

COMMITTEE SUBSTITUTE

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Senate Bill No. 499

(By Senators Kirkendoll, McCabe, Edgell, Cann, M. Hall,
Carmichael, Plymale, Palumbo and Nohe)

[Originating in the Committee on Finance;
reported February 20, 2014.]

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That §12-6-12 of the Code of West Virginia, 1931, as amended, be repealed; and that §12-6-2 and §12-6-11 of said code be amended and reenacted, all to read as follows:

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

§12-6-2. Definitions.

1 As used in this article, unless a different meaning clearly
2 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 reference

7 elsewhere in this code to board of investments or West
8 Virginia Trust Fund means the board as defined in this
9 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 the
14 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 volunteer
18 fire departments, transferred to the board for deposit;

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

22 (6) “Political subdivision” means and includes a county,
23 municipality or any agency, authority, board, county board of
24 education, commission or instrumentality of a county or

25 municipality and regional councils created pursuant to the
26 provisions of section five, article twenty-five, chapter eight
27 of this code;

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

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

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

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

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

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

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

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

13 (d) Trustees shall discharge their duties in accordance
14 with the documents and instruments governing the trusts or
15 other funds under management insofar as the documents and
16 instruments are consistent with the provisions of this article.

17 (e) Trustees, at the annual meeting required in subsection
18 (h), section three of this article, shall review, establish and

19 modify, if necessary, the investment objectives of the
20 individual participant plans as incorporated in the investment
21 policy statements of the respective trusts so as to provide for
22 the financial security of the trust funds giving consideration
23 to the following:

24 (1) Preservation of capital;

25 (2) Diversification;

26 (3) Risk tolerance;

27 (4) Rate of return;

28 (5) Stability;

29 (6) Turnover;

30 (7) Liquidity; and

31 (8) Reasonable cost of fees.

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

35 (1) A professional, third-party fiduciary investment
36 adviser registered with the Securities and Exchange

37 Commission under the Investment Advisors Act of 1940, as
38 amended, recommends the investment;

39 (2) The board or a committee designated by the board
40 approves the investment;

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

44 (4) The combined investment of institutional investors,
45 other public sector entities and educational institutions and
46 their endowments and foundations in the fund is equal to or
47 greater than fifty percent of the board's total investment in
48 the fund at the time of acquisition; and

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

52 (g) The total assets of the private real estate fund, private
53 equity fund or hedge fund shall be used in calculating the
54 percentage requirements and limitations set forth in

55 subsection (f) of this section without regard to any particular
56 investment vehicle in which assets may be held pending
57 investment.

58 (h) If the standard confidentiality agreements, policies or
59 procedures of any firm, company or organization through
60 which the board invests in securities prohibit, restrict or limit
61 the disclosure of information pertaining to the securities, the
62 information is exempt from disclosure, under the provisions
63 of chapter twenty-nine-b of this code or otherwise, to the
64 extent of the prohibitions, restrictions or limitations.

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