

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 499**

7 (SENATORS KIRKENDOLL, MCCABE, EDGELL, CANN, M. HALL, CARMICHAEL, PLYMALE,
8 PALUMBO AND NOHE, *original sponsors*)

9 _____
10 [Passed March 3, 2014; in effect ninety days from passage.]
11 _____

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

1 the West Virginia Investment Management Board.

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

3 That §12-6-12 of the Code of West Virginia, 1931, as amended,
4 be repealed; and that §12-6-2 and §12-6-11 of said code be amended
5 and reenacted, all to read as follows:

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

7 **§12-6-2. Definitions.**

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

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

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

16 (3) "401(a) plan" means a plan which is described in Section
17 401(a) of the Internal Revenue Code of 1986, as amended, and with
18 respect to which the board has been designated to hold assets of
19 the plan in trust pursuant to the provisions of section nine-a of
20 this article;

21 (4) "Local government funds" means the moneys of a political
22 subdivision, including policemen's pension and relief funds,
23 firemen's pension and relief funds and volunteer fire departments,
24 transferred to the board for deposit;

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

3 (6) "Political subdivision" means and includes a county,
4 municipality or any agency, authority, board, county board of
5 education, commission or instrumentality of a county or
6 municipality and regional councils created pursuant to the
7 provisions of section five, article twenty-five, chapter eight of
8 this code;

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

13 (8) "Securities" means all forms and types of investments,
14 financial instruments or financial transactions which may be
15 considered prudent for investment by the board under section eleven
16 of this article; and

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

20 **§12-6-11. Standard of care and investment requirements; disclosure**
21 **of information.**

22 (a) Any investments made under this article shall be made in
23 accordance with the provisions of the Uniform Prudent Investor Act
24 codified as article six-c, chapter forty-four of this code and is

1 further subject to the following requirements:

2 (1) Trustees shall discharge their duties with respect to the
3 401(a) plans for the exclusive purpose of providing benefits to
4 participants and their beneficiaries;

5 (2) Trustees shall diversify fund investment so as to minimize
6 the risk of large losses unless, under the circumstances, it is
7 clearly prudent not to do so;

8 (3) Trustees shall defray reasonable expenses of investing and
9 operating the funds under management;

10 (4) Trustees shall discharge their duties in accordance with
11 the documents and instruments governing the trusts or other funds
12 under management insofar as the documents and instruments are
13 consistent with the provisions of this article;

14 (5) Trustees, at the annual meeting required in subsection
15 (h), section three of this article, shall review, establish and
16 modify, if necessary, the investment objectives of the individual
17 participant plans as incorporated in the investment policy
18 statements of the respective trusts so as to provide for the
19 financial security of the trust funds giving consideration to the
20 following:

21 (A) Preservation of capital;

22 (B) Diversification;

23 (C) Risk tolerance;

24 (D) Rate of return;

1 (E) Stability;

2 (F) Turnover;

3 (G) Liquidity; and

4 (H) Reasonable cost of fees;

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

8 (A) A professional, third-party fiduciary investment adviser
9 registered with the Securities and Exchange Commission under the
10 Investment Advisors Act of 1940, as amended, recommends the
11 investment;

12 (B) The board or a committee designated by the board approves
13 the investment;

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

16 (D) The combined investment of institutional investors, other
17 public sector entities and educational institutions and their
18 endowments and foundations in the fund is equal to or greater than
19 fifty percent of the board's total investment in the fund at the
20 time of acquisition; and

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

23 (7) The total assets of the private real estate fund, private
24 equity fund or hedge fund shall be used in calculating the

1 percentage requirements and limitations set forth in subdivision
2 (6) of this subsection without regard to any particular investment
3 vehicle in which assets may be held pending investment.

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

11 (c) The duties of the board apply only with respect to those
12 assets deposited with or otherwise held by it.