

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4492**

4 (By Delegates Craig, White, Canterbury, Anderson and Skaff)

5 (Originating in the Committee on Finance)

6
7 [February 21, 2014]

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9
10 A BILL to repeal §12-6-12 of the Code of West Virginia, 1931, as
11 amended; and to amend and reenact §12-6-2 and §12-6-11 of said
12 code, all relating to investment of moneys by the West
13 Virginia Investment Management Board; modifying the definition
14 of the term "securities;" continuing the prudent investor
15 standard of care set forth in the West Virginia Uniform
16 Prudent Investor Act as the primary standard of care for the
17 trustees of the West Virginia Investment Management Board;
18 removing certain restrictions on investments by the Investment
19 Management Board; limiting disclosure of information; and
20 restating and adding certain restrictions on investments by
21 the West Virginia Investment Management Board.

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

23 That §12-6-12 of the Code of West Virginia, 1931, as amended,
24 be repealed; and that §12-6-2 and §12-6-11 be amended and
25 reenacted, all to read as follows:

26 **ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.**

27 **§12-6-2. Definitions.**

28 As used in this article, unless a different meaning clearly

1 appears from the context:

2 (1) "Beneficiaries" means those individuals entitled to
3 benefits from the participant plans;

4 (2) "Board" means the governing body for the West Virginia
5 Investment Management Board and any reference elsewhere in this
6 code to Board of Investments or West Virginia Trust Fund means the
7 board as defined in this subdivision;

8 (3) "401(a) plan" means a plan which is described in Section
9 401(a) of the Internal Revenue Code of 1986, as amended, and with
10 respect to which the board has been designated to hold assets of
11 the plan in trust pursuant to the provisions of section nine-a of
12 this article;

13 (4) "Local government funds" means the moneys of a political
14 subdivision, including Policemen's Pension and Relief Funds,
15 Firemen's Pension and Relief Funds and volunteer fire departments,
16 transferred to the board for deposit;

17 (5) "Participant plan" means any plan or fund subject now or
18 hereafter to subsection (a), section nine-a of this article;

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

25 (7) "Trustee" means any member serving on the West Virginia
26 Investment Management Board: *Provided*, That in section nine-a of
27 this article in which the terms of the trusts are set forth,
28 "trustee" means the West Virginia Investment Management Board;

1 (8) "Securities" means all ~~bonds, notes, debentures or other~~
2 ~~evidences of indebtedness and other lawful investment instruments~~
3 forms and types of investments, financial instruments or financial
4 transactions which may be considered prudent for investment by the
5 board under section eleven of this article; and

6 (9) "State funds" means all moneys of the state which may be
7 lawfully invested except the "school fund" established by section
8 four, article XII of the state Constitution.

9 **§12-6-11. Standard of care and investment requirements; disclosure**
10 **of information.**

11 (a) Any investments made under this article shall be made in
12 accordance with the provisions of the "Uniform Prudent Investor
13 Act" codified as article six-c, chapter forty-four of this code and
14 is further subject to the following requirements:

15 ~~(a)(1)~~ Trustees shall discharge their duties with respect to
16 the 401(a) plans for the exclusive purpose of providing benefits to
17 participants and their beneficiaries;

18 ~~(b)(2)~~ Trustees shall diversify fund investment so as to
19 minimize the risk of large losses unless, under the circumstances,
20 it is clearly prudent not to do so;

21 ~~(c)(3)~~ Trustees shall defray reasonable expenses of investing
22 and operating the funds under management; ~~and~~

23 ~~(d)(4)~~ Trustees shall discharge their duties in accordance
24 with the documents and instruments governing the trusts or other
25 funds under management insofar as the documents and instruments are
26 consistent with the provisions of this article-;

27 (5) Trustees, at the annual meeting required in subsection
28 (h), section three of this article, shall review, establish and

1 modify, if necessary, the investment objectives of the individual
2 participant plans as incorporated in the investment policy
3 statements of the respective trusts so as to provide for the
4 financial security of the trust funds giving consideration to the
5 following:

6 (A) Preservation of capital;

7 (B) Diversification;

8 (C) Risk tolerance;

9 (D) Rate of return;

10 (E) Stability;

11 (F) Turnover;

12 (G) Liquidity; and

13 (H) Reasonable cost of fees;

14 (6) The board may invest in a private real estate fund, a
15 private equity fund or a hedge fund only if the investment
16 satisfies the following conditions:

17 (A) A professional, third-party fiduciary investment adviser
18 registered with the Securities and Exchange Commission under the
19 Investment Advisors Act of 1940, as amended, recommends the
20 investment;

21 (B) The board or a committee designated by the board approves
22 the investment;

23 (C) The board's ownership interest in the fund will be less
24 than forty percent of the fund's assets at the time of acquisition;

25 (D) The combined investment of institutional investors, other
26 public sector entities and educational institutions and their
27 endowments and foundations in the fund is equal to or greater than
28 fifty percent of the board's total investment in the fund at the

1 time of acquisition; and

2 (E) The largest investment of such fund is not greater than
3 forty percent of the fund's assets at the time of acquisition; and

4 (7) The total assets of the private real estate fund, private
5 equity fund or hedge fund shall be used in calculating the
6 percentage requirements and limitations set forth in subdivision
7 (6) of this subsection without regard to any particular investment
8 vehicle in which assets may be held pending investment.

9 (b) If the standard confidentiality agreements, policies or
10 procedures of any firm, company or organization through which the
11 board invests in securities prohibit, restrict or limit the
12 disclosure of information pertaining to the securities, the
13 information is exempt from disclosure, under the provisions of
14 chapter twenty-nine-b of this code or otherwise, to the extent of
15 the prohibitions, restrictions or limitations.

16 ~~(e)~~ (c) The duties of the board apply only with respect to
17 those assets deposited with or otherwise held by it.