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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

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ENROLLED

SENATE BILL NO. 563

(By Senator CRAIGO)

—●—
PASSED APRIL 12, **1997**

In Effect FROM **Passage**

SB 543

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APR 20 1997

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Senate Bill No. 563

(BY SENATOR CRAIGO)

[Passed April 12, 1997; in effect from passage.]

AN ACT to repeal section thirteen, article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections nine-g and eighteen, article six of said chapter; to repeal sections two and two-a, article eight, chapter twenty-seven of said code; to repeal article six-b, chapter forty-four of said code; to amend and reenact section six, article two, chapter five-f of said code; to amend and reenact section one, article seven, chapter six of said code; to amend and reenact section one, article five, chapter seven of said code; to amend and reenact section fifteen, article thirteen, chapter eight of said code; to amend and reenact sections one, two, four, five, seven, eight, nine, ten, eleven, twelve and thirteen, article one, chapter twelve of said code; to amend and reenact sections two, three, four and five, article two of said chapter; to amend and reenact

sections one, one-a, one-b, four, ten-a and thirteen-b, article three of said chapter; to further amend said article by adding thereto two new sections, designated sections ten-c and ten-d; to amend and reenact sections two, three, four, six, seven, eight and nine, article four of said chapter; to further amend said article by adding thereto two new sections, designated sections three-a and eight-a; to amend and reenact sections two, four, five and six, article five of said chapter; to further amend said article by adding thereto a new section designated section seven; to amend and reenact sections one, one-a, two, three, four, five, eight, nine-c, nine-e, twelve, thirteen, fifteen, sixteen and nineteen, article six of said chapter; and that said article be further amended by adding thereto four new sections, designated sections six, nine, nine-a and eleven; to amend and reenact sections two, three, five and six, article six-a of said chapter; to further amend said chapter by adding thereto a new article, designated article six-b; to amend and reenact section three, article three, chapter thirteen of said code; to amend and reenact section two-a, article three, chapter fifty of said code; to amend and reenact section seven-a, article one, chapter fifty-seven of said code; and to amend and reenact section twelve, article one, chapter fifty-nine of said code, all relating generally to the financial and investment procedures in this state; repealing provisions relating to unreconciled items on bank accounts; repealing provisions relating to budgeting for state hospitals and local mental health programs; repealing the West Virginia trust fund act; providing for the consolidation and organization of certain boards and commissions; authorizing state officials, officers and employees to be paid twice per month; providing for collection of moneys due a county, district, municipality, magistrate court and circuit courts; establishing duties and responsibilities of the state treasurer in relation to state depositories; changing the method for the payment and deposit of taxes and other amounts due the state or any political subdivision; establishing duties and responsibilities of the state auditor and treasurer in relation to appropriations, expenditures and deductions; clarifying the accounts of treasurer and auditor; providing that the auditor is to certify condition of revenues and funds of the

state; providing method for signing of checks and warrants; facsimile signatures and use of mechanical and electrical devices; providing criminal penalties for violations of signature authority; comparison of books of auditor and treasurer; requiring the changing of the office hours of auditor and treasurer; authorizing the employment of legal counsel; changing rules relating to absence of auditor or treasurer; providing for the balancing of state accounts; establishing the state treasurer's duties and responsibilities in relation to public securities; providing that the treasurer will act as financial advisor; providing for the employment or selection of bond counsel; amending the provisions relating to the repeal of the state board of investments; creating a new public body corporate called the "West Virginia investment management board"; providing that all functions and assets of the board of investments and the West Virginia trust fund are transferred to the investment management board; terminating the board of investments and the West Virginia trust fund; providing for purposes and objects; providing legislative findings; providing definitions; providing for appointments; providing that the governor, treasurer and auditor are members of the board; providing for filling of vacancies; providing for board meetings and notices of meetings; providing for beneficiary representatives; providing for management and control of funds; providing for liability of trustees; providing for powers of the board; providing for audits and reports; establishing investment funds; providing for fees for services; providing for continuation of existing trust; authorizing investments; providing standards for investments; providing for loans for industrial development; providing for standards of care in investment management; providing for duties of the board; providing for transfers of funds to the board; providing for loans by the board; providing for debt information reporting; creating a debt capacity advisory division; allowing the use of photographic copies in evidence, for state records, and papers or documents; providing for destruction or transfer to archives of original documents; destruction of canceled checks; and paid and canceled bonds and coupons.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections nine-g and eighteen, article six of said chapter be repealed; that sections two and two-a, article eight, chapter twenty-seven of said code be repealed; that article six-b, chapter forty-four of said code be repealed; that section six, article two, chapter five-f of said code be amended and reenacted; that section one, article seven, chapter six of said code be amended and reenacted; that section one, article five, chapter seven of said code be amended and reenacted; that section fifteen, article thirteen, chapter eight of said code be amended and reenacted; that sections one, two, four, five, seven, eight, nine, ten, eleven, twelve and thirteen, article one, chapter twelve of said code be amended and reenacted; that sections two, three, four and five, article two of said chapter be amended and reenacted; that sections one, one-a, one-b, four, ten-a and thirteen-b, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections ten-c and ten-d; that sections two, three, four, six, seven, eight and nine, article four of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections three-a and eight-a; that sections two, four, five and six, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section seven; that sections one, one-a, two, three, four, five, eight, nine-c, nine-e, twelve, thirteen, fifteen, sixteen and nineteen, article six of said chapter be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections six, nine, nine-a and eleven; that sections two, three, five and six, article six-a of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article six-b; that section three, article three of chapter thirteen be amended and reenacted; that section two-a, article three, chapter fifty of said code be amended and reenacted; that section seven-a, article one, chapter fifty-seven of said code be amended and reenacted; and that section twelve, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE
BRANCH OF STATE GOVERNMENT.**

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-6. Reorganization of boards issuing or incurring debt.

1 (a) The Legislature finds and declares that boards and
2 commissions empowered to issue bonds, incur indebted-
3 ness and provide financing or financial services for a
4 public purpose may in some cases benefit the public
5 interest or operate more efficiently through consolidation
6 of legal, technical and support staff or services, sharing of
7 office space, consolidation of procedures, and cooperation
8 to identify circumstances where one entity may provide
9 services for another, including, but not limited to, circum-
10 stances where one board or commission may finance the
11 programs of another. On or after the effective date of this
12 section, the treasurer shall be authorized at the request of
13 the presiding officer of the entity to provide financial
14 services, provide technical staff services, provide support
15 staff and services and provide for the sharing of office
16 space among and between the following entities:

17 (1) The staff of the municipal bond commission provided
18 for in article three, chapter thirteen of this code: *Pro-*
19 *vided*, That nothing in this section shall be construed to
20 limit the independence and autonomy of the municipal
21 bond commission;

22 (2) The staff of the hospital finance authority provided
23 for in article twenty-nine-a, chapter sixteen of this code:
24 *Provided*, That nothing in this section shall be construed
25 to limit the independence and autonomy of the hospital
26 finance authority; and

27 (3) The staff of the public energy authority provided for
28 in article one, chapter five-d of this code.

29 (b) In furtherance of the goal of increased efficiency and
30 cooperation, the director of the debt management division
31 of the board of investments and the secretary of the
32 department of administration are jointly charged with the
33 responsibility of developing and presenting to the boards
34 and commissions, to the board of investments, to the state

35 treasurer, to the governor and to the Legislature recom-
36 mendations for administrative and statutory change.

37 (c) On the effective date of this section, any funds,
38 equipment, personnel or office facilities associated with
39 those responsibilities that are transferred from the board
40 of investments or any other agency, to the treasurer's
41 office shall be transferred within thirty days of the
42 transfer of those responsibilities.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-1. State officials, officers and employees to be paid twice per month; effective date.

1 All full-time and part-time salaried and hourly officials,
2 officers and employees of the state and the board of
3 trustees of the university system of West Virginia and the
4 board of directors of the state college system shall be paid
5 twice per month, and under the same procedures and in
6 the same manner as the state auditor currently pays
7 agencies on such basis: *Provided*, That on and after the
8 first day of July, one thousand nine hundred ninety-nine,
9 or any date thereafter, as determined by the auditor, all
10 officials, officers or employees, except elected officials and
11 employees whose compensation is fixed by statute, shall
12 be paid one pay cycle in arrears. Any employee whose
13 employment with the state begins on or after the first day
14 of July, one thousand nine hundred ninety-nine, as
15 determined by the auditor, shall not receive his or her first
16 pay until the end of the second regular payroll cycle after
17 beginning employment. The auditor shall propose a
18 legislative rule in accordance with article three, chapter
19 twenty-nine-a of this code to determine the manner to
20 implement the payment of employees in arrears. Nothing
21 contained in this section is intended to increase or dimin-
22 ish the salary or wages of any official, officer or employee.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-1. Sheriff ex officio county treasurer.

1 The sheriff shall be ex officio county treasurer and as
2 such treasurer shall receive, collect and disburse all
3 moneys due such county or any district thereof, and shall
4 also receive, collect and disburse to the treasurer of the
5 county board of education all school money for the county,
6 unless the sheriff is designated by the board of education
7 as its treasurer, as provided in section six, article nine,
8 chapter eighteen of this code. The sheriff shall keep his
9 office at the courthouse for the county, in a suitable room
10 or rooms provided for that purpose by the county court
11 (county commission), in which all money and property in
12 his possession shall be kept, unless deposited by him in a
13 county depository, in which case an accurate daily deposit
14 account thereof shall be kept in his office. He shall keep
15 in his office a fair and accurate account of all receipts and
16 disbursements by him, showing the time when, from
17 whom, to whom and on what account received and paid,
18 and he shall so arrange his books that the amount received
19 and paid on account of separate and distinct funds, or
20 specific appropriations, shall be exhibited in separate and
21 distinct accounts, and he shall also keep separate and
22 distinct accounts for the funds of each fiscal year.

23 When any money is paid to the sheriff, except for taxes,
24 the sheriff shall give to the person paying the same
25 duplicate receipts thereof, stating briefly the fund or
26 account for which paid; one of which receipts such person
27 shall forthwith deposit with the clerk of the county court
28 (county commission), who shall, in a well-bound book to
29 be kept by him in his office for the purpose, charge the
30 sheriff therewith and preserve such receipt in his office.

31 The sheriff and his sureties on his official bond shall be
32 held liable for all public moneys coming into his hands as
33 ex officio treasurer from every source whether or not the
34 same shall be deposited in a bank: *Provided*, That nothing
35 in this article prohibits the payment of funds due the
36 county treasurer by credit or check card. Allowing for the
37 collection of funds by credit or check card shall be at the
38 discretion of the county commission.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-15. Collection of municipal taxes, fines and assessments.

1 Unless otherwise provided, it shall be the duty of the
2 treasurer of the municipality or other individual who may
3 be designated by general law, by charter provisions or by
4 the governing body, to collect and promptly pay into the
5 municipal treasury all taxes, fines, special assessments or
6 other moneys due the municipality. All such taxes, fines,
7 special assessments (except assessments for permanent or
8 semipermanent public improvements) and other moneys
9 due the municipality are hereby declared to be debts
10 owing to the municipality, for which the debtor shall be
11 personally liable, and the treasurer, or other individual so
12 designated, may enforce this liability by appropriate civil
13 action in any court of competent jurisdiction, and is
14 hereby vested with the same rights to distrain for the same
15 as is vested in the sheriff for the collection of taxes. Such
16 treasurer or other individual shall give a bond, condi-
17 tioned according to law, in such penalty and with such
18 security as the governing body may require: *Provided,*
19 That nothing in this article shall prohibit the payment of
20 taxes, fines, special assessments or other moneys due the
21 municipality by credit or check card. Allowing for the
22 collection of these funds by credit or check card shall be
23 at the discretion of the municipality.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**ARTICLE 1. STATE DEPOSITORIES.****§12-1-1. Legislative findings and purpose.**

1 The Legislature finds and declares that the efficient
2 collection, disbursement, management and investment of
3 public moneys in the state treasury will benefit the
4 citizens, teachers and public employees of this state by
5 reducing the costs of government and providing sources of
6 increased revenue without the necessity of increased
7 taxation; and to achieve these goals, the state treasurer
8 shall provide a stable and continuous source of profes-
9 sional financial management, and shall be given the
10 authority to develop and maintain modern systems,
11 consistent with sound financial practices, for the collec-
12 tion, disbursement, management and investment of such

13 moneys in conjunction with the state treasurer.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer.

1 The state treasurer shall designate the state and national
2 banks in this state which shall serve as depositories for all
3 state funds placed in demand deposits. Any such state or
4 national bank shall, upon request to the treasurer, be
5 designated as a state depository for such deposits, if such
6 bank meets the requirements set forth in this chapter.

7 Demand deposit accounts shall consist of receipt and
8 disbursement. Receipt accounts shall be those accounts in
9 which are deposited moneys belonging to or due the state
10 of West Virginia or any official, department, board,
11 commission or agency thereof.

12 Disbursement accounts shall be those accounts from
13 which are paid moneys due from the state of West Virginia
14 or any official, department, board, commission, political
15 subdivision or agency thereof to any political subdivision,
16 person, firm or corporation, except moneys paid from
17 investment accounts.

18 Investment accounts shall be those accounts established
19 by the West Virginia investment management board for
20 the buying and selling of securities for investment for the
21 state of West Virginia or any official, department, board,
22 commission or agency thereof or to meet obligations to
23 paying agents or for paying charges incurred for the
24 custody, safekeeping and management of such securities
25 pursuant to the provisions of section five, article five of
26 this chapter, or for paying the charges of any bank or trust
27 company acting as paying agent or copaying agent for a
28 bond issue of the state pursuant to the provisions of
29 section seven-a, article one, chapter fifty-seven of this
30 code.

31 The state treasurer shall promulgate rules, in accordance
32 with the provisions of article three, chapter twenty-nine-a
33 of this code, concerning depositories for receipt accounts
34 prescribing the selection criteria, procedures, compensa-

35 tion and such other contractual terms as it considers to be
36 in the best interests of the state giving due consideration
37 to: (1) The activity of the various accounts maintained
38 therein; (2) the reasonable value of the banking services
39 rendered or to be rendered the state by such depositories;
40 and (3) the value and importance of such deposits to the
41 economy of the communities and the various areas of the
42 state affected thereby.

43 The state treasurer shall select depositories for disburse-
44 ment accounts through competitive bidding by eligible
45 banks in this state. The treasurer shall promulgate rules
46 and regulations, in accordance with the provisions of
47 article three, chapter twenty-nine-a of this code, prescrib-
48 ing the procedures and criteria for the bidding and
49 selection. The treasurer shall, in the invitations for bids,
50 specify the approximate amounts of deposits, the duration
51 of contracts to be awarded and such other contractual
52 terms as it considers to be in the best interests of the state,
53 consistent with obtaining the most efficient service at the
54 lowest cost.

55 The amount of money needed for current operation
56 purposes of the state government, as determined by the
57 state treasurer, shall be maintained at all times in the
58 state treasury, in cash or in disbursement accounts with
59 banks designated as depositories in accordance with the
60 provisions of this section. No state officer or employee
61 shall make or cause to be made any deposits of state funds
62 in banks not so designated.

§12-1-4. Bonds to be given by depositories.

1 Before allowing any money to be deposited with any
2 eligible depository in excess of the amount insured by an
3 agency of the federal government, the state treasurer shall
4 require the depository to give a collaterally secured bond,
5 in the amount of not less than ten thousand dollars,
6 payable to the state of West Virginia, conditioned upon
7 the prompt payment, whenever lawfully required, of any
8 state money, or part thereof, that may be deposited with
9 that depository, or of any accrued interest on deposits.
10 The bond shall be a continuous bond but may be increased
11 or decreased in amount or replaced by a new bond with

12 the approval of the state treasurer. The collateral security
13 for the bond shall consist of bonds of the United States, of
14 the federal land banks, of the federal home loan banks, or
15 bonds of the state of West Virginia or of any county,
16 district or municipality of this state, or other bonds or
17 securities approved by the treasurer. All bonds so secured
18 are here designated as collaterally secured bonds. With-
19 drawal or substitution of any collateral pledged as secu-
20 rity for the performance of the conditions of such bond
21 may be permitted with the approval in writing of the
22 treasurer. All depository bonds shall be recorded by the
23 treasurer in a book kept in his or her office for the pur-
24 pose, and a copy of the record, certified by the treasurer,
25 shall be prima facie evidence of the execution and con-
26 tents of the bond in any suit or legal proceeding. All
27 collateral securities shall be delivered to or deposited for
28 the account of the treasurer of the state of West Virginia,
29 and in the event said securities are delivered to the
30 treasurer, he or she shall furnish a receipt therefor to the
31 owner thereof. The treasurer and his or her bondsmen
32 shall be liable to any person for any loss by reason of the
33 embezzlement or misapplication of the securities by the
34 treasurer or any of his or her employees, and for the loss
35 thereof due to his or her negligence or the negligence of
36 his or her employees; and the securities shall be delivered
37 to the owner thereof when liability under the bond which
38 they are pledged to secure has terminated. The treasurer
39 may permit the deposit under proper receipt of the
40 securities with one or more banking institutions within or
41 outside the state of West Virginia and may contract with
42 any such institution for safekeeping and exchange of any
43 such collateral securities, and may prescribe the rules and
44 regulations for handling and protecting the collateral
45 securities.

§12-1-5. Limitation on amount of deposits.

1 The amount of state funds on deposit in any depository
2 in excess of the amount insured by an agency of the
3 federal government shall not exceed ninety percent of the
4 value of collateral pledged on the collaterally secured
5 bond given by the depository. The value of the collateral
6 shall be determined by the treasurer.

§12-1-7. Rules of the state treasurer; depositors, agreements.

1 In addition to rules specially authorized in this article,
2 the West Virginia investment management board and state
3 treasurer are generally authorized to promulgate any rules
4 necessary to protect the interests of the state, its depository
5 and taxpayers. All rules promulgated shall be subject
6 to the provisions of article three, chapter twenty-nine-a of
7 this code. Any rules previously established by the board
8 of public works, the board of investments or the state
9 treasurer pursuant to this article shall remain in effect
10 until amended, superseded or rescinded.

11 The treasurer is also authorized to enter into any depository
12 agreements for the purpose of reorganizing or
13 rehabilitating any depository in which state funds are
14 deposited, and for the purpose of transferring the assets,
15 in whole or in part, of any depository to any other lawful
16 depository when, in the judgment of the treasurer, the
17 interests of the state will be promoted thereby, and upon
18 condition that no right of the state to preferred payment
19 be waived.

§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 member of the
3 West Virginia investment management board, or employee
4 of the treasurer's office, or a spouse or minor child of that
5 member or employee, is an officer, director or employee
6 thereof, or owns greater than two percent of the depository
7 either in his or their own name or beneficially, an
8 interest in such depository. A member of the board or
9 employee of the treasurer's office shall disclose the
10 circumstance, if any, in the sworn statement required
11 under the provisions of section one, article one, chapter
12 six-b of this code.

§12-1-9. Transfer of funds by check or electronic funds transfer bank wire; requirements.

1 Subject to applicable banking regulations or state law,
2 the treasurer may transfer funds by check or electronic
3 funds transfer whenever actually needed to pay the
4 warrants drawn by the auditor upon the treasury, to

5 equalize deposits or to provide funds to purchase invest-
6 ments for the account of the state. All checks drawn for
7 transfer of funds shall have printed or stamped on the face
8 of same "for transfer of funds only", or if the transfer is
9 made by electronic funds transfer, the electronic funds
10 transfer and supporting documents shall be marked "for
11 transfer of funds only".

**§12-1-10. The treasurer to keep accounts with depositories;
settlements with depositories; statements of
depository balances; reconciliation of statements
and records.**

1 The treasurer shall keep in his office or her office a
2 record showing the account of each depository. Under the
3 account of each depository an entry shall be made show-
4 ing the amount and date of each deposit, the amount and
5 date of each withdrawal and the balance on deposit. The
6 treasurer shall cause the state's account with each deposi-
7 tory to be settled at the end of every month of the year and
8 the balance in the depository to the credit of the treasury
9 to be carried forward to the account of the next month.

10 All the statements and records shall be reconciled
11 monthly and the reconciled reports shall be kept in the
12 treasurer's office. The reconciled records for each month
13 shall be kept in the treasurer's office for a period of five
14 years.

**§12-1-11. Reports by depositories to treasurer; discontinuance
of depositories.**

1 Each depository of state funds shall at the end of each
2 quarter cause its president or cashier to report to the
3 treasurer the amount of state funds on deposit and the
4 report shall be verified by the affidavit of the officer
5 making it. The form and contents of the report shall be
6 prescribed by the treasurer. For the failure to file the
7 report, or for other good cause, the treasurer may discon-
8 tinue any depository as an eligible depository and cause
9 all state funds to be withdrawn from any depository or
10 depositories so discontinued. When a depository is
11 discontinued, the treasurer shall immediately notify such
12 depository of its discontinuance, and shall immediately

13 withdraw by current checks or by transfer to another
14 depository or depositories the full amount of the deposits
15 held by any depository so discontinued. After discontinu-
16 ance, it shall be unlawful for the treasurer to deposit any
17 state funds in any depository so discontinued until such
18 time as the depository may be reinstated to eligibility.

**§12-1-12. When treasurer shall make funds available to the
investment management board; depositories
outside the state.**

1 When the funds in the treasury exceed the amount
2 needed for current operational purposes, as determined by
3 the treasurer, the treasurer shall make all of such excess
4 available for investment by the investment management
5 board which shall invest the same for the benefit of the
6 general revenue fund.

7 Whenever the funds in the treasury exceed the amount
8 for which depositories within the state have qualified, or
9 the depositories within the state which have qualified are
10 unwilling to receive larger deposits, the treasurer may
11 designate depositories outside the state, disbursement
12 accounts being bid for in the same manner as required by
13 depositories within the state, and when such depositories
14 outside the state have qualified by giving the bond
15 prescribed in section four of this article, the state trea-
16 surer shall deposit funds therein in like manner as funds
17 are deposited in depositories within the state under this
18 article.

19 The treasurer or board of investments may transfer
20 funds to banks outside the state to meet obligations to
21 paying agents outside the state and any such transfer must
22 meet the same bond requirements as set forth in this
23 article.

**§12-1-13. Payment of banking services and litigation costs for
prior investment losses.**

1 (a) The treasurer is authorized to pay for banking
2 services, and services ancillary thereto, by either a com-
3 pensating balance in a noninterest-bearing account
4 maintained at the financial institution providing the
5 services or with a state warrant as described in section

6 one, article five of this chapter.

7 (b) The investment management board is authorized to
8 pay for the investigation and pursuit of claims against
9 third parties for the investment losses incurred during the
10 period beginning on the first day of August, one thousand
11 nine hundred eighty-four, and ending on the thirty-first
12 day of August, one thousand nine hundred eighty-nine.
13 The payment may be in the form of a state warrant.

14 (c) If payment is made by a state warrant, the invest-
15 ment management board at the request of the treasurer is
16 authorized to establish within the consolidated fund an
17 investment pool which will generate sufficient income to
18 pay for all banking services provided to the state and to
19 pay for the investigation and pursuit of the prior invest-
20 ment loss claims. All income earned by the investment
21 pool shall be paid into a special account of the treasurer to
22 be known as the banking services account and shall be
23 used solely for the purpose of paying for all banking
24 services and services ancillary to the banking services
25 provided to the state, for the investigation and pursuit of
26 the prior investment loss claims, amortize the balance in
27 the investment imbalance fund.

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

**§12-2-2. Itemized record of moneys received for deposit; regu-
lations governing deposits; credit to state fund;
exceptions.**

1 (a) All officials and employees of the state authorized by
2 statute to accept moneys due the state of West Virginia
3 shall keep a daily itemized record of moneys so received
4 for deposit in the state treasury and shall deposit within
5 twenty-four hours with the state treasurer all moneys
6 received or collected by them for or on behalf of the state
7 for any purpose whatsoever. The treasurer shall be
8 authorized to review the procedures and methods used by
9 officials and employees authorized to accept moneys due
10 the state and change such procedures and methods if he or
11 she determines it to be in the best interest of the state:
12 *Provided*, That the treasurer shall not be authorized to
13 review or amend the procedures by which the department

14 of tax and revenue accepts moneys due the state. The
15 treasurer shall propose rules, in accordance with the
16 provisions of article three, chapter twenty-nine-a of this
17 code governing the procedure for deposits.

18 The official or employee making such deposits with the
19 treasurer shall prepare deposit lists in the manner and
20 upon report forms as may be prescribed by the treasurer.
21 Certified or receipted copies shall be immediately for-
22 warded by the state treasurer to the state auditor and to
23 the secretary of administration. The original of the
24 deposit report shall become a part of the treasurer's
25 permanent record.

26 (b) All moneys received by the state from appropriations
27 made by the Congress of the United States shall be
28 recorded in special fund accounts, in the state treasury
29 apart from the general revenues of the state, and shall be
30 expended in accordance with the provisions of article
31 eleven, chapter four of this code. All moneys, other than
32 federal funds, defined in section two, article eleven,
33 chapter four of this code, shall be credited to the state
34 fund and treated by the auditor and treasurer as part of
35 the general revenue of the state except the following funds
36 which shall be recorded in separate accounts:

37 (1) All funds excluded by the provisions of section six,
38 article eleven, chapter four of this code;

39 (2) All funds derived from the sale of farm and dairy
40 products from farms operated by any agency of the state
41 government other than the farm management commission;

42 (3) All endowment funds, bequests, donations, executive
43 emergency funds, and death and disability funds;

44 (4) All fees and funds collected at state educational
45 institutions for student activities;

46 (5) All funds derived from collections from dormitories,
47 boardinghouses, cafeterias and road camps;

48 (6) All moneys received from counties by institutions for
49 the deaf and blind on account of clothing for indigent
50 pupils;

51 (7) All insurance collected on account of losses by fire
52 and refunds;

53 (8) All funds derived from bookstores and sales of blank
54 paper and stationery, and collections by the chief inspec-
55 tor of public offices;

56 (9) All moneys collected and belonging to the capitol
57 building fund, state road fund, state road sinking funds,
58 general school fund, school fund, state fund (moneys
59 belonging to counties, districts and municipalities), state
60 interest and sinking funds, state compensation funds, the
61 fund maintained by the public service commission for the
62 investigation and supervision of applications, and all fees,
63 money, interest or funds arising from the sales of all
64 permits and licenses to hunt, trap, fish or otherwise hold
65 or capture fish and wildlife resources and money reim-
66 bursed and granted by the federal government for fish and
67 wildlife conservation;

68 (10) All moneys collected or received under any act of
69 the Legislature providing that funds collected or received
70 thereunder shall be used for specific purposes.

71 (c) All moneys, excepted as provided in subdivisions (1)
72 through (9), inclusive, subsection (b) of this section, shall
73 be paid into the state treasury in the same manner as
74 collections not so excepted, and shall be recorded in
75 separate accounts to be used and expended only for the
76 purposes for which the same are authorized to be collected
77 by law: *Provided*, That amounts collected pursuant to
78 subdivision (10), subsection (b) of this section, which are
79 found from time to time to exceed funds needed for the
80 purposes set forth in general law may be transferred to
81 other accounts or funds and redesignated for other
82 purposes by appropriation of the Legislature. The gross
83 amount collected in all cases shall be paid into the state
84 treasury, and commissions, costs and expenses of collec-
85 tion authorized by general law to be paid out of the gross
86 collection, including bank and credit or check card fees,
87 are hereby authorized to be paid out of the moneys
88 collected and paid into the state treasury in the same
89 manner as other payments are made from the state
90 treasury.

90 (d) The state treasurer shall have authority to establish
91 an imprest fund or funds in the office of any state agency
92 or institution making proper application to the board. To
93 implement this authority, the treasurer shall propose rules
94 in accordance with the provisions of article three, chapter
95 twenty-nine-a of this code. The treasurer or his or her
96 designee shall annually audit all funds and prepare a list
97 of all such funds showing the location and amount as of
98 fiscal year end, retaining the list as a permanent record of
99 the treasurer until the legislative auditor has completed an
100 audit of the imprest funds of all agencies and institutions
101 involved.

102 (e) The treasurer shall be authorized to develop and
103 implement a centralized receipts processing center. The
104 treasurer may request the transfer of equipment and
105 personnel from appropriate state agencies to the central-
106 ized receipts processing center in order to implement the
107 provisions of this subsection: *Provided*, That the governor
108 or appropriate constitutional officer shall have final
109 authority to authorize the transfer of equipment or
110 personnel to the centralized receipts processing center
111 from the respective agency.

§12-2-3. Deposit of moneys by state officials and employees.

1 All officials and employees of the state authorized by
2 statute to accept moneys due the state of West Virginia
3 shall deposit those moneys in the manner the treasurer
4 directs and shall promptly transmit or cause to be trans-
5 mitted the deposits, together with a certificate of deposit,
6 as soon as practicable to the depository in which they
7 desire to make the deposit, and shall retain and record the
8 deposit lists. All officials and employees of the state
9 authorized to accept moneys that they have determined
10 are not funds due the state pursuant to the provisions of
11 section two of this article, shall request the treasurer to
12 approve the deposit of the funds into an approved deposi-
13 tory. The request shall be made on forms and in accor-
14 dance with procedures as the treasurer establishes. No
15 funds shall be deposited until the written approval of the
16 treasurer is obtained. The treasurer shall be the final
17 determining authority as to whether these funds are funds

18 due or not due the state pursuant to section two of this
19 article. The treasurer shall on a quarterly basis provide
20 the legislative auditor with a report of all accounts
21 approved by him.

§12-2-4. Duty of depositories.

1 Immediately upon the receipt of a deposit from the state,
2 it shall be the duty of the depository to credit the treasurer
3 with the amount of the deposit, to date and sign the
4 certificate of deposit by some legally constituted official
5 of the depository and promptly transmit the certificate to
6 the treasurer.

§12-2-5. Deposits in correspondent banks of state depositories.

1 When any payment of money has been made to the state
2 for road bonds or other purposes outside of the state, the
3 treasurer has the authority to place the same to the credit
4 of one or more state depositories in one or more of its
5 correspondent banks located within or without the state.
6 The treasurer shall, upon making such a deposit in the
7 correspondent bank, secure from it a proper certificate of
8 deposit certifying the amount and the name of the state
9 depository to whose credit the deposit was made by the
10 treasurer. The treasurer shall forward a copy of the
11 certificate to the state depository receiving the deposit
12 through its correspondent bank, and it shall be the duty of
13 the depository immediately to issue to the state of West
14 Virginia a proper certificate of deposit for the amount
15 deposited, dated the same day the deposit was made in the
16 correspondent bank. Before making the deposit the
17 treasurer shall secure written authority from the deposi-
18 tory, designating the name and address of its correspon-
19 dent bank or banks in which deposits are to be made and
20 the maximum amount to be deposited in each. The
21 depository bonds of all state depositories authorizing and
22 receiving the deposits in their correspondent banks shall
23 be liable for the deposits the same as if the deposits had
24 been made with them directly, whether the bonds are so
25 conditioned or not, and all depository bonds hereafter
26 issued shall so provide.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-1. Manner of payment from treasury; form of checks.

1 Every person claiming to receive money from the
2 treasury of the state shall apply to the auditor for a
3 warrant for same. The auditor shall thereupon examine
4 the claim, and the vouchers, certificates and evidence, if
5 any, offered in support thereof, and for so much thereof as
6 he or she finds to be justly due from the state, if payment
7 thereof is authorized by law, and if there is an appropria-
8 tion not exhausted or expired out of which it is properly
9 payable, the auditor shall issue his or her warrant on the
10 treasurer, specifying to whom and on what account the
11 money mentioned therein is to be paid, and to what
12 appropriation it is to be charged. The auditor shall
13 present to the treasurer daily reports on the number of
14 warrants issued, the amounts of the warrants and the
15 dates on the warrants for the purpose of effectuating the
16 investment policy of the investment management board.
17 On the presentation of the warrant to the treasurer, the
18 treasurer shall ascertain whether there are sufficient funds
19 in the treasury to pay that warrant, and if he or she finds
20 it to be so, he or she shall in that case, but not otherwise,
21 endorse his or her check upon the warrant, directed to
22 some depository, which check shall be payable to the
23 order of the person who is to receive the money therein
24 specified; or the treasurer may issue an electronic funds
25 transfer in payment of the warrant. If the check is not
26 presented for payment within six months after it is drawn,
27 it shall then be the duty of the treasurer to credit it to the
28 depository on which it was drawn, to credit the unclaimed
29 property fund pursuant to the provisions of article eight,
30 chapter thirty-six of this code, and immediately notify the
31 auditor to make corresponding entries on the auditor's
32 books. No state depository may pay a check unless it is
33 presented within six months after it is drawn and every
34 check shall bear upon its face the words, "Void, unless
35 presented for payment within six months." All claims
36 required by law to be allowed by any court, and payable
37 out of the state treasury, shall have the seal of the court
38 allowing or authorizing the payment of the claim affixed
39 by the clerk of the court to his or her certificate of its
40 allowance. No claim may be audited and paid by the

41 auditor unless the seal of the court is thereto attached as
42 aforesaid. No tax or fee may be charged by the clerk for
43 affixing his or her seal to the certificate, referred to in this
44 section. The treasurer shall propose rules in accordance
45 with the provisions of article three, chapter twenty-nine-a
46 of this code governing the procedure for such payments
47 from the treasury.

§12-3-1a. Payment by deposit in bank account.

1 The auditor may issue his warrant on the treasurer to
2 pay any person claiming to receive money from the
3 treasury by deposit to the person's account in any bank or
4 other financial institution by electronic funds transfer, if
5 the person furnishes to the auditor written authorization
6 of the method of payment. After the authorization has
7 been approved by the auditor, it shall be forwarded to the
8 treasurer for further processing. The auditor shall pre-
9 scribe the form of the authorization. This section shall not
10 be construed to require the auditor to utilize the method
11 of payment authorized by this section; but the method is
12 authorized only as an alternative method of payment to
13 persons claiming to receive money from the treasury. A
14 written authorization furnished pursuant to this section
15 may be revoked by written notice furnished to the auditor.
16 Upon the execution of such authorization and its receipt
17 by the office of the auditor, the payment shall be made in
18 the manner specified on the form and remitted by the
19 treasurer to the designated bank or other financial
20 institution: *Provided*, That after the first day of July, two
21 thousand two, the state auditor shall cease issuing paper
22 warrants except for income tax refunds. After that date
23 all warrants, except for income tax refunds, shall be
24 issued by electronic funds transfer: *Provided, however*,
25 That the auditor, in his or her discretion, may issue paper
26 warrants on an emergency basis.

**§12-3-1b. Voluntary direct deposits by auditor treasurer of
salaries of employees to banks or other financial
institutions.**

1 Any officer or employee of the state of West Virginia
2 may authorize that his net wages be deposited directly to
3 his account in any bank or other financial institution by

4 electronic funds transfer. The direct deposits may be
5 authorized on a form provided by the auditor. Upon
6 execution of such authorization and its receipt by the
7 office of the auditor, the direct deposits shall be made in
8 the manner specified on the form and remitted by the
9 treasurer to the designated bank or other financial
10 institution on or before the day or days the officer or
11 employee is due his or her net wages. Direct deposit
12 authorizations may be revoked at any time thirty days
13 prior to the date on which the direct deposit is regularly
14 made and on a form to be provided by the auditor:
15 *Provided*, That on and after the first day of July, two
16 thousand two, at the option of the auditor, all wages shall
17 be deposited directly into the employees' account at any
18 bank or financial institution designated by the employee
19 via electronic funds transfer.

§12-3-4. No check to be drawn on depository having insufficient funds; necessity of warrant and check or electronic funds transfer.

1 The treasurer shall draw no check on any depository
2 unless there is money enough in the depository to the
3 credit of the treasury to pay the check when duly pre-
4 sented for payment. No depository holding money to the
5 credit of the treasury shall pay out the same, or any part
6 thereof, except upon a check of the treasurer endorsed on
7 a warrant of the auditor authorizing a check or a duly
8 authorized electronic funds transfer drawn in place of
9 such check.

§12-3-10a. Purchasing card program.

1 Notwithstanding the provisions of section ten of this
2 article, payment of claims may be made through the use of
3 the state purchasing card program authorized by the
4 provisions of this section. The auditor, in cooperation
5 with the secretary of the department of administration,
6 may establish a state purchasing card program for the
7 purpose of authorizing all spending units of state govern-
8 ment to use a purchasing card as an alternative payment
9 method when making small purchases. The purchasing
10 card program shall be conducted so that procedures and
11 controls for the procurement and payment of goods and

12 services are made more efficient. The program shall
13 permit spending units to use a purchase charge card to
14 purchase goods and services. The amount of any one
15 purchase made with the purchase charge card shall not
16 exceed the amount contained in the jointly proposed rules
17 of the auditor and the purchasing division of the depart-
18 ment of administration proposed in accordance with the
19 provisions of article three, chapter twenty-nine-a of this
20 code: *Provided*, That purchasing cards may not be
21 utilized for the purpose of obtaining cash advances,
22 whether the advances are made in cash or by other
23 negotiable instrument. Purchases of goods and services
24 must be received either in advance of or simultaneously
25 with the use of a state purchasing card for payment for
26 those goods or services. The auditor, by legislative rule,
27 may eliminate the requirement for vendor invoices and
28 provide a procedure for consolidating multiple vendor
29 payments into one monthly payment to a charge card
30 vendor. Selection of a charge card vendor to provide state
31 purchase cards shall be accomplished by competitive bid.
32 The purchasing division of the department of administra-
33 tion shall contract with the successful bidder for provision
34 of state purchase charge cards. Purchase charge cards
35 issued under the program shall be used for official state
36 purchases only. The auditor and the director of the
37 purchasing division of the department of administration
38 shall jointly propose rules for promulgation in accordance
39 with the provisions of article three, chapter twenty-nine-a
40 of this code to govern the implementation of the purchase
41 card program.

§12-3-10c. Transaction fees; disposition of fees.

1 (a) In order to promote and enhance the use of the state
2 purchasing card program established by the provisions of
3 section ten-a of this article and in order to maintain and
4 develop the fiscal operations and accounting systems of
5 the state, the auditor and the treasurer may assess joint
6 transaction fees for all financial documents that will be
7 processed on the central accounting system. Such transac-
8 tion fees shall be prescribed by legislative rule proposed in
9 accordance with article three, chapter twenty-nine-a of
10 this code and may include the following:

11 (1) A penalty fee to be assessed against spending units of
12 state government who submit claims for payment of goods
13 and services when those claims are authorized to be paid
14 by use of a state purchasing card and the spending unit
15 has failed to utilize the state purchasing card; and

16 (2) A transaction fee to be assessed against spending
17 units of state government for every transaction received,
18 electronically or otherwise, by the auditor from the
19 centralized accounting system.

20 (b) All fees collected under this section shall be depos-
21 ited into the "Technology Support and Acquisition Fund"
22 which is hereby created in the state treasury to be admin-
23 istered by the auditor. The auditor and treasurer shall use
24 moneys deposited in the fund to maintain and develop the
25 state purchasing card program, support the fiscal opera-
26 tions of the state, including the state centralized account-
27 ing system, and to acquire and improve the technology
28 required to support these functions: *Provided*, That
29 expenditures from the fund are authorized from collec-
30 tions and are to be made only in accordance with an
31 appropriation by the Legislature and in accordance with
32 the provision of article three of this chapter and upon
33 fulfillment of the provisions set forth in article two,
34 chapter five-a of this code: *Provided, however*, That for
35 the fiscal year ending the thirtieth day of June, one
36 thousand nine hundred ninety-eight, expenditures from
the fund may be made from collections.

§12-3-10d. Purchasing card fund created; expenditures.

1 All money received by the state pursuant to any agree-
2 ment with vendors providing purchasing charge cards
3 shall be deposited in a special revenue revolving fund
4 designated the "Purchasing Card Administration Fund",
5 which is hereby created in the state treasury to be admin-
6 istered by the department of administration. All expenses
7 of the purchasing division of the department of adminis-
8 tration incurred in the implementation and operation of
9 the purchasing card program shall be paid from the fund.
10 Expenditures from the fund shall be made in accordance
11 with appropriations by the Legislature pursuant to the
12 provisions of article three, chapter twelve of this code and

13 upon fulfillment of the provisions of article two, chapter
14 five-a of this code.

§12-3-13b. Voluntary deductions by state auditor from salaries of employees to pay association dues or fees and to pay supplemental health and life insurance premiums.

1 Any officer or employee of the state of West Virginia
2 may authorize that a voluntary deduction from his net
3 wages be made for the payment of membership dues or
4 fees to an employee association. Voluntary deductions
5 may also be authorized by an officer or employee for any
6 supplemental health and life insurance premium, subject
7 to prior approval by the auditor. Such deductions shall be
8 authorized on a form provided by the auditor of the state
9 of West Virginia and shall state: (a) The identity of the
10 employee; (b) the amount and frequency of such deduc-
11 tions; and (c) the identity and address of the association or
12 insurance company to which such dues shall be paid.
13 Upon execution of such authorization and its receipt by
14 the office of the auditor, such deductions shall be made in
15 the manner specified on the form and remitted to the
16 designated association or insurance company on the tenth
17 day of each month: *Provided*, That voluntary other
18 deductions, as approved and authorized by the auditor,
19 may be made in accordance with rules proposed by the
20 auditor pursuant to article three, chapter twenty-nine-a of
21 this code: *Provided, however*, That deductions shall be
22 made either once or twice monthly at the option of the
23 employee. Deduction authorizations may be revoked at
24 any time thirty days prior to the date on which the
25 deduction is regularly made and on a form to be provided
26 by the office of the state auditor: *Provided further*, That
27 nothing in this section shall interfere with or remove any
28 existing arrangement for dues deduction between an
29 employer or any political subdivision of the state and its
30 employees.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-2. Accounts of treasurer and auditor; auditor to certify condition of revenues and funds of the state.

1 The treasurer shall keep in his office separate accounts
2 with each depository, and also a summary account for the
3 state, and when money is paid into the treasury, it shall be
4 charged to the proper depository and credited to a sum-
5 mary account. The auditor shall keep in his office sepa-
6 rate accounts of the particular heads or sources of reve-
7 nue, and a summary account with the treasurer, beside
8 such individual accounts with officers and persons as may
9 be necessary, and shall charge every sum of money
10 received for the state as aforesaid to the treasurer's
11 account, and credit it under the particular head of revenue
12 to which it properly belongs, distinguishing especially in
13 distinct accounts the receipts on account of the capital of
14 the school fund and those on account of the income of said
15 fund subject to annual distribution. The auditor shall
16 certify annually to the commissioner of finance and
17 administration the condition of the state revenues and the
18 several funds of the state. The certification shall be used
19 by the commissioner in the preparation of a tentative state
20 budget as required of him by article two, chapter five-a of
21 this code.

§12-4-3. Accounts of appropriations.

1 The auditor and secretary of administration shall each
2 keep an account of every appropriation made by law, and
3 of the several sums drawn thereon, so that the accounts
4 may show at all times the balance undrawn on each
5 appropriation. The account so kept shall be compared
6 every month and errors, if any, corrected.

§12-4-3a. Accounts of the auditor.

1 The auditor shall at all times maintain and have avail-
2 able for public inspection a report containing monthly
3 balances in the treasury, which balances shall include, but
4 not be limited to, the general revenue surplus balance; the
5 general revenue surplus appropriation account balance;
6 the state general revenue reappropriated account balance;
7 the state general revenue current account balance; the
8 total state account balance; and the total general revenue.

§12-4-4. Accounts of expenditures; signing of checks and warrants; facsimile signatures and use of me-

chanical and electrical devices; forgery; penalty.

1 When the treasurer issues his check on a depository, he
2 or she shall credit the same to the account of the deposi-
3 tory, and charge it to the summary account provided for
4 in section two of this article. The auditor shall keep
5 accounts of the particular heads of expenditures, and,
6 when he or she issues a warrant on the treasurer, shall
7 credit the treasurer's summary account therewith and
8 charge the same under the particular head of expenditure
9 to which it properly belongs, distinguishing especially the
10 disbursements on account of the capital and the annual
11 income of the school fund, as directed in section two of
12 this article in relation to receipts belonging to that fund.
13 All checks when issued by the treasurer shall bear his or
14 her signature, personally signed by the treasurer, or by
15 employees as are, in writing, authorized by the treasurer
16 to make his or her signature thereto, or bear a facsimile of
17 the treasurer's signature. All warrants when issued by the
18 auditor shall bear his or her signature, personally signed
19 by the auditor, or by employees as are, in writing, autho-
20 rized by the auditor to make his or her signature thereto,
21 or bear a facsimile of the auditor's signature. The signa-
22 ture of the treasurer, or auditor, respectively, may be
23 made, however, by means of such mechanical or electrical
24 device as the treasurer, or auditor, respectively, may
25 select. Any mechanical or electrical device, selected shall
26 be safely kept in the respective offices of the treasurer or
27 auditor so that no one has access to the device except the
28 treasurer, or the auditor, and the employees authorized to
29 respectively sign checks or warrants as provided by this
30 section. If any person, other than the treasurer, or auditor,
31 respectively, or their respective duly and respectively
32 authorized employees sign the name of the treasurer or the
33 auditor, respectively, by the use of any mechanical or
34 electrical device, or otherwise, or use the facsimile of the
35 signature of either of them, on any check or warrant, or
36 utter or attempt to employ as true such forged check or
37 warrant, knowing it to be forged, he or she shall be guilty
38 of a felony and, upon conviction thereof, shall be impris-
39 oned not less than two nor more than ten years.

§12-4-6. Comparison of books of auditor and treasurer;

monthly balances.

1 At the end of every month of the year, the summary
2 account of the treasurer kept on the books of the auditor's
3 office shall be compared with the summary account kept
4 by the treasurer, and the errors, if there be any in either,
5 corrected. The summary account of the month shall be
6 adjusted and a balance shall be struck showing the
7 amount then in the treasury. The balance shall be carried
8 forward in the books of both offices to the account for the
9 next month.

§12-4-7. Annual report of auditor.

1 The annual report of the auditor shall be furnished to
2 the governor by the thirty-first day of December following
3 after the end of the fiscal year. It shall contain a state-
4 ment of the receipts and disbursements, under the proper
5 general heads, during the preceding fiscal year, and show
6 the balance in the treasury at the beginning and end of
7 that year. It shall also contain an estimate of the revenue
8 and expenditures for the current year, with similar
9 statements and estimates respecting the school fund. It
10 shall show the indebtedness of the state and the balances
11 standing at the end of the year to the credit of the several
12 unexpired appropriations, specifying in each case the date
13 when the appropriation was made. The report shall be
14 accompanied with an explanation of the amounts of
15 receipts and disbursements and the balances and estimates
16 reported. In it the auditor shall point out any defects
17 which may occur to him or her in the revenue laws.
18 Furthermore, the auditor shall suggest the remedies for
19 those deficits. If the auditor is of the opinion, that the
20 future revenue is likely to prove insufficient, then the
21 auditor shall recommend plans for increasing the revenue
22 and suggest new subjects of taxation, or additional taxes
23 on the old, as he may deem proper.

§12-4-8. Office hours of auditor and treasurer.

1 The hours for transacting business in the offices of the
2 auditor and treasurer shall be from eight-thirty in the
3 morning until five o'clock in the afternoon.

12-4-8a. Employment of legal counsel.

1 Notwithstanding the provisions of section two, article
 2 three, chapter five of this code, the auditor and treasurer
 3 are hereby authorized to employ legal counsel: *Provided*,
 4 That the auditor and the treasurer, at their discretion, may
 5 use the services of the attorney general.

§12-4-9. Absence of auditor or treasurer.

1 When it is necessary for either the auditor or treasurer
 2 to be absent, the other shall be informed of the absence.
 3 During the absence, the duties of the officer so absent may
 4 be performed by the auditor's or treasurer's designee
 5 respectively. The absent officer and his sureties shall be
 6 liable for any malconduct or neglect of the person acting
 7 in his or her place.

8 Notwithstanding restrictions which may otherwise be
 9 provided by law concerning membership on any board,
 10 agency or commission, the auditor and treasurer each may
 11 designate a representative who is authorized to act for and
 12 on their behalf in any and all matters relating to those
 13 memberships.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-2. Treasurer custodian of securities; charges to companies for care, exchange and substitution of securities.

1 (a) The treasurer of this state, unless otherwise expressly
 2 provided by law, shall be custodian of all securities
 3 required by law to be deposited with the state or held in
 4 legal custody by the state, and all departments of this
 5 state, commissioners or agents of the state, who hold any
 6 such securities, shall transfer and deliver the same to the
 7 state treasurer to be kept and held by him as legal custo-
 8 dian thereof until released in the manner provided by law:
 9 *Provided*, That the state treasurer shall establish a list of
 10 which securities shall be acceptable securities and notify
 11 all state agencies of the contents of that list: *Provided*,
 12 *however*, That the provisions of this subsection shall not
 13 apply to the investment management board.

14 (b) The treasurer may by formal order of record fix fair
 15 and reasonable charges for the care, custody, exchange

16 and substitution of securities deposited by insurance
17 companies and companies issuing annuity contracts. The
18 treasurer shall collect the charges from the companies and
19 shall deposit the collections in the general revenue fund:
20 *Provided*, That no charge shall be made against any
21 company depositing securities of the par value of less than
22 three hundred thousand dollars.

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

1 It shall be the duty of the treasurer to keep an accurate
2 account of all securities received by him or her and collect
3 and account for the interest as it becomes due and payable
4 and the principal whenever it is due.

§12-5-5. Protection and handling of securities.

1 The securities retained in the treasury shall be kept in a
2 vault. The treasurer shall use due diligence in protecting
3 the securities against loss from any cause. The treasurer
4 shall designate certain employees to take special care of
5 the securities. Only the treasurer and the designated
6 employees may have access to the securities, and at least
7 two of these persons shall be present whenever the securi-
8 ties are handled in any manner. The treasurer may
9 contract with one or more banking institutions in or
10 outside the state for the custody, safekeeping and manage-
11 ment of securities. The contract shall prescribe the rules
12 for the handling and protection of the securities.

§12-5-6. When notes deemed securities; appraisal.

1 (a) Whenever, by statute of this state, any public official,
2 board, commission or department of this state is charged
3 with the approval of securities required as collateral for
4 the deposit of public or other funds, or required to be
5 deposited with the state treasurer, or an investment of
6 capital or surplus or a reserve or other fund, is required to
7 be maintained consisting of designated securities depos-
8 ited with the state treasurer, the securities shall, at the
9 discretion of that public official, board, commission or
10 department, include and mean notes executed by the
11 person or corporation required to make the deposit. The
12 securities shall be made payable to the state of West
13 Virginia upon demand, or in the event of the person or

14 corporation, for the benefit of those for whom the securi-
15 ties are deposited, when the notes are secured by duly
16 executed deeds of trust on improved, unencumbered real
17 property located in the state and owned by the person or
18 corporation executing the notes, the deeds of trust to be
19 approved by the attorney general of the state as to suffi-
20 ciency of form and manner of execution and accompanied
21 by proper abstracts of title and fire insurance policies
22 equal to the amounts of the notes and recorded among the
23 land records of the county in which the real property is
24 located. Whenever any note so secured by a deed of trust
25 on real property owned by any person or corporation is
26 approved by any public official, board, commission or
27 department of this state, the real property shall have an
28 appraised value of at least thirty per centum more than
29 the amount of the note. The value of the property shall be
30 determined by an appraisal of two landowners, who are
31 citizens of this state and generally recognized as experi-
32 enced real estate appraisers, appointed by the public
33 official, board, commission or department, charged with
34 the approval of the securities. The expenses of the ap-
35 praisal is to be borne by the person or corporation re-
36 quired to make the deposit, and each unit of that real
37 property shall have an appraised value of at least fifty
38 thousand dollars.

39 For purposes of this section, "improved real property"
40 means all real property within the limits of an incorpo-
41 rated city or town on which permanent buildings suitable
42 for residential, industrial or commercial use are located.

43 For purposes of this section, real property shall not be
44 deemed to be encumbered by reason of the existence of
45 instruments reserving rights-of-way, sewer rights and
46 rights in walls, nor by reason of building restrictions or
47 other restrictive covenants, nor by reason of the fact that
48 it, or any part thereof, is subject to lease under which
49 rents or profits are reserved to the owner: *Provided*, That
50 the deed of trust for such investment is a full and unre-
51 stricted first lien upon the property.

52 (b) Any public official, board, commission or department
53 of this state charged with the approval of securities

54 required to be deposited in accordance with this section,
55 shall, at least annually and more often if deemed proper,
56 appoint a disinterested person or persons, not exceeding
57 three, to make an examination and appraisal of the
58 securities deposited to determine if those securities meet
59 the requirements of the law of this state. The cost of that
60 examination and appraisal and expenses, shall be borne
61 by the person or corporation required to make the deposits
62 as security: *Provided*, That the total cost and expenses
63 shall not be less than ten dollars nor more than twenty-
64 five dollars per diem for each person conducting the
65 examination.

§12-5-7. Treasurer as financial advisor; selection of necessary parties; employment of bond counsel.

1 Unless otherwise specifically provided by law, the
2 treasurer may select or serve as financial advisor for all
3 bonds, notes, certificates of participation, certificate
4 transactions and all other forms of securities and indebt-
5 edness issued by the state through its departments,
6 commissions, boards or agencies after the first day of July,
7 one thousand nine hundred ninety-seven. Unless other-
8 wise specifically provided by law, the governor shall
9 coordinate the issuance of all bonds issued by the state
10 and its departments, commissions, boards and agencies,
11 through the department of administration and the gover-
12 nor shall select all other necessary parties, including, but
13 not limited to, bond, disclosure or other counsel, under-
14 writers, trustee, verification agent and any other profes-
15 sionals necessary to effectuate the issuance of the bonds:
16 *Provided*, That this section shall not apply to the housing
17 development fund created pursuant to article eighteen,
18 chapter thirty-one of this code; the hospital finance
19 authority created pursuant to article twenty-nine-a,
20 chapter sixteen of this code; the West Virginia economic
21 development authority created pursuant to article fifteen,
22 chapter thirty-one of this code; the West Virginia park-
23 ways, economic development and tourism authority
24 created pursuant to article sixteen-a, chapter seventeen of
25 this code; the West Virginia public energy authority
26 created pursuant to article one, chapter five-d of this code;
27 the West Virginia solid waste management board created

28 pursuant to article three, chapter twenty-two-c of this
 29 code; the West Virginia water development authority
 30 created pursuant to article one, chapter twenty-two-c of
 31 this code; the infrastructure and jobs development council
 32 created pursuant to article fifteen-a, chapter thirty-one of
 33 this code; the school building authority created pursuant
 34 to article nine-d, chapter eighteen of this code; and the
 35 governing boards of higher education: *Provided, however,*
 36 That these entities shall be governed by those provisions
 37 of law specifically designating financial and other profes-
 38 sional counsel and personnel for bond issuances. All
 39 selections of professionals shall be competitive, but the
 40 bidding shall not be required to comply with the provi-
 41 sions of article three, chapter five-a of this code.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-1. Purposes and objects; how article cited.

1 This article, which may be cited as the “West Virginia
 2 Investment Management Act” is enacted to modernize the
 3 procedures for the investment of funds of the state and its
 4 political subdivisions for the purpose of increasing the
 5 investment return of those funds.

§12-6-1a. Legislative findings.

1 (a) The Legislature hereby finds and declares that all the
 2 public employees covered by the public employees retire-
 3 ment system, the teachers retirement system, the West
 4 Virginia state police retirement system, the death, disabil-
 5 ity and retirement fund of the division of public safety and
 6 the judges’ retirement system should benefit from a
 7 prudent and conscientious staff of financial professionals
 8 dedicated to the administration, investment and manage-
 9 ment of those employees’ and employer’s financial contri-
 10 butions and that an independent board and staff should be
 11 immune to changing political climates and should provide
 12 a stable and continuous source of professional financial
 13 investment and management.

14 (b) The Legislature finds and declares that teachers and
 15 other public employees throughout the state are experi-
 16 encing economic difficulty and that in order to reduce this
 17 economic hardship on these dedicated public employees,

18 and to help foster sound financial practices, the West
19 Virginia investment management board is given the
20 authority to develop, implement and maintain an efficient
21 and modern system for the investment and management of
22 the state's money. The Legislature further finds that in
23 order to implement these sound fiscal policies, the West
24 Virginia investment management board shall operate as
25 an independent board with its own full-time staff of
26 financial professionals immune to changing political
27 climates, in order to provide a stable and continuous
28 source of professional financial management.

29 (c) The Legislature hereby finds and declares further
30 that experience has demonstrated that prudent investment
31 provides diversification and beneficial return not only for
32 public employees but for all citizens of the state and that
33 in order to have access to this sound fiscal policy, public
34 employee and employer contributions to the consolidated
35 pension plan are declared to be an irrevocable trust,
36 available for no use or purpose other than for the benefit
37 of those public employees.

38 (d) The Legislature hereby finds and declares further
39 that the workers' compensation funds and coal-workers'
40 pneumoconiosis fund are trust funds to be used exclu-
41 sively for those workers, miners and their beneficiaries
42 who have sacrificed their health in the performance of
43 their jobs, and further finds that the assets available to
44 pay awarded benefits should be prudently invested so that
45 awards may be paid.

46 (e) The Legislature hereby finds and declares further
47 that an independent public body corporate with appropri-
48 ate governance shall be the best means of assuring pru-
49 dent financial management of these funds under rapidly
50 changing market conditions and regulations.

51 (f) The Legislature hereby finds and declares further
52 that in accomplishing this purpose, the West Virginia
53 investment management board, created and established by
54 this article, is acting in all respects for the benefit of the
55 state's public employees and ultimately the citizens of the
56 state, and the West Virginia investment management
57 board is empowered by this article to act as trustee for an

58 irrevocable trust created by this article, and to manage
59 and invest other state funds.

60 (g) The Legislature hereby finds and declares further
61 that the standard of care and prudence applied to trustees,
62 the conduct of the affairs of the irrevocable trust created
63 by this article and the investment of other state funds is
64 intended to be that applied to the investment of funds as
65 described in the “uniform prudent investor act” codified
66 as article six-c of this chapter.

67 (h) The Legislature further finds and declares that the
68 West Virginia supreme court of appeals declared the
69 “West Virginia Trust Fund Act” unconstitutional in its
70 decision rendered on the twenty-eighth day of March, one
71 thousand nine hundred ninety-seven, to the extent that it
72 authorized investments in corporate stock but the court
73 also recognized that there were other permissible constitu-
74 tional purposes of the “West Virginia Trust Fund Act”,
75 and that it is the role of the Legislature to determine those
76 purposes consistent with the court’s decision and the
77 constitution of West Virginia.

78 (i) The Legislature hereby further finds and declares
79 that it is in the best interests of the state and its citizens to
80 create a new investment management board in order to:
81 (1) Be in full compliance with the provisions of the
82 constitution of West Virginia; and (2) protect all existing
83 legal and equitable rights of persons who have entered
84 into contractual relationships with the West Virginia
85 board of investments and the West Virginia trust fund.

§12-6-2. Definitions.

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

3 (1) “Beneficiaries” means those individuals entitled to
4 benefits from the consolidated pension plan;

5 (2) “Board” means the governing body for the West
6 Virginia investment management board, and any reference
7 elsewhere in this code to board of investments or West
8 Virginia trust fund means the board as defined herein;

9 (3) “Consolidated fund” means the investment fund

10 managed by the board and established pursuant to
11 subsection (a), section eight of this article;

12 (4) "Consolidated pension plan" means the public
13 employees retirement system established in article ten,
14 chapter five of this code, the teachers retirement system
15 established in article seven-a, chapter eighteen of this
16 code, the West Virginia state police retirement system
17 established in article two-a, chapter fifteen of this code,
18 the death, disability and retirement fund of the depart-
19 ment of public safety established in article two, chapter
20 fifteen of this code, the judges' retirement system estab-
21 lished in article nine, chapter fifty-one of this code, the
22 workers' compensation fund established in article three,
23 chapter twenty-three of this code, and the coal-workers'
24 pneumoconiosis plan established in article four-b, chapter
25 twenty-three of this code;

26 (5) "Local government funds" means the moneys of a
27 political subdivision, including policemen's pension and
28 relief funds, firemen's pension and relief funds and
29 volunteer fire departments, transferred to the board for
30 deposit;

31 (6) "Participant plan" means any component system,
32 plan or fund of the consolidated pension plan within the
33 definition set forth in subdivision (c) of this section;

34 (7) "Political subdivision" means and includes a county,
35 municipality or any agency, authority, board, county
36 board of education, commission or instrumentality of a
37 county or municipality and regional councils created
38 pursuant to the provisions of section five, article twenty-
39 five, chapter eight of this code;

40 (8) "Trustee" means any member serving on the West
41 Virginia investment management board: *Provided*, That in
42 section nine-a of this article wherein the terms of the trust
43 indenture are set forth, "trustee" means the West Virginia
44 investment management board;

45 (9) "Securities" means all bonds, notes, debentures or
46 other evidences of indebtedness, and other lawful invest-
47 ment instruments; and

48 (10) "State funds" means all moneys of the state which
49 may be lawfully invested except the "school fund" estab-
50 lished by section four, article XII of the state constitution.

**§12-6-3. West Virginia management investment board created;
body corporate; board created; trustees; nomina-
tion and appointment of trustees, qualifications
and terms of appointment, advice and consent;
annual and other meetings; designation of
representatives and committees; board meetings
with committees regarding investment policy
statement required; open meetings, qualifica-
tions.**

1 (a) There is hereby created the West Virginia investment
2 management board. The board is created as a public body
3 corporate and established to provide prudent fiscal
4 administration, investment and management for the
5 pension funds, workers' compensation and coal workers
6 pneumoconiosis funds and other state funds.

7 (b) The board shall be governed by a board of trustees,
8 consisting of thirteen members:

9 (1) Nominations made to the West Virginia trust fund
10 board and the West Virginia board of investments shall
11 remain in effect and are hereby specifically reauthorized
12 and those members shall be members of the investment
13 management board and shall serve out the remainder of
14 their respective terms subject to the advice and consent of
15 the Senate: *Provided*, That prior appointments which have
16 been confirmed by the Senate are hereby specifically
17 reauthorized without further action of the Senate.

18 (2) Any appointment is effective immediately upon
19 appointment by the governor with respect to voting,
20 constituting a quorum, receiving compensation and
21 expenses, and all other rights and privileges of the trustee
22 position. All appointees must have experience in pension
23 management, institutional management or financial
24 markets, and one trustee must be an attorney experienced
25 in finance and investment matters, and one trustee must
26 be a certified public accountant.

27 (3) The governor, the state auditor and the state trea-

28 surer or their designees shall serve as members of the
29 board. They shall serve by virtue of their office and are
30 not entitled to compensation under the provisions of this
31 article. The governor, the auditor and the treasurer or
32 their designees shall be subject to all duties, responsibili-
33 ties and requirements of the provisions of this article,
34 including, but not limited to, the provisions of subsections
35 (e) and (f), section four of this article.

36 (c) At the end of each trustee's term, the governor may
37 reappoint or appoint a successor who shall serve for six-
38 year terms. No more than six of the ten appointed trustees
39 may belong to the same political party.

40 (d) In the event of a vacancy among the trustees, an
41 appointment shall be made by the governor to fill the
42 unexpired term.

43 (e) The governor may remove any trustee, other than
44 trustees who serve by virtue of their elective office, in case
45 of gross negligence or misfeasance and may declare that
46 position vacant and may appoint a person for the vacancy
47 as provided in subsection (d) of this section.

48 (f) Each trustee, other than those enumerated in subsec-
49 tion (b), subdivision (3) of this section, shall be entitled to
50 receive, and, at the trustee's option, the board shall pay to
51 the trustee, compensation in the amount of five thousand
52 dollars per year and additional compensation in the
53 amount of five hundred dollars per meeting attended by
54 the trustee in excess of the four quarterly meetings
55 required by this section. In addition, all trustees shall
56 receive reasonable and necessary expenses actually
57 incurred in discharging trustee duties pursuant to this
58 article.

59 (g) The board shall meet quarterly and may include in its
60 bylaws procedures for the calling and holding of addi-
61 tional meetings. For any quarterly or additional meeting
62 in which the board shall review or modify its securities list
63 or its investment objectives pursuant to subsection (f),
64 section twelve of this article, the board shall give ten days
65 notice in writing to the designated representative of each
66 participant plan selected pursuant to subdivision one,

67 subsection (i) of this section, and the meeting shall be open
68 to the members and beneficiaries of the participant plans
69 for that portion of the meeting in which the board under-
70 takes the review or modification.

71 (h) The board shall hold an annual meeting within forty-
72 five days after the issuance of the year-end financial
73 report. The annual meeting may also serve as a quarterly
74 meeting. The annual meeting shall be open to the public,
75 and the board shall receive oral and written comments
76 from representatives, members and beneficiaries of the
77 participant plans and from other citizens of the state. At
78 the annual meeting, the board shall adopt a fee schedule
79 and a budget reflecting fee structures for the year.

80 (i) Pursuant to subsection (j) of this section, the board
81 shall meet with committees representing the participant
82 plans to discuss the board's drafting, reviewing or modify-
83 ing the written investment policy of the trust with respect
84 to that committee's participant plan pursuant to section
85 twelve of this article. Representatives and committees
86 shall be designated as follows:

87 (1) The West Virginia consolidated public retirement
88 board shall promulgate procedural rules by which each
89 pension system named in paragraphs one through five,
90 inclusive, subsection (c), section nine-a of this article, shall
91 designate an individual representative of each said
92 pension system, and the West Virginia workers' compensa-
93 tion commission shall promulgate procedural rules by
94 which the pneumoconiosis fund and the workers' compen-
95 sation fund shall designate an individual representative of
96 each said fund.

97 (2) On or before the first day of June of each year, the
98 consolidated public retirement board shall submit in
99 writing to the board the names of the five designated
100 representatives, and the workers' compensation commis-
101 sion shall so submit the names of the two representatives.

102 (3) Each designated representative shall provide to the
103 board his or her current address, updated each year on or
104 before the first day of July, to which address the board
105 shall provide notice of meetings of the board pursuant to

106 subsection (g) of this section.

107 (4) Each designated representative shall submit in
108 writing to the board on or before the first day of July of
109 each year, the names of no more than three persons
110 comprising a committee representing the beneficiaries of
111 that representative's participant plan.

112 (j) At its annual meeting, the board shall meet with each
113 of the seven committees, formed pursuant to subdivision
114 (1), subsection (i) of this section, for the purpose of receiv-
115 ing input from the committees regarding the board's
116 drafting, reviewing or modifying its written investment
117 policy statement for investment of the consolidated
118 pension plan funds. In developing the investment policy
119 statement, the trustees shall receive each committee's
120 stated objectives and policies regarding the risk tolerances
121 and return expectations of each participant plan, with
122 attention to the factors enumerated in subsection (g),
123 section twelve of this article, in order to provide for the
124 continuing financial security of the trust and its partici-
125 pant plans. The board may meet with the committees or
126 any of them at its quarterly and additional meetings for
127 the same purpose.

128 (k) All meetings of the board shall be open to the
129 representatives of the participant plans as appointed
130 pursuant to subdivision (1), subsection (i) of this section.
131 The representatives shall be subject to any rules, bylaws,
132 guidelines, requirements and standards promulgated by
133 the board. The representatives shall observe standards of
134 decorum established by the board. The representatives
135 shall be subject to the same code of conduct applicable to
136 the trustees and shall be subject to all board rules and
137 bylaws. The representatives shall also be subject to any
138 requirements of confidentiality applicable to the trustees.
139 Each representative shall be liable for any act which he or
140 she undertakes which violates any rule, bylaw or statute
141 governing ethical standards, confidentiality or other
142 standard of conduct imposed upon the trustees or the
143 representatives. Any meeting of the board may be closed,
144 upon adoption of a motion by any trustee, when necessary
145 to preserve the attorney-client privilege, to protect the

146 privacy interests of individuals, to review personnel
147 matters or to maintain confidentiality when confidential-
148 ity is in the best interest of the beneficiaries of the trust.

§12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.

1 (a) The management and control of the board shall be
2 vested solely in the trustees in accordance with the
3 provisions of this article.

4 (b) The governor shall be the chairman of the board and
5 the trustees shall elect a vice-chairman who may not be a
6 constitutional officer or his or her designee to serve for a
7 term of two years. Effective with any vacancy in the
8 vice-chairmanship, the board shall elect a vice-chairman
9 to a new two-year term. The vice-chairman shall preside
10 at all meetings in the absence of the chairman. Annually,
11 the trustees shall elect a secretary, who need not be a
12 member of the board, to keep a record of the proceedings
13 of the board.

14 (c) The trustees shall appoint a chief executive officer of
15 the board and shall fix his or her duties and compensation.
16 The chief executive officer shall have five years experience
17 in investment management with public or private funds
18 within the ten years next preceding the date of appoint-
19 ment. The chief executive officer additionally shall have
20 academic degrees, professional designations and other
21 investment management or investment oversight or
22 institutional investment experience in such combination
23 as the trustees consider necessary to carry out the respon-
24 sibilities of the chief executive officer position as defined
25 by the trustees.

26 (d) The trustees shall retain an internal auditor to report
27 directly to the trustees and shall fix his or her compensa-
28 tion. The internal auditor shall be a certified public
29 accountant with at least three years experience as an
30 auditor. The internal auditor shall develop an internal
31 audit plan, with board approval, for the testing of proce-
32 dures and the security of transactions.

33 (e) Each trustee shall give a separate fiduciary or surety

34 bond from a surety company qualified to do business
35 within this state in a penalty amount of one million
36 dollars for the faithful performance of his or her duties as
37 a trustee of the fund. The board shall purchase a blanket
38 bond for the faithful performance of its duties, in the
39 amount of fifty million dollars or in an amount equivalent
40 to one percent of the assets under management, whichever
41 is greater. The amount of the blanket bond shall be in
42 addition to the one million dollar individual bond re-
43 quired of each trustee by the provisions of this section.
44 The board may require a fiduciary or surety bond from a
45 surety company qualified to do business in this state for
46 any person who has charge of, or access to, any securities,
47 funds or other moneys held by the board, and the amount
48 of the fiduciary or surety bond shall be fixed by the board.
49 The premiums payable on all fiduciary or surety bonds
50 shall be an expense of the board.

51 (f) The trustees and employees of the board are not liable
52 personally, either jointly or severally, for any debt or
53 obligation created by the board: *Provided*, That the
54 trustees and employees of the board are liable for acts of
55 misfeasance or gross negligence.

56 (g) The board shall be exempt from the provisions of
57 sections seven and eleven, article three, chapter twelve of
58 this code and article three, chapter five-a of said code:
59 *Provided*, That the trustees and employees of the board
60 shall be subject to purchasing policies and procedures
61 which shall be promulgated by the board. The purchasing
62 policies and procedures may be promulgated as emergency
63 rules pursuant to section fifteen, article three, chapter
64 twenty-nine-a of this code.

65 (h) Any employee of the West Virginia trust fund who
66 previously was an employee of another state agency may
67 return to the public employees retirement system pursuant
68 to section eighteen, article ten, chapter five of this code,
69 and may elect to either: (1) Transfer to the public em-
70 ployee retirement system his or her employee contribu-
71 tions, with accrued interest, and, if vested, his or her
72 employer contributions, with accrued interest and retain
73 as credited state service all time served as an employee of

74 the West Virginia trust fund; or (2) retain all employee
75 contributions with accrued interest and, if vested, his or
76 her employer contributions with interest, and forfeit all
77 service credit for the time served as an employee of the
78 West Virginia trust fund.

§12-6-5. Powers of the board.

1 The board may exercise all powers necessary or appro-
2 priate to carry out and effectuate its corporate purposes.
3 The board may:

- 4 (1) Adopt and use a common seal and alter the same at
5 pleasure;
- 6 (2) Sue and be sued;
- 7 (3) Enter into contracts and execute and deliver instru-
8 ments;
- 9 (4) Acquire (by purchase, gift or otherwise), hold, use
10 and dispose of real and personal property, deeds, mort-
11 gages and other instruments;
- 12 (5) Promulgate and enforce bylaws and rules for the
13 management and conduct of its affairs;
- 14 (6) Notwithstanding any other provision of law, retain
15 and employ legal, accounting, financial and investment
16 advisors and consultants;
- 17 (7) Acquire (by purchase, gift or otherwise), hold,
18 exchange, pledge, lend and sell or otherwise dispose of
19 securities and invest funds in interest earning deposits and
20 in any other lawful investments;
- 21 (8) Maintain accounts with banks, securities dealers and
22 financial institutions both within and outside this state;
- 23 (9) Engage in financial transactions whereby securities
24 are purchased by the board under an agreement providing
25 for the resale of the securities to the original seller at a
26 stated price;
- 27 (10) Engage in financial transactions whereby securities
28 held by the board are sold under an agreement providing
29 for the repurchase of the securities by the board at a
30 stated price;

31 (11) Consolidate and manage moneys, securities and
32 other assets of the other funds and accounts of the state
33 and the moneys of political subdivisions which may be
34 made available to it under the provisions of this article;

35 (12) Enter into agreements with political subdivisions of
36 the state whereby moneys of the political subdivisions are
37 invested on their behalf by the board;

38 (13) Charge and collect administrative fees from politi-
39 cal subdivisions for its services;

40 (14) Exercise all powers generally granted to and
41 exercised by the holders of investment securities with
42 respect to management of the investment securities;

43 (15) Contract with one or more banking institutions in
44 or outside the state for the custody, safekeeping and
45 management of securities held by the board;

46 (16) Make, and from time to time, amend and repeal
47 bylaws, regulations and procedures not inconsistent with
48 the provisions of this article;

49 (17) Hire its own employees, consultants, managers and
50 advisors as it considers necessary and fix their compensa-
51 tion and prescribe their duties;

52 (18) Develop, implement and maintain its own banking
53 accounts and investments;

54 (19) Do all things necessary to implement and operate
55 the board and carry out the intent of this article;

56 (20) Require the state auditor and treasurer to transmit
57 state funds on a daily basis for investment: *Provided*, That
58 money held for meeting the daily obligations of state
59 government need not be transferred;

60 (21) Upon request of the treasurer, transmit funds for
61 deposit in the state treasury to meet the daily obligations
62 of state government; and

63 (22) Notwithstanding any other provision of the code to
64 the contrary, conduct investment transactions, including
65 purchases, sales, redemptions and income collections
66 which transactions shall not be treated by the auditor as

67 recordable transactions on the state's accounting system.

§12-6-6. Annual audits; reports and information to constitutional and legislative officers, council of finance and administration, consolidated public retirement board, workers' compensation fund and coal-workers' pneumoconiosis fund; statements and reports open for inspection.

1 (a) The board shall cause an annual financial and
2 compliance audit of the consolidated pension fund to be
3 made by a certified public accounting firm having a
4 minimum staff of ten certified public accountants and
5 being a member of the American institute of certified
6 public accountants, and, if doing business in West Vir-
7 ginia, being a member of the West Virginia society of
8 certified public accountants. The financial and compli-
9 ance audit shall be made of the board's books, accounts
10 and records, with respect to its receipts, disbursements,
11 investments, contracts and all other matters relating to its
12 financial operations. Copies of the audit report shall be
13 furnished to the governor, state treasurer, state auditor,
14 president of the Senate, speaker of the House of Delegates,
15 council of finance and administration and consolidated
16 public retirement board.

17 (b) The board shall produce monthly financial state-
18 ments for the consolidated pension fund and the consoli-
19 dated fund and cause them to be delivered to each member
20 of the board and the executive secretary of the consoli-
21 dated public retirement board as established in sections
22 one and two, article ten-d, chapter five of this code and to
23 the commissioner of the bureau of employment programs
24 as administrator of the workers' compensation fund and
25 coal-workers' pneumoconiosis fund, as established in
26 section one, article one, chapter twenty-three of this code,
27 and section one, article three of said chapter and section
28 seven, article four-b of said chapter.

29 (c) The board shall deliver in each quarter to the council
30 of finance and administration and the consolidated public
31 retirement board a report detailing the investment perfor-
32 mance of the retirement plans.

33 (d) The board shall cause an annual performance audit
34 to be made by a nationally recognized fiduciary service.
35 The board shall furnish copies of the audit report to the
36 governor, state treasurer, state auditor, president of the
37 Senate, speaker of the House of Delegates, council of
38 finance and administration and consolidated public
39 retirement board.

40 (e) The board shall provide any other information
41 requested in writing by the council of finance and admin-
42 istration.

43 (f) All statements and reports with respect to participant
44 plans required in this section shall be available for
45 inspection by the members and beneficiaries and desig-
46 nated representatives of the participant plans.

§12-6-8. Investment funds established; management thereof.

1 (a) There is hereby established a special investment fund
2 to be managed by the board and designated as the
3 "consolidated fund".

4 (b) Each board, commission, department, official or
5 agency charged with the administration of state funds is
6 hereby authorized to make moneys available to the board
7 for investment.

8 (c) Each political subdivision of this state through its
9 treasurer or equivalent financial officer is hereby autho-
10 rized to enter into agreements with the board for the
11 investment of moneys of the political subdivision. Any
12 political subdivision may enter into an agreement with
13 any state agency from which it receives funds to allow the
14 funds to be transferred to their investment account with
15 the investment management board.

16 (d) Moneys held in the various funds and accounts
17 administered by the board shall be invested as permitted
18 in section twelve of this article and subject to the restric-
19 tions contained in that section. The treasurer shall
20 maintain records of the deposits and withdrawals of each
21 participant and the performance of the various funds and
22 accounts. The board shall report the earnings on the
23 various funds under management to the treasurer at such

24 times as determined by the treasurer. The board shall also
25 establish rules for the administration of the various funds
26 and accounts established by this section as it considers
27 necessary for the administration of the funds and ac-
28 counts, including, but not limited to: (1) The specification
29 of minimum amounts which may be deposited in any fund
30 or account and minimum periods of time for which
31 deposits will be retained; and (2) creation of reserves for
32 losses: *Provided*, That in the event any moneys made
33 available to the board may not lawfully be combined for
34 investment or deposited in the consolidated funds estab-
35 lished by this section, the board may create special
36 accounts and may administer and invest those moneys in
37 accordance with the restrictions specially applicable to
38 those moneys: *Provided, however*, That the consolidated
39 fund and the moneys of the consolidated pension plan
40 shall not be combined or deposited to a single account or
41 fund.

§12-6-9. Fees for service.

1 The board shall charge fees, as adopted at the annual
2 meeting, for the reasonable and necessary expenses
3 incurred by the investment management board in render-
4 ing services to the participant plans and the consolidated
5 fund. The fees shall be subtracted from the total return of
6 the board, and the net return shall be credited to each of
7 the participant plans and the consolidated fund. All fees
8 which are dedicated or identified or readily identifiable to
9 an individual participant plan or the consolidated fund
10 shall be charged against that plan or fund, and all other
11 fees shall be charged as a percentage of assets under
12 management. At its annual meeting, the board shall adopt
13 a fee schedule and a budget reflecting fee structures.

§12-6-9a. Trust indenture.

1 On the effective date of this section, all assets of the
2 irrevocable trust entered into by the governor on the first
3 day of July, one thousand nine hundred ninety-six, with
4 the West Virginia trust fund, inc. acting as the trustee
5 shall constitute the corpus of an irrevocable trust with the
6 board as its trustee: *Provided*, That the trust shall con-
7 tinue to be subject to the following provisions:

8 (a) The Legislature hereby reserves the following rights
9 and powers:

10 (1) The right by supplemental agreement to amend,
11 modify or alter the terms of this trust without consent of
12 the trustee, or any beneficiary; and

13 (2) The right to request and receive additional informa-
14 tion from the trustee at any time.

15 (b) The trustee shall establish a trust for the participant
16 plans specified by this article with the earnings and losses
17 accounted for and charged individually to each partici-
18 pant plan, including, but not limited to, the following:

19 (1) The public employees retirement system;

20 (2) The teachers retirement system;

21 (3) The West Virginia state police retirement system;

22 (4) The death, disability and retirement fund of the
23 department of public safety;

24 (5) The judges' retirement system;

25 (6) The pneumoconiosis fund; and

26 (7) The workers' compensation fund.

27 (c) In the administration of the trust created by the trust
28 indenture, the trustee has the following powers:

29 (1) To purchase, retain, hold, transfer and exchange, and
30 to sell, at public or private sale, the whole or any part of
31 the trust estate upon such terms and conditions as it
32 considers advisable;

33 (2) To invest and reinvest the trust estate or any part
34 thereof, in any kind of property, real or personal, includ-
35 ing, but not limited to, mortgage or mortgage
36 participations, common stocks, preferred stocks, common
37 trust funds, bonds, notes or other securities, notwithstand-
38 ing the provisions of articles five and six, chapter
39 forty-four of this code: *Provided*, That notwithstanding
40 the provisions of this act to the contrary, the board shall
41 not become a stockholder or owner of any company or
42 association for any purpose whatsoever unless and until

43 the provisions of section six, article X of the constitution
44 of West Virginia are amended to permit those investments;

45 (3) To carry the securities and other property held under
46 the trust indenture either in the name of the trustee or in
47 the name of its nominee;

48 (4) To vote, in person or by proxy, all securities held
49 under the trust indenture, to join in or to dissent from and
50 oppose the reorganization, recapitalization, consolidation,
51 merger, liquidation or sale of corporations or property; to
52 exchange securities for other securities issued in connec-
53 tion with or resulting from any transaction; to pay any
54 assessment or expense which the trustee considers advis-
55 able for the protection of its interest as holder of any such
56 securities; to deposit securities in any voting trust or with
57 any protective or like committee, or with a trustee deposi-
58 tory; to exercise any option appurtenant to any securities
59 for the conversion of any securities into other securities;
60 and to exercise or sell any rights issued upon or with
61 respect to the securities of any corporation, all upon terms
62 the trustee considers advisable;

63 (5) To prosecute, defend, compromise, arbitrate or
64 otherwise adjust or settle claims in favor of or against the
65 trustee or other trust estate;

66 (6) To employ and pay from the trust estate legal and
67 investment counsel, brokers and such other assistants and
68 agents as the trustee considers advisable; and

69 (7) To develop, implement and modify an asset alloca-
70 tion plan for each participant plan. The asset allocation
71 plans shall be implemented within the management and
72 investment of the trust fund.

73 (d) All trust income shall be free from anticipation,
74 alienation, assignment or pledge by, and free from attach-
75 ment, execution, appropriation or control by or on behalf
76 of, any and all creditors of any beneficiary by any pro-
77 ceeding at law, in equity, in bankruptcy or insolvency.

78 (e) The trustee may receive any other property, real or
79 personal, tangible or intangible, of any kind whatsoever,
80 that may be granted, conveyed, assigned, transferred,

81 devised, bequeathed or made payable to it by the state, or
82 by any other person or entity, for the purposes of the trust
83 created by the trust indenture, and all such properties
84 shall be held, managed, invested and administered by the
85 trustee as provided in the trust indenture and in the "West
86 Virginia Investment Management Act".

87 (f) The trustee shall promptly cause to be paid to the
88 state the amounts certified by the governor as necessary
89 for the monthly payment of benefits to the beneficiaries of
90 the trust.

91 (g) The trustee shall render an annual accounting to the
92 governor not more than one hundred twenty days follow-
93 ing the close of the fiscal year of the trust.

94 (h) The trust will not be invalid by reason of any existing
95 law or rule against perpetuities or against accumulations
96 or against restraints upon the power of alienation, but the
97 trust may continue for such time as necessary to accom-
98 plish the purposes for which it is established.

99 (i) If any provision of the trust indenture is void, invalid
100 or unenforceable, the remaining provisions are neverthe-
101 less valid and shall be carried into effect.

§12-6-9c. Authorization of additional investments.

1 Notwithstanding the restrictions which may otherwise
2 be provided by law with respect to the investment of
3 funds, the board, all administrators, custodians or trustees
4 of pension funds, each political subdivision of this state
5 and each county board of education is authorized to invest
6 funds in the securities of or any other interest in any
7 investment company or investment trust registered under
8 the Investment Company Act of 1940, 15 U.S.C. §80a, the
9 portfolio of which is limited: (i) To obligations issued by
10 or guaranteed as to the payment of both principal and
11 interest by the United States of America or its agencies or
12 instrumentalities; and (ii) to repurchase agreements fully
13 collateralized by obligations of the United States govern-
14 ment or its agencies or instrumentalities: *Provided, That*
15 *the investment company or investment trust takes delivery*
16 *of the collateral either directly or through an authorized*
17 *custodian: Provided, however, That the investment*

18 company or investment trust is rated within one of the top
19 two rating categories of any nationally recognized rating
20 service such as Moody's or Standard and Poor's.

**§12-6-9e. Legislative findings; loans for industrial develop-
ment; availability of funds and interest rates.**

1 (a) The Legislature hereby finds and declares that the
2 citizens of the state benefit from the creation of jobs and
3 businesses within the state; that an industrial develop-
4 ment loan program will provide for economic growth and
5 stimulation within the state; and that loans from pools
6 established in the consolidated fund will assist in provid-
7 ing the needed capital to assist industrial development.
8 This section is enacted in view of these findings.

9 (b) The board may make available, on a revolving basis,
10 up to fifteen million dollars from the consolidated fund to
11 loan the West Virginia economic development authority
12 for industrial development projects authorized by section
13 seven, article fifteen, chapter thirty-one of this code:
14 *Provided*, That the West Virginia economic development
15 authority may not loan more than two million dollars for
16 any one industrial development project. The loans shall
17 be secured by notes, security interests or bonds issued by
18 the West Virginia economic development authority
19 evidencing the indebtedness of the economic development
20 authority to the board.

21 The notes, security interests or bonds issued by the
22 economic development authority shall be secured by
23 security equal to or better than one of the three highest
24 rating grades by an agency which is nationally known in
25 the field of rating corporate securities or by a letter of
26 credit guarantee issued by a bank having an unsecured
27 legal lending limit greater than two million dollars.

28 (c) The interest rates and maturity dates on the loans to
29 the West Virginia economic development authority shall
30 be at competitive rates and maturities as determined by
31 the board. The board shall determine the financial
32 condition of pools within the consolidated fund and shall
33 determine if there is sufficient liquidity within the pools
34 to make the loans specified in this section.

§12-6-11. Standard of care.

1 Any investments made under this article shall be made
2 in accordance with the provisions of the “Uniform Pru-
3 dent Investor Act” codified as article six-c of this chapter
4 and shall be further subject to the following requirements:

5 (a) Trustees shall discharge their duties with respect to
6 the consolidated pension plan for the exclusive purpose of
7 providing benefits to participants and their beneficiaries;

8 (b) Trustees shall diversify fund investment so as to
9 minimize the risk of large losses unless, under the circum-
10 stances, it is clearly prudent not to do so;

11 (c) Trustees shall defray reasonable expenses of invest-
12 ing and operating the funds under management; and

13 (d) Trustees shall discharge their duties in accordance
14 with the documents and instruments governing the trust
15 fund or other funds under management insofar as such
16 documents and instruments are consistent with the
17 provisions of this article.

§12-6-12. Limitations on investments.

1 (a) The board shall not become a stockholder or owner
2 of any company or association for any purpose whatsoever
3 unless and until the provisions of section six, article X of
4 the constitution of West Virginia are amended to provide
5 for those investments. If at some time, after the effective
6 date of this section, the provisions of section six, article X
7 of the constitution of West Virginia are amended to allow
8 the state to become a stockholder in a corporation, the
9 board shall limit its asset allocation and types of securities
10 to the following:

11 (1) For the first twelve months following authorization
12 of the state to become a stockholder or owner of any
13 corporation, the board shall hold in equity investments no
14 more than twenty percent of its total portfolio and no
15 more than twenty percent of the assets of any individual
16 participant plan or the consolidated fund; during the
17 thirteenth through and including the twenty-fourth month
18 following the authorization, the board shall hold in equity
19 investments no more than forty percent of its total portfo-

20 lio and no more than forty percent of the assets of any
21 individual participant plan or the consolidated fund; and
22 thereafter, the board shall hold in equity investments no
23 more than sixty percent of its total portfolio and no more
24 than sixty percent of the assets of any individual partici-
25 pant plan or the consolidated fund.

26 (2) The board shall hold in international securities no
27 more than twenty percent of the consolidated fund or the
28 trust fund and no more than twenty percent of the assets
29 of any individual participant plan or the consolidated
30 fund.

31 (3) The board may not at the time of purchase hold more
32 than five percent of the trust fund or consolidated fund in
33 the equity securities of any single company or association:
34 *Provided*, That if a company or association has a market
35 weighting of greater than five percent in the Standard &
36 Poor's 500 index of companies, the board may hold
37 securities of that equity equal to its market weighting.

38 (b) The board shall at all times limit its asset allocation
39 and types of securities to the following:

40 (1) The board may not hold more than twenty percent of
41 the trust fund in commercial paper. Any commercial
42 paper at the time of its acquisition shall be in one of the
43 two highest rating categories by an agency nationally
44 known for rating commercial paper.

45 (2) At no time shall the board hold more than seventy-
46 five percent of the trust fund or consolidated fund in
47 corporate debt. Any corporate debt security at the time of
48 its acquisition shall be rated in one of the four highest
49 rating categories by a nationally recognized rating agency.

50 (3) No security may be purchased by the board unless
51 the type of security is on a list approved by the board. The
52 board may modify the securities list at any time, and must
53 give notice of that action pursuant to subsection (g),
54 section three of this article, and must review the list at its
55 annual meeting.

56 (c) The board, at the annual meeting provided for in
57 subsection (h), section three of this article, shall review,

58 establish and modify, if necessary, the investment objec-
59 tives of the individual participant plans, as incorporated
60 in the investment policy statements of the respective trusts
61 so as to provide for the financial security of the trust
62 funds giving consideration to the following:

- 63 (1) Preservation of capital.
- 64 (2) Diversification.
- 65 (3) Risk tolerance.
- 66 (4) Rate of return.
- 67 (5) Stability.
- 68 (6) Turnover.
- 69 (7) Liquidity.
- 70 (8) Reasonable cost of fees.

§12-6-13. Board as sole agency for investments; exceptions.

1 All duties vested by law in any agency, commission,
2 official or other board of the state relating to the invest-
3 ment of moneys, and the acquisition, sale, exchange or
4 disposal of securities or any other investment are hereby
5 transferred to the board: *Provided*, That neither this
6 section nor any other section of this article applies to the
7 "board of the school fund" and the "school fund" estab-
8 lished by section 4, article XII of the state constitution:
9 *Provided, however*, That funds under the control of the
10 municipal bond commission may, in the discretion of the
11 commission, be made available to the board for invest-
12 ment to be invested by the commission as provided in
13 article three, chapter thirteen of this code.

§12-6-15. Consolidated fund audits.

1 The board shall cause to be conducted an annual exter-
2 nal audit of all investment transactions of the consoli-
3 dated fund by a nationally recognized accounting firm:
4 *Provided*, That the board shall on a monthly basis provide
5 to each state agency and any other entity investing
6 moneys in the consolidated fund an itemized statement of
7 the agency's or the entity's account in the consolidated
8 fund. The statement shall include the beginning balance,

9 contributions, withdrawals, income distributed, change in
10 value and ending balance.

§12-6-16. Existing investments.

1 The board shall be vested with ownership of all securi-
2 ties or other investments lawfully held by the board of
3 investments or the West Virginia trust fund as of the
4 effective date of this article. All obligations and assets of
5 the board of investments and the West Virginia trust fund,
6 inc. shall be vested in the West Virginia investment
7 management board as of the effective date of this article.

§12-6-19. Authorization for loans by the board.

1 (a) The board, upon request of the state building com-
2 mission, shall transfer moneys as a loan to the state
3 building commission in an amount not to exceed in the
4 aggregate twenty-one million dollars for the purposes of
5 financing or refinancing the projects specified in subsec-
6 tions (b) and (d), section eight, article six, chapter five of
7 this code. The money borrowed shall bear interest during
8 the term of the loan at a fixed rate not to exceed the
9 interest rate on treasury notes, bills or bonds of the same
10 term as the term of the loan the week of closing on the
11 loan as reported by the treasury of the United States.
12 Loans made under this subsection shall be repaid in
13 regular monthly or semiannual payments and shall be
14 paid in full not later than twenty-five years from the date
15 the loans are made with terms and conditions mutually
16 agreed upon by the state building commission and the
17 investment management board.

18 (b) The board shall upon request of the state building
19 commission transfer moneys as a loan to the state building
20 commission in an amount not to exceed in the aggregate
21 eighty million dollars for the purposes of financing
22 construction of regional jails, correctional facilities, or
23 building extensions or improvements to regional jails and
24 correctional facilities. Prior to the expenditure of any
25 loan proceeds, the regional jail and correctional facility
26 authority shall certify a list of projects to the state build-
27 ing commission and the joint committee on government
28 and finance that are to be funded from loan proceeds.
29 This certified list cannot thereafter be altered or amended

30 other than by legislative enactment. Upon receipt of the
31 certified list of projects, the state building commission
32 shall transfer the loan proceeds to the regional jail and
33 correctional facility authority. The money borrowed shall
34 bear interest during the term of the loan at a fixed rate not
35 to exceed the interest rate on treasury notes, bills or bonds
36 of the same term as the term of the loan the week of
37 closing on the loan as reported by the treasury of the
38 United States.

39 (c) Loans made under this section for the projects
40 specified in subsection (b) of this section and in subsection
41 (d), section eight, article six, chapter five of this code,
42 shall be repaid in annual payments of not less than twelve
43 million dollars per year by appropriation of the Legisla-
44 ture to the board. The amount transferred for loans under
45 subsection (a) or (b) of this section shall not exceed that
46 amount which the board determines is reasonable given
47 the cash flow needs of the consolidated fund. The board
48 shall make transfers for loans first for the project speci-
49 fied in subsection (d), section eight, article six, chapter
50 five of this code, second for the projects specified in
51 subsection (b) of this section and third for projects speci-
52 fied in subsection (b), section eight, article six, chapter
53 five of this code, which are in imminent danger of default
54 in payment. The board shall take the steps necessary to
55 increase the liquidity of the consolidated fund over a
56 period of the next five years to allow for the loans pro-
57 vided in this section without increasing the risk of loss in
58 the consolidated fund.

ARTICLE 6A. THE DEBT MANAGEMENT ACT OF 1991.

**§12-6A-2. Legislative findings and declaration of public neces-
sity.**

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

9 agencies, boards, commissions and authorities.

10 (b) The Legislature hereby finds:

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

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

22 (3) In order to attain these goals, authorization of state
23 debt must be based on the ability of the state to meet its
24 total debt service requirements, in light of other uses of its
25 fiscal resources.

26 (c) The Legislature hereby further finds that the public
27 policies and responsibilities of the state as set forth in this
28 article cannot be fully attained without the creation of a
29 state division of debt management.

§12-6A-3. Division of debt management created; director.

1 There is hereby created within the office of the state
2 treasurer, the division of debt management.

3 The division shall be under the control of a director to
4 be appointed by the treasurer and who shall be qualified
5 by reason of exceptional training and experience in the
6 field of activities of his respective division and shall serve
7 at the will and pleasure of the treasurer.

§12-6A-5. Powers and duties.

1 The division of debt management shall perform the
2 following functions and duties:

3 (1) Develop a long-term debt plan including criteria for
4 the issuance of debt by the state and its spending units
5 and the continuous evaluation of the current and pro-
6 jected debt of the state and its spending units.

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

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

13 (4) Assist the state and its spending units regarding the
14 issuance of debt if requested.

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

18 (6) Make and execute contracts and other instruments
19 and pay the reasonable value of services or commodities
20 rendered to the division pursuant to those contracts.

21 (7) Contract, cooperate or join with any one or more
22 other governments or public agencies, or with any politi-
23 cal subdivision of the state, or with the United States, to
24 perform any administrative service, activity or undertak-
25 ing which any such contracting party is authorized by law
26 to perform and to charge for providing such services and
27 expend any fees collected.

28 (8) Do all things necessary or convenient to effectuate
29 the intent of this article and to carry out its powers and
30 functions.

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

§12-6A-6. Debt information reporting.

1 (a) Within fifteen days following the end of each calen-
2 dar quarter, each state spending unit shall provide the
3 division and the legislative auditor, in the manner pro-
4 vided by this article and in such form and detail as the
5 state treasurer may by regulation require, a statement of
6 the total debt of each such state spending unit incurred
7 during the calendar quarter and owing at the end of such
8 calendar quarter, which statement shall include, but not
9 be limited to, the name of the state spending unit, the
10 amounts and types of debt incurred during the calendar

11 quarter and outstanding at the end of the calendar
12 quarter, the cost and expenses of incurring the debt, the
13 maturity date of each debt, the terms and conditions of the
14 debt, the current debt service on the debt, the current
15 interest rate on the debt, the source of the proceeds
16 utilized for repayment of the debt, the amounts of repay-
17 ment during the calendar quarter, the repayment schedule
18 and the security for the debt. A state spending unit having
19 no outstanding debt shall not be required to provide the
20 quarterly report but shall file an annual report, on forms
21 established by the division of debt management: *Pro-*
22 *vided*, That the state spending unit shall immediately
23 notify the division of debt management of any change in
24 the spending unit's outstanding debt condition.

25 (b) Not less than thirty days prior to a proposed offering
26 of debt to be issued by a state spending unit, written
27 notice of such proposed offering and the terms thereof
28 shall be given to the division by such state spending unit
29 in the form as the division may by regulation require.
30 Within thirty days after closing, the terms shall be re-
31 ported to the division in the form as the division may, by
32 regulation require.

33 (c) On or before the thirty-first day of January and the
34 thirty-first day of July of each year, the treasurer shall
35 prepare and issue a report of all debt of the state and its
36 spending units and of all proposed debt issuances of which
37 the treasurer has received notice and shall furnish a copy
38 of such report to the governor, the president of the Senate,
39 the speaker of the House of Delegates, the legislative
40 auditor and upon request to any legislative committee and
41 any member of the Legislature. The report shall be kept
42 available for inspection by any citizen of the state. The
43 treasurer shall also prepare updated reports of all debt of
44 the state and its spending units which shall be available
45 for inspection at the office of the state treasurer on or
46 before the thirty-first day of March and the thirtieth day
47 of September of each year.

ARTICLE 6B. DEBT CAPACITY ADVISORY DIVISION.

§12-6B-1. Purpose.

1 The purpose of this article is to provide a mechanism by
2 which necessary information may be provided to the
3 governor and the Legislature so that they may prudently
4 manage the state's financial resources by attempting to
5 keep the state within an average to low range of nation-
6 ally recognized debt limits. The ratio measurements
7 which may be taken into consideration in attempting to
8 meet these limits include, but are not limited to, outstand-
9 ing net tax supported debt per capita, net tax supported
10 debt as a percentage of personal income, net tax supported
11 debt as a percentage of assessed valuation, and any other
12 criteria that recognized bond rating agencies use to judge
13 the quality of issues of state bonds.

§12-6B-2. Debt capacity advisory division created.

1 There is hereby created within the offices of the state
2 treasurer a debt capacity advisory division.

§12-6B-3. Definitions.

1 For the purpose of this article:

2 (a) "Debt" means bonds, notes, certificates of participa-
3 tion, certificate transactions, capital leases and all other
4 forms of securities and indebtedness.

5 (b) "Debt impact statement" means a signed statement
6 from the treasurer which shall include such information
7 and be in such form, as determined by the division, for the
8 Legislature or the governor to make an informed decision
9 concerning the issuance of debt by the state or its spend-
10 ing units.

11 (c) "Division" means the debt capacity advisory division
12 established in this article.

13 (d) "Net tax supported debt as a percentage of assessed
14 valuation" means the net tax supported debt, as deter-
15 mined by the division, divided by the most recently
16 available estimated assessed valuation of all taxable
17 property in the state by the West Virginia department of
18 tax and revenue.

19 (e) "Net tax supported debt as a percentage of personal
20 income" means the net tax supported debt, as determined

21 by the division, divided by the most recently available
22 personal income figures for the state by the West Virginia
23 bureau of employment programs.

24 (f) "Net tax supported debt per capita" means the state's
25 net tax supported debt, as determined by the division,
26 divided by the most recently available population estimate
27 for the state by the United States department of com-
28 merce.

29 (g) "Spending unit" means any of the state's agencies,
30 boards, commissions, committees, authorities, or other of
31 its entities with the power to issue debt and secure such
32 debt, but not including local political subdivisions of the
33 state.

34 (h) "Tax supported debt" means: (1) All obligations of
35 the state or any spending unit to which the state's full
36 faith and credit is pledged to pay directly or by guarantee
37 (provided that any such guaranteed obligations shall be
38 included only to the extent any such obligations are in
39 default); and (2) all obligations of the state or any agency
40 or authority thereof extending beyond one year with
41 respect to the lease, occupancy or acquisition of property
42 which are incurred in connection with debt financing
43 transactions, including, but not limited to, certificates of
44 participation, and which are payable from taxes, fees,
45 permits, licenses and fines imposed or approved by the
46 Legislature.

47 Tax supported obligations do not include: (1) Any
48 obligations of the West Virginia housing development
49 fund, the economic development authority, the hospital
50 finance authority, the West Virginia parkway authority,
51 the West Virginia public energy authority, the West
52 Virginia solid waste management board, and the West
53 Virginia water development authority; (2) revenue antici-
54 pation notes or bonds of the state; or (3) any obligations to
55 the extent that the debt service with respect thereto is
56 reasonably expected to be offset, as determined by the
57 division, by lease payments, user fees, federal grants or
58 other payments from some source other than the general
59 fund. Such payments shall be used expressly for the
60 purpose of paying debt service.

61 (i) "Treasurer" means the treasurer of the state of West
62 Virginia.

§12-6B-4. Powers and duties.

1 The division shall perform the following functions and
2 duties:

3 (a) Promulgate rules pursuant to article three, chapter
4 twenty-nine-a of this code, for the management and
5 conduct of its affairs;

6 (b) Annually review the size and condition of the state's
7 tax-supported debt and submit to the governor and to the
8 Legislature, on or before the first day of October of each
9 year, an estimate of the maximum amount of new tax-
10 supported debt that prudently may be authorized for the
11 next fiscal year, together with a report explaining the
12 basis for the estimate. The estimate shall be advisory and
13 in no way restrict the governor or the Legislature. In
14 preparing its annual review and estimate, the division
15 shall, at a minimum, consider:

16 (1) The amount of net tax supported debt that, during
17 the next fiscal year and annually for the following ten
18 fiscal years: (A) Will be outstanding; and (B) has been
19 authorized but not yet issued;

20 (2) Projected debt service requirements during the next
21 fiscal year and annually for the following ten fiscal years
22 based upon: (A) Existing outstanding debt; (B) previously
23 authorized but unissued debt; and (C) projected bond
24 authorizations;

25 (3) Any information available from the budget section of
26 the department of administration in connection with
27 anticipated capital expenditures projected for the next
28 five fiscal years;

29 (4) The criteria that recognized bond rating agencies use
30 to judge the quality of state bonds;

31 (5) Any other factor that the division finds as relevant
32 to: (A) The ability of the state to meet its projected debt
33 service requirements for the next fiscal year; (B) the
34 ability of the state to meet its projected debt service

35 requirement for the next five fiscal years; and (C) any
36 other factor affecting the marketability of such bond; and

37 (6) The effect of authorizations of new tax-supported
38 debt on each of the considerations of this subsection.

39 (c) Conduct ongoing review of the amount and condition
40 of bonds, notes and other security obligations of the state's
41 spending units: (1) Not secured by the full faith and credit
42 of the state or for which the Legislature is not obligated to
43 replenish reserve funds or make necessary debt service
44 payments; (2) for which the state has a contingent or
45 limited liability or for which the Legislature is permitted
46 to replenish reserve funds or make necessary debt service
47 payments if deficiencies occur. When appropriate, the
48 division shall recommend limits on such additional
49 obligations to the governor and to the Legislature. Such
50 recommendation is advisory and shall in no way restrict
51 the governor, the Legislature or the spending unit.

52 (d) The treasurer may review all proposed offerings of
53 debt, as defined in this article, submitted to the division of
54 debt management, as provided in section six, article six-a
55 of this chapter. The division may also request any addi-
56 tional information which may be needed to issue an
57 advisory opinion to the governor, the speaker of the
58 House of Delegates and the president of the Senate as to
59 the impact of the proposed offering on the state's net tax-
60 supported debt outstanding and any other criteria which
61 the treasurer feels may be relevant to the marketability of
62 said offering and its impact on the state's credit rating.
63 Such advisory opinion shall in no way restrict the gover-
64 nor, the Legislature or the spending unit.

65 (e) Do all things necessary or convenient to effectuate
66 the intent of this article and to carry out its powers and
67 functions.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 3. MUNICIPAL BOND COMMISSION.

**§13-3-3. Officers; employees; chief administrative officer;
meetings; quorum; compensation and expenses;
legal representation.**

1 (a) The tax commissioner or his or her designee shall be
2 chair of the commission.

3 (b) The members of the commission shall appoint a chief
4 administrative officer and may fix his title and duties.
5 Notwithstanding the provisions of section two-a, article
6 seven, chapter six of this code, the commission shall have
7 the authority to set the compensation of the chief adminis-
8 trative officer. The chief administrative officer shall serve
9 as secretary to the board and treasurer of the commission.
10 The chair may designate a board member to serve as
11 secretary in the absence of the chief administrative officer.
12 The chair is authorized with the approval of the commis-
13 sion, to employ other employees and consultants as the
14 commission deems advisable and fix their compensation
15 and prescribe their duties.

16 (c) Appointed members of the commission shall be paid
17 fifty dollars for each day or substantial portion thereof
18 that they are engaged in the work of the commission.
19 Each member of the commission may be reimbursed for all
20 reasonable and necessary expenses actually incurred in
21 the performance of duties on behalf of the commission.

22 (d) The commission shall hold at least three meetings in
23 each fiscal year, one of which meetings shall be within
24 sixty days of the end of the fiscal year and shall be the
25 annual meeting. The meetings shall be held on dates and
26 at places prescribed by the chair. Additional meetings
27 may be held at the call of the chair or upon the written
28 request of three members at such time and place as
29 designated in such call or request. Three members of the
30 commission constitute a quorum.

31 (e) The chair with the consent of the commission is
32 authorized to provide or designate legal advisory services
33 to the commission.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

**§50-3-2a. Payment of fines by credit card or payment plan;
suspension of licenses for failure to pay fines or
appear or respond.**

1 (a) A magistrate court may accept credit cards in
2 payment of all costs, fines, forfeitures or penalties. The
3 supreme court of appeals shall adopt rules regarding the
4 use of credit or check cards to pay fines and any charges
5 made by the credit card company may be paid from the
6 gross credit card collections. A magistrate court may
7 collect a portion of any costs, fines, forfeitures or penalties
8 at the time the amount is imposed by the court so long as
9 the court requires the balance to be paid in accordance
10 with a payment plan which specifies: (1) The number of
11 payments to be made; (2) the dates on which such pay-
12 ments and amounts shall be made; and (3) amounts due on
13 such dates.

14 (b) If any costs, fines, forfeitures, restitution or penalties
15 imposed or ordered by the magistrate court for hunting or
16 fishing violations as described in chapter twenty of this
17 code are not paid in full as directed by the magistrate
18 court, the magistrate court clerk or, upon a judgment
19 rendered on appeal, the circuit clerk, shall notify the
20 director of the division of natural resources, of such
21 failure to pay. If any costs, fines, forfeitures, restitution
22 or penalties imposed by the magistrate court in a criminal
23 case are not paid as directed by the magistrate court, the
24 magistrate court clerk or, upon judgment rendered on
25 appeal, the circuit clerk, shall notify the director of the
26 division of motor vehicles of the failure to pay. Upon
27 notice, the division of motor vehicles shall suspend the
28 operator's or commercial driver's license and the director
29 of the division of natural resources shall suspend the
30 hunting or fishing license of the person defaulting on
31 payment until such time that the costs, fines, forfeitures,
32 restitution or penalties are paid.

33 (c) If a person charged with any criminal violation of
34 this code fails to appear or otherwise respond in court, the
35 magistrate court shall notify the director of the division of
36 motor vehicles thereof within fifteen days of the scheduled
37 date to appear, unless the person sooner appears or
38 otherwise responds in court to the satisfaction of the
39 magistrate. Upon such notice, the division of motor
40 vehicles shall suspend the operator's or commercial
41 driver's license of the person failing to appear or other-

42 wise respond in accordance with the provisions of section
43 six, article three, chapter seventeen-b of this code.

44 (d) In every criminal case which involves a misdemeanor
45 violation, a magistrate may order restitution where
46 appropriate when rendering judgment.

47 (e) If all costs, fines, forfeitures, restitution or penalties
48 imposed by a magistrate court and ordered to be paid are
49 not paid as ordered by the judgment of the magistrate
50 court, the clerk of the magistrate court shall notify the
51 prosecuting attorney of the county of such nonpayment
52 and provide the prosecuting attorney with an abstract of
53 judgment. The prosecuting attorney shall file the abstract
54 of judgment in the office of the clerk of the county com-
55 mission in the county where the defendant was convicted
56 and in any county wherein the defendant resides or owns
57 property. The clerk of the county commission shall record
58 and index the abstracts of judgment without charge or fee
59 to the prosecuting attorney, and when so recorded, the
60 amount stated to be owing in the abstract shall constitute
61 a lien against all property of the defendant.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 1. LEGISLATIVE ACTS AND RESOLUTIONS; PUBLIC RECORDS.

§57-1-7a. Use of photographic copies in evidence; state records, papers or documents; destruction or transfer to archives of originals; destruction of canceled checks and paid and canceled bonds and coupons.

1 (a) Any public officer of the state may, with the approval
2 of the state records administrator cause any or all records,
3 papers or documents kept by him to be reproduced, by any
4 photographic, photostatic, microphotographic or by
5 similar miniature photographic process or by nonerasable
6 optical image disks (commonly referred to as compact
7 disks) or by other records-retention technology approved
8 by the state records administrator. These reproductions
9 by photographic, photostatic, microphotographic or by
10 similar miniature photographic process or by nonerasable
11 optical image disks shall be of durable material and the
12 device used to reproduce such records on such film shall

13 be one which accurately reproduces the originals thereof
14 in all details.

15 The reproductions by photographic, photostatic,
16 microphotographic or by similar miniature photographic
17 process or nonerasable optical image disks shall be
18 deemed to be an original record for all purposes, including
19 introduction in evidence in all courts or administrative
20 agencies. A transcript, exemplification or certified copy
21 thereof shall, for all purposes recited herein, be deemed to
22 be a transcript, exemplification or certified copy of the
23 original. Whenever reproductions by photographic,
24 photostatic, microphotographic or by similar miniature
25 photographic process or nonerasable optical image disks
26 have been made and put in conveniently accessible
27 fireproof files, and provision has been made for preserv-
28 ing, examining and using the same, the respective heads of
29 the departments, divisions, institutions and agencies of the
30 state may, with the approval of the state records adminis-
31 trator, cause the records and papers so reproduced by
32 photographic, photostatic, microphotographic or by
33 similar miniature photographic process or nonerasable
34 optical image disks, or any part thereof, to be destroyed;
35 but before any records, papers or documents are autho-
36 rized to be destroyed, the state records administrator shall
37 obtain the advice and counsel of the state historian and
38 archivist, or his designated representative, as to the
39 desirability of placing the records, papers and documents
40 in the archives of that department. In the event the
41 administrator is of the opinion that the record has no
42 further administrative, legal, fiscal, research or historical
43 value, the administrator may destroy or otherwise dispose
44 of the record, paper or document if otherwise permitted to
45 do so after complying with the provisions of section
46 seventeen, article eight, chapter five-a of this code.

47 (b) Notwithstanding any other provisions of this code to
48 the contrary, the state treasurer may at his discretion
49 destroy any canceled checks of the state after three years
50 have elapsed since the date of the check, whether or not
51 such checks have been reproduced by photographic,
52 photostatic, microphotographic or by similar miniature
53 photographic process or nonerasable optical image disks:

54 *Provided*, That any canceled bonds or interest coupons of
55 any bond issues of this state in the custody of the trea-
56 surer, or for which the treasurer acts as fiscal agent or
57 paying agent, may at his discretion be destroyed by one of
58 the two methods below:

59 Method I - The treasurer shall maintain a permanent
60 record for the purpose of recording the destruction of
61 bonds and coupons, showing the following: (1) With
62 respect to bonds, the purpose of issuance, the date of issue,
63 denomination, maturity date and total principal amount;
64 and (2) with respect to coupons, the purpose of issue and
65 date of the bonds to which the coupons appertain, the
66 maturity date of the coupons, and, as to each maturity
67 date, the denomination, quantity and total amount of
68 coupons.

69 After recording the specified information, the treasurer
70 shall have the canceled bonds and coupons destroyed
71 either by burning or shredding, in the presence of an
72 employee of the treasurer and an employee of the legisla-
73 tive auditor, each of whom shall certify that he saw the
74 canceled bonds and coupons destroyed. The certificates
75 shall be made a part of the permanent record. Canceled
76 bonds or coupons shall not be destroyed until after one
77 year from the date of payment.

78 Method II - The treasurer may contract with any bank
79 or trust company acting as paying agent or copaying agent
80 for a bond issue of the state for the destruction of bonds
81 and interest coupons which have been canceled by the
82 paying agent. The contract shall require that the paying
83 agent give the treasurer a certificate containing the same
84 information required by Method I. The certificate shall be
85 made a part of the treasurer's permanent records.

86 Each contract shall also require that the paying agent be
87 responsible for proper payment and disposition of all
88 bonds and coupons, and for any duplicate payments to
89 unauthorized persons and nonpayment to authorized
90 persons occurring as a result of destruction of bonds or
91 coupons under this section. In addition, the treasurer may
92 require the paying agent to submit an indemnity bond, in
93 an amount to be determined by the treasurer, to assure

94 performance of the duties specified in this section.
95 Canceled bonds or coupons may not be destroyed until one
96 year from the date of payment.

97 For purposes of this section, the term "bonds" shall
98 include interim certificates.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWS-
PAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-12. Payment of fines by credit card or payment plan.

1 A circuit court may accept credit cards in payment of all
2 fines, cost, forfeiture, restitution or penalties. The su-
3 preme court of appeals shall adopt rules regarding the use
4 of credit or check cards to pay fines, and any charges
5 made by the credit card company may be paid from the
6 gross credit card collections.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Paul Shanover
.....
Chairman Senate Committee

Nick Tentasia
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Carroll Holmes
.....
Clerk of the Senate

Suzanne M. King
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *25th*
day of *April*, 199*7*

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 1/21/97

Time 8:47am