

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 499**

6 (By Senators Kirkendoll, McCabe, Edgell, Cann, M. Hall,

7 Carmichael, Plymale, Palumbo and Nohe)

8 \_\_\_\_\_  
9 [Originating in the Committee on Finance;

10 reported February 20, 2014.]

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13  
14 A BILL 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"; imposing 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; and restating certain restrictions on  
24 investments by the West Virginia Investment Management Board.

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

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3 be repealed; and that §12-6-2 and §12-6-11 of said code be amended  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

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

6 **§12-6-2. Definitions.**

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

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

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

15       (3) "401(a) plan" means a plan which is described in Section  
16 401(a) of the Internal Revenue Code of 1986, as amended, and with  
17 respect to which the board has been designated to hold assets of  
18 the plan in trust pursuant to the provisions of section nine-a of  
19 this article;

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

24       (5) "Participant plan" means any plan or fund subject now or

1 hereafter to subsection (a), section nine-a of this article;

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

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

12 (8) "Securities" means all ~~bonds, notes, debentures or other~~  
13 ~~evidences of indebtedness and other lawful investment instruments~~  
14 forms and types of investments, financial instruments or financial  
15 transactions which may be considered prudent for investment by the  
16 board under section eleven 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.**

21 Any investments made under this article shall be made in  
22 accordance with the provisions of the Uniform Prudent Investor Act  
23 codified as article six-c, chapter forty-four of this code and is  
24 further subject to the following requirements:

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

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

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

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

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

20 (1) Preservation of capital;

21 (2) Diversification;

22 (3) Risk tolerance;

23 (4) Rate of return;

24 (5) Stability;

1       (6) Turnover;

2       (7) Liquidity; and

3       (8) Reasonable cost of fees.

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

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

11       (2) The board or a committee designated by the board approves  
12 the investment;

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

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

20       (5) The largest investment of such fund is not greater than  
21 forty percent of the fund's assets at the time of acquisition.

22       (g) The total assets of the private real estate fund, private  
23 equity fund or hedge fund shall be used in calculating the  
24 percentage requirements and limitations set forth in subsection (f)

1 of this section without regard to any particular investment vehicle  
2 in which assets may be held pending investment.

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

10 ~~(e)~~ (i) The duties of the board apply only with respect to  
11 those assets deposited with or otherwise held by it.