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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001

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ENROLLED

Committee Substitute for

SENATE BILL NO. 451

(By Senator Craig, et al)

—●—

PASSED April 14, 2001

In Effect from Passage

FILED

2001 APR 30 P 4: 45

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 451

(SENATORS CRAIGO, SHARPE, JACKSON, CHAFIN,
PREZIOSO, PLYMALE, LOVE, HELMICK, BOWMAN,
BAILEY, ANDERSON, EDGELL, UNGER, MCCABE,
BOLEY, MINEAR AND SPROUSE, *original sponsors*)

[Passed April 14, 2001; in effect from passage.]

AN ACT to amend and reenact section eight, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one-a, two, three, four, five, six, eight, nine, nine-a, nine-e, ten, eleven and twelve, article six of said chapter, all relating to the West Virginia investment management board and its investment management and loans for business and industrial development and availability of funds and interest rates; correcting and clarifying inconsistencies; deleting outdated provisions regarding conflict of interest provision regarding board members and state depositories; providing for the common investment of pension, workers' compensa-

tion and other assets in board-created vehicles; changing date of annual meeting; providing for staggered terms of board members; conforming statutory trust language to trust indenture; providing for appropriate fees to be assessed against all assets invested and managed by the board; amending and clarifying certain restrictions on investments; requiring the board to make certain loans to the West Virginia economic development authority; specifying limits and conditions for same; clarifying that board members bear no fiduciary responsibility for such loans made to the economic development authority; and rebalancing of assets when investment limitations exceeded.

Be it enacted by the Legislature of West Virginia:

That section eight, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one-a, two, three, four, five, six, eight, nine, nine-a, nine-e, ten, eleven and twelve, article six of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-8. Conflict of interest.

1 No depository in this state may serve or be eligible for
2 designation as a state depository if any employee of the
3 treasurer's office, or a spouse or minor child of that
4 employee, is an officer, director or employee of the deposi-
5 tory or owns greater than two percent of the depository
6 either in his or her own name or beneficially or an interest
7 in the depository. An employee of the treasurer's office
8 shall disclose the circumstance, if any, in the sworn
9 statement required under the provisions of section one,
10 article one, chapter six-b of this code.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§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, disabili-
5 ty and retirement fund of the division of public safety, the
6 judges' retirement system and the deputy sheriff's retire-
7 ment system should benefit from a prudent and conscien-
8 tious staff of financial professionals dedicated to the
9 administration, investment and management of those
10 employees' and employers' financial contributions and
11 that an independent board and staff should be immune to
12 changing political climates and should provide a stable
13 and continuous source of professional financial investment
14 and management.

15 (b) The Legislature finds and declares that teachers and
16 other public employees throughout the state are experienc-
17 ing economic difficulty and that in order to reduce this
18 economic hardship on these dedicated public employees
19 and to help foster sound financial practices, the West
20 Virginia investment management board is given the
21 authority to develop, implement and maintain an efficient
22 and modern system for the investment and management of
23 the state's money. The Legislature further finds that in
24 order to implement these sound fiscal policies, the West
25 Virginia investment management board shall operate as an
26 independent board with its own full-time staff of financial
27 professionals, immune to changing political climates, in
28 order to provide a stable and continuous source of profes-
29 sional financial management.

30 (c) The Legislature hereby finds and declares further
31 that experience has demonstrated that prudent investment
32 provides diversification and beneficial return not only for
33 public employees but for all citizens of the state and that
34 in order to have access to this sound fiscal policy, public
35 employee and employer contributions to the 401(a) plans
36 are declared to be made to an irrevocable trust on behalf
37 of each plan, available for no use or purpose other than for
38 the benefit of those public employees.

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

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

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

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

69 (h) The Legislature further finds and declares that the
70 West Virginia supreme court of appeals declared the "West
71 Virginia Trust Fund Act" unconstitutional in its decision
72 rendered on the twenty-eighth day of March, one thousand
73 nine hundred ninety-seven, to the extent that it authorized
74 investments in corporate stock, but the court also recog-

75 nized that there were other permissible constitutional
76 purposes of the “West Virginia Trust Fund Act” and that
77 it is the role of the Legislature to determine those purposes
78 consistent with the court’s decision and the constitution of
79 West Virginia.

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

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 in this
9 subdivision;

10 (3) “Consolidated fund” means the investment fund
11 managed by the board and established pursuant to subsec-
12 tion (a), section eight of this article;

13 (4) “401(a) plan” means a plan which is described in
14 section 401(a) of the Internal Revenue Code of 1986, as
15 amended, and with respect to which the board has been
16 designated to hold assets of the plan in trust pursuant to
17 the provisions of section nine-a of this article;

18 (5) “Local government funds” means the moneys of a
19 political subdivision, including policemen’s pension and
20 relief funds, firemen’s pension and relief funds and

21 volunteer fire departments, transferred to the board for
22 deposit;

23 (6) "Participant plan" means any plan or fund subject
24 now or hereafter to subsection (a), section nine-a, article
25 six of this chapter;

26 (7) "Political subdivision" means and includes a county,
27 municipality or any agency, authority, board, county
28 board of education, commission or instrumentality of a
29 county or municipality and regional councils created
30 pursuant to the provisions of section five, article twenty-
31 five, chapter eight of this code;

32 (8) "Trustee" means any member serving on the West
33 Virginia investment management board: *Provided*, That
34 in section nine-a of this article in which the terms of the
35 trusts are set forth, "trustee" means the West Virginia
36 investment management board;

37 (9) "Securities" means all bonds, notes, debentures or
38 other evidences of indebtedness and other lawful invest-
39 ment instruments; and

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

**§12-6-3. West Virginia investment management board contin-
ued; body corporate; trust fund board; trustees;
nomination and appointment of trustees, qualifica-
tions and terms of appointment, advice and con-
sent; annual and other meetings; designation of
representatives and committees; board meetings
with committees regarding investment policy
statement required; open meetings, qualifications.**

1 (a) There is hereby continued the West Virginia invest-
2 ment management board. The board is created as a public
3 body corporate and established to provide prudent fiscal
4 administration, investment and management for the funds

5 of the participant plans and any other funds managed by
6 the board.

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
16 have 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 shall have experience in pension
23 management, institutional management or financial
24 markets and one trustee shall be an attorney experienced
25 in finance and investment matters and one trustee shall be
26 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 are subject to all duties, responsibilities
33 and requirements of the provisions of this article, includ-
34 ing, but not limited to, the provisions of subsections (e)
35 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 a term
38 ending on the thirty-first day of January in the sixth year
39 following the year of his or her appointment: *Provided*,

40 That for all terms ending in the year two thousand one,
41 two appointments shall be for two-year terms; two ap-
42 pointments shall be for three-year terms; one shall be for
43 a four-year term; and two shall be for six-year terms.
44 Except for vacancy appointments made pursuant to
45 subsection (d) of this section, all subsequent appointments
46 shall be for terms ending on the thirty-first day of January
47 in the sixth year following the year of appointment. No
48 more than six of the ten appointed trustees may belong to
49 the same political party.

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

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

58 (f) Each trustee, other than those enumerated in subsec-
59 tion (b), subdivision (3) of this section, is entitled to receive
60 and, at the trustee's option, the board shall pay to the
61 trustee compensation in the amount of five thousand
62 dollars per year and additional compensation in the
63 amount of five hundred dollars per meeting attended by
64 the trustee in excess of the four quarterly meetings re-
65 quired by this section. In addition, all trustees shall
66 receive reasonable and necessary expenses actually
67 incurred in discharging trustee duties pursuant to this
68 article.

69 (g) The board shall meet quarterly and may include in its
70 bylaws procedures for the calling and holding of addi-
71 tional meetings. For any quarterly or additional meeting
72 in which the board shall review or modify its securities list
73 or its investment objectives pursuant to subsection (f),
74 section twelve of this article, the board shall give ten days'
75 notice in writing to the designated representative of each

76 participant plan selected pursuant to subdivision (1),
77 subsection (i) of this section and the meeting shall be open
78 to the members and beneficiaries of the participant plans
79 for that portion of the meeting in which the board under-
80 takes the review or modification.

81 (h) The board shall hold an annual meeting before the
82 start of the fiscal year. The annual meeting may also serve
83 as a quarterly meeting. The annual meeting shall be open
84 to the public and the board shall receive oral and written
85 comments from representatives, members and beneficia-
86 ries of the participant plans and from other citizens of the
87 state. At the annual meeting, the board shall adopt a fee
88 schedule and a budget reflecting fee structures for the
89 year.

90 (i) Pursuant to subsection (j) of this section, the board
91 shall meet with committees representing the participant
92 plans to discuss the board's drafting, reviewing or modify-
93 ing the written investment policy of the trust with respect
94 to that committee's participant plan pursuant to section
95 twelve of this article. Representatives and committees
96 shall be designated as follows:

97 (1) The West Virginia consolidated public retirement
98 board shall promulgate procedural rules by which each
99 401(a) plan for which the board is trustee, shall designate
100 an individual representative of each 401(a) plan and the
101 West Virginia workers' compensation commission shall
102 promulgate procedural rules by which the pneumoconiosis
103 fund and the workers' compensation fund shall designate
104 an individual representative of each fund.

105 (2) On or before the first day of June of each year, the
106 consolidated public retirement board shall submit in
107 writing to the board the names of the six designated
108 representatives of the 401(a) plans and the workers'
109 compensation commission shall submit the names of the
110 two representatives.

111 (3) Each designated representative shall provide to the
112 board his or her current address, updated each year on or
113 before the first day of July, to which address the board
114 shall provide notice of meetings of the board pursuant to
115 subsection (g) of this section.

116 (4) Each designated representative shall submit in
117 writing to the board on or before the first day of July of
118 each year the names of no more than three persons com-
119 prising a committee representing the beneficiaries of that
120 representative's participant plan.

121 (j) At its annual meeting, the board shall meet with each
122 of the seven committees, formed pursuant to subdivision
123 (1), subsection (i) of this section, for the purpose of receiv-
124 ing input from the committees regarding the board's
125 drafting, reviewing or modifying its written investment
126 policy statement for investment of the funds of the partici-
127 pant plans. In developing the investment policy statement,
128 the trustees shall receive each committee's stated objec-
129 tives and policies regarding the risk tolerances and return
130 expectations of each participant plan, with attention to
131 the factors enumerated in, section twelve of this article, in
132 order to provide for the continuing financial security of
133 the trusts and its participant plans. The board may meet
134 with the committees or any of them at its quarterly and
135 additional meetings for the same purpose.

136 (k) All meetings of the board shall be open to the
137 representatives of the participant plans as appointed
138 pursuant to subdivision (1), subsection (i) of this section.
139 The representatives are subject to any rules, bylaws,
140 guidelines, requirements and standards promulgated by
141 the board. The representatives shall observe standards of
142 decorum established by the board. The representatives are
143 subject to the same code of conduct applicable to the
144 trustees and are subject to all board rules and bylaws. The
145 representatives are also subject to any requirements of
146 confidentiality applicable to the trustees. Each represen-
147 tative is liable for any act which he or she undertakes

148 which violates any rule, bylaw or statute governing ethical
149 standards, confidentiality or other standard of conduct
150 imposed upon the trustees or the representatives. Any
151 meeting of the board may be closed, upon adoption of a
152 motion by any trustee, when necessary to preserve the
153 attorney-client privilege, to protect the privacy interests of
154 individuals, to review personnel matters or to maintain
155 confidentiality when confidentiality is in the best interest
156 of the beneficiaries of the trusts.

§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 provi-
3 sions 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 vice
8 chairmanship, the board shall elect a vice chairman to a
9 new two-year term. The vice chairman shall preside at all
10 meetings in the absence of the chairman. Annually, the
11 trustees shall elect a secretary, who need not be a member
12 of the board, to keep a record of the proceedings of the
13 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' experi-
17 ence in investment management with public or private
18 funds within the ten years next preceding the date of
19 appointment. The chief executive officer additionally
20 shall have academic degrees, professional designations and
21 other investment management or investment oversight or
22 institutional investment experience in a combination the
23 trustees consider necessary to carry out the responsibilities

24 of the chief executive officer position as defined by the
25 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 dollars
36 for the faithful performance of his or her duties as a
37 trustee. The board shall purchase a blanket bond for the
38 faithful performance of its duties in the amount of fifty
39 million dollars or in an amount equivalent to one percent
40 of the assets under management, whichever is greater. The
41 amount of the blanket bond is in addition to the one
42 million dollar individual bond required of each trustee by
43 the provisions of this section. The board may require a
44 fiduciary or surety bond from a surety company qualified
45 to do business in this state for any person who has charge
46 of, or access to, any securities, funds or other moneys held
47 by the board and the amount of the fiduciary or surety
48 bond shall be fixed by the board. The premiums payable
49 on all fiduciary or surety bonds shall be an expense of the
50 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 is exempt from the provisions of sections
57 seven and eleven, article three, chapter twelve of this code
58 and article three, chapter five-a of said code: *Provided*,
59 That the trustees and employees of the board are subject

60 to purchasing policies and procedures which shall be
61 promulgated by the board. The purchasing policies and
62 procedures may be promulgated as emergency rules
63 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 it at pleasure;

5 (2) Sue and be sued;

6 (3) Enter into contracts and execute and deliver instru-
7 ments;

8 (4) Acquire (by purchase, gift or otherwise), hold, use
9 and dispose of real and personal property, deeds, mort-
10 gages and other instruments;

11 (5) Promulgate and enforce bylaws and rules for the
12 management and conduct of its affairs;

13 (6) Notwithstanding any other provision of law, retain
14 and employ legal, accounting, financial and investment
15 advisors and consultants;

16 (7) Acquire (by purchase, gift or otherwise), hold,
17 exchange, pledge, lend and sell or otherwise dispose of
18 securities and invest funds in interest earning deposits and
19 in any other lawful investments;

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

22 (9) Engage in financial transactions whereby securities
23 are purchased by the board under an agreement providing
24 for the resale of the securities to the original seller at a
25 stated price;

26 (10) Engage in financial transactions whereby securities
27 held by the board are sold under an agreement providing
28 for the repurchase of the securities by the board at a stated
29 price;

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

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

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

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

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

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

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

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

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

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

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

62 (22) Establish one or more investment funds for the
63 purpose of investing the funds for which it is trustee,
64 custodian or otherwise authorized to invest pursuant to
65 this article. Interests in each fund shall be designated as
66 units and the board shall adopt industry standard ac-
67 counting procedures to determine each fund's unit value.
68 The securities in each investment fund are the property of
69 the board and each fund shall be considered an investment
70 pool or fund and may not be considered a trust nor may
71 the securities of the various investment funds be consid-
72 ered held in trust. However, units in an investment fund
73 established by or sold by the board and the proceeds from
74 the sale or redemption of any unit may be held by the
75 board in its role as trustee of the participant plans; and

76 (23) Notwithstanding any other provision of the code to
77 the contrary, conduct investment transactions, including
78 purchases, sales, redemptions and income collections,

79 which shall not be treated by the auditor as recordable
80 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 assets managed by the board to be
3 made by a certified public accounting firm which has a
4 minimum staff of ten certified public accountants and
5 which is a member of the American institute of certified
6 public accountants and, if doing business in West Virginia,
7 a member of the West Virginia society of certified public
8 accountants. The financial and compliance audit shall be
9 made of the board's books, accounts and records with
10 respect to its receipts, disbursements, investments, con-
11 tracts and all other matters relating to its financial
12 operations. Copies of the audit report shall be furnished
13 to the governor, state treasurer, state auditor, president of
14 the Senate, speaker of the House of Delegates, council of
15 finance and administration and consolidated public
16 retirement board.

17 (b) The board shall produce monthly financial state-
18 ments for the assets managed by the board and cause them
19 to be delivered to each member of the board and the
20 executive secretary of the consolidated public retirement
21 board as established in sections one and two, article ten-d,
22 chapter five of this code and to the commissioner of the
23 bureau of employment programs as administrator of the
24 workers' compensation fund and coal-workers' pneumoco-
25 niosis fund as established in section one, article one,
26 chapter twenty-three of this code and section one, article
27 three of said chapter and section seven, article four-b of
28 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 401(a) plans.

33 (d) The board shall cause an annual audit of the reported
34 returns of the assets managed by the board to be made by
35 an investment consulting or a certified public accounting
36 firm meeting the criteria set out in subsection (a) of this
37 section. The board shall furnish copies of the audit report
38 to the governor, state treasurer, state auditor, president of
39 the Senate, speaker of the House of Delegates, council of
40 finance and administration and consolidated public
41 retirement board.

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

45 (f) All statements and reports with respect to participant
46 plans required in this section shall be available for inspec-
47 tion by the members and beneficiaries and designated
48 representatives of the participant plans.

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

1 (a) There is hereby continued a special investment fund
2 to be managed by the board and designated as the “con-
3 solidated fund”.

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

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

15 (d) Moneys held in the various funds and accounts
16 administered by the board shall be invested as permitted
17 by this article and subject to the restrictions contained in
18 this article. For the consolidated fund, the treasurer shall
19 maintain records of the deposits and withdrawals of each
20 participant and the performance of the various funds and
21 accounts. The board shall report the earnings on the
22 various funds under management to the treasurer at the
23 times determined by the treasurer. The board shall also
24 establish rules for the administration of the various funds
25 and accounts established by this section as it considers
26 necessary for the administration of the funds and ac-
27 counts, including, but not limited to: (1) The specification
28 of amounts which may be deposited in any fund or account
29 and minimum periods of time for which deposits will be
30 retained; and (2) creation of reserves for losses: *Provided,*
31 That in the event any moneys made available to the board
32 may not lawfully be combined for investment or deposited
33 in the consolidated funds established by this section, the
34 board may create special accounts and may administer and
35 invest those moneys in accordance with the restrictions
36 specially applicable to those moneys.

§12-6-9. Fees for service.

1 The board may charge fees, which may be subtracted
2 from the total return, for the reasonable and necessary
3 expenses incurred by the investment management board in
4 rendering services. All fees which are dedicated or
5 identified or readily identifiable to an entity, plan or fund
6 shall be charged to that entity, plan or fund and all other
7 fees shall be charged as a percentage of assets under
8 management. At its annual meeting, the board shall adopt
9 a fee schedule and a budget reflecting fee structures.

§12-6-9a. Trust indenture.

1 The provisions of the trust indenture entered into by the
2 governor on the first day of July, one thousand nine
3 hundred ninety six, with the West Virginia trust fund, inc.,

4 acting as the trustee, are superseded by the following
5 provisions:

6 (a) The board shall continue to hold each of the partici-
7 pant plans specified by this article in a separate irrevoca-
8 ble trust as trustee pursuant to the terms and provisions
9 set forth in this section and with the earnings and losses
10 accounted for and charged individually to each participant
11 plan and trust: *Provided*, That the board shall be autho-
12 rized to invest the assets held in each participant plan in
13 any investment fund even though the board may also
14 invest non-401(a) moneys in the investment fund. Partici-
15 pant plans, each declared by this section to be held in a
16 separate irrevocable trust, include, but are not limited to,
17 the following and any other plans that may be added to
18 this section or otherwise designated by the Legislature
19 from time to time:

- 20 (1) The public employees' retirement system;
- 21 (2) The teachers' retirement system;
- 22 (3) The West Virginia state police retirement system;
- 23 (4) The death, disability and retirement fund of the
24 division of public safety;
- 25 (5) The judges' retirement system;
- 26 (6) The deputy sheriffs' retirement system;
- 27 (7) The pneumoconiosis fund;
- 28 (8) The workers' compensation fund; and
- 29 (9) The wildlife endowment fund.

30 (b) The Legislature hereby reserves the following rights
31 and powers:

- 32 (1) The right by supplemental agreement to amend,
33 modify or alter the terms of the trusts established by this
34 section without consent of the trustee, or any beneficiary,

35 except that no amendment to a trust which holds any
36 401(a) plan moneys may be made which allows at any time
37 for any part of the corpus or income (other than the part
38 that is required to pay taxes and administration expenses)
39 to be used for, or diverted to, purposes other than for the
40 exclusive benefit of the employees or their beneficiaries in
41 accordance with the requirements of section 401(a)(2) of
42 the Internal Revenue Code, as it may be amended from
43 time to time; and

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

46 (c) In the administration of the trusts created by this
47 article, the trustee has the following powers:

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

52 (2) To invest and reinvest the trust estate or any part of
53 the trust estate, in any kind of property, real or personal,
54 including, but not limited to, mortgage or mortgage
55 participations, common stocks, preferred stocks, common
56 trust funds, investment funds established by the board,
57 bonds, notes or other securities, notwithstanding the
58 provisions of articles five and six, chapter forty-four of
59 this code;

60 (3) To carry the securities and other property held in
61 trust either in the name of the trustee or in the name of its
62 nominee;

63 (4) To vote, in person or by proxy, all securities held in
64 trust, to join in or to dissent from and oppose the reorgani-
65 zation, recapitalization, consolidation, merger, liquidation
66 or sale of corporations or property; to exchange securities
67 for other securities issued in connection with or resulting
68 from any transaction; to pay any assessment or expense
69 which the trustee considers advisable for the protection of

70 its interest as holder of the securities; to deposit securities
71 in any voting trust or with any protective or like commit-
72 tee or with a trustee depository; to exercise any option
73 appurtenant to any securities for the conversion of any
74 securities into other securities; and to exercise or sell any
75 rights issued upon or with respect to the securities of any
76 corporation, all upon terms the trustee considers advis-
77 able;

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

81 (6) To employ and pay from the trusts legal and invest-
82 ment counsel, brokers and any other assistants and agents
83 the trustee considers advisable; and

84 (7) To develop, implement and modify an asset alloca-
85 tion plan for each participant plan. The asset allocation
86 plans shall be implemented within the management and
87 investment of the individual trusts.

88 (d) All trust income shall be free from anticipation,
89 alienation, assignment or pledge by, and free from attach-
90 ment, execution, appropriation or control by or on behalf
91 of, any and all creditors of any beneficiary by any proceed-
92 ing at law, in equity, in bankruptcy or insolvency.

93 (e) Notwithstanding any other provision of this article,
94 in the case of a trust which holds any 401(a) plan's money,
95 it is impermissible at any time for any part of the corpus
96 or income to be (within the taxable year or thereafter) used
97 for, or diverted to, purposes other than the exclusive
98 benefit of the employees and their beneficiaries in accor-
99 dance with the requirements of section 401(a)(2) of the
100 Internal Revenue Code, as it may be amended from time to
101 time.

102 (f) The trustee may receive any other property, real or
103 personal, tangible or intangible, of any kind whatsoever,
104 that may be granted, conveyed, assigned, transferred,

105 devised, bequeathed or made payable to the applicable
106 trust, and all the properties shall be held, managed,
107 invested and administered by the trustee as provided in
108 this article.

109 (g) The trustee shall promptly cause to be paid to the
110 state from the applicable trust the amounts certified by the
111 governor as necessary for the monthly payment of benefits
112 to the beneficiaries of the trust.

113 (h) The trustee shall render an annual accounting to the
114 governor not more than one hundred twenty days follow-
115 ing the close of the fiscal year of each trust.

116 (i) No trust shall be invalid by reason of any existing law
117 or rule against perpetuities or against accumulations or
118 against restraints upon the power of alienation, but each
119 trust shall continue for the time necessary to accomplish
120 the purposes for which it is established.

**§12-6-9e. Legislative findings; loans for industrial development;
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 a business and industrial
4 development loan program provides for economic growth
5 and stimulation within the state; that loans from pools
6 established in the consolidated fund will assist in provid-
7 ing the needed capital to assist business and industrial
8 development; and that time constraints relating to busi-
9 ness and industrial development projects prohibit duplica-
10 tive review by both the board and West Virginia economic
11 development authority board. This section is enacted in
12 view of these findings.

13 (b) The board shall make available, subject to cash
14 availability, in the form of a revolving loan, up to one
15 hundred fifty million dollars from the consolidated fund to
16 loan the West Virginia economic development authority
17 for business or industrial development projects authorized

18 by section seven, article fifteen, chapter thirty-one of this
19 code and to consolidate existing loans authorized to be
20 made to the West Virginia economic development author-
21 ity pursuant to this section and pursuant to section twenty,
22 article fifteen, chapter thirty-one of this code which
23 authorizes a one hundred fifty million dollar revolving
24 loan and article eighteen-b, chapter thirty-one of this code
25 which authorizes a fifty million dollar investment pool:
26 *Provided*, That the West Virginia economic development
27 authority may not loan more than fifteen million dollars
28 for any one business or industrial development project.
29 The revolving loan authorized by this subsection shall be
30 secured by one note at a variable interest rate equal to the
31 twelve-month average of the board's yield on its cash
32 liquidity pool. The rate shall be set on the first day of July
33 and the rate shall be adjusted annually on the same date.
34 The maximum annual adjustment may not exceed one
35 percent. Monthly payments made by the West Virginia
36 economic development authority to the board shall be
37 calculated on a one hundred twenty-month amortization.
38 The revolving loan shall be secured by a security interest
39 that pledges and assigns the cash proceeds of collateral
40 from all loans under this revolving loan pool. The West
41 Virginia economic development authority may also pledge
42 as collateral certain revenue streams from other revolving
43 loan pools which source of funds does not originate from
44 federal sources or from the board.

45 The outstanding principal balance of the revolving loan
46 from the board to the West Virginia economic development
47 authority may at no time exceed one hundred three
48 percent of the aggregate outstanding principal balance of
49 the business and industrial loans from the West Virginia
50 economic development authority to economic development
51 projects funded from this revolving loan pool. This
52 provision shall be certified annually by an independent
53 audit of the West Virginia economic development author-
54 ity financial records.

55 (c) The interest rates and maturity dates on the loans
56 made by the West Virginia economic development author-
57 ity for business and industrial development projects
58 authorized by section seven, article fifteen, chapter thirty-
59 one of this code shall be at competitive rates and maturi-
60 ties as determined by the West Virginia economic develop-
61 ment authority board.

62 (d) Any and all outstanding loans made by the board, or
63 any predecessor entity, to the West Virginia economic
64 development authority shall be refunded by proceeds of
65 the revolving loan contained in this section and no loans
66 may be made hereafter by the board to the West Virginia
67 economic development authority pursuant to section
68 twenty, article fifteen, chapter thirty-one of this code or
69 article eighteen-b of said chapter.

70 (e) The trustees of the board shall bear no fiduciary
71 responsibility as provided in section eleven of this article
72 with specific regard to the revolving loan contemplated in
73 this section.

§12-6-10. Restrictions on investments.

1 Notwithstanding any other provision in this code,
2 moneys on deposit in the consolidated fund shall be
3 invested as permitted by section twelve of this article
4 subject to the restrictions and conditions contained in this
5 section:

6 (1) At no time shall more than seventy-five percent of
7 the consolidated fund be invested in any bond, note,
8 debenture, commercial paper or other evidence of indebt-
9 edness of any private corporation or association;

10 (2) At no time shall more than five percent of the
11 consolidated fund be invested in securities issued by a
12 single private corporation or association; and

13 (3) At no time shall less than fifteen percent of the
14 consolidated fund be invested in any direct obligation of

15 or obligation guaranteed as to the payment of both
16 principal and interest by the United States of America.

§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 Prudent
3 Investor Act” codified as article six-c, chapter forty-four
4 of this code and is further subject to the following require-
5 ments:

6 (a) Trustees shall discharge their duties with respect to
7 the 401(a) plans for the exclusive purpose of providing
8 benefits to participants and their beneficiaries;

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

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

14 (d) Trustees shall discharge their duties in accordance
15 with the documents and instruments governing the trusts
16 or other funds under management insofar as the docu-
17 ments and instruments are consistent with the provisions
18 of this article.

19 (e) The duties of the board apply only with respect to
20 those assets deposited with or otherwise held by it.

§12-6-12. Investment restrictions.

1 (a) The board shall hold in equity investments no more
2 than sixty percent of the assets managed by the board and
3 no more than sixty percent of the assets of any individual
4 participant plan or the consolidated fund.

5 (b) The board shall hold in international securities no
6 more than twenty percent of the assets managed by the

7 board and no more than twenty percent of the assets of
8 any individual participant plan or the consolidated fund.

9 (c) The board may not at the time of purchase hold more
10 than five percent of the assets managed by the board in the
11 equity securities of any single company or association:
12 *Provided*, That if a company or association has a market
13 weighting of greater than five percent in the Standard &
14 Poor's 500 index of companies, the board may hold
15 securities of that equity equal to its market weighting.

16 (d) The board shall at all times limit its asset allocation
17 and types of securities to the following:

18 (1) The board may not hold more than twenty percent of
19 the aggregate participant plan assets in commercial paper.
20 Any commercial paper at the time of its acquisition shall
21 be in one of the two highest rating categories by an agency
22 nationally known for rating commercial paper;

23 (2) At no time shall the board hold more than seventy-
24 five percent of the assets managed by the board in corpo-
25 rate debt. Any corporate debt security at the time of its
26 acquisition shall be rated in one of the six highest rating
27 categories by a nationally recognized rating agency; and

28 (3) No security may be purchased by the board unless
29 the type of security is on a list approved by the board. The
30 board may modify the securities list at any time and shall
31 give notice of that action pursuant to subsection (g),
32 section three of this article and shall review the list at its
33 annual meeting.

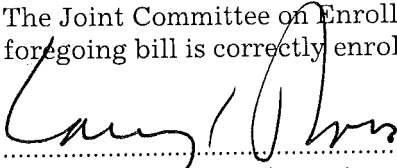
34 (e) Notwithstanding the investment limitations set forth
35 in this section, it is recognized that the assets managed by
36 the board, or the assets of the consolidated fund or partici-
37 pant plans, whether considered in the aggregate or indi-
38 vidualy, may temporarily exceed the investment limita-
39 tions in this section due to market appreciation, deprecia-

40 tion and rebalancing limitations. Accordingly, the limita-
41 tions on investments set forth in this section shall not be
42 considered to have been violated if the board rebalances
43 the assets it manages or the assets of the consolidated fund
44 or participant plans, whichever is applicable, to comply
45 with the limitations set forth in this section at least once
46 every six months based upon the latest available market
47 information and any other reliable market data that the
48 board considers advisable to take into consideration.

49 (f) The board, at the annual meeting provided for in
50 subsection (h), section three of this article, shall review,
51 establish and modify, if necessary, the investment objec-
52 tives of the individual participant plans as incorporated in
53 the investment policy statements of the respective trusts so
54 as to provide for the financial security of the trust funds
55 giving consideration to the following:

- 56 (1) Preservation of capital;
- 57 (2) Diversification;
- 58 (3) Risk tolerance;
- 59 (4) Rate of return;
- 60 (5) Stability;
- 61 (6) Turnover;
- 62 (7) Liquidity; and
- 63 (8) Reasonable cost of fees.

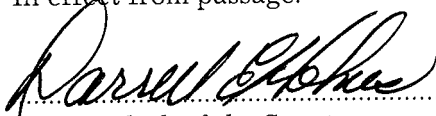
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

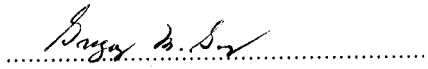

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Chairman Senate Committee

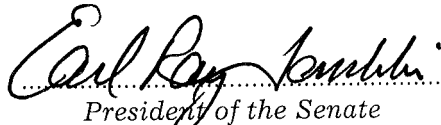

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Originated in the Senate.

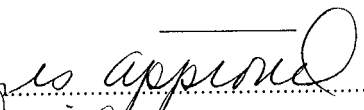
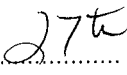
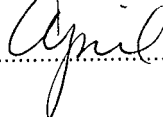
In effect from passage.

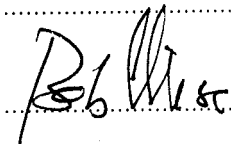

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within  this the 
Day of , 2001.


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Governor

PRESENTED TO THE

GOVERNOR

Date 4/24/01

Time 11:5am