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Senate Bill No. 499

(By Senators Kirkendoll, McCabe, Edgell, Cann, M. Hall,
Carmichael, Plymale, Palumbo and Nohe)

[Introduced February 6, 2014; referred to the Committee on
Government Organization; and then to the Committee on Finance.]

10 A BILL to repeal §12-6-12 of the Code of West Virginia, 1931, as
11 amended; and to amend and reenact §12-6-2 and §12-6-11 of said
12 code, all relating to investment of moneys by the West
13 Virginia Investment Management Board; modifying the definition
14 of the term "securities"; imposing the prudent investor
15 standard of care set forth in the West Virginia Uniform
16 Prudent Investor Act as the primary standard of care for the
17 trustees of the West Virginia Investment Management Board;
18 removing certain restrictions on investments by the Investment
19 Management Board; and restating certain restrictions on
20 investments by the West Virginia Investment Management Board.

21 Be it enacted by the Legislature of West Virginia:

22 That §12-6-12 of the Code of West Virginia, 1931, as amended,
23 be repealed; and that §12-6-2 and §12-6-11 of said code be amended

1 and reenacted, all to read as follows:

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

3 **§12-6-2. Definitions.**

4 As used in this article, unless a different meaning clearly
5 appears from the context:

6 (1) "Beneficiaries" means those individuals entitled to
7 benefits from the participant plans;

8 (2) "Board" means the governing body for the West Virginia
9 Investment Management Board and any reference elsewhere in this
10 code to board of investments or West Virginia Trust Fund means the
11 board as defined in this subdivision;

12 (3) "401(a) plan" means a plan which is described in Section
13 401(a) of the Internal Revenue Code of 1986, as amended, and with
14 respect to which the board has been designated to hold assets of
15 the plan in trust pursuant to the provisions of section nine-a of
16 this article;

17 (4) "Local government funds" means the moneys of a political
18 subdivision, including policemen's pension and relief funds,
19 firemen's pension and relief funds and volunteer fire departments,
20 transferred to the board for deposit;

21 (5) "Participant plan" means any plan or fund subject now or
22 hereafter to subsection (a), section nine-a of this article;

23 (6) "Political subdivision" means and includes a county,

1 municipality or any agency, authority, board, county board of
2 education, commission or instrumentality of a county or
3 municipality and regional councils created pursuant to the
4 provisions of section five, article twenty-five, chapter eight of
5 this code;

6 (7) "Trustee" means any member serving on the West Virginia
7 Investment Management Board: *Provided*, That in section nine-a of
8 this article in which the terms of the trusts are set forth,
9 "trustee" means the West Virginia Investment Management Board;

10 (8) "Securities" means all ~~bonds, notes, debentures or other~~
11 ~~evidences of indebtedness and other lawful investment instruments~~
12 forms and types of investments, financial instruments or financial
13 transactions which may be considered prudent for investment by the
14 board under section eleven of this article; and

15 (9) "State funds" means all moneys of the state which may be
16 lawfully invested except the "school fund" established by section
17 four, article XII of the State Constitution.

18 **§12-6-11. Standard of care and investment requirements.**

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

23 (a) Trustees shall discharge their duties with respect to the

1 401(a) plans for the exclusive purpose of providing benefits to
2 participants and their beneficiaries;

3 (b) Trustees shall diversify fund investment so as to minimize
4 the risk of large losses unless, under the circumstances, it is
5 clearly prudent not to do so;

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

8 (d) Trustees shall discharge their duties in accordance with
9 the documents and instruments governing the trusts or other funds
10 under management insofar as the documents and instruments are
11 consistent with the provisions of this article.

12 (e) Trustees, at the annual meeting required in subsection
13 (h), section three of this article, shall review, establish and
14 modify, if necessary, the investment objectives of the individual
15 participant plans as incorporated in the investment policy
16 statements of the respective trusts so as to provide for the
17 financial security of the trust funds giving consideration to the
18 following:

19 (1) Preservation of capital;

20 (2) Diversification;

21 (3) Risk tolerance;

22 (4) Rate of return;

23 (5) Stability;

1 (6) Turnover;

2 (7) Liquidity; and

3 (8) Reasonable cost of fees.

4 (f) The board may invest in a private real estate fund, a
5 private equity fund or a hedge fund only if the investment
6 satisfies the following conditions:

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

11 (2) The board or a committee designated by the board approves
12 the investment;

13 (3) A third-party investment manager will execute the
14 transaction for the investment;

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

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

22 (6) The largest investment of such fund is not greater than
23 forty percent of the fund's assets at the time of acquisition.

1 (g) The total assets of the private real estate fund, private
2 equity fund or hedge fund shall be used in calculating the
3 percentage requirements and limitations set forth in subsection (f)
4 without regard to any particular investment vehicle in which assets
5 may be held pending investment.

6 (h) If the standard confidentiality agreements, policies or
7 procedures of any firm, company or organization through which the
8 board invests in securities prohibit, restrict or limit the
9 disclosure of information pertaining to the securities, the
10 information is exempt from disclosure, under the provisions of
11 chapter twenty-nine-b of this code or otherwise, to the extent of
12 the prohibitions, restrictions or limitations.

13 ~~(e)~~ (I) The duties of the board apply only with respect to
14 those assets deposited with or otherwise held by it.

NOTE: The purpose of this bill is to make the West Virginia Prudent Investor Act the primary standard of care for the West Virginia Investment Management Board. The bill removes limitations on the different classes of investment while retaining restrictions aimed at fostering due diligence and appropriate investment under the Prudent Investor Act. These revisions permit the board to fulfill its fiduciary obligations as prudent investors, with the goal of enhancing the safety of the assets under management while enabling the board to better achieve its return objectives as markets evolve.

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