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FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 438

(BY SENATORS FOSTER, McCABE, EDGELL,
PLYMALE, HALL AND MCKENZIE)

[Passed March 10, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §12-6-2, §12-6-4, §12-6-9c, §12-6-12 and §12-6-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §12-6-18, all relating to investment of moneys by the West Virginia Investment Management Board; modifying the type and amount of bonds or insurance coverage that may be obtained and maintained by the Investment Management Board; authorizing the establishment and maintenance of a self-insurance account in connection with the procurement and maintenance of insurance coverage by the Investment Management Board; modifying provisions relating to authority of the board to

make certain investments in investment companies or investment trusts registered under the Investment Company Act of 1940; modifying restrictions and limitations on permissible investments by the West Virginia Investment Management Board; authorizing investment in real estate investment funds and alternative investment funds and establishing conditions and limitations on the same; providing an exemption from disclosure under the Freedom of Information Act with respect to information concerning which disclosure is prohibited, restricted or limited by standard confidentiality agreements, policies or procedures of firms, companies or organizations through which the West Virginia Investment Management Board invests, to the extent of the prohibitions, restrictions or limitations; requiring certain additional information be part of the Investment Management Board's annual report; providing authority for the Legislature to commission or direct audits, reviews and studies as it considers necessary; and specifying that the provisions of the article are to be liberally construed to effect the public purposes of the article.

Be it enacted by the Legislature of West Virginia:

That §12-6-2, §12-6-4, §12-6-5, §12-6-9c, §12-6-12 and §12-6-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §12-6-18, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-2. Definitions.

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

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

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

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

15 (4) "Local government funds" means the moneys of a
16 political subdivision, including policemen's pension and
17 relief funds; firemen's pension and relief funds and
18 volunteer fire departments, transferred to the board for
19 deposit;

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

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

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

34 (8) "Securities" means all bonds, notes, debentures or
35 other evidences of indebtedness and other lawful
36 investment instruments; and

37 (9) "State funds" means all moneys of the state which
38 may be lawfully invested except the "school fund"
39 established by section four, article XII of the state
40 constitution.

**§12-6-4. Management and control of fund; officers; staff;
fiduciary or surety bonds for trustees; liability of
trustees.**

1 (a) The management and control of the board shall be
2 vested solely in the trustees in accordance with the
3 provisions of this article.

4 (b) The Governor shall be the chairman of the board
5 and the trustees shall elect a vice chairman who may not
6 be a constitutional officer or his or her designee to serve
7 for a term of two years. Effective with any vacancy in
8 the vice chairmanship, the board shall elect a vice
9 chairman to a new two-year term. The vice chairman
10 shall preside at all meetings in the absence of the
11 chairman. Annually, the trustees shall elect a secretary,
12 who need not be a member of the board, to keep a
13 record of the proceedings of the board.

14 (c) The trustees shall appoint a chief executive officer

15 of the board and shall fix his or her duties and
16 compensation. The chief executive officer shall have
17 five years' experience in investment management with
18 public or private funds within the ten years next
19 preceding the date of appointment. The chief executive
20 officer additionally shall have academic degrees,
21 professional designations and other investment
22 management or investment oversight or institutional
23 investment experience in a combination the trustees
24 consider necessary to carry out the responsibilities of
25 the chief executive officer position as defined by the
26 trustees.

27 (d) The trustees shall retain an internal auditor to
28 report directly to the trustees and shall fix his or her
29 compensation. The internal auditor shall be a certified
30 public accountant with at least three years experience
31 as an auditor. The internal auditor shall develop an
32 internal audit plan, with board approval, for the testing
33 of procedures and the security of transactions.

34 (e) The board shall procure and maintain in effect
35 commercially customary property, liability, crime and
36 other insurance to cover risks of loss from its
37 operations. The types and amounts of the insurance
38 coverages shall be determined by the board, from time
39 to time, in its reasonable discretion, with reference to
40 the types and amounts of insurance coverages
41 purchased or maintained by other public institutions
42 performing functions similar to those performed by the
43 board: *Provided*, That the board shall purchase a
44 blanket bond for the faithful performance of its duties
45 in the amount of at least ten million dollars. The board
46 may require that appropriate types and amounts of
47 insurance be procured and maintained by, or a fiduciary

48 or surety bond from a surety company qualified to do
49 business in this state for, any person who has charge of,
50 or access to, any securities, funds or other moneys held
51 by the board and the amount of the fiduciary or surety
52 bond shall be fixed by the board. The premiums
53 payable on any insurance or fiduciary or surety bonds
54 that the board may require, from time to time, shall be
55 an expense of the board. In connection with the duties
56 of the board under this subsection, the board may
57 establish, fund and maintain a self-insurance account.
58 If established, the board shall deposit and maintain
59 moneys in the self-insurance account in amounts as may
60 be determined by the board in consultation with one or
61 more qualified insurance or actuarial consultants, and
62 all moneys in any self-insurance account may be used
63 only for the purpose of providing self-insurance,
64 establishing reserves in connection with insurance
65 deductibles, self-insured retentions or self-insurance, or
66 helping to defray the costs of insurance procured under
67 this subsection, and for no other purpose. The board
68 may procure any and all insurance coverages and bonds
69 deemed appropriate by the board or required by the
70 provisions of this article, either through the state board
71 of risk and insurance management or in the commercial
72 markets, in the discretion of the board.

73 (f) The trustees and employees of the board are not
74 liable personally, either jointly or severally, for any debt
75 or obligation created by the board: *Provided*, That the
76 trustees and employees of the board are liable for acts
77 of misfeasance or gross negligence.

78 (g) The board is exempt from the provisions of sections
79 seven and eleven, article three of this chapter and
80 article three, chapter five-a of this code: *Provided*, That

81 the trustees and employees of the board are subject to
82 purchasing policies and procedures which shall be
83 promulgated by the board. The purchasing policies and
84 procedures may be promulgated as emergency rules
85 pursuant to section fifteen, article three, chapter
86 twenty-nine-a of this code.

87 (h) Any employee of the West Virginia Trust Fund who
88 previously was an employee of another state agency may
89 return to the Public Employees Retirement System
90 pursuant to section eighteen, article ten, chapter five of
91 this code and may elect to either: (1) Transfer to the
92 Public Employees Retirement System his or her
93 employee contributions, with accrued interest and, if
94 vested, his or her employer contributions, with accrued
95 interest and retain as credited state service all time
96 served as an employee of the West Virginia Trust Fund;
97 or (2) retain all employee contributions with accrued
98 interest and, if vested, his or her employer contributions
99 with interest and forfeit all service credit for the time
100 served as an employee of the West Virginia Trust Fund.

§12-6-5. Powers of the board.

1 The board may exercise all powers necessary or
2 appropriate, in accordance with the provisions of the
3 West Virginia Uniform Prudent Investor Act, codified as
4 article six-c, chapter forty-four of this code and section
5 eleven of this article, to carry out and effectuate its
6 corporate purposes, including, but not limited to, the
7 power to:

8 (1) Adopt and use a common seal and alter it at
9 pleasure;

10 (2) Sue and be sued;

11 (3) Enter into contracts and execute and deliver
12 instruments;

13 (4) Acquire (by purchase, gift or otherwise), hold, use
14 and dispose of real and personal property, deeds,
15 mortgages and other instruments;

16 (5) Promulgate and enforce bylaws and rules for the
17 management and conduct of its affairs;

18 (6) Notwithstanding any other provision of law, retain
19 and employ legal, accounting, financial and investment
20 advisors and consultants;

21 (7) Acquire (by purchase, gift or otherwise), hold,
22 exchange, pledge, lend and sell or otherwise dispose of
23 securities and invest funds in interest earning deposits
24 and in any other lawful investments;

25 (8) Maintain accounts with banks, securities dealers
26 and financial institutions both within and outside this
27 state;

28 (9) Engage in financial transactions whereby securities
29 are purchased by the board under an agreement
30 providing for the resale of the securities to the original
31 seller at a stated price;

32 (10) Engage in financial transactions whereby
33 securities held by the board are sold under an
34 agreement providing for the repurchase of the securities
35 by the board at a stated price;

- 36 (11) Consolidate and manage moneys, securities and
37 other assets of the other funds and accounts of the state
38 and the moneys of political subdivisions which may be
39 made available to it under the provisions of this article;
- 40 (12) Enter into agreements with political subdivisions
41 of the state whereby moneys of the political subdivisions
42 are invested on their behalf by the board;
- 43 (13) Charge and collect administrative fees from
44 political subdivisions for its services;
- 45 (14) Exercise all powers generally granted to and
46 exercised by the holders of investment securities with
47 respect to management of the investment securities;
- 48 (15) Contract with one or more banking institutions in
49 or outside the state for the custody, safekeeping and
50 management of securities held by the board;
- 51 (16) Make and, from time to time, amend and repeal
52 bylaws, rules and procedures consistent with the
53 provisions of this article;
- 54 (17) Hire its own employees, consultants, managers
55 and advisors as it considers necessary and fix their
56 compensation and prescribe their duties;
- 57 (18) Develop, implement and maintain its own
58 banking accounts and investments;
- 59 (19) Do all things necessary to implement and operate
60 the Board and carry out the intent of this article;
- 61 (20) Upon request of the State Treasurer, transmit

62 funds for deposit in the State Treasury to meet the daily
63 obligations of state government;

64 (21) Establish one or more investment funds for the
65 purpose of investing the funds for which it is trustee,
66 custodian or otherwise authorized to invest pursuant to
67 this article. Interests in each fund shall be designated
68 as units and the board shall adopt industry standard
69 accounting procedures to determine each fund`s unit
70 value. The securities in each investment fund are the
71 property of the board and each fund shall be considered
72 an investment pool or fund and may not be considered
73 a trust nor may the securities of the various investment
74 funds be considered held in trust. However, units in an
75 investment fund established by or sold by the board and
76 the proceeds from the sale or redemption of any unit
77 may be held by the board in its role as trustee of the
78 participant plans; and

79 (22) Notwithstanding any other provision of the code
80 to the contrary, conduct investment transactions,
81 including purchases, sales, redemptions and income
82 collections, which shall not be treated by the State
83 Auditor as recordable transactions on the state`s
84 accounting system.

§12-6-9c. Authorization of additional investments.

1 Notwithstanding the restrictions which may otherwise
2 be provided by law with respect to the investment of
3 funds, all administrators, custodians or trustees of
4 pension funds other than the board, each political
5 subdivision of this state and each county board of
6 education may invest funds in the securities of or any
7 other interest in any investment company or investment

8 trust registered under the Investment Company Act of
9 1940, 15 U. S. C. §80a, the portfolio of which is limited:
10 (i) To obligations issued by or guaranteed as to the
11 payment of both principal and interest by the United
12 States of America or its agencies or instrumentalities;
13 and (ii) to repurchase agreements fully collateralized by
14 obligations of the United States government or its
15 agencies or instrumentalities: *Provided*, That the
16 investment company or investment trust takes delivery
17 of the collateral either directly or through an authorized
18 custodian: *Provided, however*, That the investment
19 company or investment trust is rated within one of the
20 top two rating categories of any nationally recognized
21 rating service such as Moody's or Standard & Poor's.

§12-6-12. Investment restrictions.

1 (a) The board shall hold in nonreal estate equity
2 investments no more than seventy-five percent of the
3 assets managed by the board and no more than seventy-
4 five percent of the assets of any individual participant
5 plan.

6 (b) In addition to any investments the board may make
7 pursuant to subsection (h) of this section, the board
8 shall hold in real estate equity investments no more than
9 twenty-five percent of the assets managed by the board
10 and no more than twenty-five percent of the assets of
11 any individual participant plan: *Provided*, That any
12 such investment be only made upon the
13 recommendation by a professional, third-party fiduciary
14 investment adviser registered with the Securities and
15 Exchange Commission under the Investment Advisors
16 Act of 1940, as amended, upon the approval of the board
17 or a committee designated by the board, and upon the

18 execution of the transaction by a third-party investment
19 manager: *Provided, however,* That the board's
20 ownership interest in any fund is less than forty percent
21 of the fund's assets at the time of purchase: *Provided*
22 *further,* That the combined investment of institutional
23 investors, other public sector entities and educational
24 institutions and their endowments and foundations in
25 the fund is in an amount equal to or greater than fifty
26 percent of the board's total investment in the fund at
27 the time of acquisition. For the purposes of this
28 subsection, "fund" means a real estate investment trust
29 traded on a major exchange of the United States of
30 America, or a partnership, limited partnership, limited
31 liability company or other entity holding or investing in
32 related or unrelated real estate investments, at least
33 three of which are unrelated and the largest of which is
34 not greater than forty percent of the entity's holdings, at
35 the time of purchase.

36 (c) The board shall hold in international securities no
37 more than thirty percent of the assets managed by the
38 board and no more than thirty percent of the assets of
39 any individual participant plan.

40 (d) The board may not at the time of purchase hold
41 more than five percent of the assets managed by the
42 board in the nonreal estate equity securities of any
43 single company or association: *Provided,* That if a
44 company or association has a market weighting of
45 greater than five percent in the Standard & Poor's 500
46 index of companies, the board may hold securities of
47 that nonreal estate equity equal to its market weighting.

48 (e) No security may be purchased by the board unless
49 the type of security is on a list approved by the board.

50 The board may modify the securities list at any time and
51 shall give notice of that action pursuant to subsection
52 (g), section three of this article and shall review the list
53 at its annual meeting.

54 (f) Notwithstanding the investment limitations set
55 forth in this section, it is recognized that the assets
56 managed by the board or the assets of the participant
57 plans, whether considered in the aggregate or
58 individually, may temporarily exceed the investment
59 limitations in this section due to market appreciation,
60 depreciation and rebalancing limitations. Accordingly,
61 the limitations on investments set forth in this section
62 shall not be considered to have been violated if the
63 board rebalances the assets it manages or the assets of
64 the participant plans, whichever is applicable, to
65 comply with the limitations set forth in this section at
66 least once every twelve months based upon the latest
67 available market information and any other reliable
68 market data that the board considers advisable to take
69 into consideration, except for those assets authorized by
70 subsections (b) and (h) of this section for which
71 compliance with the percentage limitations shall be
72 measured at such time as the investment is made.

73 (g) The board, at the annual meeting required in
74 subsection (h), section three of this article, shall review,
75 establish and modify, if necessary, the investment
76 objectives of the individual participant plans as
77 incorporated in the investment policy statements of the
78 respective trusts so as to provide for the financial
79 security of the trust funds giving consideration to the
80 following:

81 (1) Preservation of capital;

- 82 (2) Diversification;
- 83 (3) Risk tolerance;
- 84 (4) Rate of return;
- 85 (5) Stability;
- 86 (6) Turnover;
- 87 (7) Liquidity; and
- 88 (8) Reasonable cost of fees.

89 (h) In addition to any and all other investments the
90 board may make under this article and all investment
91 authority granted to the board by this article, the board
92 is expressly authorized to invest no more than twenty
93 percent of the assets managed by the board and no more
94 than twenty percent of the assets of any individual
95 participant plan, or any other endowment or other fund
96 managed by the board, as measured at the time of the
97 investment, in any one or more classes, styles or
98 strategies of alternative investments suitable and
99 appropriate for investment by the board. A suitable and
100 appropriate alternative investment is a private equity
101 fund such as a venture capital, private real estate or
102 buy-out fund; commodities fund; distressed debt fund;
103 mezzanine debt fund; hedge fund; put or call on an
104 individual security purchased for the purpose of
105 hedging an authorized investment position; or fund
106 consisting of any combination of private equity,
107 distressed or mezzanine debt, hedge funds, private real
108 estate, commodities and other types and categories of
109 investment permitted under this article: *Provided*, That

110 any such investment be only made upon the
111 recommendation by a professional, third-party fiduciary
112 investment adviser registered with the Securities and
113 Exchange Commission under the Investment Advisors
114 Act of 1940, as amended, upon the approval of the board
115 or a committee designated by the board and upon the
116 execution of the transaction by a third-party investment
117 manager: *Provided, however,* That if the standard
118 confidentiality agreements, policies or procedures of any
119 firm, company or organization through which the board
120 invests in securities prohibit, restrict or limit the
121 disclosure of information pertaining to the securities,
122 the information shall be exempt from disclosure, under
123 the provisions of chapter twenty-nine-b of this code or
124 otherwise, to the extent of the prohibitions, restrictions
125 or limitations: *Provided further,* That the board's
126 ownership interest in any fund is less than forty percent
127 of the fund's assets at the time of purchase: *And*
128 *provided further,* That the combined investment of
129 institutional investors, other public sector entities and
130 educational institutions and their endowments and
131 foundations in the fund is in an amount equal to or
132 greater than fifty percent of the board's total investment
133 in the fund at the time of acquisition. For the purposes
134 of this subsection, "fund" means a partnership, limited
135 partnership, limited liability company or other form of
136 entity holding or investing in a collection of related or
137 unrelated investments, at least three of which are
138 unrelated and the largest of which is not greater than
139 forty percent of the fund's composition at the time of
140 purchase. To facilitate access to markets, control,
141 manage or diversify portfolio risk, or enhance
142 performance or efficiency in connection with
143 investments in alternative investments and all other
144 types and categories of investment permitted under this

145 article, the board may enter into commercially
146 customary and prudent market transactions consistent
147 with the laws of the state: *And provided further*, That
148 neither the purpose nor the effect of such transactions
149 may materially increase market risk or market exposure
150 of the total portfolio of investments as adjusted, from
151 time to time, by the board. The investments described
152 in this subsection are subject to the requirements,
153 limitations and restrictions set forth in this subsection
154 of this section and the standard of care set forth in
155 section eleven of this article, but are not subject to any
156 other limitations or restrictions set forth elsewhere in
157 this article or code.

§12-6-14. Reports of board; legislative audits, reviews and studies.

1 (a) The board shall prepare annually, or more
2 frequently if considered necessary by the board, a report
3 of its operations and the performance of the various
4 funds administered by it. The report shall include all
5 operational costs, including, but not limited to,
6 investment advisor fees, transaction costs, custody fees
7 and administrative salaries and costs.

8 (b) A copy shall be furnished to the chief financial
9 officer of each participant.

10 (c) Within the first seven calendar days of each
11 calendar year, the board shall file the annual report
12 with the Joint Committee on Government and Finance,
13 with copies to the President of the Senate, Speaker of
14 the House and Legislative Auditor.

15 (d) Upon request, the report shall be made available to

16 any legislative committee, any banking institution or
17 state or federal savings and loan association in this state
18 and any member of the news media. The report shall be
19 kept available for inspection by any citizen of this state.

20 (e) The board shall cooperate with any legislative
21 audits, performance and consultant reviews and studies
22 of the board as may be directed by the Joint Committee
23 on Government and Finance.

§12-6-18. Liberal construction.

1 This article, being necessary to secure the public
2 health, safety, convenience and welfare of the citizens of
3 this state, shall be liberally construed to effect the
4 public purposes of this article. The powers granted to
5 the board in this article, including, without limitation,
6 those granted in section five of this article, are intended
7 to be broad and shall be construed broadly so as to vest
8 in the board the power and authority necessary or
9 appropriate to carry out and effectuate its corporate
10 purposes in the financial markets of the world, as the
11 same may evolve, from time to time, at all times in a
12 fashion consistent with the prudent investor standard as
13 provided by the West Virginia Uniform Prudent Investor
14 Act, codified as article six-c, chapter forty-four of this
15 code and section eleven of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clayton White
.....
Chairman Senate Committee

Robert D. Beach
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Carroll Phelps
.....
Clerk of the Senate

Bruce M. Earl
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is disapproved* this
the *17th* Day of *March*, 2007.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 17 2007

Time 11:40 am