

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2837**

5 (By Delegates Boggs, White, Reynolds, Hunt, Guthrie, Perdue,
6 Pethtel, Williams, Manypenny, R. Phillips and Skaff)

7
8 [Passed April 13, 2013; in effect ninety days from passage.]
9

10 AN ACT to repeal §12-1-12c of the Code of West Virginia, 1931, as
11 amended; to repeal §12-6B-1, §12-6B-2, §12-6B-3 and §12-6B-4
12 of said code; to amend and reenact §5-10B-13 of said code; to
13 amend said code by adding thereto a new section, designated
14 §5-10B-14; to amend and reenact §12-1-3, §12-1-8 and §12-1-11
15 of said code; to amend and reenact §12-2-2 and §12-2-3 of said
16 code; to amend and reenact §12-3A-3 of said code; to amend
17 said code by adding thereto a new section, designated
18 §12-4-17; to amend and reenact §12-5-4 of said code; to amend
19 and reenact §12-6A-1, §12-6A-2, §12-6A-3, §12-6A-4 and
20 §12-6A-5, §12-6A-6 and §12-6A-7 of said code; to amend and
21 reenact §12-6C-7 and §12-6C-9 of said code; to amend and
22 reenact §33-3-14d of said code; and to amend and reenact
23 §36-8-13 of said code, all relating to the state treasurer's
24 office; authorizing the deferred compensation plan to accept

1 qualified domestic relations orders; authorizing Roth accounts
2 within the deferred compensation plan in accordance with the
3 Internal Revenue Code; authorizing financial institutions to
4 offer products in addition to certificates of deposit;
5 updating references to investing authorities to include the
6 Board of Treasury Investments; raising the amount of eligible
7 deposits from \$100,000 to the amount insured by a federal
8 agency; providing requirements to be eligible depositories;
9 providing for conflicts of interest for applicants and
10 employees of the Treasurer's office in connection with
11 financial institutions; authorizing depositories to submit
12 reports in an electronic format; changing the requirement that
13 deposits are required within 24 hours to one business day;
14 changing the report to the Legislative Auditor for accounts
15 outside the treasury from quarterly to an annual report;
16 authorizing the Treasurer to determine the competitive bidding
17 of banking, investment and related goods and services required
18 for treasury operations; authorizing the Treasurer to develop
19 procedures for storing, retaining and disposing of records for
20 his or her office; ensuring the director of the division of
21 archives and history receives records with historical value;
22 clarifying that the Treasurer is responsible for earnings
23 received on securities, not just interest; consolidating the
24 debt capacity division into the debt management division;

1 providing legislative findings to acknowledge the importance
2 of monitoring the debt of the state and its spending units;
3 continuing division of debt management as the central
4 information source for debt issued by the state and its
5 spending units; defining debt to include debentures, lease
6 purchases, mortgages, securitizations and other types of
7 obligations with specific amounts owed and payable on demand
8 or on determinable dates; defining debt impact report, moral
9 obligation bond, net tax supported debt and tax supported
10 debt; defining spending unit; eliminating requirement for
11 developing a long-term debt plan; authorizing the division to
12 continuously evaluating debt and debt service requirements of
13 the state and its spending units; authorizing the division to
14 issue a debt impact report if requested by the Governor,
15 Senate President or House of Delegates Speaker and that the
16 report shall not restrict the Governor, Legislature or
17 spending unit; requiring the division to monitor continuing
18 disclosure requirements and post-issuance compliance issues;
19 eliminating requirement that the debt management division
20 provide staff for the debt capacity division; providing for
21 reporting by the division and the spending units; requiring
22 the division to prepare and issue the debt capacity report;
23 authorizing the Treasurer to promulgate the rules in certain
24 circumstances; altering the bond required for the Board of

1 Treasury Investments from \$50 million to at least \$10 million,
2 as set by the board; updating language pertaining to rating
3 agencies to nationally recognized statistical rating
4 organizations; permitting pools with weighted average maturity
5 or duration of 366 days or more to invest in investment grade
6 corporate debt securities; authorizing investments in money
7 market and other fixed income funds; providing that securities
8 falling out of compliance with the Code do not have to be sold
9 if the investment manager and investment consultant recommend
10 retention; satisfying amounts due to and from policemen's and
11 firemen's pension and relief funds and the Teachers Retirement
12 System; authorizing transfer of moneys from the Unclaimed
13 Property Trust Fund for payment to policemen's and firemen's
14 pension and relief funds.

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

16 That §12-1-12c of the Code of West Virginia, 1931, as amended,
17 be repealed; that §12-6B-1, §12-6B-2, §12-6B-3 and §12-6B-4 of said
18 code be repealed; that §5-10B-13 of said code be amended and
19 reenacted; that said code be amended by adding thereto a new
20 section, designated §5-10B-14; that §12-1-3, §12-1-8 and §12-1-11
21 of said code be amended and reenacted; that §12-2-2 and §12-2-3 of
22 said code be amended and reenacted; that §12-3A-3 of said code be
23 amended and reenacted; that said code be amended by adding thereto
24 a new section, designated §12-4-17; that §12-5-4 of said code be

1 amended and reenacted; that §12-6A-1, §12-6A-2, §12-6A-3, §12-6A-4
2 and §12-6A-5, §12-6A-6 and §12-6A-7 of said code be amended and
3 reenacted; that §12-6C-7 and §12-6C-9 of said code be amended and
4 reenacted; that §33-3-14d of said code be amended and reenacted;
5 and that §36-8-13 of said code be amended and reenacted, all to
6 read as follows:

7 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**
8 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS,**
9 **MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**

10 **ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.**

11 **§5-10B-13. Moneys not subject to legal process; qualified domestic**
12 **relations orders.**

13 No account, benefit or right, created pursuant to this
14 article, accrued or accruing, is subject to execution, garnishment,
15 attachment, sale to satisfy a judgment or order, the operation of
16 bankruptcy or insolvency laws, or other process of law and shall be
17 unassignable, except that accounts, benefits and contributions
18 under the plan are subject to "qualified domestic relations orders"
19 as that term is defined in Internal Revenue Code §414(p).

20 **§5-10B-14. Roth accounts.**

21 The Treasurer or any public employer may authorize Roth
22 accounts within the plan in accordance with the Internal Revenue
23 Code, including, without limitation, conversions, deferrals,

1 rollovers and transfers.

2 **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

3 **ARTICLE 1. STATE DEPOSITORIES.**

4 **§12-1-3. Depositories for interest earning deposits;**
5 **qualifications.**

6 Any state or national bank or any state or federal savings and
7 loan association in this state shall, upon request made to the
8 State Treasurer, be designated as an eligible depository for
9 interest earning deposits of state funds if such bank or state or
10 federal savings and loan association meets the requirements set
11 forth in this chapter. For purposes of this article, the term
12 "interest earning deposits" includes certificates of deposit or
13 other financial institution products. The State Treasurer shall
14 make and apportion such interest earning deposits and shall
15 prescribe the interest rates, terms and conditions of deposits, all
16 in accordance with the provisions of articles six and six-c of this
17 chapter: *Provided*, That state or federal savings and loan
18 associations insured by an agency of the federal government shall
19 be eligible for such deposits not in excess of the amount insured
20 by any agency of the federal government.

21 **§12-1-8. Conflict of interest.**

22 An employee or a person applying for a position with the
23 office of the Treasurer shall disclose to the Treasurer if he or

1 she, or his or her spouse, is an officer, director or employee of
2 a depository or owns greater than two percent of a depository. Any
3 employee of the office of the Treasurer who, or whose spouse, is an
4 officer, director or employee of a depository or owns greater than
5 two percent of a depository may not participate in any selection of
6 or in any contract negotiations with any depository.

7 **§12-1-11. Reports by depositories to Treasurer; discontinuance of**
8 **depositories.**

9 (a) Each depository of state funds shall at the end of each
10 quarter cause its president or designated officer to report to the
11 Treasurer the amount of state funds on deposit and the report shall
12 be verified by the affidavit of the officer making it. The form and
13 contents of the report shall be prescribed by the Treasurer and may
14 be in an electronic format.

15 (b) For the failure to file the report, or for other good
16 cause, the Treasurer may discontinue any depository as an eligible
17 depository and cause all state funds to be withdrawn from any
18 depository or depositories discontinued.

19 (c) When a depository is discontinued, the Treasurer shall
20 immediately notify such depository of its discontinuance, and shall
21 immediately withdraw by current checks or by transfer to another
22 depository or depositories the full amount of the deposits held by
23 any depository discontinued. After discontinuance, it shall be
24 unlawful for the Treasurer to deposit any state funds in any

1 depository discontinued until such time as the depository may be
2 reinstated to eligibility.

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

5 **§12-2-2. Itemized record of moneys received for deposit;**
6 **regulations governing deposits; credit to state fund;**
7 **exceptions.**

8 (a) All officials and employees of the state authorized by
9 statute to accept moneys on behalf of the State of West Virginia
10 shall keep a daily itemized record of moneys received for deposit
11 in the State Treasury and shall deposit within one business day
12 with the State Treasurer all moneys received or collected by them
13 for or on behalf of the state for any purpose whatsoever. The
14 State Treasurer may grant an exception to the one business day rule
15 when circumstances make compliance difficult or expensive. The
16 State Treasurer may review the procedures and methods used by
17 officials and employees authorized to accept moneys due the state
18 and change the procedures and methods if he or she determines it is
19 in the best interest of the state: *Provided,* That the state
20 Treasurer may not review or amend the procedures by which the
21 Department of Revenue accepts moneys due the state. The State
22 Treasurer shall propose rules for legislative approval, in
23 accordance with the provisions of article three, chapter

1 twenty-nine-a of this code governing the procedure for deposits.
2 The official or employee making deposits with the state Treasurer
3 shall prepare deposit lists in the manner and upon report forms
4 prescribed by the state Treasurer in the state accounting system.
5 The State Treasurer shall review the deposits in the state
6 accounting system and forward the information to the State Auditor
7 and to the Secretary of Revenue.

8 (b) All moneys received by the state from appropriations made
9 by the Congress of the United States shall be recorded in special
10 fund accounts, in the State Treasury apart from the general
11 revenues of the state, and shall be expended in accordance with the
12 provisions of article eleven, chapter four of this code. All
13 moneys, other than federal funds, defined in section two, article
14 eleven, chapter four of this code, shall be credited to the state
15 fund and treated by the State Auditor and State Treasurer as part
16 of the general revenue of the state except the following funds
17 which shall be recorded in separate accounts:

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

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

22 (3) All endowment funds, bequests, donations, executive
23 emergency funds and death and disability funds;

24 (4) All fees and funds collected at state educational

1 institutions for student activities;

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

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

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

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

11 (9) All moneys collected and belonging to the capitol building
12 fund, state road fund, state road sinking fund, general school
13 fund, school fund, state fund (moneys belonging to counties,
14 districts and municipalities), state interest and sinking funds,
15 state compensation funds, the fund maintained by the Public Service
16 Commission for the investigation and supervision of applications
17 and all fees, money, interest or funds arising from the sales of
18 all permits and licenses to hunt, trap, fish or otherwise hold or
19 capture fish and wildlife resources and money reimbursed and
20 granted by the federal government for fish and wildlife
21 conservation; and

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

1 (c) All moneys, except as provided in subdivisions (1) through
2 (9), inclusive, subsection (b) of this section, shall be paid into
3 the State Treasury in the same manner as collections not excepted
4 and recorded in separate accounts for receipt and expenditure for
5 the purposes for which the moneys are authorized to be collected by
6 law: *Provided*, That amounts collected pursuant to subdivisions (1)
7 through (10), subsection (b) of this section, which are found, from
8 time to time, to exceed funds needed for the purposes set forth in
9 general law may be transferred to other accounts or funds and
10 redesignated for other purposes by appropriation of the
11 Legislature. The gross amount collected in all cases shall be paid
12 into the State Treasury. Commissions, costs and expenses,
13 including, without limitation, amounts charged for use of bank,
14 charge, credit or debit cards, incurred in the collection process
15 shall be paid from the gross amount collected in the same manner as
16 other payments are made from the State Treasury.

17 (d) The State Treasurer may establish an imprest fund or funds
18 in the office of any state spending unit upon receipt of a proper
19 application. To implement this authority, the State Treasurer shall
20 propose rules for legislative approval in accordance with the
21 provisions of article three, chapter twenty-nine-a of this code.
22 The State Treasurer or his or her designee shall annually audit all
23 imprest funds and prepare a list of the funds showing the location
24 and amount as of fiscal year end, retaining the list as a permanent

1 record of the State Treasurer until the Legislative Auditor has
2 completed an audit of the imprest funds of all agencies and
3 institutions involved.

4 (e) The State Treasurer may develop and implement a
5 centralized receipts processing center. The State Treasurer may
6 request the transfer of equipment and personnel from appropriate
7 state agencies to the centralized receipts processing center in
8 order to implement the provisions of this section: *Provided*, That
9 the Governor or appropriate constitutional officer has authority to
10 authorize the transfer of equipment or personnel to the centralized
11 receipts processing center from the respective agency.

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

13 (a) All officials and employees of the State authorized to
14 accept moneys that the State Treasurer determines or that this code
15 specifies are not funds due the State pursuant to the provisions of
16 section two of this article shall deposit the moneys, as soon as
17 practicable, in the manner and in the depository specified by the
18 State Treasurer. The State Treasurer shall prescribe the forms and
19 procedures for depositing the moneys.

20 (b) Notwithstanding any provision of this code to the
21 contrary, including provisions stating funds collected are not
22 state funds and provisions authorizing a spending unit to have one
23 or more accounts outside the Treasury, a spending unit shall comply
24 with the State Treasurer's procedures for the receipt and

1 disbursement of moneys not due the state and obtain written
2 authorization from the State Treasurer before depositing any moneys
3 in an account outside the Treasury. Upon the State Treasurer`s
4 written revocation of the authorization, the spending unit shall
5 deposit funds deposited in an account outside the Treasury into the
6 Treasury in the manner and in the depository specified by the State
7 Treasurer. The State Treasurer is the final determining authority
8 as to whether these funds are funds due or not due the state
9 pursuant to section two of this article.

10 (c) The State Treasurer shall provide the Legislative Auditor
11 with report of all accounts authorized under this section.

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

13 **§12-3A-3. Financial electronic commerce.**

14 (a) The State Auditor and the State Treasurer shall implement
15 electronic commerce capabilities for each of their offices to
16 facilitate the performance of their duties under this code. The
17 State Treasurer shall competitively bid the selection of vendors
18 needed to provide the necessary banking, investment and related
19 goods and services, and the provisions of article one-b, chapter
20 five, and articles three and seven, chapter five-a of this code
21 shall not apply, unless requested by the State Treasurer.

22 (b) A document or a signature received, issued or used by the
23 Auditor or the Treasurer shall be considered an original and may
24 not be denied legal effect on the ground that it is in electronic

1 form.

2 (c) The Auditor or Treasurer may, in his or her discretion,
3 require documents filed with or submitted to his or her respective
4 office be filed or submitted in a prescribed electronic format.

5 (d) The Auditor or Treasurer, in his or her discretion, may
6 waive:

7 (1) Any requirements for a document filed or submitted in an
8 electronic format; or

9 (2) Any requirements for the certification, notarization or
10 verification of a document filed or submitted in an electronic
11 format.

12 (e) The head of each spending unit is responsible for adopting
13 and implementing security procedures to ensure adequate integrity,
14 security, confidentiality and auditability of the business
15 transactions of his or her spending unit when utilizing electronic
16 commerce.

17 **ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.**

18 **§12-4-17. Retention and disposal of Treasurer's records.**

19 The Treasurer shall develop procedures for the storage,
20 retention and disposal of records filed with, submitted to or
21 created by the Treasurer's office. The procedures shall comply
22 with the requirements for state records, as defined in section
23 three, article eight, chapter five-a of this code, and for the
24 reproduction and preservation of essential state records, as

1 defined in section four, article eight, chapter five-a of this
2 code. Preservation duplicates, as defined in section three,
3 article eight, chapter five-a of this code, shall be maintained in
4 an unalterable readable electronic media in accordance with
5 industry standards, reviewed for accuracy and indexed, and shall
6 have the same force and effect as the original records whether the
7 original records are in existence or not. The procedures shall
8 provide for the maintenance of the confidentiality of the records
9 and ensure the director of the division of archives and history
10 receives the records the director identifies as having historic
11 value. The Treasurer shall purchase the equipment and supplies
12 needed for record retention as part of his or her electronic
13 commerce activities: *Provided*, That this section shall not limit
14 the responsibility of the Treasurer to provide all documents
15 necessary for the State Auditor, the Department of Revenue and the
16 State Tax Department to complete their duties.

17 **ARTICLE 5. PUBLIC SECURITIES.**

18 **§12-5-4. Treasurer to keep accounts and make collections.**

19 The Treasurer shall keep an accurate account of all securities
20 received by him or her and collect and account for earnings
21 received and the principal whenever it is due.

22 **ARTICLE 6A. THE DEBT MANAGEMENT ACT**

23 **§12-6A-1. Short title.**

1 This article shall be known and may be cited as "The Debt
2 Management Act".

3 **§12-6A-2. Legislative findings and declaration of public necessity.**

4 The Legislature hereby finds and declares that in order to
5 maintain the strong financial management of the state, to meet the
6 fiscal needs of state government and to facilitate financing
7 essential capital projects at the lowest possible cost to the
8 citizens of the state, the state must regularly monitor the amount
9 of debt issued by the state and its spending units, ensure the
10 state and its spending units meet all debt service requirements,
11 monitor the credit rating of the state and analyze the acceptance
12 of debt issued by the state and its spending units. The
13 Legislature further finds that in order to meet these important
14 goals, the Division of Debt Management needs to be continued.

15 **§12-6A-3. Division of Debt Management continued; director.**

16 (a) The Division of Debt Management is continued in the office
17 of the State Treasurer.

18 (b) The Division shall serve as a central information source
19 concerning the incurrence, recording and reporting of debt issued
20 by the state and its spending units, and shall prepare reports
21 pertaining to the capacity of the state and its spending units to
22 issue debt.

23 (c) The Treasurer shall appoint a director, qualified by
24 reason of exceptional training and experience in the field of

1 activities of his or her respective Division, and who shall serve
2 at the will and pleasure of the Treasurer.

3 **§12-6A-4. Definitions.**

4 For the purpose of this article:

5 "Debt" means bonds, notes, certificates of participation,
6 certificate transactions, capital leases, debentures, lease
7 purchases, mortgages, securitizations and all other forms of
8 securities and indebtedness obligations evidencing specific amounts
9 owed and payable on demand or on determinable dates.

10 "Debt impact report" means a report prepared by the division
11 which includes information pertaining to a proposed issuance of
12 debt by the state or its spending units.

13 "Division" means the Division of Debt Management.

14 "Moral obligation bond" means a debt obligation for which the
15 state or a spending unit has made a nonbinding covenant to make up
16 any deficiency in debt service.

17 "Net tax supported debt" means the amount of tax supported
18 debt less any applicable refundings, defeasances, escrow accounts,
19 reserve requirements and sinking funds.

20 "State" means the State of West Virginia.

21 "Spending unit" means a state department, agency, board,
22 commission, committee, authority or other entity of the state with
23 the power to issue and secure debt. Spending unit does not include
24 local political subdivisions.

1 “Tax-supported debt” means: (1) General obligation bonds of
2 the state; (2) moral obligation bonds of the state or a spending
3 unit; (3) capital leases, installment purchases, lease purchases,
4 mortgages, certificates of participation and any other similar debt
5 financing transaction extending beyond one year issued by the state
6 or its spending units; and (4) any other debt issued by the state
7 or a spending unit which is not self-supporting. Debt issued by
8 the West Virginia housing development fund, economic development
9 authority, hospital finance authority, parkway authority, public
10 energy authority, solid waste management board and water
11 development authority, with the exception of debt secured by
12 lottery revenues or secured by a lease with the Secretary of
13 Administration, is not tax-supported debt.

14 **§12-6A-5. Powers and duties.**

15 The Division of Debt Management shall perform the following
16 functions and duties:

17 (1) Continuously evaluate the current and projected debt and
18 debt service requirements of the State and its spending units.

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

21 (3) Issue a debt impact report if requested by the Governor,
22 the President of the Senate or the Speaker of the House of
23 Delegates. The Division may request any additional information
24 needed to issue a debt impact report. A debt impact report shall

1 in no way restrict the Governor, the Legislature or the spending
2 unit.

3 (4) Act as liaison with the Legislature on all debt matters,
4 including, but not limited to, new debt issues and the status of
5 debt issued by the State and its spending units.

6 (5) Assist the State and its spending units regarding the
7 issuance of debt if requested.

8 (6) Establish reporting requirements for the issuance of debt
9 by the State and its spending units pursuant to the provisions of
10 this article.

11 (7) Monitor continuing disclosure requirements and
12 post-issuance compliance issues with federal and state tax and
13 securities law, including, without limitation, arbitrage, rebate
14 and remedial measures.

15 (8) Make and execute contracts and other instruments and pay
16 the reasonable value of services or commodities rendered to the
17 division pursuant to those contracts.

18 (9) Contract, cooperate or join with any one or more other
19 governments or public agencies, with any political subdivision of
20 the State, or with the United States, to perform any administrative
21 service, activity or undertaking which the contracting party is
22 authorized by law to perform, charge for providing services and
23 expend any fees collected.

24 (10) Do all things necessary or convenient to effectuate the

1 intent of this article and to carry out its powers and functions.

2 **§12-6A-6. Reporting.**

3 (a) Within fifteen days following the end of each calendar
4 quarter, each state spending unit shall provide the division and
5 the Legislative Auditor, in the manner provided by this article and
6 in such form and detail as the State Treasurer may require, a
7 report including, but not limited to, the name of the state
8 spending unit, the amounts and types of debt incurred during the
9 calendar quarter and outstanding at the end of the calendar
10 quarter, the cost and expenses of incurring the debt, the maturity
11 date of each debt, the terms and conditions of the debt, the
12 current debt service on the debt, the interest rate on the debt,
13 the source of the proceeds utilized for repayment of the debt, the
14 amounts of repayment during the calendar quarter, the repayment
15 schedule and the security for the debt. A state spending unit
16 having no outstanding debt shall not be required to provide the
17 quarterly report but shall file an annual report, on forms
18 established by the Division of Debt Management: *Provided*, That the
19 state spending unit shall immediately notify the Division of Debt
20 Management of any change in the spending unit's outstanding debt or
21 financial condition.

22 (b) Not less than thirty days prior to a proposed offering of
23 debt by the state or a state spending unit, written notice of the
24 proposed offering and the terms thereof shall be given to the

1 Division by the state spending unit in the form as the Division may
2 require.

3 (c) Within thirty days after closing on an offering, the
4 responsible spending unit shall report to the division the
5 information pertaining to the offering required by the division in
6 the form the division may require.

7 (d) On or before January 31 and July 31 of each year, the
8 division shall prepare and issue a report of all debt of the State
9 and its spending units and of all proposed debt issuances of which
10 the division has received notice and shall furnish a copy of the
11 report to the Governor, the President of the Senate, the Speaker of
12 the House of Delegates, the members of the Joint Committee on
13 Government and Finance, the Legislative Auditor and upon request to
14 any other legislative committee and any member of the Legislature.
15 The report shall be kept available for inspection by any citizen of
16 the state. The division shall also prepare updated reports of all
17 debt of the state and its spending units as of March 31 and
18 September 30 each year, which shall be available for inspection at
19 the office of the state Treasurer within thirty days of the end of
20 the respective calendar quarter.

21 (e) On or before January 15 each year, the division shall
22 report to the Governor and to the Legislature on the capacity of
23 the state to issue additional debt. In preparing its annual review
24 and estimate, the division shall, at a minimum, consider:

1 (1) The amount of net tax supported debt outstanding and debt
2 authorized but not issued during the current and next fiscal year
3 and annually for the following ten fiscal years;

4 (2) Debt service requirements during the current and next
5 fiscal year and annually for the following ten fiscal years based
6 upon existing outstanding debt, previously authorized but unissued
7 debt and projected bond authorizations;

8 (3) Any information available from the budget office of the
9 department of revenue in connection with projected revenues and
10 anticipated capital expenditures projected for at least the next
11 five fiscal years;

12 (4) The amount of debt the state and its spending units may
13 prudently issue;

14 (5) What is needed to keep West Virginia within an average to
15 low range of nationally recognized debt limits;

16 (6) The debt ratios rating agencies and analysts use; and

17 (7) The effect of authorizations of new tax supported debt on
18 each of the considerations in this subsection.

19 **§12-6A-7. Promulgation of rules.**

20 The Treasurer shall propose rules for legislative approval
21 relating to the reporting requirements and duties under this
22 article in accordance with the provisions of article three, chapter
23 twenty-nine-a of this code.

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

1 **§12-6C-7. Management and control of fund; officers; staff;**
2 **fiduciary or surety bonds for directors; liability of**
3 **directors.**

4 (a) The management and control of the Consolidated Fund is
5 vested solely in the Board in accordance with the provisions of
6 this article.

7 (b) The State Treasurer is the chairperson of the Board. The
8 Board shall elect a vice chairperson. Annually, the directors shall
9 elect a secretary to keep a record of the proceedings of the Board
10 and provide any other duties required by the board. The board may
11 elect a person who is not a member of the board as secretary.

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

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

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

1 (f) Each director shall give a separate fiduciary or surety
2 bond from a surety company qualified to do business within this
3 State in a penalty amount of one million dollars for the faithful
4 performance of his or her duties as a director. The Board shall
5 purchase a blanket bond for the faithful performance of its duties
6 in the amount set by the board of at least \$10 million. The amount
7 of the blanket bond is in addition to the \$1 million individual
8 bond required of each director by the provisions of this section.
9 The Board may require a fiduciary or surety bond from a surety
10 company qualified to do business in this state for any person who
11 has charge of, or access to, any securities, funds or other moneys
12 held by the board and the amount of the fiduciary or surety bond
13 are fixed by the board. The premiums payable on all fiduciary or
14 surety bonds are expenses of the board.

15 (g) The directors, employees of the Board and employees of the
16 State Treasurer performing work for or on behalf of the Board are
17 not liable personally, either jointly or severally, for any debt or
18 obligation created by the Board: *Provided*, That the directors and
19 employees of the Board are liable for acts of misfeasance or gross
20 negligence.

21 (h) The board is exempt from the provisions of article three,
22 chapter five-a, and sections seven and eleven, article three,
23 chapter twelve of this code. However, the board is subject to the
24 purchasing policies and procedures of the State Treasurer's Office.

1 **§12-6C-9. Asset allocation; investment policies, authorized**
2 **investments; restrictions.**

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

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

13 (c) The board shall consider the following when adopting,
14 reviewing, modifying or canceling investment policies:

- 15 (1) Preservation of capital;
- 16 (2) Risk tolerance;
- 17 (3) Credit standards;
- 18 (4) Diversification;
- 19 (5) Rate of return;
- 20 (6) Stability and turnover;
- 21 (7) Liquidity;
- 22 (8) Reasonable costs and fees;
- 23 (9) Permissible investments;
- 24 (10) Maturity ranges;

- 1 (11) Internal controls;
- 2 (12) Safekeeping and custody;
- 3 (13) Valuation methodologies;
- 4 (14) Calculation of earnings and yields;
- 5 (15) Performance benchmarks and evaluation; and
- 6 (16) Reporting.

7 (d) No security may be purchased by the board unless the type
8 of security is on a list approved at a board meeting. The board
9 shall review the list at its annual meeting.

10 (e) Notwithstanding the restrictions which are otherwise
11 provided by law with respect to the investment of funds, the board
12 and all participants, now and in the future, may invest funds in
13 these securities:

14 (1) Obligations of, or obligations that are insured as to
15 principal and interest by, the United States of America or any
16 agency or corporation thereof and obligations and securities of the
17 United States sponsored enterprises, including, without limitation:

- 18 (I) United States Treasury;
- 19 (ii) Export-Import Bank of the United States;
- 20 (iii) Farmers Home Administration;
- 21 (iv) Federal Farm Credit Banks;
- 22 (v) Federal Home Loan Banks;
- 23 (vi) Federal Home Loan Mortgage Corporation;
- 24 (vii) Federal Land Banks;

1 (viii) Government National Mortgage Association;

2 (ix) Merchant Marine bonds; and

3 (x) Tennessee Valley Authority Obligations;

4 (2) Obligations of the Federal National Mortgage Association;

5 (3) Commercial paper with one of the two highest commercial
6 paper credit ratings by a nationally recognized statistical rating
7 organization;

8 (4) Corporate debt rated in one of the six highest rating
9 categories by a nationally recognized statistical rating
10 organization;

11 (5) Corporate debt rated investment grade by a nationally
12 recognized statistical rating organization for pools with a
13 weighted average maturity or duration of at least three hundred
14 sixty-six days;

15 (6) State and local government, or any instrumentality or
16 agency thereof, securities with one of the three highest ratings by
17 a nationally recognized statistical rating organization;

18 (7) Repurchase agreements involving the purchase of United
19 States Treasury securities and repurchase agreements fully
20 collateralized by obligations of the United States government or
21 its agencies or instrumentalities;

22 (8) Reverse repurchase agreements involving the purchase of
23 United States Treasury securities and reverse repurchase agreements
24 fully collateralized by obligations of the United States government

1 or its agencies or instrumentalities;

2 (9) Asset-backed securities rated in the highest category by
3 a nationally recognized statistical rating organization;

4 (10) Certificates of deposit;

5 (11) Money market and other fixed income funds; and

6 (12) Investments in accordance with the Linked Deposit
7 Program, a program using financial institutions in West Virginia to
8 obtain certificates of deposit, loans approved by the Legislature
9 and any other programs authorized by the Legislature.

10 (f) In addition to the restrictions and conditions contained
11 in this section:

12 (1) At no time shall more than seventy-five percent of the
13 Consolidated Fund be invested in any bond, note, debenture,
14 commercial paper or other evidence of indebtedness of any private
15 corporation or association;

16 (2) At no time shall more than five percent of the
17 Consolidated Fund be invested in securities issued by a single
18 private corporation or association; and

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

23 (g) Securities purchased in compliance with this article that
24 become non-compliant may be retained upon recommendation of the

1 investment manager of the security and the board investment
2 consultant.

3 **CHAPTER 33. INSURANCE**

4 **ARTICLE 3. LICENSING, FEES, AND TAXATION OF INSURANCE.**

5 **§33-3-14d. Additional fire and casualty insurance premium tax;**
6 **allocation of proceeds; effective date.**

7 (a) (1) For the purpose of providing additional revenue for
8 municipal policemen's and firemen's pension and relief funds and
9 the Teachers Retirement System Reserve Fund and for volunteer and
10 part-volunteer fire companies and departments, there is hereby
11 levied and imposed an additional premium tax equal to one percent
12 of taxable premiums for fire insurance and casualty insurance
13 policies. For purposes of this section, casualty insurance does
14 not include insurance on the life of a debtor pursuant to or in
15 connection with a specific loan or other credit transaction or
16 insurance on a debtor to provide indemnity for payments becoming
17 due on a specific loan or other credit transaction while the
18 debtor is disabled as defined in the policy.

19 (2) All moneys collected from this additional tax shall be
20 received by the commissioner and paid by him or her into a special
21 account in the State Treasury, designated the Municipal Pensions
22 and Protection Fund: *Provided*, That on or after January 1, 2010,
23 the commissioner shall pay ten percent of the amount collected to

1 the Teachers Retirement System Reserve Fund created in section
2 eighteen, article seven-a, chapter eighteen of this code,
3 twenty-five percent of the amount collected to the Fire Protection
4 Fund created in section thirty-three of this article for
5 allocation by the Treasurer to volunteer and part-volunteer fire
6 companies and departments and sixty-five percent of the amount
7 collected to the Municipal Pensions and Protection Fund: *Provided,*
8 *however,* That upon notification by the Municipal Pensions
9 Oversight Board pursuant to the provisions of section eighteen-b,
10 article twenty-two, chapter eight of this code, on or after
11 January 1, 2010, or as soon thereafter as the Municipal Pensions
12 Oversight Board is prepared to receive the funds, sixty-five
13 percent of the amount collected by the commissioner shall be
14 deposited in the Municipal Pensions Security Fund created in
15 section eighteen-b, article twenty-two, chapter eight of this
16 code. The net proceeds of this tax after appropriation thereof by
17 the Legislature is distributed in accordance with the provisions
18 of this section, except for distribution from proceeds pursuant to
19 subsection (d), section eighteen-a, article twenty-two, chapter
20 eight of this code.

21 (b) (1) Before the August 1 of each year, the treasurer of
22 each municipality in which a municipal policemen's or firemen's
23 pension and relief fund is established shall report to the State
24 Treasurer the average monthly number of members who worked at

1 least one hundred hours per month and the average monthly number
2 of retired members of municipal policemen's or firemen's pension
3 and relief fund or the Municipal Police Officers and Firefighters
4 Retirement System during the preceding fiscal year: *Provided*, That
5 beginning in the year 2010 and continuing thereafter, the report
6 shall be made to the oversight board created in section
7 eighteen-a, article twenty-two, chapter eight of this code. These
8 reports received by the oversight board shall be provided annually
9 to the State Treasurer by September 1.

10 (2) Before September 1 of each calendar year, the State
11 Treasurer, or the Municipal Pensions Oversight Board, once in
12 operation, shall allocate and authorize for distribution the
13 revenues in the Municipal Pensions and Protection Fund which were
14 collected during the preceding calendar year for the purposes set
15 forth in this section. Before September 1 of each calendar year
16 and after the Municipal Pensions Oversight Board has notified the
17 Treasurer and commissioner pursuant to section eighteen-b, article
18 twenty-two, chapter eight of this code, the Municipal Pensions
19 Oversight Board shall allocate and authorize for distribution the
20 revenues in the Municipal Pensions Security Fund which were
21 collected during the preceding calendar year for the purposes set
22 forth in this section. In any year the actuarial report required
23 by section twenty, article twenty-two, chapter eight of this code
24 indicates no actuarial deficiency in the municipal policemen's or

1 firemen's pension and relief fund, no revenues may be allocated
2 from the Municipal Pensions and Protection Fund or the Municipal
3 Pensions Security Fund to that fund. The revenues from the
4 Municipal Pensions and Protection Fund shall then be allocated to
5 all other pension and relief funds which have an actuarial
6 deficiency.

7 (3) The moneys, and the interest earned thereon, in the
8 Municipal Pensions and Protection Fund allocated to volunteer and
9 part-volunteer fire companies and departments shall be allocated
10 and distributed quarterly to the volunteer fire companies and
11 departments. Before each distribution date, the State Fire Marshal
12 shall report to the State Treasurer the names and addresses of all
13 volunteer and part-volunteer fire companies and departments within
14 the state which meet the eligibility requirements established in
15 section eight-a, article fifteen, chapter eight of this code.

16 (c) (1) Each municipal pension and relief fund shall have
17 allocated and authorized for distribution a pro rata share of the
18 revenues allocated to municipal policemen's and firemen's pension
19 and relief funds based on the corresponding municipality's average
20 monthly number of police officers and firefighters who worked at
21 least one hundred hours per month during the preceding fiscal
22 year. On and after July 1, 1997, from the growth in any moneys
23 collected pursuant to the tax imposed by this section and interest
24 thereon there shall be allocated and authorized for distribution

1 to each municipal pension and relief fund, a pro rata share of the
2 revenues allocated to municipal policemen's and firemen's pension
3 and relief funds based on the corresponding municipality's average
4 number of police officers and firefighters who worked at least one
5 hundred hours per month and average monthly number of retired
6 police officers and firefighters. For the purposes of this
7 subsection, the growth in moneys collected from the tax collected
8 pursuant to this section is determined by subtracting the amount
9 of the tax collected during the fiscal year ending June 30, 1996,
10 from the tax collected during the fiscal year for which the
11 allocation is being made and interest thereon. All moneys received
12 by municipal pension and relief funds under this section may be
13 expended only for those purposes described in sections sixteen
14 through twenty-eight, inclusive, article twenty-two, chapter eight
15 of this code.

16 (2) Each volunteer fire company or department shall receive
17 an equal share of the revenues allocated for volunteer and
18 part-volunteer fire companies and departments.

19 (3) In addition to the share allocated and distributed in
20 accordance with subdivision (1) of this subsection, each municipal
21 fire department composed of full-time paid members and volunteers
22 and part-volunteer fire companies and departments shall receive a
23 share equal to the share distributed to volunteer fire companies
24 under subdivision (2) of this subsection reduced by an amount

1 equal to the share multiplied by the ratio of the number of
2 full-time paid fire department members who are also members of a
3 municipal firemen's pension and relief fund or the Municipal
4 Police Officers and Firefighters Retirement System to the total
5 number of members of the fire department.

6 (d) The allocation and distribution of revenues provided for
7 in this section are subject to the provisions of section twenty,
8 article twenty-two, and sections eight-a and eight-b, article
9 fifteen, chapter eight of this code.

10 (e) Based upon the findings of an audit by the Treasurer, the
11 Legislature hereby finds and declares that during the period of
12 1982 through April 27, 2012 allocations from the Municipal
13 Pensions and Protection Fund were miscalculated and errors were
14 made in amounts transferred, resulting in overpayments and
15 underpayments to the relief and pension funds and to the Teachers
16 Retirement System, and that the relief and pension funds and the
17 Teachers Retirement System were not at fault for any of the
18 overpayments and underpayments. The Legislature hereby further
19 finds and declares that any attempt by the Municipal Pension
20 Oversight Board or other entity to recover any of the overpayments
21 would be unjust and create economic hardship for the entities that
22 received overpayments. No entity, including, without limitation,
23 the Municipal Pension Oversight Board, may seek to recover from a
24 relief or pension fund, the Teachers Retirement System or the

1 state any overpayments received from the Municipal Pensions and
2 Protection Fund and the overpayments are not subject to recovery,
3 offset or litigation. Pursuant to the audit by the Treasurer, the
4 amount of \$3,631,846.55 is determined owed to specific relief and
5 pension funds through the period of April 27, 2012. The Treasurer
6 is hereby authorized to transfer the amount of \$3,631,846.55 from
7 the Unclaimed Property Trust Fund to the Municipal Pensions and
8 Protection Fund, which is hereby reopened for the sole purpose of
9 the transfer and remittances pursuant to this subsection (e), and
10 to use the amount transferred to remit the amounts due to the
11 pension and relief funds. The payment of the \$3,631,846.55 to the
12 pension and relief funds is complete satisfaction of any amounts
13 due, and no entity, including, without limitation, the Municipal
14 Pension Oversight Board and any pension or relief fund, may seek
15 to recover any further amounts.

16 **CHAPTER 36. ESTATES AND PROPERTY.**

17 **ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.**

18 **§36-8-13. Deposit of funds.**

19 (a) The administrator shall record the name and last known
20 address of each person appearing from the holders reports to be
21 entitled to the property and the name and last known address of
22 each insured person or annuitant and beneficiary and with respect
23 to each policy or annuity listed in the report of an insurance
24 company, its number, the name of the company and the amount due.

1 (b) The Unclaimed Property Fund is continued. The
2 administrator shall deposit all funds received pursuant to this
3 article in the Unclaimed Property Fund, including the proceeds
4 from the sale of abandoned property under section twelve of this
5 article. In addition to paying claims of unclaimed property duly
6 allowed, the administrator may deduct the following expenses from
7 the Unclaimed Property Fund:

8 (1) Expenses of the sale of abandoned property;

9 (2) Expenses incurred in returning the property to owners,
10 including without limitation the costs of mailing and publication
11 to locate owners;

12 (3) Reasonable service charge; and

13 (4) Expenses incurred in examining records of holders of
14 property and in collecting the property from those holders.

15 (c) The Unclaimed Property Trust Fund is continued within the
16 State Treasury. The administrator may invest the Unclaimed
17 Property Trust Fund with the West Virginia Board of Treasury
18 Investments and all earnings shall accrue to the fund and are
19 available for expenditure in accordance with this article. After
20 deducting the expenses specified in subsection (b) of this section
21 and maintaining a sum of money from which to pay claims duly
22 allowed, the administrator shall transfer the remaining moneys in
23 the Unclaimed Property Fund to the Unclaimed Property Trust Fund.

24 (d) (1) On July 1, 2009, the unclaimed property administrator

1 shall transfer the amount of \$8 million from the Unclaimed
2 Property Trust Fund to the Prepaid Tuition Trust Escrow Fund.

3 (2) On or before December 15 of each year, notwithstanding
4 any provision of this code to the contrary, the administrator
5 shall transfer the sum of \$1 million from the Unclaimed Property
6 Trust Fund to the Prepaid Tuition Trust Escrow Fund, until the
7 actuary certifies there are sufficient funds to pay out all
8 contracts.

9 (e) On or before June 1, 2007, the unclaimed property
10 administrator shall transfer the amount of \$2 million from the
11 Unclaimed Property Trust Fund to the Deferred Compensation
12 Matching Fund for operation of the deferred compensation matching
13 program for state employees. On or before June 1, 2008, the
14 unclaimed property administrator shall transfer the amount of \$1
15 million from the Unclaimed Property Trust Fund to the Deferred
16 Compensation Matching Fund for operation of the matching program.

17 (f) On or before June 1, 2013, the unclaimed property
18 administrator shall transfer the amount of \$3,631,846.55 from the
19 Unclaimed Property Trust Fund to the Municipal Pensions and
20 Protection Fund for the purpose of satisfying any amounts due as
21 of April 27, 2012 to policemen's and firemen's pension and relief
22 funds in accordance with section fourteen-d, article three,
23 chapter thirty-three of this Code.

24 (g) After transferring any money required by subsections (d)

1 through (f) of this section, the administrator shall transfer
2 moneys remaining in the Unclaimed Property Trust Fund to the
3 General Revenue Fund.