

1 **Senate Bill No. 432**

2 (By Senators Jenkins, Kessler (Mr. President), Barnes,
3 Beach, Cann, Carmichael, Edgell, Facemire, Fitzsimmons,
4 Green, D. Hall, M. Hall, Kirkendoll, McCabe, Palumbo,
5 Snyder, Stollings, Unger, Wells, Williams, Yost and Plymale)

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7 [Introduced March 4, 2013; referred to the Committee on Pensions;
8 and then to the Committee on Finance.]

**FISCAL
NOTE**

9 _____
10 A BILL 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 repeal §48-2-604 of said code; to amend and
13 reenact §5-10B-3 of said code; to amend said code by adding
14 thereto a new section, designated §5-10B-14; to amend and
15 reenact §12-1-3, §12-1-8, §12-1-11 and §12-1-12b of said code;
16 to amend and reenact §12-2-2 and §12-2-3 of said code; to
17 amend and reenact §12-3-1 of said code; to amend and reenact
18 §12-3A-3 of said code; to amend and reenact §12-5-4 of said
19 code; to amend and reenact §12-6A-1, §12-6A-2, §12-6A-3,
20 §12-6A-4, §12-6A-5, §12-6A-6 and §12-6A-7 of said code; to
21 amend and reenact §12-6C-7 and §12-6C-9 of said code; to amend
22 and reenact §18-30-8 and §18-30-11 of said code; to amend and
23 reenact §33-3-14d of said code; and to amend and reenact

1 §36-8-13 of said code, all relating to the State Treasurer's
2 Office; authorizing organizations exempt from taxation within
3 West Virginia to participate in the deferred compensation plan
4 in accordance with the Internal Revenue Code; authorizing Roth
5 accounts within the deferred compensation plan in accordance
6 with the Internal Revenue Code; authorizing financial
7 institutions to offer products in addition to certificates of
8 deposit; updating references to investing authorities to
9 include the Board of Treasury Investments; raising the amount
10 of eligible deposits from \$100,000 to the amount insured by a
11 federal agency; deleting archaic language pertaining to
12 eligible depositories; amending language pertaining to what
13 constitutes a conflict of interest for applicants and
14 employees of the Treasurer's Office in connection with
15 financial institutions by prohibiting those persons with a
16 defined conflict from participating in the selection of or in
17 contract negotiations with a depository; authorizing
18 depositories to submit reports in an electronic format;
19 clarifying that payments under the CMIA are interest payments;
20 changing the CMIA report from a quarterly report to an annual
21 report since the calculation is only prepared annually;
22 changing the requirement that deposits are required within
23 twenty-four hours to one business day; establishing standards

1 for receipting of moneys, including reviewing of internal
2 controls by auditors and the Treasurer and ensuring copies of
3 audits are submitted to the Legislative Auditor; ensuring
4 confidential information in internal control procedures is
5 redacted before release; clarifying the definitions of
6 federal, special and general revenue funds; eliminating
7 reference to the chief inspector of public offices, changing
8 the report to the Legislative Auditor for accounts outside the
9 treasury from quarterly to an annual report; clarifying that
10 investments are managed by the Board of Treasury Investments
11 in addition to the Investment Management Board; conforming
12 language pertaining to determining the amount of federal funds
13 in stale state checks to the capabilities of the Enterprise
14 Resource Planning System; clarifying that the Treasurer
15 determines the competitive bidding of banking, investment and
16 related goods and services required for treasury operations;
17 authorizing the Treasurer to develop procedures for storing,
18 retaining and disposing of records for his or her office;
19 ensuring the Director of the Division of Archives and History
20 receives records with historical value; clarifying that the
21 Treasurer is responsible for earnings received on securities,
22 not just interest; consolidating the Debt Capacity Division
23 into the Debt Management Division; amending legislative

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

1 report; clarifying the Treasurer promulgates the rules;
2 altering the bond required for the Board of Treasury
3 Investments from \$50 million to at least \$10 million, as set
4 by the board; updating language pertaining to rating agencies
5 to nationally recognized statistical rating organizations;
6 permitting investment in corporate debt in investment grade
7 securities and in money market and other fixed income funds;
8 authorizing the board to make loans specified by the
9 Legislature and to offer an equipment and software financing
10 program for state government entities; removing requirement
11 that direct or guaranteed obligations of the United States
12 constitute at least fifteen percent of the consolidated fund;
13 providing that securities falling out of compliance with the
14 code do not have to be sold if the investment manager and
15 investment consultant recommend retention; authorizing moneys
16 in the College Prepaid Tuition and Savings Program
17 Administrative Account be used to provide matching grants and
18 scholarships for the program; clarifying the value of a
19 prepaid tuition or savings plan account is not considered for
20 purposes of determining eligibility for income-based
21 governmental financial assistance unless required by federal
22 law; satisfying amounts due to and from policemen's and
23 firemen's pension and relief funds and the Teachers Retirement

1 System; authorizing expenses related to operations and
2 programs of the Office of the Treasurer from the Unclaimed
3 Property Fund; authorizing transfer of moneys from the
4 Unclaimed Property Trust Fund for payment to policemen's and
5 firemen's pension and relief funds; and making various
6 technical clean up revisions.

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

8 That §12-1-12c of the Code of West Virginia, 1931, as amended,
9 be repealed; that §12-6B-1, §12-6B-2, §12-6B-3 and §12-6B-4 of said
10 code be repealed; that §48-2-604 of said code be repealed; that
11 §5-10B-3 of said code be amended and reenacted; that said code be
12 amended by adding thereto a new section, designated §5-10B-14; that
13 §12-1-3, §12-1-8, §12-1-11 and §12-1-12b of said code be amended
14 and reenacted; that §12-2-2 and §12-2-3 of said code be amended and
15 reenacted; that §12-3-1 of said code be amended and reenacted; that
16 §12-3A-3 of said code be amended and reenacted; that §12-5-4 of
17 said code be amended and reenacted; that §12-6A-1, §12-6A-2,
18 §12-6A-3, §12-6A-4, §12-6A-5, §12-6A-6 and §12-6A-7 of said code be
19 amended and reenacted; that §12-6C-7 and §12-6C-9 of said code be
20 amended and reenacted; that §18-30-8 and §18-30-11 of said code be
21 amended and reenacted; that §33-3-14d of said code be amended and
22 reenacted; and that §36-8-13 of said code be amended and reenacted,
23 all to read as follows:

1 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**
2 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS,**
3 **MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**
4 **ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.**
5 **§5-10B-3. Powers; contracts; meetings.**

6 (a) Notwithstanding any provision of this code to the
7 contrary, including, without limitation, this chapter and chapter
8 five-a of this code, the state employer and a public employer have
9 the power necessary or appropriate to carry out the provisions and
10 objectives of this article and to operate the trust, including,
11 without limitation, entering into contracts and executing and
12 delivering instruments; engaging consultants, auditors, counsel,
13 managers, advisors, trustees or any other contractors or
14 professionals; and charging and collecting administrative fees.

15 (b) The state employer or any public employer may, by
16 contract, agree with any of its employees to defer and hold in
17 trust any portion of that employee's compensation and may
18 subsequently purchase or acquire from vendors licensed to do
19 business in the State of West Virginia investment products for the
20 purpose of carrying out the objectives of the deferred compensation
21 plan as described in this article.

22 (c) Employees are authorized to attend meetings called by the
23 state employer or public employer for the purpose of explaining a

1 plan during regular working hours.

2 (d) Notwithstanding any provision of this code to the contrary
3 and in accordance with the Internal Revenue Code, the Treasurer may
4 extend participation in the plan to organizations exempt from
5 taxation located within West Virginia.

6 **§5-10B-14. Roth Accounts.**

7 The Treasurer or any public employer may authorize Roth
8 accounts within the plan in accordance with the Internal Revenue
9 Code, including, without limitation, conversions, deferrals,
10 rollovers and transfers.

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

12 **ARTICLE 1. STATE DEPOSITORIES.**

13 **§12-1-3. Depositories for interest earning deposits;**
14 **qualifications.**

15 Any state or national bank or any state or federal savings and
16 loan association in this state shall, upon request made to the
17 State Treasurer, be designated as an eligible depository for
18 interest earning deposits of state funds if such bank or state or
19 federal savings and loan association meets the requirements set
20 forth in this chapter. For purposes of this article, the term
21 "interest earning deposits" includes certificates of deposit or
22 other financial institution products. The State Treasurer shall
23 make and apportion such interest earning deposits and shall

1 prescribe the interest rates, terms and conditions of such
2 deposits, all in accordance with the provisions of ~~article six~~
3 articles six and six-c of this chapter: Provided, That state or
4 federal savings and loan associations insured by an agency of the
5 federal government shall be eligible for such deposits not in
6 excess of ~~one hundred thousand dollars~~ the amount insured by any
7 agency of the federal government. ~~Provided, however, That~~
8 ~~notwithstanding any provision of this article to the contrary, no~~
9 ~~such interest earning deposits may be deposited in any depository~~
10 ~~which has been in existence over a period of five years which does~~
11 ~~not have a loan to deposit ratio of fifty percent or more and which~~
12 ~~does not have farm, single or multifamily residential unit loans in~~
13 ~~an amount greater than twenty-five percent of the amount of loans~~
14 ~~representing a loan to deposit ratio of fifty percent. For the~~
15 ~~purpose of making the foregoing calculation, the balances due the~~
16 ~~depository on the following loans shall be given effect: (1)~~
17 ~~Qualifying residential loans held by the depository; (2) qualifying~~
18 ~~loans made in participation with other financial institutions; (3)~~
19 ~~qualifying loans made in participation with agencies of the state,~~
20 ~~federal or local governments; and (4) qualifying loans originated~~
21 ~~and serviced by the depository but owned by an out-of-state~~
22 ~~investor. The computation of the criteria for eligibility specified~~
23 ~~above shall be based on the average daily balances of deposits, the~~

1 ~~average daily balances of total loans and qualifying residential~~
2 ~~loans for the period being reported.~~

3 **§12-1-8. Conflict of interest.**

4 ~~No depository in this State may serve or be eligible for~~
5 ~~designation as a State Depository if any employee of the~~
6 ~~Treasurer's office, or a spouse or minor child of that employee, is~~
7 ~~an officer, director or employee of the depository or owns greater~~
8 ~~than two percent of the depository either in his or her own name or~~
9 ~~beneficially or an interest in the depository. An employee of the~~
10 ~~Treasurer's office shall disclose the circumstance, if any, in the~~
11 ~~sworn statement required under the provisions of section one,~~
12 ~~article one, chapter six-b of this code. An employee or a person~~
13 ~~applying for a position with the office of the Treasurer shall~~
14 ~~disclose to the Treasurer if he or she, or his or her spouse, is an~~
15 ~~officer, director or employee of a depository or owns greater than~~
16 ~~two percent of a depository. Any employee of the office of the~~
17 ~~Treasurer who, or whose spouse, is an officer, director or employee~~
18 ~~of a depository or owns greater than two percent of a depository~~
19 ~~may not participate in any selection of or in any contract~~
20 ~~negotiations with any depository.~~

21 **§12-1-11. Reports by depositories to Treasurer; discontinuance of**
22 **depositories.**

23 (a) Each depository of state funds shall at the end of each

1 quarter cause its president or ~~cashier~~ designated officer to report
2 to the Treasurer the amount of state funds on deposit and the
3 report shall be verified by the affidavit of the officer making it.
4 The form and contents of the report shall be prescribed by the
5 Treasurer and may be in an electronic format.

6 (b) For the failure to file the report, or for other good
7 cause, the Treasurer may discontinue any depository as an eligible
8 depository and cause all state funds to be withdrawn from any
9 depository or depositories ~~so~~ discontinued.

10 (c) When a depository is discontinued, the Treasurer shall
11 immediately notify such depository of its discontinuance, and shall
12 immediately withdraw by current checks or by transfer to another
13 depository or depositories the full amount of the deposits held by
14 any depository ~~so~~ discontinued. After discontinuance, it shall be
15 unlawful for the Treasurer to deposit any state funds in any
16 depository ~~so~~ discontinued until such time as the depository may be
17 reinstated to eligibility.

18 **§12-1-12b. Cash Management Improvement Act; administration;**
19 **reports.**

20 (a) The Cash Management Improvement Act of 1990, Public Law
21 101-453, October 24, 1990, 31 U.S.C. Section 6501 et. seq. (CMIA)
22 and regulations, as amended, establishes requirements and
23 techniques, including calculations, for the receipt and

1 disbursement of federal funds by states. The authorized official
2 and representative of the State of West Virginia for the CMIA is
3 the State Treasurer.

4 (b) In administering the CMIA, the State Treasurer is
5 authorized to do all things reasonably necessary, including without
6 limitation, entering into agreements with, negotiating settlements
7 with, ~~refunding~~ paying any interest due and satisfying any
8 liability to the United States Treasury in accordance with the
9 CMIA.

10 (c) Periodically, the State Treasurer shall transfer to the
11 "Federal Cash Management Fund", which is hereby authorized and
12 continued, earnings on the State General Revenue Fund in an amount
13 the Treasurer estimates is needed to make ~~refunds~~ interest payments
14 in accordance with the CMIA. After each annual settlement with the
15 United States Treasury, the State Treasurer shall transfer to the
16 State General Revenue Fund any moneys remaining in the Federal Cash
17 Management Interest Fund for the period just settled.

18 (d) The State Treasurer shall also transfer periodically to
19 the "Federal Cash Management - Administration Fund," which is
20 hereby authorized and continued, earnings on the State General
21 Revenue Fund in an amount the Treasurer determines is needed to pay
22 for the costs of administering the CMIA. The State Treasurer may
23 pay the costs he or she incurs in administering the CMIA from the

1 Federal Cash Management-Administration Fund.

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

5 (f) The State Treasurer shall send ~~quarterly reports~~ an annual
6 report on the activities involving the CMIA to the Governor,
7 Auditor, Secretary of Revenue and Joint Committee on Government and
8 Finance.

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

11 **§12-2-2. Itemized record of moneys received for deposit;**
12 **regulations governing deposits; credit to state**
13 **fund; exceptions.**

14 (a) All officials and employees of the state authorized by
15 statute to accept moneys on behalf of the State of West Virginia
16 shall keep a daily itemized record of moneys received for deposit
17 in the State Treasury and shall deposit within one business day
18 with the State Treasurer all moneys received or collected by them
19 for or on behalf of the state for any purpose whatsoever. The
20 State Treasurer may grant an exception to the one business day rule
21 when circumstances make compliance difficult or expensive.

22 (b) The State Treasurer shall establish standards for internal
23 controls for spending units receipting moneys, assist spending

1 units in developing and improving their internal control procedures
2 for receipting moneys and provide training. State spending units
3 accepting moneys shall establish and at least annually review
4 internal control procedures for receipting moneys that safeguard
5 assets, minimize fraud, waste and abuse, and comply with applicable
6 laws, rules and regulations. Upon request of the State Treasurer,
7 spending units, except the Department of Revenue, shall submit the
8 internal control procedures and any revisions to the internal
9 control procedures to the State Treasurer for review. The State
10 Treasurer may make revisions to or suggestions for the internal
11 control procedures if he or she believes the procedures do not
12 provide reasonable protection for moneys collected. A spending
13 unit shall adopt any revisions made by the Treasurer.

14 (c) Any confidential information in internal control
15 procedures shall be redacted before release of the internal control
16 procedures in accordance with a request pursuant to §29B-1-1 et
17 seq. of this code.

18 (d) The Treasurer may also audit the receipting of moneys by
19 a spending unit, except spending units within the Department of
20 Revenue. A copy of any audit performed by the Treasurer shall be
21 submitted to the Legislative Auditor. Any audit of a spending unit
22 by an internal auditor or by an auditing firm shall include an
23 evaluation of and report on the adequacy of internal control

1 procedures for receipting moneys, with a copy of the audit being
2 sent to the Treasurer and to the Legislative Auditor within thirty
3 days of receipt of the audit by the spending unit.

4 (e) The State Treasurer shall propose rules for legislative
5 approval, in accordance with the provisions of article three,
6 chapter twenty-nine-a of this code governing the procedure for
7 deposits.

8 (f) The official or employee making deposits with the State
9 Treasurer shall prepare deposit lists in the manner and upon report
10 forms prescribed by the State Treasurer in the state accounting
11 system. The State Treasurer shall review the deposits in the state
12 accounting system and forward the information to the State Auditor
13 and to the Secretary of Revenue.

14 (g) All moneys received by the state shall be recorded in
15 federal, general revenue and special fund accounts in the State
16 Treasury, as follows:

17 (1) All federal funds, defined in section two, article eleven,
18 chapter four of this code, received shall be recorded in federal
19 fund accounts in the state treasury apart from the general and
20 special revenues of the state, and shall be expended in accordance
21 with the provisions of article eleven, chapter four of this code.

22 (2) All moneys, other than federal and special revenue funds,
23 shall be credited to the state fund and treated by the State

1 Auditor and State Treasurer as part of the general revenue of the
2 state.

3 (3) All moneys from specific revenue sources which by
4 legislative enactments are not required to be accounted for as
5 general revenue funds or federal funds, are special revenue funds,
6 and include, but are not limited to the following funds which shall
7 be recorded in separate accounts:

8 (A) All funds excluded by the provisions of section six,
9 article eleven, chapter four of this code;

10 (B) All funds derived from the sale of farm and dairy products
11 from farms operated by any spending unit of the state;

12 (C) All endowment funds, bequests, donations, executive
13 emergency funds and death and disability funds;

14 (D) All fees and funds collected at state educational
15 institutions for student activities;

16 (E) All funds derived from collections from dormitories,
17 boardinghouses, cafeterias and road camps;

18 (F) All moneys received from counties by institutions for the
19 deaf and blind on account of clothing for indigent pupils;

20 (G) All insurance collected on account of losses by fire and
21 refunds;

22 (H) All funds derived from bookstores;

23 (I) All moneys collected and belonging to the capitol building

1 fund, state road fund, general school fund, school fund, political
2 subdivisions, state compensation funds, the fund maintained by the
3 Public Service Commission for the investigation and supervision of
4 applications and all fees, money, interest or funds arising from
5 the sales of all permits and licenses to hunt, trap, fish or
6 otherwise hold or capture fish and wildlife resources and money
7 reimbursed and granted by the federal government for fish and
8 wildlife conservation; and

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

12 (K) All moneys, except as provided in paragraphs (A) through
13 (I), inclusive, subdivision (3), subsection (g) of this section,
14 shall be paid into the State Treasury in the same manner as
15 collections not excepted and recorded in separate accounts for
16 receipt and expenditure for the purposes for which the moneys are
17 authorized to be collected by law: Provided, That amounts collected
18 pursuant to, paragraph (J), subdivision (3), subsection (g) of this
19 section, which are found, from time to time, to exceed funds needed
20 for the purposes set forth in general law may be transferred to
21 other accounts or funds and redesignated for other purposes by
22 appropriation of the Legislature.

23 (L) The gross amount collected in all cases shall be paid into

1 the State Treasury. Commissions, costs and expenses, including,
2 without limitation, amounts charged for use of bank, charge, credit
3 or debit cards, incurred in the collection process shall be paid
4 from the gross amount collected in the same manner as other
5 payments are made from the State Treasury.

6 (M) The State Treasurer may establish an imprest fund or funds
7 in the office of any state spending unit upon receipt of a proper
8 application. To implement this authority, the State Treasurer shall
9 propose rules for legislative approval in accordance with the
10 provisions of article three, chapter twenty-nine-a of this code.
11 The State Treasurer or his or her designee shall annually audit all
12 imprest funds and prepare a list of the funds showing the location
13 and amount as of fiscal year end, retaining the list as a permanent
14 record of the State Treasurer until the Legislative Auditor has
15 completed an audit of the imprest funds of all agencies and
16 institutions involved.

17 (N) The State Treasurer may develop and implement a
18 centralized receipts processing center. The State Treasurer may
19 request the transfer of equipment and personnel from appropriate
20 state agencies to the centralized receipts processing center in
21 order to implement the provisions of this section: Provided, That
22 the Governor or appropriate constitutional officer has authority to
23 authorize the transfer of equipment or personnel to the centralized

1 receipts processing center from the respective agency.

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

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

10 (b) Notwithstanding any provision of this code to the
11 contrary, including provisions stating funds collected are not
12 state funds and provisions authorizing a spending unit to have one
13 or more accounts outside the Treasury, a spending unit shall comply
14 with the State Treasurer's procedures for the receipt and
15 disbursement of moneys not due the state and obtain written
16 authorization from the State Treasurer before depositing any moneys
17 in an account outside the Treasury. Upon the State Treasurer's
18 written revocation of the authorization, the spending unit shall
19 deposit funds deposited in an account outside the Treasury into the
20 Treasury in the manner and in the depository specified by the State
21 Treasurer. The State Treasurer is the final determining authority
22 as to whether these funds are funds due or not due the state
23 pursuant to section two of this article.

1 (c) The State Treasurer shall ~~on a quarterly basis~~ provide the
2 Legislative Auditor with ~~a~~ an annual report of all accounts
3 authorized under this section.

4 **ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

5 **§12-3-1. Manner of payment from Treasury; form of checks.**

6 (a) Every person claiming to receive money from the Treasury
7 of the state shall apply to the Auditor for a warrant for same. The
8 Auditor shall thereupon examine the claim, and the vouchers,
9 certificates and evidence, if any, offered in support thereof, and
10 for so much thereof as he or she finds to be justly due from the
11 state, if payment thereof is authorized by law, and if there is an
12 appropriation not exhausted or expired out of which it is properly
13 payable, the Auditor shall issue his or her warrant on the
14 Treasurer, specifying to whom and on what account the money
15 mentioned therein is to be paid, and to what appropriation it is to
16 be charged. The Auditor shall present to the Treasurer daily
17 reports on the number of warrants issued, the amounts of the
18 warrants and the dates on the warrants for the purpose of
19 effectuating the investment policies of the State Treasurer, ~~and~~
20 the West Virginia Investment Management Board ~~and the West Virginia~~
21 Board of Treasury Investments. On the presentation of the warrant
22 to the Treasurer, the Treasurer shall ascertain whether there are
23 sufficient funds in the Treasury to pay that warrant, and if he or

1 she finds it to be so, he or she shall in that case, but not
2 otherwise, endorse his or her check upon the warrant, directed to
3 some depository, which check shall be payable to the order of the
4 person who is to receive the money therein specified.

5 (b) If a check is not presented for payment within six months
6 after it is drawn, it is the duty of the Treasurer to credit it to
7 the depository on which it was drawn, to credit the "Treasurer's
8 Stale Check Fund," which is hereby created in the State Treasury,
9 and immediately notify the Auditor to make corresponding entries on
10 the Auditor's books. If the State Treasurer determines any funds
11 deposited in the stale check account are federal funds, the State
12 Treasurer shall notify the spending unit authorizing the payment.
13 Within six months following issuance of the notice, the spending
14 unit shall inform the State Treasurer of the amount of federal
15 funds included in the check, the account from which the federal
16 funds were disbursed, and the current fiscal year account to which
17 the federal funds are to be transferred. After receiving the
18 information, the State Treasurer shall transfer the amount of
19 federal funds specified as a reimbursement to the current fiscal
20 year account specified to receive federal funds by the spending
21 unit. For a period of up to six months, the State Treasurer shall
22 endeavor to pay the money in the stale check account to the payee.
23 The Treasurer shall credit the money that has been in the stale

1 check account for six months, or for a shorter period as determined
2 by the Treasurer, to the unclaimed property fund pursuant to the
3 provisions of article eight, chapter thirty-six of this code, and
4 shall immediately notify the Auditor to make corresponding entries
5 on the Auditor's books.

6 (c) No state depository may pay a check issued by the State
7 Treasurer unless it the check is presented within six months after
8 it is drawn. ~~and every~~ Every check shall bear upon its face the
9 words "Void, unless presented for payment within six months." If
10 a state check is not presented for payment within six months after
11 it is drawn, the state check is presumed to be a stale check and
12 shall be reported as unclaimed property, in accordance with §36-8-1
13 et seq. of this code.

14 All state spending units shall regularly monitor checks issued
15 on their behalf in accordance with procedures established by the
16 Treasurer. Factors to be reviewed and reported to the Treasurer
17 include, but are not limited to, whether any outstanding check
18 contains federal funds, whether good-faith efforts have been made
19 to locate the payees, and whether the outstanding check still
20 constitutes a valid obligation owed to the payee. If an
21 outstanding state check contains any federal funds, the spending
22 unit shall advise the Treasurer of the amount of federal funds
23 included in the check, the account from which the federal funds

1 were disbursed and the current fiscal year account to which the
2 federal funds are to be transferred. If the check remains
3 outstanding and becomes a stale check, the Treasurer shall credit
4 the amount of the check to the state depository on which the check
5 was issued, notify the Auditor to make corresponding entries on his
6 or her books, and transfer the amount of federal funds reported as
7 a reimbursement to the current fiscal year account specified to
8 receive federal funds by the spending unit. The Treasurer shall
9 transfer any funds from stale checks that are not federal funds
10 into the Unclaimed Property Fund.

11 (d) Any information or records maintained by the Treasurer
12 concerning any check not presented for payment within six months of
13 the date of issuance is confidential and exempt from disclosure
14 under the provisions of ~~article one, chapter twenty-nine b~~ §29B-1-1
15 et seq. of this code, and is disclosable only to the state spending
16 unit authorizing the check, or to the payee, his or her personal
17 representative, next of kin or attorney-at-law.

18 (e) All claims required by law to be allowed by any court, and
19 payable out of the State Treasury, shall have the seal of the court
20 allowing or authorizing the payment of the claim affixed by the
21 clerk of the court to his or her certificate of its allowance. No
22 claim may be audited and ~~paid~~ payment authorized by the Auditor
23 unless the seal of the court is ~~thereto~~ attached. ~~as aforesaid.~~ No

1 tax or fee may be charged by the clerk for affixing his or her seal
2 to the certificate, referred to in this section. The Treasurer
3 shall propose rules in accordance with the provisions of article
4 three, chapter twenty-nine-a of this code governing the procedure
5 for such payments from the treasury.

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

7 **§12-3A-3. Financial electronic commerce.**

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

17 (b) A document or a signature received, issued or used by the
18 Auditor or the Treasurer shall be considered an original and may
19 not be denied legal effect on the ground that it is in electronic
20 form.

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

1 (d) The Auditor or Treasurer, in his or her discretion, may
2 waive:

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

5 (2) Any requirements for the certification, notarization or
6 verification of a document filed or submitted in an electronic
7 format.

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

13 (f) The Treasurer shall develop procedures for the storage,
14 retention and disposal of state records, as defined in section
15 three, article eight, chapter five-a of this code, filed with or
16 submitted to his or her office, and for the reproduction and
17 preservation of essential state records, as defined in section
18 four, article eight, chapter five-a of this code, filed with or
19 submitted to his or her office. Preservation duplicates, as
20 defined in section three, article eight, chapter five-a of this
21 code, shall be maintained in an unalterable readable electronic
22 media in accordance with industry standards, reviewed for accuracy
23 and indexed, and shall have the same force and effect as the

1 original records whether the original records are in existence or
 2 not. The procedures shall provide for the maintenance of the
 3 confidentiality of the records and ensure the Director of the
 4 Division of Archives and History receives the records the director
 5 identifies as having historic value. The Treasurer shall purchase
 6 the equipment and supplies needed for record retention as part of
 7 his or her electronic commerce activities.

8 **ARTICLE 5. PUBLIC SECURITIES.**

9 **§12-5-4. Treasurer to keep accounts and make collections.**

10 ~~It shall be the duty of the Treasurer to~~ The Treasurer shall
 11 keep an accurate account of all securities received by him or her
 12 and collect and account for ~~the interest as it becomes due and~~
 13 ~~payable~~ earnings received and the principal whenever it is due.

14 **ARTICLE 6A. THE DEBT MANAGEMENT ACT OF 1991.**

15 **§12-6A-1. Short title.**

16 This article shall be known and may be cited as "The Debt
 17 Management Act ~~of 1991~~".

18 **§12-6A-2. Legislative findings and declaration of public**
 19 **necessity.**

20 ~~(a) The Legislature hereby finds and declares that efficient~~
 21 ~~and effective state government requires the procuring, maintaining~~
 22 ~~and reporting of pertinent information relating to the debt of the~~
 23 ~~state and its agencies, boards, commissions and authorities. The~~

1 ~~State Treasurer shall perform the functions and duties necessary to~~
2 ~~serve as a central information source concerning the incurrence,~~
3 ~~recording and reporting of debt issued by the state, its agencies,~~
4 ~~boards, commissions and authorities.~~

5 ~~(b) The Legislature hereby finds:~~

6 ~~(1) The credit rating and acceptance of bonds, notes,~~
7 ~~certificates of participation and other securities and indebtedness~~
8 ~~of the State and its spending units have been unstable as a result~~
9 ~~of the instability in traditional national and international~~
10 ~~markets of goods and services produced by the citizens of the~~
11 ~~State.~~

12 ~~(2) In order to finance essential capital projects for the~~
13 ~~benefit of the citizens of the State at the lowest possible cost,~~
14 ~~the State must maintain high levels of acceptance of the~~
15 ~~indebtedness of the State and its spending units in the financial~~
16 ~~markets.~~

17 ~~(3) In order to attain these goals, authorization of State~~
18 ~~debt must be based on the ability of the State to meet its total~~
19 ~~debt service requirements, in light of other uses of its fiscal~~
20 ~~resources. in order to maintain the strong financial management of~~
21 ~~the state, to meet the fiscal needs of state government and to~~
22 ~~facilitate financing essential capital projects at the lowest~~
23 ~~possible cost to the citizens of the state, the state must~~

1 regularly monitor the amount of debt issued by the state and its
2 spending units, ensure the state and its spending units meet all
3 debt service requirements, monitor the credit rating of the state
4 and analyze the acceptance of debt issued by the state and its
5 spending units. The Legislature further finds that in order to
6 meet these important goals, the Division of Debt Management needs
7 to be continued.

8 **§12-6A-3. Division of Debt Management ~~created~~ continued; director.**

9 ~~There is hereby created within the office of the State~~
10 ~~Treasurer, the~~ (a) The Division of Debt Management is continued in
11 the office of the State Treasurer.

12 (b) The Division shall serve as a central information source
13 concerning the incurrence, recording and reporting of debt issued
14 by the state and its spending units, and shall prepare reports
15 pertaining to the capacity of the state and its spending units to
16 issue debt.

17 ~~(c) The division shall be under the control of a Director to~~
18 ~~be appointed by the Treasurer and who shall be~~ shall appoint a
19 director, qualified by reason of exceptional training and
20 experience in the field of activities of his or her respective
21 division, and who shall serve at the will and pleasure of the
22 Treasurer.

23 **§12-6A-4. Definitions.**

1 For the purpose of this article:

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

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

10 "Division" means the Division of Debt Management.

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

14 "Net tax supported debt" means the amount of tax supported
15 debt less any applicable refundings, defeasances, escrow accounts,
16 reserve requirements and sinking funds.

17 "State" means the State of West Virginia.

18 "Spending unit" means ~~any of the state's agencies, boards,~~
19 ~~commissions, committees, authorities or other of its entities with~~
20 ~~the power to issue debt and secure such debt, and not including~~
21 ~~local political subdivisions of the State~~ a state department,
22 agency, board, commission, committee, authority or other entity of
23 the state with the power to issue and secure debt. Spending unit

1 does not include local political subdivisions.

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

16 **§12-6A-5. Powers and duties.**

17 The Division of Debt Management shall perform the following
18 functions and duties:

19 (1) ~~Develop a long-term debt plan including criteria for the~~
20 ~~issuance of debt by the State and its spending units and the~~
21 ~~continuous evaluation of~~ Continuously evaluate the current and
22 projected debt and debt service requirements of the state and its
23 spending units.

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

3 (3) Review all proposed offerings of debt of the state and its
4 spending units, requesting any additional information needed to
5 issue a debt impact report if requested by the Governor, the
6 President of the Senate or the Speaker of the House of Delegates.
7 A debt impact report shall in no way restrict the Governor, the
8 Legislature or the spending unit.

9 ~~(3)~~ (4) Act as liaison with the Legislature on all debt
10 matters, including, but not limited to, new debt issues and the
11 status of debt issued by the State and its spending units.

12 ~~(4)~~ (5) Assist the State and its spending units regarding the
13 issuance of debt if requested.

14 ~~(5)~~ (6) Establish reporting requirements for the issuance of
15 debt by the state and its spending units pursuant to the provisions
16 of this article.

17 (7) Monitor continuing disclosure requirements and
18 post-issuance compliance issues with federal and state tax and
19 securities law, including, without limitation, arbitrage, rebate
20 and remedial measures.

21 ~~(6)~~ (8) Make and execute contracts and other instruments and
22 pay the reasonable value of services or commodities rendered to the
23 division pursuant to those contracts.

1 ~~(7)~~ (9) Contract, cooperate or join with any one or more other
2 governments or public agencies, ~~or~~ with any political subdivision
3 of the state, or with the United States, to perform any
4 administrative service, activity or undertaking which ~~any such~~ the
5 contracting party is authorized by law to perform, ~~and to~~ charge
6 for providing ~~such~~ services and expend any fees collected.

7 ~~(8)~~ (10) Do all things necessary or convenient to effectuate
8 the intent of this article and to carry out its powers and
9 functions.

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

12 **~~§12-6A-6. Debt information reporting~~ Reporting.**

13 (a) Within fifteen days following the end of each calendar
14 quarter, each state spending unit shall provide the division and
15 the Legislative Auditor, in the manner provided by this article and
16 in such form and detail as the State Treasurer may ~~by regulation~~
17 ~~require, a statement of the total debt of each such state spending~~
18 ~~unit incurred during the calendar quarter and owing at the end of~~
19 ~~such calendar quarter, which statement shall include~~ report
20 including, but not ~~be~~ limited to, the name of the state spending
21 unit, the amounts and types of debt incurred during the calendar
22 quarter and outstanding at the end of the calendar quarter, the
23 cost and expenses of incurring the debt, the maturity date of each

1 debt, the terms and conditions of the debt, the current debt
2 service on the debt, the ~~current~~ interest rate on the debt, the
3 source of the proceeds utilized for repayment of the debt, the
4 amounts of repayment during the calendar quarter, the repayment
5 schedule and the security for the debt. A state spending unit
6 having no outstanding debt shall not be required to provide the
7 quarterly report but shall file an annual report, on forms
8 established by the Division of Debt Management: *Provided*, That the
9 state spending unit shall immediately notify the Division of Debt
10 Management of any change in the spending unit's outstanding debt or
11 financial condition.

12 (b) Not less than thirty days prior to a proposed offering of
13 debt ~~to be issued by the state or~~ a state spending unit, written
14 notice of ~~such~~ the proposed offering and the terms thereof shall be
15 given to the Division by ~~such~~ the state spending unit in the form
16 as the Division may ~~by regulation~~ require.

17 (c) Within thirty days after closing on an offering, the
18 ~~terms shall be reported to the~~ responsible spending unit shall
19 report to the division the information pertaining to the offering
20 required by the division in the form ~~as~~ the division may ~~by~~
21 ~~regulation~~ require.

22 (c) (d) On or before ~~the thirty-first day of~~ January 31 and
23 ~~the thirty-first day of~~ July 31 of each year, the ~~Treasurer~~

1 division shall prepare and issue a report of all debt of the State
2 and its spending units and of all proposed debt issuances of which
3 the ~~Treasurer~~ division has received notice and shall furnish a copy
4 of ~~such~~ the report to the Governor, the President of the Senate,
5 the Speaker of the House of Delegates, the members of the Joint
6 Committee on Government and Finance, the Legislative Auditor and
7 upon request to any other legislative committee and any member of
8 the Legislature. The report shall be kept available for inspection
9 by any citizen of the state. The ~~Treasurer~~ division shall also
10 prepare updated reports of all debt of the state and its spending
11 units as of March 31 and September 30 each year, which shall be
12 available for inspection at the office of the State Treasurer ~~on or~~
13 ~~before the thirty-first day of March and the thirtieth day of~~
14 ~~September of each year~~ within thirty days of the end of the
15 respective calendar quarter.

16 (e) On or before the fifteenth day of January 15 each year,
17 the division shall report to the Governor and to the Legislature on
18 the capacity of the state to issue additional debt. In preparing
19 its annual review and estimate, the division shall, at a minimum,
20 consider:

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

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

5 (3) Any information available from the budget office of the
6 Department of Revenue in connection with projected revenues and
7 anticipated capital expenditures projected for at least the next
8 five fiscal years;

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

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

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

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

16 **§12-6A-7. Promulgation of rules.**

17 The ~~Division of Debt Management~~ Treasurer shall ~~promulgate~~
18 ~~propose~~ rules for legislative approval relating to reporting
19 requirements and ~~it's~~ the duties under this article ~~and the rules~~
20 ~~shall be promulgated~~ in accordance with the provisions of article
21 three, chapter twenty-nine-a of this Code.

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

23 **§12-6C-7. Management and control of fund; officers; staff;**

1 **fiduciary or surety bonds for directors; liability**
2 **of directors.**

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

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

11 (c) The board may use the staff of the State Treasurer, employ
12 personnel and contract with any person or entity needed to perform
13 the tasks related to operating the 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. As a
16 minimum qualification, the internal auditor shall be a certified
17 public accountant with at least three years' experience as an
18 auditor. The internal auditor shall develop an internal audit plan,
19 with board approval, for the testing of procedures, internal
20 controls and the security of transactions.

21 (e) The board may retain one employee with a chartered
22 financial analyst designation or an employee who is a certified
23 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~~ \$1 million ~~dollars~~ for the
4 faithful performance of his or her duties as a director. The Board
5 shall purchase a blanket bond for the faithful performance of its
6 duties in the amount of ~~fifty~~ set by the board of at least ten \$10
7 million ~~dollars. or in an amount equivalent to one percent of the~~
8 ~~assets under management, whichever is greater.~~ The amount of the
9 blanket bond is in addition to the \$1 ~~one~~ million ~~dollar~~ individual
10 bond required of each director by the provisions of this section.
11 The board may require a fiduciary or surety bond from a surety
12 company qualified to do business in this state for any person who
13 has charge of, or access to, any securities, funds or other moneys
14 held by the board and the amount of the fiduciary or surety bond
15 are fixed by the board. The premiums payable on all fiduciary or
16 surety bonds are expenses of the board.

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

23 (h) The board is exempt from the provisions of article three,

1 chapter five-a, and sections seven and eleven, article three,
2 chapter twelve of this code. However, the board is subject to the
3 purchasing policies and procedures of the State Treasurer's Office.

4 **§12-6C-9. Asset allocation; investment policies, authorized**
5 **investments; restrictions.**

6 (a) The board shall develop, adopt, review or modify an asset
7 allocation plan for the Consolidated Fund at each annual board
8 meeting.

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

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

- 18 (1) Preservation of capital;
- 19 (2) Risk tolerance;
- 20 (3) Credit standards;
- 21 (4) Diversification;
- 22 (5) Rate of return;
- 23 (6) Stability and turnover;

- 1 (7) Liquidity;
- 2 (8) Reasonable costs and fees;
- 3 (9) Permissible investments;
- 4 (10) Maturity ranges;
- 5 (11) Internal controls;
- 6 (12) Safekeeping and custody;
- 7 (13) Valuation methodologies;
- 8 (14) Calculation of earnings and yields;
- 9 (15) Performance benchmarks and evaluation; and
- 10 (16) Reporting.

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

14 (e) Notwithstanding the restrictions which are otherwise
15 provided by law with respect to the investment of funds, the board
16 and all participants, now and in the future, may invest funds in
17 these securities:

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

- 22 (i) United States Treasury;
- 23 (ii) Export-Import Bank of the United States;

- 1 (iii) Farmers Home Administration;
- 2 (iv) Federal Farm Credit Banks;
- 3 (v) Federal Home Loan Banks;
- 4 (vi) Federal Home Loan Mortgage Corporation;
- 5 (vii) Federal Land Banks;
- 6 (viii) Government National Mortgage Association;
- 7 (ix) Merchant Marine bonds; and
- 8 (x) Tennessee Valley Authority Obligations;
- 9 (2) Obligations of the Federal National Mortgage Association;
- 10 (3) Commercial paper with one of the two highest commercial
- 11 paper credit ratings by a nationally recognized ~~investment rating~~
- 12 ~~firm~~ statistical rating organization;
- 13 (4) Corporate debt rated ~~in one of the six highest rating~~
- 14 ~~categories by a nationally recognized rating agency~~ investment
- 15 grade by a nationally recognized statistical rating organization;
- 16 (5) State and local government, or any instrumentality or
- 17 agency thereof, securities with one of the three highest ratings by
- 18 a nationally recognized ~~rating agency~~ statistical rating
- 19 organization;
- 20 (6) Repurchase agreements involving the purchase of United
- 21 States Treasury securities and repurchase agreements fully
- 22 collateralized by obligations of the United States Government or
- 23 its agencies or instrumentalities;

1 (7) Reverse repurchase agreements involving the purchase of
2 United States Treasury securities and reverse repurchase agreements
3 fully collateralized by obligations of the United States Government
4 or its agencies or instrumentalities;

5 (8) Asset-backed securities rated in the highest category by
6 a nationally recognized ~~rating agency~~ statistical rating
7 organization;

8 (9) Certificates of deposit; ~~and~~

9 (10) Money market and other fixed income funds; and

10 ~~(10)~~ (11) Investments in accordance with the Linked Deposit
11 Program, ~~a program~~ loans authorized under this article, programs
12 using financial institutions in West Virginia to obtain
13 ~~certificates of deposit, loans approved by the Legislature~~ invest
14 moneys, equipment and software financing program for West Virginia
15 State Government entities that authorize the board to capture
16 revenues in the event of default and any other programs authorized
17 by the Legislature.

18 (f) In addition to the restrictions and conditions contained
19 in this section:

20 (1) At no time shall more than seventy-five percent of the
21 Consolidated Fund be invested in any bond, note, debenture,
22 commercial paper or other evidence of indebtedness of any private
23 corporation or association; and

1 (2) At no time shall more than five percent of the
2 Consolidated Fund be invested in securities issued by a single
3 private corporation or association. ~~and~~

4 ~~(3) At no time shall less than fifteen percent of the~~
5 ~~Consolidated Fund be invested in any direct obligation of or~~
6 ~~obligation guaranteed as to the payment of both principal and~~
7 ~~interest by the United States of America.~~

8 (g) Securities purchased in compliance with this article that
9 become noncompliant may be retained upon recommendation of the
10 investment manager of the security and the board investment
11 consultant.

12 **CHAPTER 18. EDUCATION.**

13 **ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS** 14 **PROGRAM ACT.**

15 **§18-30-8. College Prepaid Tuition and Savings Program** 16 **Administrative Account.**

17 (a) There is hereby created a separate account within the
18 State Treasurer's office titled the "College Prepaid Tuition and
19 Savings Program Administrative Account" for the purposes of
20 implementing, operating and maintaining the trust funds and program
21 created by this article, and providing matching grant contributions
22 and scholarships for the program. ~~On the effective date of this~~
23 section, ~~all moneys in the Prepaid Tuition Trust Fund~~

1 ~~Administrative Account are hereby transferred to the College~~
 2 ~~Prepaid Tuition and Savings Program Administrative Account.~~

3 (b) The administrative account shall receive all fees, charges
 4 and penalties collected by the board. Expenditures from the fund
 5 are authorized from collections subject to appropriations made by
 6 the Legislature.

7 **§18-30-11. Financial aid eligibility.**

8 (a) The calculations of a beneficiary's eligibility for state
 9 student financial aid for higher education may not include or
 10 consider the value of distributions available in a prepaid tuition
 11 account or the value of distributions available in a savings plan
 12 account.

13 (b) The value of a prepaid tuition account or a savings plan
 14 account shall not be considered for purposes of determining
 15 eligibility for income-based governmental financial assistance,
 16 unless otherwise required by federal law.

17 **CHAPTER 33. INSURANCE**

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

19 **§33-3-14d. Additional fire and casualty insurance premium tax;**
 20 **allocation of proceeds; effective date.**

21 (a) (1) For the purpose of providing additional revenue for
 22 municipal policemen's and firemen's pension and relief funds and
 23 the Teachers Retirement System Reserve Fund and for volunteer and

1 part-volunteer fire companies and departments, there is hereby
2 levied and imposed an additional premium tax equal to one percent
3 of taxable premiums for fire insurance and casualty insurance
4 policies. For purposes of this section, casualty insurance does not
5 include insurance on the life of a debtor pursuant to or in
6 connection with a specific loan or other credit transaction or
7 insurance on a debtor to provide indemnity for payments becoming
8 due on a specific loan or other credit transaction while the debtor
9 is disabled as defined in the policy.

10 (2) All moneys collected from this additional tax shall be
11 received by the commissioner and paid by him or her into a special
12 account in the State Treasury, designated the Municipal Pensions
13 and Protection Fund: *Provided*, That on or after January 1, 2010,
14 the commissioner shall pay ten percent of the amount collected to
15 the Teachers Retirement System Reserve Fund created in section
16 eighteen, article seven-a, chapter eighteen of this code,
17 twenty-five percent of the amount collected to the Fire Protection
18 Fund created in section thirty-three of this article for allocation
19 by the Treasurer to volunteer and part-volunteer fire companies and
20 departments and sixty-five percent of the amount collected to the
21 Municipal Pensions and Protection Fund: *Provided, however*, That
22 upon notification by the Municipal Pensions Oversight Board
23 pursuant to the provisions of section eighteen-b, article

1 twenty-two, chapter eight of this code, on or after January 1,
2 2010, or as soon thereafter as the Municipal Pensions Oversight
3 Board is prepared to receive the funds, sixty-five percent of the
4 amount collected by the commissioner shall be deposited in the
5 Municipal Pensions Security Fund created in section eighteen-b,
6 article twenty-two, chapter eight of this code. The net proceeds of
7 this tax after appropriation thereof by the Legislature is
8 distributed in accordance with the provisions of this section,
9 except for distribution from proceeds pursuant to subsection (d),
10 section eighteen-a, article twenty-two, chapter eight of this code.

11 (b) (1) Before ~~the first day of~~ August 1 of each year, the
12 Treasurer of each municipality in which a municipal policemen's or
13 firemen's pension and relief fund is established shall report to
14 the State Treasurer the average monthly number of members who
15 worked at least one hundred hours per month and the average monthly
16 number of retired members of municipal policemen's or firemen's
17 pension and relief fund or the Municipal Police Officers and
18 Firefighters Retirement System during the preceding fiscal year:
19 Provided, That beginning in the year 2010 and continuing
20 thereafter, the report shall be made to the oversight board created
21 in section eighteen-a, article twenty-two, chapter eight of this
22 code. These reports received by the oversight board shall be
23 provided annually to the State Treasurer by September 1.

1 (2) Before ~~the first day of~~ September 1 of each calendar year,
2 the State Treasurer, or the Municipal Pensions Oversight Board,
3 once in operation, shall allocate and authorize for distribution
4 the revenues in the Municipal Pensions and Protection Fund which
5 were collected during the preceding calendar year for the purposes
6 set forth in this section. Before ~~the first day of~~ September 1 of
7 each calendar year and after the Municipal Pensions Oversight Board
8 has notified the Treasurer and commissioner pursuant to section
9 eighteen-b, article twenty-two, chapter eight of this code, the
10 Municipal Pensions Oversight Board shall allocate and authorize for
11 distribution the revenues in the Municipal Pensions Security Fund
12 which were collected during the preceding calendar year for the
13 purposes set forth in this section. In any year the actuarial
14 report required by section twenty, article twenty-two, chapter
15 eight of this code indicates no actuarial deficiency in the
16 Municipal Policemen's or Firemen's Pension and Relief Fund, no
17 revenues may be allocated from the Municipal Pensions and
18 Protection Fund or the Municipal Pensions Security Fund to that
19 fund. The revenues from the Municipal Pensions and Protection Fund
20 shall then be allocated to all other pension and relief funds which
21 have an actuarial deficiency. (3) The moneys, and the interest
22 earned thereon, in the Municipal Pensions and Protection Fund
23 allocated to volunteer and part-volunteer fire companies and

1 departments shall be allocated and distributed quarterly to the
2 volunteer fire companies and departments. Before each distribution
3 date, the State Fire Marshal shall report to the State Treasurer
4 the names and addresses of all volunteer and part-volunteer fire
5 companies and departments within the state which meet the
6 eligibility requirements established in section eight-a, article
7 fifteen, chapter eight of this code.

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

1 section is determined by subtracting the amount of the tax
2 collected during the fiscal year ending June 30, 1996, from the tax
3 collected during the fiscal year for which the allocation is being
4 made and interest thereon. All moneys received by municipal pension
5 and relief funds under this section may be expended only for those
6 purposes described in sections sixteen through twenty-eight,
7 inclusive, article twenty-two, chapter eight of this code.

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

11 (3) In addition to the share allocated and distributed in
12 accordance with subdivision (1) of this subsection, each municipal
13 fire department composed of full-time paid members and volunteers
14 and part-volunteer fire companies and departments shall receive a
15 share equal to the share distributed to volunteer fire companies
16 under subdivision (2) of this subsection reduced by an amount equal
17 to the share multiplied by the ratio of the number of full-time
18 paid fire department members who are also members of a municipal
19 firemen's pension and relief fund or the Municipal Police Officers
20 and Firefighters Retirement System to the total number of members
21 of the fire department.

22 (d) The allocation and distribution of revenues provided for
23 in this section are subject to the provisions of section twenty,

1 article twenty-two, and sections eight-a and eight-b, article
2 fifteen, chapter eight of this code.

3 (e) Based on the findings of an audit by the Treasurer, the
4 Legislature hereby finds and declares that during the period of
5 1982 through February 29, 2012 allocations from the Municipal
6 Pensions Protection Fund were miscalculated and errors were made in
7 amounts transferred, resulting in overpayments and underpayments to
8 the relief and pension funds and to the Teachers Retirement System,
9 and that the relief and pension funds and the Teachers Retirement
10 System were not at fault for any of the overpayments and
11 underpayments. The Legislature hereby further finds and declares
12 that any attempt by the Municipal Pension Oversight Board or other
13 entity to recover any of the overpayments would be unjust and
14 create economic hardship for the entities that received
15 overpayments. No entity, including, without limitation, the
16 Municipal Pension Oversight Board, may seek to recover from a
17 relief or pension fund, the Teachers Retirement System or the state
18 any overpayments received from the Municipal Pensions and
19 Protection Fund and the overpayments are not subject to recovery,
20 offset or litigation. Pursuant to the audit by the Treasurer, the
21 amount of \$3,571,546.55 is determined owed to specific relief and
22 pension funds through the period of February 29, 2012. The
23 Treasurer is hereby authorized to transfer the amount of

1 \$3,571,546.55 from the Unclaimed Property Trust Fund to the
2 Municipal Pensions and Protect Fund, which is hereby reopened for
3 the sole purpose of the transfer and remittances pursuant to this
4 subsection (e), and to use the amount transferred to remit the
5 amounts due to the pension and relief funds. The payment of the
6 \$3,571,546.55 to the pension and relief funds is complete
7 satisfaction of any amounts due, and no entity, including, without
8 limitation, the Municipal Pension Oversight Board and any pension
9 or relief fund, may seek to recover any further amounts.

10 **CHAPTER 36. ESTATES AND PROPERTY.**

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

12 **§36-8-13. Deposit of funds.**

13 (a) The administrator shall record the name and last known
14 address of each person appearing from the holders reports to be
15 entitled to the property and the name and last known address of
16 each insured person or annuitant and beneficiary and with respect
17 to each policy or annuity listed in the report of an insurance
18 company, its number, the name of the company and the amount due.

19 (b) The Unclaimed Property Fund is continued. The
20 administrator shall deposit all funds received pursuant to this
21 article in the Unclaimed Property Fund, including the proceeds from
22 the sale of abandoned property under section twelve of this
23 article. In addition to paying claims of unclaimed property duly

1 allowed, the administrator may deduct the following expenses from
2 the Unclaimed Property Fund:

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

4 (2) Expenses incurred in returning the property to owners,
5 including without limitation the costs of mailing and publication
6 to locate owners;

7 (3) Reasonable service charge; ~~and~~

8 (4) Expenses incurred in examining records of holders of
9 property and in collecting the property from those holders; and

10 (5) Expenses related to the operations and programs of the
11 Treasurer's office.

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

21 (d) (1) On July 1, 2009, the unclaimed property administrator
22 shall transfer the amount of \$8 million from the Unclaimed Property
23 Trust Fund to the Prepaid Tuition Trust Escrow Fund.

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

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

14 (f) On or before June 1, 2013, the unclaimed property
15 administrator shall transfer the amount of \$3,571,546.55 from the
16 Unclaimed Property Trust Fund to the Municipal Pensions Security
17 Fund for the purpose of satisfying any amounts due as of February
18 29, 2012 to policemen's and firemen's pension and relief funds in
19 accordance with §33-3-14d of this Code.

20 ~~(f)~~ (g) After transferring any money required by subsections
21 (d) ~~and (e)~~ through (f) of this section, the administrator shall
22 transfer moneys remaining in the Unclaimed Property Trust Fund to
23 the General Revenue Fund.

NOTE: The purpose of this bill is to amend various provisions of the Code affecting the Treasurer's Office. In addition to various technical clean up revisions, the bill authorizes organizations exempt from taxation within West Virginia to participate in the deferred compensation plan Retirement Plus in accordance with the Internal Revenue Code and authorizes Roth accounts within the deferred compensation plan Retirement Plus in accordance with the Internal Revenue Code. Financial institutions would be permitted to offer products in addition to certificates of deposit. The bill updates references to investing authorities to include the Board of Treasury Investments, raises the amount of eligible deposits from \$100,000 to the amount insured by a federal agency, deletes archaic language pertaining to eligible depositories, amends language pertaining to what constitutes a conflict of interest for applicants and employees of the Treasurer's office in connection with financial institutions by prohibiting those persons with a defined conflict from participating in the selection of or in contract negotiations with a depository, and authorizes depositories to submit reports in an electronic format. In connection with the Cash Management Improvement Act (CMIA), the bill repeals duplicate §12-1-12c, clarifies that payments under the CMIA are interest payments, and changes the CMIA report from a quarterly report to an annual report since the calculation is only prepared annually. Revisions pertaining to receipting of moneys include changing the requirement that deposits are required within 24 hours to one business day (since 24 hours is not feasible); establishing standards for receipting of moneys; reviewing internal controls by auditors and the Treasurer; ensuring copies of audits are submitted to the Legislative Auditor; and requiring redaction of confidential information in internal control procedures before release of the procedures. The bill clarifies the definitions of federal, special and general revenue funds, eliminates reference to the chief inspector of public offices (position has not existed for many years), and changes the report to the Legislative Auditor for accounts outside the treasury from quarterly to an annual report. Proposed revisions conform language pertaining to determining the amount of federal funds in stale state checks to the capabilities of the enterprise resource planning system; clarify that the Treasurer determines the competitive bidding of banking, investment and related goods and services required for treasury operations; authorize the Treasurer to develop procedures for storing, retaining and disposing of records for his or her office; ensure

the February 28, 2013 Director of the Division of Archives and History receives records with historical value; and clarify that the Treasurer is responsible for earnings received on securities, not just interest. The bill repeals the provision of article 6B of chapter 12; consolidates the debt capacity division into the debt management division; amends legislative findings to acknowledge the importance of monitoring the debt of the state and its spending units; continues the division of debt management as the central information source for debt issued by the state and its spending units; expands the definition of debt to include debentures, lease purchases, mortgages, securitizations and other types of obligations with specific amounts owed and payable on demand or on determinable dates; defines debt impact report, moral obligation bond, net tax supported debt and tax supported debt; amends definition of spending unit; eliminates requirement for developing a long-term debt plan; clarifies the division is responsible for continuously evaluating debt and debt service requirements and reviewing all proposed debt offerings of the state and its spending units; clarifies the division is to issue a debt impact report if requested by the Governor, Senate President or House of Delegates Speaker and that the report shall not restrict the Governor, Legislature or spending unit; requires the division to monitor continuing disclosure requirements and post-issuance compliance issues; eliminates requirement that the debt management division provide staff for the debt capacity division; clarifies the reporting requirements of the division and the spending units; requires division to prepare and issue the debt capacity report; and clarifies the Treasurer promulgates the rules. As to the Board of Treasury Investments, the bill proposes to alter the bond required for the board from \$50 million to at least \$10 million, as set by the board; update language pertaining to rating agencies to nationally recognized statistical rating organizations; authorize investment in investment grade corporate debt, in money market and in other fixed income funds; authorize the board to make loans specified by the Legislature and to offer an equipment and software financing program for state government entities; remove requirement that direct or guaranteed obligations of the United States constitute at least fifteen percent of the consolidated fund; and permit securities falling out of compliance with the Code to not have to be sold if the investment manager and investment consultant recommend retention. The bill authorizes moneys in the College Prepaid Tuition and Savings Program Administrative Account be used to provide matching grants and scholarships for the SMART529 program and clarifies the value of a prepaid tuition or savings plan account is not considered for purposes of determining

eligibility for income-based governmental financial assistance unless required by federal law. In accordance with the audit conducted by the Treasurer, the bill satisfies amounts due to and from policemen's and firemen's pension and relief funds and the Teachers Retirement System. In addition, the bill authorizes expenses related to operations and programs of the office of the Treasurer from the Unclaimed Property Fund, authorizes transfer of moneys from the Unclaimed Property Trust Fund for payment to policemen's and firemen's pension and relief funds, repeals §48-2-604 which duplicates the fee for marriage licenses, and makes various technical clean up revisions.

§5-10B-14 is new; therefore, strike throughs and underscoring have been omitted.

§12-2-2 has been completely rewritten; therefore strike throughs and underscoring have been omitted.

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