertaining to eligible depositories, amends language pertaining to what constitutes a conflict of interest for applicants and employees of the Treasurer's office in connection with financial institutions by prohibiting those persons with a defined conflict from participating in the selection of or in contract negotiations with a depository, and authorizes depositories to submit reports in an electronic format. In connection with the Cash Management Improvement Act (CMIA), the bill repeals duplicate §12-1-12c, clarifies that payments under the CMIA are interest payments, and changes the CMIA report from a quarterly report to an annual report since the calculation is only prepared annually. Revisions pertaining to receipting of moneys include changing the requirement that deposits are required within 24 hours to one business day (since 24 hours is not feasible); establishing standards for receipting of moneys; reviewing internal controls by auditors and the Treasurer; ensuring copies of audits are submitted to the Legislative Auditor; and requiring redaction of confidential information in internal control procedures before release of the procedures. The bill clarifies the definitions of federal, special and general revenue funds, eliminates reference to the chief inspector of public offices (position has not existed for many years), and changes the report to the Legislative Auditor for accounts outside the treasury from quarterly to an annual report. Proposed revisions conform language pertaining to determining the amount of federal funds in stale state checks to the capabilities of the enterprise resource planning system; clarify that the Treasurer determines the competitive bidding of banking, investment and related goods and services required for treasury operations;

authorize the Treasurer to develop procedures for storing, retaining and disposing of records for his or her office; ensure the February 28, 2013 Director of the Division of Archives and History receives records with historical value; and clarify that the Treasurer is responsible for earnings received on securities, not just interest. The bill repeals the provision of article 6B of chapter 12; consolidates the debt capacity division into the debt management division; amends legislative findings to acknowledge the importance of monitoring the debt of the state and its spending units; continues the division of debt management as the central information source for debt issued by the state and its spending units; expands the definition of debt to include debentures, lease purchases, mortgages, securitizations and other types of obligations with specific amounts owed and payable on demand or on determinable dates; defines debt impact report, moral obligation bond, net tax supported debt and tax supported debt; amends definition of spending unit; eliminates requirement for developing a long-term debt plan; clarifies the division is responsible for continuously evaluating debt and debt service requirements and reviewing all proposed debt offerings of the state and its spending units; clarifies the division is to issue a debt impact report if requested by the Governor, Senate President or House of Delegates Speaker and that the report shall not restrict the Governor, Legislature or spending unit; requires the division to monitor continuing disclosure requirements and post-issuance compliance issues; eliminates requirement that the debt management division provide staff for the debt capacity division; clarifies the reporting requirements of the division and the spending units; requires division to prepare and issue the debt capacity report; and clarifies the Treasurer promulgates the rules. As to the Board of Treasury Investments, the bill proposes to alter the bond required for the board from \$50 million to at least \$10 million, as set by the board; update language pertaining to rating agencies to nationally recognized statistical rating organizations; authorize investment in investment grade corporate debt, in money market and in other fixed income funds; authorize the board to make loans specified by the Legislature and to offer an equipment and software financing program for state government entities; remove requirement that direct or guaranteed obligations of the United States constitute at least fifteen percent of the consolidated fund; and permit securities falling out of compliance with the Code to not have to be sold if the investment manager and investment consultant recommend retention. The bill authorizes moneys in the College Prepaid Tuition and Savings Program Administrative Account be used to provide matching grants and scholarships for the SMART529 program and clarifies the value of a prepaid tuition or savings plan account is not considered for purposes of determining eligibility for income-based governmental financial assistance

unless required by federal law. In accordance with the audit conducted by the Treasurer, the bill satisfies amounts due to and from policemen's and firemen's pension and relief funds and the Teachers Retirement System. In addition, the bill authorizes expenses related to operations and programs of the office of the Treasurer from the Unclaimed Property Fund, authorizes transfer of moneys from the Unclaimed Property Trust Fund for payment to policemen's and firemen's pension and relief funds, repeals §48-2-604 which duplicates the fee for marriage licenses, and makes various technical clean up revisions.

§5-10B-14 is new; therefore, strike throughs and underscoring have been omitted.

§12-2-2 has been completely rewritten; therefore strike throughs and underscoring have been omitted.

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