

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 438

FISCAL
NOTE

BY SENATORS NELSON AND TRUMP

[Introduced January 20, 2022; referred
to the Committee on Banking and Insurance; and then
to the Committee on Finance]

1 A BILL to amend and reenact §12-1-5 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new article, designated §12-1B-1, §12-1B-2,
3 §12-1B-3, §12-1B-4, §12-1B-5, §12-1B-6, §12-1B-7, §12-1B-8, §12-1B-9, §12-1B-10,
4 §12-1B-11, §12-1B-12, §12-1B-13, and §12-1B-14; all relating generally to the West
5 Virginia Security for Public Deposits Act; authorizing the State Treasurer to promulgate
6 certain legislative rules related to securing public deposits; providing a short title; providing
7 legislative findings; specifying the act's applicability; defining terms; establishing the West
8 Virginia Security for Public Deposits Program and requiring the program to be operable
9 by a certain date; establishing the Treasurer's Collateral Administration Fund and
10 requirements for said fund; establishing powers and duties of the State Treasurer with
11 regard to the program; requiring the State Treasurer to promulgate certain legislative rules
12 related to the program; authorizing designated state depositories to secure public deposits
13 pursuant to the act; clarifying that designated state depositories securing public deposits
14 under the act are not required to secure deposits by other methods; establishing the duties
15 of designated state depositories securing deposits pursuant to the act; allowing
16 designated state depositories to secure public deposits through a pooled method;
17 subrogating the State Treasurer to certain claims of a depositor and requiring distribution
18 of assets; mandating that deposit of public funds pursuant to the act be made in
19 designated state depositories and authorizing said depositories to make public deposits;
20 limiting liability of public depositors in certain circumstances; setting forth reporting
21 requirements for designated state depositories; and clarifying that the act controls over
22 inconsistent provisions of state or local law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-5. Limitation on amount on deposit.

1 (a) The amount of state funds on deposit in any depository in excess of the amount insured

2 by an agency of the federal government shall be secured by a deposit guaranty bond issued by
3 a valid bankers' surety company or by other securities acceptable to the treasurer, under the
4 dedicated method, as defined in §12-1B-4(1) of this code, in an amount of at least 102 percent of
5 the amount on deposit. The value of the collateral shall be determined by the treasurer.

6 (b) The State Treasurer shall propose legislative rules that are necessary to effectuate the
7 provisions of this section, including emergency rules if necessary, in accordance with §29A-3-1
8 et seq. of this code.

ARTICLE 1B. WEST VIRGINIA SECURITY FOR PUBLIC DEPOSITS ACT.

§12-1B-1. Short title.

1 This article shall be known, and may be cited as, the "West Virginia Security for Public
2 Deposits Act."

§12-1B-2. Legislative intent; findings.

1 (a) The purpose of the West Virginia Security for Public Deposits Act is to allow designated
2 state depositories to pledge collateral for all public deposits made by the state or any county,
3 municipality, spending unit, or political subdivision of the state through a pooled method, as
4 defined herein.

5 (b) It is the intent of the Legislature that designated state depositories participating in the
6 Public Deposits Program be authorized to secure public deposits through the pooled method, as
7 an alternative to the methods of securing public deposits previously authorized under §7-6-2,
8 §8-13-22a, §12-1-4, §12-1-5, and §18-9-6 of this code.

9 (c) The Legislature finds that authorizing designated state depositories to secure public
10 deposits using the pooled method will lower the overall cost of public deposits and make state
11 banking contracts more desirable to financial institutions.

§12-1B-3. Applicability.

1 This article applies to public deposits. This article may not apply to investments made by
2 the State Treasurer, the Board of Treasury Investments, the Investment Management Board, or

3 any other investments of the state.

§12-1B-4. Definitions.

1 For the purposes of this article, the following terms have the following meanings:

2 “Dedicated method” or “non-contingent liability pool” means the securing of public deposits
3 without accepting the contingent liability for the losses of public deposits of other qualified public
4 depositories, as provided in §12-1-5 of this code.

5 “Defaulting depository” means any qualified public depository determined to be in default
6 or insolvent.

7 “Default or insolvent” includes, but may not be limited to, the failure or refusal of any
8 qualified public depository to return any public deposit upon demand or at maturity and the
9 issuance of an order of supervisory authority restraining such depository from making payments
10 of deposit liabilities or the appointment of a receiver for such depository.

11 “Designated state depository” means any state and national banks and the state and
12 federal savings and loan associations in this state meeting the requirements of Chapter 12 of this
13 code.

14 “Political subdivision” means a county, municipality, board of education, RESA,
15 corporation, or instrumentality of one or more counties or municipalities, and any other
16 government organization.

17 “Pooled method” means securing public deposits by accepting the contingent liability for
18 the losses of public deposits of other qualified public depositories choosing this method, as
19 required by this article and the legislative rules promulgated by the State Treasurer.

20 “Public deposit” means state funds, or any public moneys held by a designated state
21 depository that is authorized to receive or administer such moneys from a public depositor, for
22 deposit in any of the following types of accounts: nonnegotiable time deposits, demand deposits,
23 savings deposits, or any other transaction accounts.

24 “Public depositor” means the state or any county, municipality, spending unit, or political

25 subdivision of the state.

26 “Qualified escrow agent” means the State Treasurer or any bank or trust company
27 approved by the State Treasurer to hold collateral pledged to secure public deposits.

28 “Spending unit” means a department, agency, board, commission, or institution of state
29 government for which an appropriation is requested, or to which an appropriation is made by the
30 Legislature.

31 “Required collateral” of a designated state depository means the amount of collateral
32 required to secure public deposits, according to this article or legislative rules promulgated by the
33 State Treasurer.

34 “State Treasurer” means the West Virginia State Treasurer or his or her designee.

35 “West Virginia Security for Public Deposits Program” or “Public Deposits Program” means
36 the system and procedures developed by the State Treasurer to enable public depositors to
37 secure public deposits pursuant to this article.

§12-1B-5. West Virginia Security for Public Deposits Program established.

1 The West Virginia Security for Public Deposits Program is hereby established, to be
2 operable on or before March 1, 2024. The Treasurer shall implement and administer the West
3 Virginia Security for Public Deposits Program under the terms and conditions required by this
4 article.

§12-1B-6. The Treasurer’s Collateral Administration Fund.

1 There is hereby established an appropriated special revenue account in the State
2 Treasury called the Treasurer’s Collateral Administration Fund to be administered by the
3 Treasurer pursuant to the provisions of this article. This fund shall be an interest-bearing fund and
4 shall receive moneys established in the article. Moneys in the account shall be used by the
5 Treasurer to pay any fees and costs associated with this article and for such other purposes as
6 authorized by the Legislature.

§12-1B-7. Powers and duties of the State Treasurer.

1 In order to implement and administer the Public Deposits Program, the State Treasurer
2 shall:

3 (1) Propose legislative rules that are necessary to effectuate this article, including
4 emergency rules if necessary, in accordance with the provisions of §29A-3-1 et seq. of this code,
5 which may include, but are not limited to, the following:

6 (A) The terms and conditions under which public deposits must be secured;

7 (B) The method for determining the pooled-base collateral requirements based on balance
8 of public funds held in the designated state depository and the evaluation of the overall financial
9 condition of the designated state depository;

10 (C) The collateral requirements and collateral-pledging level for each designated state
11 depository as determined to be prudent under the circumstances, based on nationally recognized
12 financial rating services information and established financial performance guidelines;

13 (D) The securities or instruments that constitute eligible collateral and fix the percentage
14 of face value or market value of such securities or instruments that can be used to secure public
15 deposits;

16 (E) Reporting requirements for designated state depositories;

17 (F) The process for a designated state depository to withdraw from the pooled method of
18 securing public deposits and instead be governed by the procedures for securing such deposits
19 by the dedicated method, consistent with the primary purpose of protecting public deposits;

20 (G) The process for determining when a default or insolvency has occurred, or is likely to
21 occur, and the actions necessary for the protection, collection, compromise, or settlement of any
22 claim arising in case of default or insolvency;

23 (H) Requirements for the payment of losses by pooled or dedicated methods; and

24 (I) Any and all guidelines necessary and proper for the full and complete performance of
25 this article;

26 (2) Charge and collect any necessary administrative fees, fines, penalties, and service

27 charges in connection with any agreement, contract, or transaction pursuant to this article;

28 (3) Execute contracts, agreements, or other instruments for goods and services necessary
29 to effectuate this article, including agreements with designated state depositories or any other
30 entity: *Provided*, That selection of these services is not subject to §5A-3-1 *et seq.* of this code;
31 and

32 (4) Perform all other lawful actions necessary to effectuate the provisions of this article,
33 subject to applicable state and federal law.

§12-1B-8. Authority to secure public deposits; acceptance of liabilities and duties by public depositories.

1 (a) All designated state depositories are hereby authorized to secure public deposits in
2 accordance with this article and shall be considered to have accepted the liabilities and duties
3 imposed upon it pursuant to this article.

4 (b) Notwithstanding any provision of this code to the contrary, including, but not limited to,
5 §7-6-2, §8-13-22a, §12-1-4, §12-1-5, and §18-9-6 of this code, a designated state depository
6 securing public deposits in accordance with this article is not required to secure said deposits by
7 another method provided in this code.

§12-1B-9. Collateral for Public Deposits.

1 (a) Designated state depositories may secure public deposits by the state or any county,
2 municipality, spending unit, or political subdivision of the state by either the pooled method or the
3 dedicated method. Every designated state depository shall deposit with a qualified escrow agent
4 eligible collateral equal to or in excess of the required collateral. Eligible collateral shall be valued
5 as determined by the State Treasurer. Substitutions and withdrawals of eligible collateral may be
6 made as determined by the State Treasurer.

7 (b) No designated state depository may accept or retain any public deposit that is required
8 to be secured unless it has deposited eligible collateral equal to its required collateral with a
9 qualified escrow agent pursuant to this article: *Provided*, That a designated state depository may

10 accept or retain public deposits that occur outside of its set hours of operation and in excess of
11 its required collateral, so long as any such necessary deposit of eligible collateral is made prior to
12 the close of business on the second business day following receipt of the deposit.

§12-1B-10. Subrogation of the State Treasurer to depositor's rights; payment of sums received from distribution of assets.

1 Upon payment in full to any public depositor on any claim presented pursuant to this
2 article, the State Treasurer shall be subrogated to all of such depositor's rights, title, and interest
3 against the depository in default or insolvent and shall share in any distribution of such defaulting
4 or insolvent depository's assets ratably with other depositors. Any sums received from any such
5 distribution shall be paid to the other designated state depositories against which assessments
6 were made, in proportion to such assessments, net of any proper payment or expense of the
7 State Treasurer in enforcing any such claim.

§12-1B-11. Mandatory deposit of public funds in designated state depositories; authority to make public deposits.

1 (a) Public deposits required to be secured pursuant to this article shall be deposited in a
2 designated state depository.

3 (b) All public depositors may make public deposits under their control in designated state
4 depositories, securing such public deposits pursuant to this article: *Provided*, That a public
5 depositor shall provide a designated state depository with at least two business days advance
6 notice prior to making any large increase in its public deposits that could otherwise result in the
7 depository having an insufficient amount of eligible collateral necessary to secure the public
8 deposits in accordance with the provisions of this article. If the advanced notice is not provided,
9 the designated state depository shall notify the State Treasurer accordingly.

10 (c) A county, municipality, spending unit, or political subdivision of the state may not
11 require any pledge of collateral from a designated state depository for their deposits in excess of
12 the requirements of this article.

§12-1B-12. Liability of public depositors.

1 When deposits are made in accordance with this article, no official of a public depositor
2 shall be personally liable for any loss resulting from the default or insolvency of any designated
3 state depository in the absence of negligence, malfeasance, misfeasance, or nonfeasance.

§12-1B-13. Reports of designated state depositories.

1 No later than the tenth day after the end of each calendar reporting month, or when
2 otherwise requested by the State Treasurer, each qualified public depository shall submit to the
3 State Treasurer an electronic report of such data required by the Treasurer for the effectuation of
4 this article.

§12-1B-14. Inconsistent Provisions.

1 If provisions of this article are inconsistent with the provisions of any other law relating to
2 the pledge of collateral by the state or any county, municipality, or other political subdivision for
3 purposes of securing public deposits in financial institutions, the provisions of this article shall
4 control.

NOTE: The purpose of this bill is to establish the West Virginia Security for Public Deposits Act.

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