

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### House Bill 4001

FISCAL  
NOTE

BY DELEGATES HANSHAW (MR. SPEAKER), MANDT,  
ATKINSON, TONEY, PACK, LINVILLE, ESPINOSA, WILLIAMS,  
SKAFF, MILEY AND BATES

[Introduced January 08, 2020; Referred to the  
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §12-6E-1, §12-6E-2, §12-6E-3, §12-6E-4, §12-6E-5, §12-6E-6, §12-6E-7,  
 3 §12-6E-8, §12-6E-9, §12-6E-10, and §12-6E-11, all relating to creating West Virginia  
 4 Impact Fund, Investment Committee and Mountaineer Impact Office to invest funds in  
 5 certain projects with the goal of furthering economic development, infrastructure  
 6 development and job creation in the State of West Virginia, generally; providing definitions;  
 7 creating West Virginia Impact Fund; providing for the transfer of funds to Investment  
 8 Committee and the purposes for the expenditure of the funds; creating Investment  
 9 Committee and providing for its membership, appointments; terms; removals; vacancies  
 10 and quorums; providing for powers and duties of Investment Committee; requiring  
 11 disclosures of interest, standard of care, and nonliability for debts or obligations; creating  
 12 Mountaineer Impact Office and providing for powers, duties, staffing, management and  
 13 processes for proposing and administering investments in projects approved by  
 14 Investment Committee; providing for audits and reports; providing for review and  
 15 professional advice relating to investments from the West Virginia Investment  
 16 Management Board; providing for immunities and exemptions; prohibiting political  
 17 activities; and providing for confidentiality of information.

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

**ARTICLE 6E. WEST VIRGINIA IMPACT FUND.**

**§12-6E-1. Definitions.**

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

2 “Approved investment” means a proposed investment by the West Virginia Impact Fund  
 3 in a final project as approved by the Investment Committee.

4 “Approved project proposal” means a project proposal that has been approved by the  
 5 Investment Committee.

6 “Fiduciary standard” means the fiduciary standards applicable to investments under the

7 West Virginia Uniform Prudent Investor Act set forth in §44-6C-1 et seq. of this code and under  
8 the standard of care set forth in §12-6E-5 of this code.

9 “Final project” means the final project or investment product developed by a selected  
10 manager.

11 “Investment Committee” means the committee established in §12-6E-4 of this code.

12 “Investment Management Board” means the West Virginia Investment Management  
13 Board established under §12-6-1, et seq. of this code.

14 “Mountaineer Impact Office” means the agency and government instrumentality of the  
15 State of West Virginia established under §12-6E-6 of this code to implement, invest and  
16 administer the assets transferred from the West Virginia Impact Fund to the Investment  
17 Committee.

18 “Project proposal” means a proposal for a particular project identified by the Mountaineer  
19 Impact Office to implement the goal of the West Virginia Impact Fund described in §12-6E-3 of  
20 this code.

21 “Selected manager” means one or more asset or project managers selected by the  
22 Mountaineer Impact Office under §12-6E-6 of this code.

23 “West Virginia Impact Fund” means the fund established in §12-6E-2 of this code.

#### **§12-6E-2. West Virginia Impact Fund.**

1 (a) There is hereby created within the State Treasury a special revenue account,  
2 designated the “West Virginia Impact Fund” to be administered by the Governor for the purposes  
3 set forth in this article.

4 (b) The fund shall consist of all moneys made available for the purposes of this article from  
5 any source, including, but not limited to, any moneys that may be appropriated and designated  
6 for those purposes by the Legislature; all interest or other return earned or received from  
7 investment of the fund; any moneys which the fund is authorized to receive under any provision  
8 of this code for the purposes of this article; all gifts, grants, bequests or transfers made to the fund

9 from any source; all interest or other return received from the Investment Committee's deposits  
10 or investments, as provided by this article; and any other funds which the Investment Committee  
11 directs to be deposited into the fund. Expenditures from the fund shall be made by transfer to the  
12 Investment Committee solely for the purposes set forth in this article pursuant to resolution of the  
13 Investment Committee adopted under §12-6E-3 of this code. Any balance, including accrued  
14 interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to  
15 the General Revenue Fund but shall remain in the fund and be expended as provided by this  
16 article.

**§12-6E-3. Investment guidelines; goal of Impact Fund.**

1 (a) The assets of the West Virginia Impact Fund, upon transfer to the Investment  
2 Committee as provided by this article, shall be:

3 (1) Invested in any final project presented by the Mountaineer Impact Office under this  
4 article that is approved by resolution of the Investment Committee that requires an aggregate  
5 investment of moneys in the project of not less than \$100 million by either the Investment  
6 Committee, as sole investor, or by the Investment Committee and one or more co-investors,  
7 public or private, with the goal of furthering economic development, infrastructure development  
8 and job creation in the State of West Virginia; and

9 (2) Expended by the Investment Committee in such amounts necessary to provide for the  
10 payment of expenses incurred in the administration of this article.

11 (b) The Mountaineer Impact Office shall identify specific project proposals for projects,  
12 which may be single target companies, blind pool investment funds or other, to implement the  
13 goal of the West Virginia Impact Fund.

14 (c) The Mountaineer Impact Office shall present such project proposals for approval or  
15 disapproval to the Investment Committee pursuant to §12-6E-6 of this code.

**§12-6E-4. Establishment of the Investment Committee; appointments; removal; vacancy;**  
**and quorum.**

1           (a) There is hereby created the Investment Committee, as an agency of the State of West  
2 Virginia, to manage the investment of the assets transferred to the Investment Committee from  
3 the West Virginia Impact Fund.

4           (b) The Investment Committee shall be governed by a committee of trustees, consisting  
5 of seven members:

6           (1) The Governor and the Secretary of the Department of Commerce, or their designees  
7 shall serve as members of the Investment Committee. They shall serve by virtue of their office  
8 and are not entitled to compensation under the provisions of this article. The Governor and the  
9 Secretary of the Department of Commerce or their designees are subject to all duties,  
10 responsibilities and requirements of the provisions of this article, including, but not limited to, the  
11 provisions of paragraph (A), subdivision (2) of this subsection and subdivision (3) of this  
12 subsection.

13           (2)(A) Five members of the Investment Committee shall be appointed by the Governor,  
14 with the advice and consent of the Senate. The terms of the appointed members shall be three  
15 years, subject to the following: The initial appointment of one member shall be for a term of one  
16 year; the initial appointment of two members shall be for terms of two years; and the initial  
17 appointment of two members shall be for terms of three years. At the end of each member's term,  
18 the Governor may reappoint, or appoint a successor, who shall serve for a term ending on January  
19 31 in the third year following the year of his or her appointment. Except for vacancy appointments  
20 made pursuant to this paragraph, all subsequent appointments shall be for terms ending on  
21 January 31 in the third year following the expiration of the prior term for the position to which the  
22 appointment is made. No more than three of the five appointed members may belong to the same  
23 political party. In the event of a vacancy among the trustees, the Governor shall promptly make  
24 an appointment to fill the unexpired term.

25           (B) The Governor may remove any appointed member in case of gross negligence or  
26 misfeasance and may declare that position vacant and may appoint a person for the vacancy as

27 provided in this subsection. A removal by the Governor must be in writing and must state the  
 28 reason for the removal. A member who is removed by the Governor may not participate in  
 29 Investment Committee business and may not be counted for purposes of establishing a quorum  
 30 after the member receives written notice of removal from the Governor.

31 (C) The appointed members may not hold any other state or federal office, position or  
 32 employment, either elective or appointive, except as a member of the armed forces of either the  
 33 United States or of this state, and must have recognized competence and experience in finance,  
 34 investments, or other business management-related fields.

35 (3) Each appointed member is entitled to receive, and, at the member's option, the  
 36 Investment Committee shall pay to the member compensation in the amount of \$400 for each day  
 37 on which the member attends a meeting of the Investment Committee. In addition, all appointed  
 38 members shall receive reasonable and necessary expenses actually incurred in discharging  
 39 member duties pursuant to this article.

40 (c) The Investment Committee may continue to act notwithstanding any vacancy.

41 (d) The presence of four members of the Investment Committee is a quorum for the  
 42 exercise of any authority granted to the Investment Committee in this article. Action may be taken  
 43 only upon affirmative vote of four members of the Investment Committee, which vote may be in  
 44 person or in writing.

**§12-6E-5. Powers and duties of Investment Committee; disclosure of interests; standard of care.**

1 (a) The Investment Committee may: (1) Appoint the managing director of the Mountaineer  
 2 Impact Office, (2) approve or disapprove project proposals, (3) approve or disapprove the  
 3 negotiated terms of any proposed investment of funds held by the Investment Committee in any  
 4 final project, and (4) approve or disapprove of the managing director's appointment of employees  
 5 and retention of consultants to carry out the duties of the Mountaineer Impact Office.

6 (b) The Investment Committee shall approve or disapprove project proposals and the

7 negotiated terms of a proposed investment in any final project solely pursuant to its determination  
8 of whether the projects or the negotiated terms of the proposed investment in the final project  
9 meet the goal prescribed in 12-6E-3 of this code.

10 (c) The Investment Committee may, in its own right or through the Mountaineer Impact  
11 Office:

12 (1) Adopt and use a common seal and alter it at pleasure;

13 (2) Sue and be sued;

14 (3) Enter into contracts and execute and deliver instruments;

15 (4) Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal  
16 property, deeds, mortgages and other instruments;

17 (5) Notwithstanding any other provision of law, retain and employ legal, accounting,  
18 financial and investment advisors and consultants;

19 (6) Maintain accounts with banks, securities dealers and financial institutions both within  
20 and outside this state;

21 (7) Exercise all powers generally granted to and exercised by the holders of investment  
22 securities with respect to management of the investment securities;

23 (8) Contract with one or more banking institutions in or outside the state for the custody,  
24 safekeeping and management of securities held by the board;

25 (9) Make and, from time to time, amend and repeal bylaws, rules and procedures  
26 consistent with the provisions of this article;

27 (10) Hire its own employees, consultants, managers and advisors as it considers  
28 necessary and fix their compensation and prescribe their duties;

29 (11) Develop, implement and maintain its own banking accounts and investments; and

30 (12) Do all things necessary to implement and operate the Investment Committee and the  
31 Mountaineer Impact Office and carry out the intent of this article.

32 (d) Disclosure of interests. -- If a member of the Investment Committee acquires, owns, or

33 controls an interest, direct or indirect, in any final project in which West Virginia Impact Fund  
34 assets are invested or proposed to be invested, the member shall immediately disclose the  
35 interest to the Investment Committee. The disclosure is a matter of public record and shall be  
36 included in the minutes of the Investment Committee meeting next following the disclosure.

37 (e) *Standard of care.* -- When making decisions, the Investment Committee shall exercise  
38 the judgment and care under the circumstances then prevailing that an institutional investor of  
39 ordinary prudence, discretion, and intelligence exercises in the designation and management of  
40 large investments entrusted to it, not in regard to speculation, but in regard to the permanent  
41 disposition of funds, considering preservation of the purchasing power of the West Virginia Impact  
42 Fund over time, while maximizing the expected total return from both income and the appreciation  
43 of capital and accomplishing the goal of the West Virginia Impact Fund as set forth in §12-6E-3  
44 of this code.

**§12-6E-6. Establishment of the Mountaineer Impact Office; managing director; project proposals; monitoring performance; consultation with Investment Management Board; insurance.**

1 (a) There is hereby created the Mountaineer Impact Office. The Mountaineer Impact Office  
2 is an agency and instrumentality of the State of West Virginia managed by the Investment  
3 Committee. The purpose of the Mountaineer Impact Office is to implement, invest and administer  
4 the assets transferred to the Investment Committee from the West Virginia Impact Fund.

5 (b) The Investment Committee shall appoint a managing director, as a state employee, to  
6 manage the affairs of the Mountaineer Impact Office. The managing director shall have a strong  
7 background in business and significant experience in investments and the development of  
8 projects.

9 (c) The salary of the managing director is not restricted by state compensation rules but  
10 shall be determined by the Governor in accordance with customary salaries for officers and  
11 directors with similar responsibilities and experience in the private sector.



12 (d) The managing director may, with the approval of the Investment Committee, appoint  
13 permanent or temporary employees and/or retain consultants to carry out the duties of the  
14 Mountaineer Impact Office. An employee of the Mountaineer Impact Office, including the  
15 managing director, may not be a member of the Investment Committee.

16 (e) The Mountaineer Impact Office shall identify specific project proposals for projects,  
17 which may be single target companies, blind pool investment funds or other, to implement the  
18 goal prescribed in §12-6E-3 of this code.

19 (f) The Mountaineer Impact Office shall present such project proposals for approval or  
20 disapproval to the Investment Committee.

21 (g) The Mountaineer Impact Office shall establish a procurement process for selecting one  
22 or more selected managers to develop final projects in accordance with each approved project  
23 proposal. This procurement process shall be streamlined and efficient and is not required to  
24 comply with §5A-3-1 et seq. of this code. Pursuant to the procurement process, the Mountaineer  
25 Impact Office shall identify, procure and enter into a nonbinding memorandum of understanding  
26 with a selected manager to develop a final project in accordance with each approved project  
27 proposal.

28 (h) The Mountaineer Impact Office shall, with the selected manager, negotiate the terms  
29 and amount of any proposed investment of funds held by the Investment Committee in any final  
30 project.

31 (i) The Mountaineer Impact Office shall present such final negotiated terms and amount  
32 of a proposed investment in a final project for approval or disapproval to the Investment  
33 Committee, together with any disclosures of conflicts of interest in the proposed investment as  
34 required pursuant to §12-6E-5(d) of this code.

35 (j) The Mountaineer Impact Office shall monitor the qualitative and quantitative  
36 performance of each approved investment on an ongoing basis, with respect to the goal of  
37 investments prescribed in §12-6E-3 of this code, including without limitation, the exit and

38 termination of each approved investment.

39 (k) The Mountaineer Impact Office may consult the Investment Management Board about  
40 investments made or proposed under this article.

41 (l) The Mountaineer Impact Office may exercise all powers necessary or appropriate to  
42 carry out the duties or responsibilities conferred upon it by law or the Investment Committee under  
43 the provisions of this article.

44 (m) The Mountaineer Impact Office shall procure and maintain in effect, for the benefit of  
45 the members of the Investment Committee, commercially customary property, liability, crime and  
46 other insurance to cover risks of loss from the operations of the Investment Committee. The types  
47 and amounts of the insurance coverages shall be determined by the Mountaineer Impact Office,  
48 from time to time, in its reasonable discretion, with reference to the types and amounts of  
49 insurance coverages purchased or maintained by other public institutions performing functions  
50 similar to those performed by the Investment Committee, and in an amount of not less than \$10  
51 million. The Investment Committee may require that appropriate types and amounts of insurance  
52 be procured and maintained by, or a fiduciary or surety bond from a surety company qualified to  
53 do business in this state for, any person who has charge of, or access to, any securities, funds or  
54 other moneys held by the Investment Committee and the amount of the fiduciary or surety bond  
55 shall be fixed by the Investment Committee. The premiums payable on any insurance or fiduciary  
56 or surety bonds that the board may require, from time to time, shall be an expense of the board.

**§12-6E-7. Computation of income; audits; annual report.**

1 (a) The Mountaineer Impact Office shall cause the income from investments made by the  
2 Investment Committee to be deposited back into the West Virginia Impact Fund, net of amounts  
3 determined by the Investment Committee to be necessary to provide for the payment of expenses  
4 incurred in the administration of this article.

5 (b) The Mountaineer Impact Office shall compute the net income of the Investment  
6 Committee's investments annually as of the last day of the fiscal year in accordance with generally

7 accepted accounting principles, excluding any unrealized gains or losses.

8 (c) The Mountaineer Impact Office shall cause combined annual financial and compliance  
9 audits of the assets in the West Virginia Impact Fund, and of the moneys transferred to and held  
10 by the Investment Committee, to be made by a certified public accounting firm which has a  
11 minimum staff of 10 certified public accountants and which is a member of the American institute  
12 of certified public accountants and, if doing business in West Virginia, a member of the West  
13 Virginia society of certified public accountants. The Mountaineer Impact Office shall cause copies  
14 of the audits report to be furnished to the Governor, State Treasurer, State Auditor, President of  
15 the Senate and the Speaker of the House of Delegates.

16 (d) By December 1 of each year, the Mountaineer Impact Office shall publish a report of  
17 the Investment Committee investments for distribution to the Governor, the President of the  
18 Senate, the Speaker of the House of Delegates and the public. The Mountaineer Impact Office  
19 shall notify the Legislature that the report is available and otherwise comply with §4-1-23 and §5-  
20 1-20 of this code.

21 (e) The report published pursuant to subsection (d) of this section must include financial  
22 statements audited by independent outside auditors, a statement of the amount of money  
23 received by the Investment Committee and the West Virginia Impact Fund from each investment  
24 during the period covered, a statement of investments by the Investment Committee, including an  
25 appraisal at market value, a description of investment activities during the period covered by the  
26 report, a comparison of the investment performance with the intended goal contained in §12-6E-  
27 3 of this code and any other information the Mountaineer Impact Office determines would be in  
28 the public interest upon which the efforts of the Investment Committee and the Mountaineer  
29 Impact Office to meet the goals and objectives of this article may be measured.

**§12-6E-8. Role of the Investment Management Board.**

1 If requested by the Investment Committee or the Mountaineer Impact Office, the  
2 Investment Management Board shall, to the extent the board determines that to do so is not

3 inconsistent with its duties and responsibilities imposed by this code, provide review and  
4 professional advice relating to investments and proposed investments approved by the  
5 Investment Committee in any project under consideration. The Investment Management Board's  
6 role in the investments may be limited to a determination as to whether such proposed investment  
7 or investment in such final project meets the fiduciary standard.

**§12-6E-9. Immunities and exemptions.**

1 In addition to the immunities and exemptions otherwise provided herein, the West Virginia  
2 Impact Fund, any sub-account or wholly-owned subsidiary thereof, the Mountaineer Impact  
3 Office, the Investment Committee, and the property and assets held by the Investment Committee  
4 in any account, sub-account and wholly-owned subsidiary thereof shall also enjoy the following  
5 immunities and exemptions:

6 (1) Property and assets of the West Virginia Impact Fund and the property and assets held  
7 by the Investment Committee in any account, sub-account and wholly-owned subsidiary thereof,  
8 wherever located and by whomsoever held, shall enjoy immunity from every form of judicial  
9 process except to the extent that it expressly waives its immunity for the purpose of any  
10 proceedings or by the terms of any contract.

11 (2) Property and assets held by the Investment Committee in any account, sub-account  
12 or wholly-owned subsidiary thereof, wherever located and by whomsoever held, shall be immune  
13 from search, requisition, confiscation, expropriation, or any other form of seizure by executive or  
14 legislative action.

15 (3) To the extent necessary to carry out the activities provided for in this article, all property  
16 and assets of the West Virginia Impact Fund and the property and assets held by the Investment  
17 Committee in any account, sub-account or wholly-owned subsidiary thereof shall be free from  
18 restrictions, regulations, controls, and moratoria of any nature.

19 (4) All members, advisors, officers and employees of the Investment Committee, the  
20 Mountaineer Impact Office and the Investment Management Board are not liable personally,

21 either jointly or severally, for any debt or obligation created by the Investment Committee or the  
22 Mountaineer Impact Office: *Provided*, That the members, advisors, officers and employees are  
23 liable for acts of misfeasance or gross negligence.

24 (5) The West Virginia Impact Fund, any sub-account or wholly-owned subsidiary thereof,  
25 the Mountaineer Impact Office, the Investment Committee, and the property and assets held by  
26 the Investment Committee in any account, sub-account and wholly-owned subsidiary thereof are  
27 exempt from all taxes and assessments in the State of West Virginia. All security instruments  
28 issued by the Investment Committee or the Mountaineer Impact Office, their transfer, and their  
29 income are exempt from all taxes and assessments in the State of West Virginia.

**§12-6E-10. Political activities.**

1 The resources of the West Virginia Impact Fund, the Investment Committee and the  
2 Mountaineer Impact Office may not be used to finance or influence political activities.

**§12-6E-11. Confidential information.**

1 The reports described in §12-6E-7 of this code shall be public record. However,  
2 information that discloses the particulars of the business or affairs of a private enterprise or  
3 investor, including without limitation, any final project or information regarding any other investor  
4 therein, is confidential and shall not form part of the public record. Such information may be  
5 publicly disclosed only for the purposes of an official law enforcement investigation or when its  
6 production is required in a court proceeding. These restrictions do not prohibit the publication of  
7 statistics presented in a manner that prevents the identification of particular reports, items,  
8 persons, or enterprises.

NOTE: The purpose of this bill is to create the West Virginia Impact Fund, its Investment Committee and the Mountaineer Impact Office to further economic development, infrastructure development and job creation in the State of West Virginia through investment of the assets of the fund.

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