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**H. B. 4492**

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

[Introduced February 13, 2014; referred to the  
Committee on Finance.]

A BILL to repeal §12-6-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §12-6-2 and §12-6-11 of said code, all relating to investment of moneys by the West Virginia Investment Management Board; modifying the definition of the term "securities"; imposing the prudent investor standard of care set forth in the West Virginia Uniform Prudent Investor Act as the primary standard of care for the trustees of the West Virginia Investment Management Board; removing certain restrictions on investments by the Investment Management Board; and restating certain restrictions on investments by the West Virginia Investment Management Board.

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

That §12-6-12 of the Code of West Virginia, 1931, as amended, be repealed; and that §12-6-2 and §12-6-11 be amended and reenacted, all to read as follows:

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

1 **§12-6-2. Definitions.**

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

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

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

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

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

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

21 (6) "Political subdivision" means and includes a county,  
22 municipality or any agency, authority, board, county board of  
23 education, commission or instrumentality of a county or  
24 municipality and regional councils created pursuant to the

1 provisions of section five, article twenty-five, chapter eight of  
2 this code;

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

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

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

15 **§12-6-11. Standard of care and investment requirements.**

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

20 (a) Trustees shall discharge their duties with respect to the  
21 401(a) plans for the exclusive purpose of providing benefits to  
22 participants and their beneficiaries;

23 (b) Trustees shall diversify fund investment so as to minimize  
24 the risk of large losses unless, under the circumstances, it is

1 clearly prudent not to do so;

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

4 (d) Trustees shall discharge their duties in accordance with  
5 the documents and instruments governing the trusts or other funds  
6 under management insofar as the documents and instruments are  
7 consistent with the provisions of this article.

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

15 (1) Preservation of capital;

16 (2) Diversification;

17 (3) Risk tolerance;

18 (4) Rate of return;

19 (5) Stability;

20 (6) Turnover;

21 (7) Liquidity; and

22 (8) Reasonable cost of fees.

23 (f) The board may invest in a private real estate fund, a  
24 private equity fund or a hedge fund only if the investment

1 satisfies the following conditions:

2 (1) A professional, third-party fiduciary investment adviser  
3 registered with the Securities and Exchange Commission under the  
4 Investment Advisors Act of 1940, as amended, recommends the  
5 investment;

6 (2) The board or a committee designated by the board approves  
7 the investment;

8 (3) A third-party investment manager will execute the  
9 transaction for the investment;

10 (4) The board's ownership interest in the fund will be less  
11 than forty percent of the fund's assets at the time of acquisition;

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

17 (6) The largest investment of such fund is not greater than  
18 forty percent of the fund's assets at the time of acquisition.

19 (g) The total assets of the private real estate fund, private  
20 equity fund or hedge fund shall be used in calculating the  
21 percentage requirements and limitations set forth in subsection (f)  
22 without regard to any particular investment vehicle in which assets  
23 may be held pending investment.

24 (h) If the standard confidentiality agreements, policies or

1 procedures of any firm, company or organization through which the  
2 board invests in securities prohibit, restrict or limit the  
3 disclosure of information pertaining to the securities, the  
4 information is exempt from disclosure, under the provisions of  
5 chapter twenty-nine-b of this code or otherwise, to the extent of  
6 the prohibitions, restrictions or limitations.

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

NOTE: The purpose of this bill is to make the West Virginia Prudent Investor Act the primary standard of care for the West Virginia Investment Management Board. The bill removes limitations on the different classes of investment while retaining restrictions aimed at fostering due diligence and appropriate investment under the Prudent Investor Act. These revisions permit the board to fulfill its fiduciary obligations as prudent investors, with the goal of enhancing the safety of the assets under management while enabling the board to better achieve its return objectives as markets evolve.

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