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2005 MAY -4 A 9: 20

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2005*

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**ENROLLED**

*Committee Substitute for*

**SENATE BILL NO. 558**

**(By Senators Tomblin, Mr. President, and Sprouse,)**  
*By Request of the Executive)*

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**PASSED April 9, 2005**

**In Effect 90 days from Passage**

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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 558**

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
BY REQUEST OF THE EXECUTIVE)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to repeal §12-6-10 and §12-6-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §12-1-2, §12-1-12 and §12-1-13 of said code; to amend said code by adding thereto a new section, designated §12-1-12b; to amend and reenact §12-2-2 and §12-2-3 of said code; to amend and reenact §12-3A-4 of said code; to amend and reenact §12-6-1a, §12-6-5, §12-6-8 and §12-6-13 of said code; to amend and reenact §12-6B-4 of said code; and to amend said code by adding thereto a new article, designated §12-6C-1, §12-6C-2, §12-6C-3, §12-6C-4, §12-6C-5, §12-6C-6, §12-6C-7, §12-6C-8, §12-6C-9, §12-6C-10, §12-6C-11, §12-6C-12, §12-6C-13, §12-6C-14, §12-6C-15, §12-6C-16, §12-6C-17, §12-6C-18, §12-6C-19 and §12-6C-20, all relating generally to the management and investment of public funds; authorizing investment accounts for the Board of Treasury Investments; adding State Treasurer to entities receiving

reports from depositories regarding accounts not approved by the State Treasurer; allowing the Board of Treasury Investments to accept funds remitted by the State Treasurer; codifying and clarifying the duties of the State Treasurer in administering the Federal Cash Management Improvement Act; authorizing the Federal Cash Management Interest Fund and the Federal Cash Management - Administration Fund; enabling the Board of Treasury Investments to invest moneys in the consolidated fund; codifying current method of handling receipts using the state accounting system; authorizing Legislature to transfer moneys; requiring spending units to comply with procedures for receipt and disbursement of moneys not due the state; clarifying roles and administration of the West Virginia pay card; transferring management of consolidated fund from Investment Management Board to West Virginia Board of Treasury Investments; removing provision that the Investment Management Board can order the State Auditor and the State Treasurer to transmit funds; creating West Virginia Board of Treasury Investments; changing the date the debt capacity report is due from the first day of October to the fifteenth day of January; providing purposes, legislative findings and definitions for the Board of Treasury Investments; specifying membership of Board, appointment of certain directors of Board, terms of office, vacancies in office, removal of directors, expenses of directors, meetings and powers of Board; transferring management, control and administration of consolidated fund to the Board of Treasury Investments; requiring annual review of asset allocation plans and investment policies; specifying requirements and restrictions on investments; authorizing loans for industrial development; handling of securities; establishing the standard of care for investments; transferring existing cash, securities and other investments to the Board of Treasury Investments; requiring audits, financial statements and reports; continuing the current powers of spending units as to investments; transferring all loans from the consolidated fund to the Board of Treasury Investments; creating the fee fund and the

investment fund; authorizing fees for administration and expenses; and termination of Board.

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

That §12-6-10 and §12-6-15 of the Code of West Virginia, 1931, as amended, be repealed; that §12-1-2, §12-1-12 and §12-1-13 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §12-1-12b; that §12-2-2 and §12-2-3 of said code be amended and reenacted; that §12-3A-4 of said code be amended and reenacted; that §12-6-1a, §12-6-5, §12-6-8 and §12-6-13 of said code be amended and reenacted; that §12-6B-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §12-6C-1, §12-6C-2, §12-6C-3, §12-6C-4, §12-6C-5, §12-6C-6, §12-6C-7, §12-6C-8, §12-6C-9, §12-6C-10, §12-6C-11, §12-6C-12, §12-6C-13, §12-6C-14, §12-6C-15, §12-6C-16, §12-6C-17, §12-6C-18, §12-6C-19 and §12-6C-20, all to read as follows:

**ARTICLE 1. STATE DEPOSITORIES.**

**§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by State Treasurer; definition of spending unit.**

1 (a) The State Treasurer shall designate the state and  
2 national banks and the state and federal savings and loan  
3 associations in this state meeting the requirements of this  
4 chapter as depositories for all state funds placed in  
5 demand deposits.

6 (b) (1) Demand deposit accounts shall consist of receipt  
7 and disbursement accounts. Receipt accounts are accounts  
8 in which are deposited moneys belonging to or due the  
9 State of West Virginia or any official, department, board,  
10 commission or agency of the state.

11 (2) Disbursement accounts are accounts from which are  
12 paid moneys due from the State of West Virginia or any

13 official, department, board, commission, political subdivi-  
14 sion or agency of the state to any political subdivision,  
15 person, firm or corporation, except moneys paid from  
16 investment accounts.

17 (3) Investment accounts are accounts established by the  
18 West Virginia Investment Management Board, the West  
19 Virginia Board of Treasury Investments or the State  
20 Treasurer for the buying and selling of securities for  
21 investment purposes.

22 (c) The State Treasurer shall propose rules for legislative  
23 approval, in accordance with the provisions of article  
24 three, chapter twenty-nine-a of this code, concerning  
25 depositories for receipt accounts prescribing the selection  
26 criteria, procedures, compensation and any other contrac-  
27 tual terms it considers to be in the best interests of the  
28 state giving due consideration to: (1) The activity of the  
29 various accounts maintained in the depositories; (2) the  
30 reasonable value of the banking services rendered or to be  
31 rendered the state by the depositories; and (3) the value  
32 and importance of the deposits to the economy of the  
33 communities and the various areas of the state affected by  
34 the deposits.

35 (d) The State Treasurer shall select depositories for  
36 disbursement accounts through competitive bidding by  
37 eligible banks in this state. If none of the eligible banks in  
38 this state are able to provide the needed services, then the  
39 State Treasurer may include eligible banks outside this  
40 state in the competitive bidding process. The State  
41 Treasurer shall propose rules for legislative approval in  
42 accordance with the provisions of article three, chapter  
43 twenty-nine-a of this code, prescribing the procedures and  
44 criteria for the bidding and selection. The State Treasurer  
45 shall, in the invitations for bids, specify the approximate  
46 amounts of deposits, the duration of contracts to be  
47 awarded and any other contractual terms the State  
48 Treasurer considers to be in the best interests of the state,

49 consistent with obtaining the most efficient service at the  
50 lowest cost.

51 The amount of money needed for current operation  
52 purposes of the state government, as determined by the  
53 State Treasurer, shall be maintained at all times in the  
54 State Treasury, in cash, in short term investments not to  
55 exceed five days or in disbursement accounts with finan-  
56 cial institutions designated as depositories in accordance  
57 with the provisions of this section. No state officer or  
58 employee shall make or cause to be made any deposits of  
59 state funds in financial institutions which have not been  
60 designated as depositories.

61 (e) Except as otherwise provided in this code, only banks  
62 and state and federal savings and loan associations  
63 designated by the State Treasurer as depositories may  
64 accept deposits of state funds. Only the Legislature and  
65 the State Treasurer may determine whether funds are state  
66 funds and only the State Treasurer may approve the  
67 opening of an account or processing of a transaction with  
68 a financial institution.

69 (f) Boards, commissions and spending units with author-  
70 ity pursuant to this code to deposit moneys in a financial  
71 institution without approval of the State Treasurer shall  
72 retain that authority and are not required to have the  
73 State Treasurer designate a financial institution as a  
74 depository: *Provided*, That boards, commissions and  
75 spending units with moneys deposited in financial institu-  
76 tions not approved for that purpose by the State Treasurer  
77 shall submit a report on those moneys annually to the  
78 Legislative Auditor and the State Treasurer.

79 (g) The provisions of this section shall not apply to the  
80 proceeds from the sale of general obligation bonds or  
81 bonds issued by the School Building Authority, the  
82 Parkways, Economic Development and Tourism Authority,  
83 the Housing Development Fund, the Economic Develop-  
84 ment Authority, the Infrastructure and Jobs Development

85 Council, the Water Development Authority or the Hospital  
86 Finance Authority.

87 (h) As used in this chapter, "spending unit" means a  
88 department, agency, board, commission or institution of  
89 state government for which an appropriation is requested,  
90 or to which an appropriation is made by the Legislature.

**§12-1-12. Investing funds in treasury; depositories outside the state.**

1 (a) When the funds in the Treasury exceed the amount  
2 needed for current operational purposes, as determined by  
3 the State Treasurer, the State Treasurer shall make all  
4 excess funds available for investment by the Board of  
5 Treasury Investments which shall invest the excess for the  
6 benefit of the general revenue fund: *Provided*, That the  
7 State Treasurer, after reviewing the cash flow needs of the  
8 state, may withhold and invest amounts not to exceed one  
9 hundred twenty-five million dollars of the operating funds  
10 needed to meet current operational purposes. Investments  
11 made by the State Treasurer under this section shall be  
12 made in short term investments not to exceed five days.  
13 Operating funds means the consolidated fund established  
14 in section eight, article six of this chapter, including all  
15 cash and investments of the fund.

16 (b) Spending units with authority to retain interest or  
17 earnings on a fund or account may submit requests to the  
18 State Treasurer to transfer moneys to a specific investment  
19 pool of the Investment Management Board or the Board of  
20 Treasury Investments and retain any interest or earnings  
21 on the money invested. The general revenue fund shall  
22 receive all interest or other earnings on money invested  
23 that are not designated for a specific fund or account.

24 (c) Whenever the funds in the Treasury exceed the  
25 amount for which depositories within the state have  
26 qualified, or the depositories within the state which have  
27 qualified are unwilling to receive larger deposits, the State

28 Treasurer may designate depositories outside the state,  
29 disbursement accounts being bid for in the same manner  
30 as required by depositories within the state, and when  
31 depositories outside the state have qualified by giving the  
32 bond prescribed in section four of this article, the State  
33 Treasurer shall deposit funds in the same manner as funds  
34 are deposited in depositories within the state under this  
35 article.

36 (d) The State Treasurer may transfer funds to financial  
37 institutions outside the state to meet obligations to paying  
38 agents outside the state if the financial institution meets  
39 the same collateral requirements as set forth in this article.

**§12-1-12b. Cash management improvement act; administration;  
reports.**

1 (a) The Cash Management Improvement Act of 1990,  
2 Public Law 101-453, October 24, 1990, 31 USCA Section  
3 6501, *et seq.*, (CMIA) and regulations, as amended, estab-  
4 lishes requirements and techniques, including calculations,  
5 for the receipt and disbursement of federal funds by states.  
6 The authorized official and representative of the State of  
7 West Virginia for the CMIA is the State Treasurer.

8 (b) In administering the CMIA, the State Treasurer is  
9 authorized to do all things reasonably necessary, including  
10 without limitation, entering into agreements with, negoti-  
11 ating settlements with, refunding any interest due and  
12 satisfying any liability to the United States Treasury in  
13 accordance with the CMIA.

14 (c) Periodically the State Treasurer shall transfer to the  
15 Federal Cash Management Interest Fund, which is hereby  
16 authorized and continued, earnings on the State General  
17 Revenue Fund in an amount the State Treasurer estimates  
18 is needed to make refunds in accordance with the CMIA.  
19 After each annual settlement with the United States  
20 Treasury, the State Treasurer shall transfer to the State  
21 General Revenue Fund any moneys remaining in the

22 Federal Cash Management Interest Fund for the period  
23 just settled.

24 (d) The State Treasurer shall also transfer periodically to  
25 the Federal Cash Management – Administration Fund,  
26 which is hereby authorized and continued, earnings on the  
27 State General Revenue Fund in an amount the State  
28 Treasurer determines is needed to pay for the costs of  
29 administering the CMIA. The State Treasurer may pay the  
30 costs he or she incurs in administering the CMIA from the  
31 Federal Cash Management – Administration Fund.

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

35 (f) The State Treasurer shall send quarterly reports on  
36 the activities involving the CMIA to the Governor, State  
37 Auditor, Secretary of Revenue and Joint Committee on  
38 Government and Finance.

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

1 (a) The State Treasurer is authorized to pay for banking  
2 services, and goods and services ancillary to the banking  
3 services, by either a compensating balance in an account  
4 maintained at the financial institution providing the  
5 services or with a state warrant as described in section  
6 one, article three of this chapter.

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

14 (c) If payment is made by a state warrant, the West  
15 Virginia Board of Treasury Investments, at the request of

16 the State Treasurer, may establish within the consolidated  
 17 fund an investment pool which will generate sufficient  
 18 income to pay for all banking services provided to the state  
 19 and to pay for the investigation and pursuit of the prior  
 20 investment loss claims. All income earned by the invest-  
 21 ment pool shall be paid into a special account of the State  
 22 Treasurer known as the banking services account to pay  
 23 for all banking services and goods and services ancillary to  
 24 the banking services provided to the state, for the investi-  
 25 gation and pursuit of the prior investment loss claims, and  
 26 for amortization of the balance in the investment imbal-  
 27 ance 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; regula-  
 tions governing deposits; credit to state fund; excep-  
 tions.**

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 received for  
 4 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 State Treasurer may  
 8 review the procedures and methods used by officials and  
 9 employees authorized to accept moneys due the state and  
 10 change the procedures and methods if he or she determines  
 11 it is in the best interest of the state: *Provided*, That the  
 12 State Treasurer may not review or amend the procedures  
 13 by which the Department of Revenue accepts moneys due  
 14 the state. The State Treasurer shall propose rules for  
 15 legislative approval, in accordance with the provisions of  
 16 article three, chapter twenty-nine-a of this code governing  
 17 the procedure for deposits. The official or employee  
 18 making deposits with the State Treasurer shall prepare  
 19 deposit lists in the manner and upon report forms pre-  
 20 scribed by the State Treasurer in the state accounting

21 system. The State Treasurer shall review the deposits in  
22 the state accounting system and forward the information  
23 to the State Auditor and to the Secretary of Revenue.

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

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

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

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

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

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

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

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

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

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

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

70 (c) All moneys, except as provided in subdivisions (1)  
71 through (9), inclusive, subsection (b) of this section, shall  
72 be paid into the State Treasury in the same manner as  
73 collections not excepted and recorded in separate accounts  
74 for receipt and expenditure for the purposes for which the  
75 moneys are authorized to be collected by law: *Provided*,  
76 That amounts collected pursuant to subdivision (10),  
77 subsection (b) of this section, which are found, from time  
78 to time, to exceed funds needed for the purposes set forth  
79 in general law may be transferred to other accounts or  
80 funds and redesignated for other purposes by appropria-  
81 tion of the Legislature. The gross amount collected in all  
82 cases shall be paid into the State Treasury. Commissions,  
83 costs and expenses, including, without limitation, amounts  
84 charged for use of bank, charge, credit or debit cards,  
85 incurred in the collection process shall be paid from the  
86 gross amount collected in the same manner as other  
87 payments are made from the State Treasury.

88 (d) The State Treasurer may establish an imprest fund or  
89 funds in the office of any state spending unit upon receipt  
90 of a proper application. To implement this authority, the  
91 State Treasurer shall propose rules for legislative approval

92 in accordance with the provisions of article three, chapter  
93 twenty-nine-a of this code. The State Treasurer or his or  
94 her designee shall annually audit all imprest funds and  
95 prepare a list of the funds showing the location and  
96 amount as of fiscal year end, retaining the list as a perma-  
97 nent record of the State Treasurer until the Legislative  
98 Auditor has completed an audit of the imprest funds of all  
99 agencies and institutions involved.

100 (e) The State Treasurer may develop and implement a  
101 centralized receipts processing center. The State Trea-  
102 surer may request the transfer of equipment and personnel  
103 from appropriate state agencies to the centralized receipts  
104 processing center in order to implement the provisions of  
105 this section: *Provided*, That the Governor or appropriate  
106 constitutional officer has authority to authorize the  
107 transfer of equipment or personnel to the centralized  
108 receipts processing center from the respective agency.

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

1 All officials and employees of the state authorized to  
2 accept moneys that the State Treasurer determines or that  
3 this code specifies are not funds due the state pursuant to  
4 the provisions of section two of this article shall deposit  
5 the moneys, as soon as practicable, in the manner and in  
6 the depository specified by the State Treasurer. The State  
7 Treasurer shall prescribe the forms and procedures for  
8 depositing the moneys.

9 Notwithstanding any provision of this code to the  
10 contrary, including provisions stating funds collected are  
11 not state funds and provisions authorizing a spending unit  
12 to have one or more accounts outside the Treasury, a  
13 spending unit shall comply with the State Treasurer's  
14 procedures for the receipt and disbursement of moneys not  
15 due the state and obtain written authorization from the  
16 State Treasurer before depositing any moneys in an  
17 account outside the Treasury. Upon the State Treasurer's  
18 written revocation of the authorization, the spending unit

19 shall deposit funds deposited in an account outside the  
20 Treasury into the Treasury in the manner and in the  
21 depository specified by the State Treasurer. The State  
22 Treasurer is the final determining authority as to whether  
23 these funds are funds due or not due the state pursuant to  
24 section two of this article. The State Treasurer shall on a  
25 quarterly basis provide the Legislative Auditor with a  
26 report of all accounts authorized under this section.

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

**§12-3A-4. Payment by a West Virginia pay card.**

1 The State Auditor and the State Treasurer may jointly  
2 establish a state stored value debit card program known as  
3 the “West Virginia Pay Card” for recipients of employee  
4 payroll, retirement benefits or entitlement programs who  
5 do not possess a federally insured depository institution  
6 account. The State Auditor and the State Treasurer shall  
7 use every reasonable effort to encourage all identified  
8 unbanked recipients to obtain a federally insured depository  
9 account. The State Auditor shall include an  
10 unbanked recipient in the program upon determining that  
11 good cause exists. Once an unbanked recipient is included  
12 in the program, the State Auditor shall provide the State  
13 Treasurer with an electronic file containing the necessary  
14 unbanked recipient information. The State Treasurer shall  
15 issue a request for proposals in accordance with section  
16 three of this article to aid in the administration of the  
17 program. The State Auditor shall assist in the review of  
18 pay card proposals. In carrying out the purposes of this  
19 article, the State Treasurer shall not compete with banks  
20 or other federally insured financial institutions, or for  
21 profit.

**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,  
5 Disability and Retirement Fund of the Division of Public  
6 Safety, the Judges' Retirement System and the Deputy  
7 Sheriffs Retirement System should benefit from a prudent  
8 and conscientious staff of financial professionals dedicated  
9 to the administration, investment and management of  
10 those employees and employers financial contributions  
11 and that an independent board and staff should be im-  
12 mune to changing political climates and should provide a  
13 stable and continuous source of professional financial  
14 investment 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 may develop,  
21 implement and maintain an efficient and modern system  
22 for the investment and management of the state's money,  
23 except those moneys managed in accordance with article  
24 six-c of this chapter. The Legislature further finds that in  
25 order to implement these sound fiscal policies, the West  
26 Virginia Investment Management Board shall operate as  
27 an independent board with its own full-time staff of  
28 financial professionals, immune to changing political  
29 climates, in order to provide a stable and continuous  
30 source of professional financial management.

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

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

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

53 (f) The Legislature hereby finds and declares further that  
54 in accomplishing this purpose, the West Virginia Invest-  
55 ment Management Board, created and established by this  
56 article, is acting in all respects for the benefit of the state's  
57 public employees and ultimately the citizens of the state  
58 and the West Virginia Investment Management Board may  
59 act as trustee of the irrevocable trusts created by this  
60 article and to manage 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  
71 West Virginia Trust Fund Act unconstitutional in its  
72 decision rendered on the twenty-eighth day of March, one  
73 thousand nine hundred ninety-seven, to the extent that it  
74 authorized investments in corporate stock, but the court  
75 also recognized that there were other permissible constitu-

76 tional purposes of the West Virginia Trust Fund Act and  
77 that it is the role of the Legislature to determine those  
78 purposes consistent with the court's decision and the  
79 Constitution of West Virginia.

80 (i) The Legislature hereby further finds and declares that  
81 it is in the best interests of the state and its citizens to  
82 create a new investment management board in order to: (1)  
83 Be in full compliance with the provisions of the Constitu-  
84 tion of West Virginia; and (2) protect all existing legal and  
85 equitable rights of persons who have entered into contrac-  
86 tual relationships with the West Virginia Board of Invest-  
87 ments and the 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 and  
9 dispose of real and personal property, deeds, mortgages  
10 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  
29 stated 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 political  
38 subdivisions for its services;

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

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

45 (16) Make and, from time to time, amend and repeal  
46 bylaws, rules and procedures not inconsistent with the  
47 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) Upon request of the State Treasurer, transmit funds  
56 for deposit in the State Treasury to meet the daily obliga-  
57 tions of state government;

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

72 (22) Notwithstanding any other provision of the code to  
73 the contrary, conduct investment transactions, including  
74 purchases, sales, redemptions and income collections,  
75 which shall not be treated by the State Auditor as record-  
76 able transactions on the state's accounting system.

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

1 (a) There is continued a special investment fund desig-  
2 nated as the Consolidated Fund. Effective the thirtieth  
3 day of June, two thousand five, the power and authority of  
4 the Board as to the consolidated fund terminates. On the  
5 first day of July, two thousand five, the Board shall  
6 transfer the consolidated fund, all moneys, obligations,  
7 assets, securities and other investments of the consolidated  
8 fund and all records, properties and any other document or  
9 item pertaining to the consolidated fund in its possession  
10 or under its control to the West Virginia Board of Treasury  
11 Investments established in article six-c of this chapter.

12 (b) Each board, commission, department, official or  
13 agency charged with the administration of state funds may  
14 request the State Treasurer to make moneys available to  
15 the Board for investment.

16 (c) Each political subdivision of this state through its  
17 treasurer or equivalent financial officer may enter into  
18 agreements with the State Treasurer for the investment of  
19 moneys of the political subdivision. Any political subdivi-  
20 sion may enter into an agreement with a state spending  
21 unit from which it receives funds to request transfer of the  
22 funds to their investment account with the Investment  
23 Management Board or the West Virginia Board of Trea-  
24 sury Investments.

25 (d) Moneys held in the various funds and accounts  
26 administered by the Board shall be invested as permitted  
27 by this article and subject to the restrictions contained in  
28 this article. The Board shall report the earnings on the  
29 various funds under management to the State Treasurer at  
30 the times determined by the State Treasurer. The Board  
31 shall also establish rules for the administration of the  
32 various funds and accounts established by this section as  
33 it considers necessary for the administration of the funds  
34 and accounts, including, but not limited to: (1) The specifi-  
35 cation of amounts which may be deposited in any fund or  
36 account and minimum periods of time for which deposits  
37 will be retained; and (2) creation of reserves for losses:  
38 *Provided*, That in the event any moneys made available to  
39 the Board may not lawfully be combined for investment or  
40 deposited in the consolidated funds established by this  
41 section, the Board may create special accounts and may  
42 administer and invest those moneys in accordance with the  
43 restrictions specially applicable to those moneys.

**§12-6-13. Board as 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 duties vested by law in any agency, commission, official or  
8 other board of the state relating to the investment of  
9 moneys and the acquisition, sale, exchange or disposal of  
10 securities or any other investment by the West Virginia  
11 Board of Treasury Investments pursuant to article six-c of  
12 this chapter, to the Board of the School Fund or to the  
13 School Fund established by section 4, article XII of the  
14 State Constitution: *Provided, however*, That funds under  
15 the control of the Municipal Bond Commission may, in the  
16 discretion of the Commission, be made available to the  
17 Board for investment by the Commission as provided in  
18 article three, chapter thirteen of this code.

**ARTICLE 6B. DEBT CAPACITY ADVISORY DIVISION.**

**§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 fifteenth day of January of  
9 each year, an estimate of the maximum amount of new  
10 tax-supported debt that prudently may be authorized for  
11 the 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 the  
17 next fiscal year and annually for the following ten fiscal

18 years: (A) Will be outstanding; and (B) has been authorized  
19 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 five  
28 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 ability  
34 of the state to meet its projected debt service requirement  
35 for the next five fiscal years; and (C) any other factor  
36 affecting the marketability of the 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 the additional obliga-  
49 tions to the Governor and to the Legislature. The recom-  
50 mendation is advisory and in no way restricts the Gover-  
51 nor, the Legislature or the spending unit.

52 (d) The State Treasurer may review all proposed offer-  
53 ings of debt, as defined in this article, submitted to the  
54 Division of Debt Management, as provided in section six,  
55 article six-a of this chapter. The Division may also request  
56 any additional information which may be needed to issue  
57 an 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 State Treasurer feels may be relevant to the market-  
62 ability of said offering and its impact on the state's credit  
63 rating. The advisory opinion shall in no way restrict the  
64 Governor, the Legislature or the spending unit.

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

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

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

1 This article, cited as the West Virginia Treasury Invest-  
2 ments Act, is enacted to provide for the investment and  
3 management of the Consolidated Fund for the purposes of  
4 making state moneys more accessible to state government  
5 and allowing the Investment Management Board to focus  
6 on long-term investment of the trust estates it manages  
7 pursuant to article six of this chapter.

**§12-6C-2. Legislative findings.**

1 (a) The Legislature finds and declares that the Consoli-  
2 dated Fund should benefit from financial professionals  
3 dedicated to and focused on the sound administration,  
4 investment and management of the Fund.

5 (b) The Legislature finds and declares that the State  
6 Treasurer currently enters into agreements on behalf of the  
7 West Virginia Investment Management Board with

8 political subdivisions and provides reporting services for  
9 participants in the Consolidated Fund.

10 (c) The Legislature finds and declares that the transfer of  
11 the Consolidated Fund to the West Virginia Board of  
12 Treasury Investments will allow for management of the  
13 fund within state government and will encourage better  
14 cash management of state moneys.

15 (d) The Legislature finds and declares that a public body  
16 corporate within state government with appropriate  
17 governance is the best means of assuring reasonable access  
18 to and prudent management and investment of the Consol-  
19 idated Fund.

20 (e) The Legislature finds and declares that in accom-  
21 plishing these purposes, the West Virginia Board of  
22 Treasury Investments is acting in all respects for the  
23 benefit of the citizens of the state in managing and invest-  
24 ing the Consolidated Fund.

25 (f) The Legislature further finds and declares that it is in  
26 the best interests of the state, its citizens and the political  
27 subdivisions to create the West Virginia Board of Treasury  
28 Investments to manage and invest the Consolidated Fund  
29 to: (1) Provide focused investment services for the operat-  
30 ing funds of the state and of its political subdivisions; (2)  
31 provide better management of all state funds within state  
32 government; and (3) allow the West Virginia Investment  
33 Management Board to focus on the long-term investment  
34 of the trust estates it manages pursuant to article six of  
35 this chapter.

**§12-6C-3. Definitions.**

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

3 (1) "Board" means the governing body for the West  
4 Virginia Board of Treasury Investments. References in this  
5 code to the entity investing the moneys of the Consolidated

6 Fund, to the West Virginia Board of Investments, to the  
7 West Virginia Trust Fund or to the West Virginia Invest-  
8 ment Management Board in connection with investing  
9 moneys in the Consolidated Fund means the Board as  
10 defined in this subdivision;

11 (2) "Consolidated Fund" means the investment fund  
12 continued in section six of this article and transferred to  
13 the Board by the West Virginia Investment Management  
14 Board for Management and Investment;

15 (3) "Director" means any member serving on the Board;

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

20 (5) "Participant" means any state government spending  
21 unit or political subdivision which transfers moneys to the  
22 Board for investment;

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

29 (7) "Securities" means all bonds, notes, debentures or  
30 other evidences of indebtedness and other lawful invest-  
31 ment instruments; and

32 (8) "State funds" means all moneys of the state which  
33 may be lawfully invested except for the "school fund"  
34 established by section four, article XII of the State Consti-  
35 tution.

**§12-6C-4. West Virginia Board of Treasury Investments created;  
body corporate; board; directors; nomination and  
appointment of directors, qualifications and terms  
of appointment, advice and consent; annual and**

**other meetings; committees; board approval of investment policies required; open meetings, qualifications.**

1 (a) The West Virginia Board of Treasury Investments is  
2 created as a public body corporate and established to  
3 provide prudent fiscal administration, investment and  
4 management for the Consolidated Fund.

5 (b) Any appointment to the Board is effective immedi-  
6 ately upon appointment by the Governor with respect to  
7 voting, constituting a quorum, receiving expenses and all  
8 other rights and privileges of the Director position. A  
9 trustee of the West Virginia Investment Management  
10 Board other than the Governor, State Treasurer or State  
11 Auditor is not eligible to serve as a Director of the Board.

12 (c) The Board shall consist of five members, as follows:

13 (1) The Governor, the State Treasurer and the State  
14 Auditor or their designees. They shall serve by virtue of  
15 their offices and are not entitled to compensation under  
16 the provisions of this article. The Governor, State Treas-  
17 urer and State Auditor or their designees are subject to  
18 all duties, responsibilities and requirements of the provi-  
19 sions of this article; and

20 (2) Two persons appointed by the Governor subject to the  
21 advice and consent of the Senate.

22 (d) Of the two persons appointed by the Governor, one  
23 shall be a certified public accountant with experience in  
24 finance, investing and management, and one shall be an  
25 attorney with experience in finance, investing and man-  
26 agement.

27 (e) (1) Initial appointment of the appointed directors  
28 shall be for the following terms:

29 (A) One member shall be appointed for a term ending the  
30 thirtieth day of June, two thousand seven; and

31 (B) One member shall be appointed for a term ending the  
32 thirtieth day of June, two thousand nine.

33 (2) Except for appointments to fill vacancies, each  
34 subsequent appointment shall be for the term ending the  
35 thirtieth day of June of the fourth year following the year  
36 the preceding term expired. A Director may be reap-  
37 pointed. In the event a vacancy occurs it shall be filled by  
38 appointment for the unexpired term. A Director whose  
39 term has expired shall continue in office until a successor  
40 has been duly appointed and qualified. No appointed  
41 member of the Board may be removed from office by the  
42 Governor except for official misconduct, incompetency,  
43 neglect of duty, gross negligence, misfeasance or gross  
44 immorality.

45 (f) All directors shall receive reasonable and necessary  
46 expenses actually incurred in discharging director's duties  
47 pursuant to this article.

48 (g) The Board shall hold quarterly meetings. Board  
49 bylaws may provide for calling and holding additional  
50 meetings. Representatives of participants and members of  
51 the public may attend any meeting held by the Board,  
52 except during those meetings or part of meetings closed by  
53 the Board as permitted by law. Attendees shall observe  
54 standards of decorum established by board policy.

55 (h) The Board shall annually adopt a fee schedule and a  
56 budget reflecting fee structures for the year.

57 (i) The Board chairman may appoint committees as  
58 needed, including, but not limited to, an investment  
59 policies committee to discuss drafting, reviewing or  
60 modifying written investment policies. Each committee  
61 shall seek input from participants before reporting its  
62 recommendations to the Board. The Board may meet with  
63 any or all committees during any of its meetings.

64 (j) Any meeting of the Board may be closed upon adop-  
65 tion of a motion by any Director when necessary to

66 preserve the attorney-client privilege, to protect the  
67 privacy interests of individuals, to review personnel  
68 matters or to maintain confidentiality when confidential-  
69 ity is in the best interest of the participants.

**§12-6C-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 using the policies and procedures of the State  
8 Treasurer's Office;

9 (4) Acquire (by purchase, gift or otherwise), hold, use and  
10 dispose of real and personal property, deeds, mortgages  
11 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 to the  
15 contrary, specifically article three, chapter five-a of this  
16 code, retain and contract with legal, accounting, financial  
17 and investment managers, advisors and consultants;

18 (7) Acquire (by purchase, gift or otherwise), hold,  
19 exchange, pledge, lend and sell or otherwise dispose of  
20 securities and invest funds in investments authorized by  
21 this article;

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

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

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

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

36 (12) Abide by agreements entered into by the State  
37 Treasurer with political subdivisions of the state for  
38 investment of moneys of the political subdivisions by the  
39 Board;

40 (13) Charge and collect administrative fees from partici-  
41 pants, including political subdivisions, for its services;

42 (14) Exercise all powers generally granted to and exer-  
43 cised by the holders of investment securities with respect  
44 to management of the investment securities;

45 (15) Use any contract or agreement of the Investment  
46 Management Board or the State Treasurer's Office and  
47 enter into its own contracts or agreements, including,  
48 without limitation entering into a contract or agreement  
49 with one or more banking institutions in or outside the  
50 state for the custody, safekeeping and management of  
51 securities held by the Board and with any investment  
52 manager and investment advisor needed;

53 (16) Make, and from time to time, amend and repeal  
54 bylaws, rules and procedures not inconsistent with the  
55 provisions of this article;

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

59 (18) Develop, implement and maintain its own invest-  
60 ment accounts;

61 (19) Offer assistance and seminars to spending units and  
62 to political subdivisions;

63 (20) Upon request of the State Treasurer, transmit funds  
64 for deposit to the State Treasury to meet the daily obliga-  
65 tions of state government; and

66 (21) Establish one or more investment funds, pools or  
67 participant accounts within the consolidated fund for the  
68 purpose of investing the moneys and assets for which it is  
69 director, trustee, custodian or otherwise authorized to  
70 invest pursuant to this article. Interests in each fund, pool  
71 or participant account are designated as units and the  
72 Board shall adopt industry standard accounting proce-  
73 dures to determine the unit value of each fund, pool or  
74 participant account. The securities in each investment  
75 fund, pool or participant account are the property of the  
76 Board and each fund, pool or participant account is  
77 considered an investment pool, investment fund or invest-  
78 ment participant account.

**§12-6C-6. Consolidated fund continued; management.**

1 (a) The consolidated fund is continued and notwith-  
2 standing any provision of this code to the contrary is  
3 vested in the West Virginia Board of Treasury Investments  
4 on the first day of July, two thousand five.

5 (b) Each spending unit authorized to invest moneys shall  
6 unless prohibited by law, request the State Treasurer to  
7 invest its moneys. Based upon spending unit representa-  
8 tions, the State Treasurer shall send the moneys to the  
9 West Virginia Board of Treasury Investments or to the  
10 Investment Management Board for investment.

11 (c) Each political subdivision of this state through its  
12 State Treasurer or equivalent financial officer may enter  
13 into agreements with the State Treasurer for the invest-  
14 ment of moneys of the political subdivision. Any political  
15 subdivision may enter into an agreement with the state

16 spending unit from which it receives moneys to allow the  
17 board to invest the moneys.

18 (d) Moneys held in the various funds and accounts  
19 administered by the Board are invested as permitted by  
20 this article and subject to the restrictions contained in this  
21 article.

22 (e) The State Treasurer shall maintain records of the  
23 deposits and withdrawals of each participant and the  
24 performance of the various funds, pools and accounts. The  
25 Board shall report the earnings on the funds, pools, and  
26 accounts under management to the State Treasurer at the  
27 times determined by the State Treasurer.

28 (f) The Board shall establish policies for the administra-  
29 tion of the various funds, pools and accounts authorized by  
30 this article as it determines necessary. The policies may  
31 specify the minimum amounts and timing of deposits and  
32 withdrawals and any other matters authorized by the  
33 Board.

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

1 (a) The management and control of the Consolidated  
2 Fund is vested solely in the Board in accordance with the  
3 provisions of this article.

4 (b) The State Treasurer is the Chairman of the Board.  
5 The Board shall elect a vice chairman. Annually, the  
6 Directors shall elect a secretary to keep a record of the  
7 proceedings of the Board and provide any other duties  
8 required by the Board. The Board may elect a person who  
9 is not a member of the Board as secretary.

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

14 (d) The Board shall retain an internal auditor to report  
15 directly to the Board and shall fix his or her compensation.  
16 As a minimum qualification, the internal auditor shall be  
17 a certified public accountant with at least three years'  
18 experience as an auditor. The Internal Auditor shall  
19 develop an internal audit plan, with Board approval, for  
20 the testing of procedures, internal controls and the secu-  
21 rity of transactions.

22 (e) The Board shall retain one employee with a chartered  
23 financial analyst designation or an employee who is a  
24 certified treasury manager.

25 (f) Each director shall give a separate fiduciary or surety  
26 bond from a surety company qualified to do business  
27 within this state in a penalty amount of one million dollars  
28 for the faithful performance of his or her duties as a  
29 director. The Board shall purchase a blanket bond for the  
30 faithful performance of its duties in the amount of fifty  
31 million dollars or in an amount equivalent to one percent  
32 of the assets under management, whichever is greater. The  
33 amount of the blanket bond is in addition to the one  
34 million dollar individual bond required of each director by  
35 the provisions of this section. The Board may require a  
36 fiduciary or surety bond from a surety company qualified  
37 to do business in this state for any person who has charge  
38 of, or access to, any securities, funds or other moneys held  
39 by the Board and the amount of the fiduciary or surety  
40 bond are fixed by the Board. The premiums payable on all  
41 fiduciary or surety bonds are expenses of the Board.

42 (g) The Directors, employees of the Board and employees  
43 of the State Treasurer performing work for or on behalf of  
44 the Board are not liable personally, either jointly or  
45 severally, for any debt or obligation created by the Board:  
46 *Provided*, That the Directors and employees of the Board  
47 are liable for acts of misfeasance or gross negligence.

48 (h) The Board is exempt from the provisions of article  
49 three, chapter five-a, and sections seven and eleven, article

50 three, chapter twelve of this code. However, the Board is  
51 subject to the purchasing policies and procedures of the  
52 State Treasurer's Office.

**§12-6C-8. Administration of Consolidated Fund.**

1 (a) In the administration of the Consolidated Fund  
2 continued by this article, the Board may:

3 (1) Purchase, retain, hold, transfer and exchange and  
4 sell, at public or private sale, the whole or any part of the  
5 Fund or pools upon any terms and conditions it considers  
6 advisable;

7 (2) Invest and reinvest the fund and pools or any part  
8 thereof in fixed income securities as provided in this  
9 article;

10 (3) Carry the securities and other property held in trust  
11 either in the name of the Board or in the name of its  
12 nominee;

13 (4) Vote, in person or by proxy, all securities held; join in  
14 or dissent from and oppose the reorganization, recapital-  
15 ization, consolidation, merger, liquidation or sale of  
16 corporations or property; exchange securities for other  
17 securities issued in connection with or resulting from any  
18 transaction; pay any assessment or expense which the  
19 Board considers advisable for the protection of its interest  
20 as holder of the securities; exercise any option appurtenant  
21 to any securities for the conversion of any securities into  
22 other securities; and exercise or sell any rights issued upon  
23 or with respect to the securities of any corporation, all  
24 upon terms the Board considers advisable;

25 (5) Prosecute, defend, compromise, arbitrate or otherwise  
26 adjust or settle claims in favor of or against the board or  
27 a director;

28 (6) Employ and pay from the Fund any investment  
29 advisors, brokers, counsel, managers and any other  
30 assistants and agents the Board considers advisable;

31 (7) Develop, implement and modify an asset allocation  
32 plan and investment policy for each fund or pool; and

33 (8) Create a local government investment pool, a pro-  
34 gram to purchase certificates of deposit from West Vir-  
35 ginia financial institutions that are state depositories and  
36 any funds, pools or participant accounts needed.

37 (b) All income and earnings are free from anticipation,  
38 alienation, assignment or pledge by, and free from attach-  
39 ment, execution, appropriation or control by or on behalf  
40 of, any and all creditors of any beneficiary by any proceed-  
41 ing at law, in equity, in bankruptcy or insolvency.

42 (c) The Board shall render an annual accounting not  
43 more than one hundred twenty days following the close of  
44 the fiscal year.

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

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

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

12 (c) The Board shall consider the following when adopt-  
13 ing, reviewing, modifying or canceling investment policies:

14 (1) Preservation of capital;

15 (2) Risk tolerance;

16 (3) Credit standards;

- 17 (4) Diversification;
- 18 (5) Rate of return;
- 19 (6) Stability and turnover;
- 20 (7) Liquidity;
- 21 (8) Reasonable costs and fees;
- 22 (9) Permissible investments;
- 23 (10) Maturity ranges;
- 24 (11) Internal controls;
- 25 (12) Safekeeping and custody;
- 26 (13) Valuation methodologies;
- 27 (14) Calculation of earnings and yields;
- 28 (15) Performance benchmarks and evaluation; and
- 29 (16) Reporting.

30 (d) No security may be purchased by the Board unless  
31 the type of security is on a list approved at a board meet-  
32 ing. The Board shall review the list at its annual meeting.

33 (e) Notwithstanding the restrictions which are otherwise  
34 provided by law with respect to the investment of funds,  
35 the Board and all participants, now and in the future, may  
36 invest funds in these securities:

37 (1) Obligations of, or obligations that are insured as to  
38 principal and interest by, the United States of America or  
39 any agency or corporation thereof and obligations and  
40 securities of the United States sponsored enterprises,  
41 including, without limitation:

- 42 (i) United States Treasury;
- 43 (ii) Export-Import Bank of the United States;
- 44 (iii) Farmers Home Administration;

- 45 (iv) Federal Farm Credit Banks;
  - 46 (v) Federal Home Loan Banks;
  - 47 (vi) Federal Home Loan Mortgage Corporation;
  - 48 (vii) Federal Land Banks;
  - 49 (viii) Government National Mortgage Association;
  - 50 (ix) Merchant Marine bonds; and
  - 51 (x) Tennessee Valley Authority Obligations.
- 52 (2) Obligations of the Federal National Mortgage Associ-  
53 ation;
- 54 (3) Commercial paper with one of the two highest  
55 commercial paper credit ratings by a nationally recognized  
56 investment rating firm;
- 57 (4) Corporate debt rated in one of the six highest rating  
58 categories by a nationally recognized rating agency;
- 59 (5) State and local government, or any instrumentality or  
60 agency thereof, securities with one of the three highest  
61 ratings by a nationally recognized rating agency;
- 62 (6) Repurchase agreements involving the purchase of  
63 United States Treasury securities and repurchase agree-  
64 ments fully collateralized by obligations of the United  
65 States government or its agencies or instrumentalities;
- 66 (7) Reverse repurchase agreements involving the pur-  
67 chase of United States Treasury securities and reverse  
68 repurchase agreements fully collateralized by obligations  
69 of the United States government or its agencies or instru-  
70 mentalities;
- 71 (8) Asset-backed securities rated in the highest category  
72 by a nationally recognized rating agency, but excluding  
73 mortgage-backed securities; and

74 (9) Investments in accordance with the Linked Deposit  
75 Program, a program using financial institutions in West  
76 Virginia to obtain certificates of deposit, loans approved  
77 by the Legislature and any other programs authorized by  
78 the Legislature.

79 (f) In addition to the restrictions and conditions con-  
80 tained in this section:

81 (1) At no time shall more than seventy-five percent of the  
82 Consolidated Fund be invested in any bond, note, deben-  
83 ture, commercial paper or other evidence of indebtedness  
84 of any private corporation or association;

85 (2) At no time shall more than five percent of the Consol-  
86 idated Fund be invested in securities issued by a single  
87 private corporation or association; and

88 (3) At no time shall less than fifteen percent of the  
89 Consolidated Fund be invested in any direct obligation of  
90 or obligation guaranteed as to the payment of both  
91 principal and interest by the United States of America.

**§12-6C-10. Investment authority for Consolidated Fund trans-  
ferred to Board; exceptions.**

1 Effective the first day of July, two thousand and five, all  
2 duties vested by law in state spending units and the West  
3 Virginia Investment Management Board relating to the  
4 Consolidated Fund are transferred to the Board, including  
5 without limitation the investment of moneys, and the  
6 acquisition, sale, exchange or disposal of securities or any  
7 other investment: *Provided*, That neither this section nor  
8 any other section of this article applies to the “board of the  
9 school fund” and the “school fund” established by section  
10 4, article XII of the State Constitution: *Provided, how-*  
11 *ever*, That the municipal bond commission may make  
12 funds under its control available to the board for invest-  
13 ment.

**§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.**

1 (a) The Legislature finds and declares that the citizens of  
2 the state benefit from the creation of jobs and businesses  
3 within the state; that business and industrial development  
4 loan programs provide for economic growth and stimula-  
5 tion within the state; that loans from pools established in  
6 the Consolidated Fund will assist in providing the needed  
7 capital to assist business and industrial development; and  
8 that time constraints relating to business and industrial  
9 development projects prohibit duplicative review by both  
10 the Board and West Virginia Economic Development  
11 Authority Board. The Legislature further finds and  
12 declares that an investment in the West Virginia Enter-  
13 prise Capital Fund, LLC, of moneys in the Consolidated  
14 Fund as hereinafter provided will assist in creating jobs  
15 and businesses within the state and provide the needed  
16 risk capital to assist business and industrial development.  
17 This section is enacted in view of these findings.

18 (b) The West Virginia Board of Treasury Investments  
19 shall make available, subject to a liquidity determination,  
20 in the form of a revolving loan, up to one hundred seventy-  
21 five million dollars from the Consolidated Fund to loan the  
22 West Virginia Economic Development Authority for  
23 business or industrial development projects authorized by  
24 section seven, article fifteen, chapter thirty-one of this  
25 code and to consolidate existing loans authorized to be  
26 made to the West Virginia Economic Development Author-  
27 ity pursuant to this section and pursuant to section twenty,  
28 article fifteen, chapter thirty-one of this code which  
29 authorizes a one hundred seventy-five million dollar  
30 revolving loan and article eighteen-b, chapter thirty-one  
31 of this code which authorizes a fifty million dollar invest-  
32 ment pool: *Provided*, That the West Virginia Economic  
33 Development Authority may not loan more than fifteen  
34 million dollars for any one business or industrial develop-  
35 ment project. The revolving loan authorized by this

36 subsection shall be secured by one note at a variable  
37 interest rate equal to the twelve-month average of the  
38 board's yield on its cash liquidity pool. The rate shall be  
39 set on the first day of July and adjusted annually on the  
40 same date. The maximum annual adjustment may not  
41 exceed one percent. Monthly payments made by the West  
42 Virginia Economic Development Authority to the Board  
43 shall be calculated on a one hundred twenty-month  
44 amortization. The revolving loan is secured by a security  
45 interest that pledges and assigns the cash proceeds of  
46 collateral from all loans under this revolving loan pool.  
47 The West Virginia Economic Development Authority may  
48 also pledge as collateral certain revenue streams from  
49 other revolving loan pools which source of funds does not  
50 originate from federal sources or from the Board.

51 (c) The outstanding principal balance of the revolving  
52 loan from the Board to the West Virginia Economic  
53 Development Authority may at no time exceed one hun-  
54 dred three percent of the aggregate outstanding principal  
55 balance of the business and industrial loans from the West  
56 Virginia Economic Development Authority to economic  
57 development projects funded from this revolving loan pool.  
58 The independent audit of the West Virginia Economic  
59 Development Authority financial records shall annually  
60 certify that one hundred three-percent requirement.

61 (d) The interest rates and maturity dates on the loans  
62 made by the West Virginia Economic Development  
63 Authority for business and industrial development projects  
64 authorized by section seven, article fifteen, chapter thirty-  
65 one of this code shall be at competitive rates and maturi-  
66 ties as determined by the West Virginia Economic Devel-  
67 opment Authority Board.

68 (e) Any and all outstanding loans made by the West  
69 Virginia Board of Treasury Investments, or any predeces-  
70 sor entity, to the West Virginia Economic Development  
71 Authority are refundable by proceeds of the revolving loan  
72 contained in this section and the Board shall make no

73 loans to the West Virginia Economic Development Author-  
74 ity pursuant to section twenty, article fifteen, chapter  
75 thirty-one of this code or article eighteen-b of said chap-  
76 ter.

77 (f) The Directors of the Board shall bear no fiduciary  
78 responsibility with regard to any of the loans contem-  
79 plated in this section.

80 (g) Subject to cash availability, the Board shall make  
81 available to the West Virginia Economic Development  
82 Authority, from the Consolidated Fund, a nonresource  
83 loan in an amount up to twenty-five million dollars, for  
84 the purpose of the West Virginia Economic Development  
85 Authority making a loan or loans from time to time to the  
86 West Virginia Enterprise Advancement Corporation, an  
87 affiliated nonprofit corporation of the West Virginia  
88 Economic Development Authority. The respective loans  
89 authorized by this subsection by the Board to the West  
90 Virginia Economic Development Authority to the West  
91 Virginia Enterprise Advancement Corporation shall each  
92 be evidenced by one note and shall each bear interest at  
93 the rate of three percent per annum. The proceeds of any  
94 and all loans made by the West Virginia Economic Devel-  
95 opment Authority to the West Virginia Enterprise Ad-  
96 vancement Corporation pursuant to this subsection shall  
97 be invested by the West Virginia Enterprise Corporation in  
98 the West Virginia Enterprise Capital Fund, LLC, the  
99 manager of which is the West Virginia Enterprise Ad-  
100 vancement Corporation. The loan to West Virginia  
101 Economic Development Authority authorized by this  
102 subsection shall be nonrevolving, and advances under the  
103 loan shall be made at times and in amounts requested or  
104 directed by the West Virginia Economic Development  
105 Authority, upon reasonable notice to the Board. The loan  
106 authorized by this subsection is not subject to or included  
107 in the limitations set forth in subsection (b) of this section  
108 with respect to the fifteen million-dollar limitation for any  
109 one business or industrial development project and

110 limitation of one hundred three percent of outstanding  
111 loans, and may not be included in the revolving fund loan  
112 principal balance for purposes of calculating the loan  
113 amortization in subsection (b) of this section. The loan  
114 authorized by this subsection to the West Virginia Eco-  
115 nomic Development Authority shall be classified by the  
116 Board as a long-term fixed income investment, shall bear  
117 interest on the outstanding principal balance of the loan at  
118 the rate of three percent per annum payable annually on  
119 or before the thirtieth day of June of each year, and the  
120 principal of which shall be repaid no later than the  
121 thirtieth day of June, two thousand twenty-two in annual  
122 installments due on or before the thirtieth day of June of  
123 each year. The annual installments, which need not be  
124 equal shall commence no later than the thirtieth day of  
125 June, two thousand five, in annual principal amounts  
126 agreed upon between the Board and the West Virginia  
127 Economic Development Authority. The loan authorized by  
128 this subsection shall be nonrecourse and shall be payable  
129 by the West Virginia Economic Development Authority  
130 solely from amounts or returns received by the West  
131 Virginia Economic Development Authority in respect of  
132 the loan authorized by this subsection to the West Virginia  
133 Enterprise Advancement Corporation, whether in the form  
134 of interest, dividends, realized capital gains, return of  
135 capital or otherwise, in all of which the Board shall have  
136 a security interest to secure repayment of the loan to the  
137 West Virginia Economic Development Authority autho-  
138 rized by this subsection. Any and all loans from the West  
139 Virginia Enterprise Advancement Corporation made  
140 pursuant to this subsection shall also bear interest on the  
141 outstanding principal balance of the loan at the rate of  
142 three percent per annum payable annually on or before the  
143 thirtieth day of June of each year, shall be nonrecourse  
144 and shall be payable by the West Virginia Enterprise  
145 Advancement Corporation solely from amounts of returns  
146 received by the West Virginia Enterprise Advancement  
147 Corporation in respect to its investment in the West

148 Virginia Enterprise Capital Fund, LLC, whether in the  
149 form of interest, dividends, realized capital gains, return  
150 of capital or otherwise, in all of which that Board shall  
151 have a security interest to secure repayment of the loan to  
152 the West Virginia Economic Development Authority  
153 authorized by this subsection. In the event the amounts or  
154 returns received by the West Virginia Enterprise Corpora-  
155 tion in respect to its investment in the West Virginia  
156 Enterprise Capital Fund, LLC, are not adequate to pay  
157 when due the principal or interest installments, or both,  
158 with respect to the loan authorized by this subsection by  
159 the Board to the West Virginia Economic Development  
160 Authority, the principal or interest, or both, as the case  
161 may be, due on the loan made to the West Virginia Eco-  
162 nomic Development Authority pursuant to this subsection  
163 shall be deferred and any and all past-due principal and  
164 interest payments shall promptly be paid to the fullest  
165 extent possible upon receipt by the West Virginia Enter-  
166 prise Advancement Corporation of moneys in respect to its  
167 investments in the West Virginia Enterprise Capital Fund,  
168 LLC. The Directors or the Board shall bear no fiduciary  
169 responsibility as provided in section thirteen of this article  
170 with regard to the loan authorized by this subsection.

**§12-6C-12. Securities handling.**

1 In financial transactions whereby securities are pur-  
2 chased by the Board under an agreement providing for the  
3 resale of the securities to the original seller at a stated  
4 price, the Board shall take physical possession of the  
5 securities, directly, by its custodian bank or through a  
6 neutral third party: *Provided*, That an agreement with a  
7 neutral third party may not waive liability for the han-  
8 dling of the securities: *Provided, however*, That when the  
9 board is unable to take possession, directly, by its custo-  
10 dian bank or through a mutual third party, the Board may  
11 leave securities in a segregated account with the original  
12 seller, provided the amount of the securities with any one  
13 seller may not exceed one hundred fifty million dollars.

**§12-6C-13. Standard of care.**

1 (a) The Uniform Prudent Investor Act, codified in article  
2 six-c, chapter forty-four of this code, is the standard for  
3 any investments made under this article. Investments are  
4 further subject to the following:

5 (1) The directors shall diversify fund investment so as to  
6 minimize the risk of large losses unless, under the circum-  
7 stances, it is clearly prudent not to do so;

8 (2) The directors shall defray reasonable expenses of  
9 investing and managing the Consolidated Fund by charg-  
10 ing fees as provided in this article; and

11 (3) The directors shall discharge their duties in accor-  
12 dance with the documents and instruments consistent with  
13 the provisions of this article.

14 (b) The duties of the directors apply only with respect to  
15 those assets deposited with or otherwise held by the Board.

**§12-6C-14. Existing investments.**

1 The Investments Management Board shall transfer the  
2 cash, securities and other investments of the Consolidated  
3 Fund it holds, maintains or administers to the West  
4 Virginia Board of Treasury investments on the first day of  
5 July, two thousand five, which will lawfully vest the West  
6 Virginia Board of Treasury Investments with ownership of  
7 all securities or other investments of the Consolidated  
8 Fund.

**§12-6C-15. Annual audits; financial statements; information.**

1 (a) The Board shall have an annual financial and compli-  
2 ance audit of the assets, funds, pools and participant  
3 accounts managed by the Board made by a certified public  
4 accounting firm which has a minimum staff of ten certi-  
5 fied public accountants and which is a member of the  
6 American Institute of Certified Public Accountants and, if  
7 doing business in West Virginia, a member of the West

8 Virginia Society of Certified Public Accountants. The  
9 Board shall have financial and compliance audits of the  
10 Board's books, accounts and records with respect to its  
11 receipts, disbursements, investments, contracts and all  
12 other matters relating to its financial operations com-  
13 pleted annually.

14 (b) The Board shall produce monthly financial state-  
15 ments for the assets managed by the Board and send them  
16 to each member of the Board and provide copies as  
17 reasonably requested.

18 (c) Each quarter the Board shall deliver a report for the  
19 prior quarter to the Council of Finance and Administra-  
20 tion.

21 (d) The Board shall contract with an investment consult-  
22 ing or a certified public accounting firm meeting the  
23 criteria set out in subsection (a) of this section for an  
24 annual audit of the reported returns of the assets managed  
25 by the Board.

26 (e) The Board shall prepare an annual report detailing all  
27 fees charged by the Board under this article. The Board  
28 shall furnish copies of the report to the Legislative Joint  
29 Committee on Government and Finance.

30 (f) Unless specifically otherwise stated, copies of the  
31 reports required in this section shall be furnished to the  
32 Board, Governor, President of the Senate, Speaker of the  
33 House of Delegates, Council of Finance and Administra-  
34 tion, Legislative Librarian and upon request to any  
35 legislator, legislative committee, financial institution,  
36 member of the media and the public.

37 (g) The Board shall provide any other information  
38 requested in writing by the Council of Finance and  
39 Administration or any member of the Legislature.

**§12-6C-16. Reports to participants.**

1 (a) On a monthly basis, the Board shall timely provide  
2 the State Treasurer with information to enable the State

3 Treasurer to provide an itemized statement of a spending  
4 unit's or other participant's account in the Consolidated  
5 Fund to each state spending unit and any other entity  
6 investing moneys in the Consolidated Fund. The statement  
7 shall include the beginning balance, contributions, with-  
8 draws, income distributed, change in value and ending  
9 balance.

10 (b) The Board shall prepare annually, or more frequently  
11 if determined necessary by the Board, a report of its  
12 operations and the performance of the various funds, pools  
13 and participant accounts administered by it. The Board  
14 shall furnish copies of the report to each participant, the  
15 President of the Senate, Speaker of the House of Dele-  
16 gates, Legislative Auditor, and upon request to any  
17 legislative committee, any legislator, any banking institu-  
18 tion or state or federal savings and loan association in this  
19 state and any member of the news media. The Board shall  
20 also keep the reports available for inspection by any  
21 citizen of this state.

**§12-6C-17. Legal status of spending units continued.**

1 Except as otherwise provided in this article, every state  
2 spending unit shall retain all of the powers and shall  
3 exercise all of the functions and duties vested in or im-  
4 posed upon it by law, as to any fund or account.

**§12-6C-18. Authorization for loans by the Board.**

1 (a) Any loan made from the Consolidated Fund by a  
2 predecessor entity shall remain in existence and in accor-  
3 dance with the terms and conditions of the loan.

4 (b) The Board shall continue the work of the Investment  
5 Management Board in taking the steps necessary to  
6 increase the liquidity of the Consolidated Fund to allow  
7 for any loans authorized by the Legislature without  
8 increasing the risk of loss.

**§12-6C-19. Creation of fee account and investment account; budget.**

1 (a) The Board may charge fees, which are subtracted  
2 from the total return on investments, for the reasonable  
3 and necessary expenses incurred by the Board in rendering  
4 services. All fees collected shall be deposited in a special  
5 account in the State Treasury created and designated the  
6 Board of Treasury Investments Fee Fund. Expenditures  
7 from the Fund shall be for the purposes set forth in this  
8 article and are not authorized from collections, but are to  
9 be made only in accordance with appropriation by the  
10 Legislature, in accordance with the provisions of article  
11 three, chapter twelve of this code and upon the fulfillment  
12 of the provisions set forth in article two, chapter eleven-b  
13 of this code: *Provided*, That for the fiscal year ending the  
14 thirtieth day of June, two thousand six, expenditures are  
15 authorized from collections rather than pursuant to an  
16 appropriation by the Legislature.

17 (b) There is created in the State Treasury a special  
18 account designated the Board of Treasury Investments  
19 Investment Fund for use in receiving funds for investment,  
20 disbursing funds from investments and processing invest-  
21 ment transactions.

22 (c) All fees dedicated, identified or readily identifiable to  
23 an entity, fund, pool or participant account shall be  
24 charged to that entity, fund, pool or participant account  
25 and all other fees shall be charged as a percentage of assets  
26 under management. At its annual meeting, the Board shall  
27 adopt a fee schedule and a budget reflecting fee schedules.

**§12-6C-20. Termination of board.**

1 Pursuant to the provisions of article ten, chapter four of  
2 this code, the West Virginia Board of Treasury Investments  
3 shall continue to exist until the first day of July, two  
4 thousand ten.

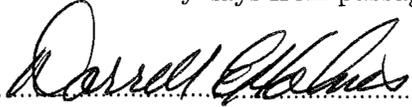
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

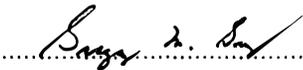
  
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Chairman Senate Committee

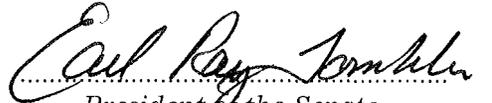
  
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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

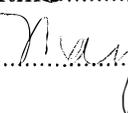
  
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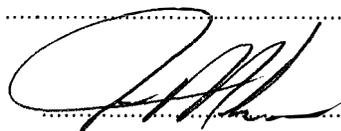
  
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