

Senate Bill No. 481

(By Senators Gaunch, D. Hall, Karnes,
Maynard, Plymale, Sypolt and Woelfel)

[Introduced February 13, 2015;
referred to the Committee on Pensions;
and then to the Committee on Finance.]

A BILL to amend and reenact §8-22-22 and §8-22-22a of the Code of West Virginia, 1931, as amended, all relating to delegating investment authority and diversification of investments of municipal policemen's and firemen's pension and relief funds.

Be it enacted by the Legislature of West Virginia:

That §8-22-22 and §8-22-22a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-22. Investment of funds by boards of trustees; exercise of discretion in making investments; report of investment plan.

- 1 (a) The board of trustees may invest a portion or all of the fund assets in any of the pools,
- 2 funds and securities managed by the West Virginia Investment Management Board or West Virginia
- 3 Board of Treasury Investments or as otherwise provided in this section. The board of trustees shall

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1 keep as an available sum for the purpose of making regular retirement, disability retirement, death
2 benefit, payments and administrative expenses in an estimated amount not to exceed payments for
3 a period of ninety days in short-term investments. The board of trustees, in acquiring, investing,
4 reinvesting, exchanging, retaining, selling and managing property for the benefit of the fund, shall
5 do so in accordance with the provisions of the Uniform Prudent Investor Act codified as article six-c,
6 chapter forty-four of this code. Within the limitations of the Uniform Prudent Investor Act, the
7 board of trustees is authorized in its sole discretion to invest and reinvest any funds received by it
8 and not invested with the West Virginia Investment Management Board or West Virginia Board of
9 Treasury Investments.

10 (b) The board of trustees of each fund may delegate investment authority to ~~equity mutual~~
11 ~~funds managers and/or~~ professional investment advisors registered with the Securities and Exchange
12 Commission, in accordance with the Investment Advisors Act of 1940, and registered with the
13 appropriate state regulatory agencies, if applicable, and who manage assets in excess of \$75 million.

14 (c) The board of trustees of each fund shall deliver to the State Treasurer or oversight board
15 on or before March 1, 2010, a copy of the pension and relief fund's investment policy. A board of
16 trustees shall submit to the oversight board any change to the investment policy within thirty days
17 of the board's authorizing the change.

18 **§8-22-22a. Restrictions on investments; diversification of investments; disclosure of fees and**
19 **costs.**

20 (a) Moneys invested as permitted by section twenty-two of this article and not invested with
21 the West Virginia Investment Management Board or the Board of Treasury Investments are subject
22 to the following restrictions and conditions contained in this section:

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1 (1) The board of trustees of each fund shall diversify fund investment so as to minimize the
2 risk of large losses unless, under the circumstances, it is clearly prudent not to do so.

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

6 ~~(2) The board shall hold in real estate equity investments no more than twenty-five percent~~
7 ~~of the assets managed by the board and no more than twenty-five percent of the assets of any~~
8 ~~individual participant plan: *Provided*, That the investment be made only on the recommendation by~~
9 ~~a professional, third-party fiduciary investment adviser registered with the Securities and Exchange~~
10 ~~Commission under the Investment Advisors Act of 1940, as amended, on the approval of the board~~
11 ~~or a committee designated by the board, and on the execution of the transaction by a third-party~~
12 ~~investment manager: *Provided, however*, That the board's ownership interest in any fund is less than~~
13 ~~forty percent of the fund's assets at the time of purchase: *Provided further*, That the combined~~
14 ~~investment of institutional investors, other public sector entities and educational institutions and their~~
15 ~~endowments and foundations in the fund is in an amount equal to or greater than fifty percent of the~~
16 ~~board's total investment in the fund at the time of acquisition. For the purposes of this subsection,~~
17 ~~"fund" means a real estate investment trust traded on a major exchange of the United States of~~
18 ~~America or a partnership, limited partnership, limited liability company or other entity holding or~~
19 ~~investing in related or unrelated real estate investments, at least three of which are unrelated and the~~
20 ~~largest of which is not greater than forty percent of the entity's holdings at the time of purchase.~~

21 (3) The board shall hold in international securities no more than thirty percent of the total
22 pension assets managed by the board and no more than thirty percent of the assets of any individual

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1 participant plan.

2 (4) The board may not at the time of purchase hold more than five percent of the assets
3 managed by the board in the ~~nonreal estate~~ equity securities of any single company or association.
4 ~~Provided, That if a company or association has a market weighting of greater than five percent in~~
5 ~~the Standard & Poor's 500 index of companies, the board may hold securities of that nonreal estate~~
6 ~~equity equal to its market weighting.~~

7 (5) ~~No security may be purchased by the board unless the type of security is on a list~~
8 ~~approved by the board. The board may modify the securities list at any time, and shall review the~~
9 ~~list annually~~ purchase any security trading on the New York Stock Exchange, the American Stock
10 Exchange and the NASDAQ over-the-counter market for its pension portfolio unless it is otherwise
11 restricted by this section. No more than twenty-five percent of the board's total retirement plan
12 assets may be invested in any one industry.

13 (6) ~~Notwithstanding the investment limitations set forth in this section, it is recognized that~~
14 ~~the assets managed by the board may temporarily exceed the investment limitations in this section~~
15 ~~due to market appreciation, depreciation and rebalancing limitations. Accordingly, the limitations~~
16 ~~on investments set forth in this section shall not be considered to have been violated if the board~~
17 ~~rebalances the assets it manages to comply with the limitations set forth in this section at least once~~
18 ~~every twelve months based on the latest available market information and any other reliable market~~
19 ~~data that the board considers advisable to take into consideration, except for those assets authorized~~
20 ~~by subdivision (2) of this subsection for which compliance with the percentage limitations shall be~~
21 ~~measured at such time as the investment is made.~~

22 (7) ~~(6)~~ The board shall annually review, establish and modify, if necessary, the board's

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1 investment objectives and investment policy so as to provide for the financial security of the trust
2 funds giving consideration to the following:

3 (A) Preservation of capital;

4 (B) Diversification;

5 (C) Risk tolerance;

6 (D) Rate of return;

7 (E) Stability;

8 (F) Turnover;

9 (G) Liquidity; and

10 (H) Reasonable cost of fees.

11 ~~(8)~~ (7) The board is expressly prohibited from investing in any class, style or strategy of
12 alternative investments, including a real estate investment trust, private equity fund such as a venture
13 capital, private real estate or buy-out fund; commodities fund; distressed debt fund; mezzanine debt
14 fund; hedge fund; or fund consisting of any combination of private equity, distressed or mezzanine
15 debt, hedge funds, private real estate, commodities and other types and categories of investment
16 permitted under this article unless the investments satisfy all of the following:

17 (A) A professional third-party fiduciary investment adviser registered with the Securities and
18 Exchange Commission under the Investment Advisors Act of 1940, as amended, recommends the
19 investment;

20 (B) The board or a committee designated by the board approves the investment;

21 (C) The total maximum alternative investment exposure of all strategies in this subdivision
22 may not be more than twenty-five percent of the total pension portfolio at any time;

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1 (D) The total maximum alternative investment exposure of a single fund strategy in this
2 subdivision may not be more than ten percent of the total pension portfolio at any time; and

3 (E) The board requires that all of the plan assets be invested in liquid securities that are
4 defined as securities that can be transacted quickly and efficiently for the plan, priced daily and
5 settled within five business days.

6 (8) Notwithstanding the investment limitations set forth in this section, it is recognized that
7 the assets managed by the board may temporarily exceed the investment limitations in this section
8 due to market appreciation, depreciation and rebalancing limitations. Accordingly, the limitations
9 on investments set forth in this section shall not be considered to have been violated if the board
10 rebalances the assets it manages to comply with the limitations set forth in this section at least once
11 every twelve months based on the latest available market information and any other reliable market
12 data that the board considers advisable to take into consideration.

13 (9) The board shall hold in fixed income and cash equivalent investments no less than
14 twenty-five percent and no more than seventy-five percent of total pension assets. No more than five
15 percent may be held in one issuer or twenty-five percent in one industry: *Provided*, That the board
16 may exceed this limitation if the investments are held in United States securities.

17 (10) Fixed income securities shall be of generally high quality and have a quality rating of
18 "B-" or better by Moody's, Standard & Poor's, or other recognized agency, unless held by a
19 registered Investment Advisor and governed by prospectus. The total fixed income portfolio shall
20 have an average Standard & Poor's quality rating of at least "A-". For registered mutual funds, the
21 prospectus of the fund will govern the investment policies of the fund investments.

22 (11) The maximum maturity for any fixed income securities is thirty years. The weighted

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1 average portfolio maturity of all fixed income securities may not exceed ten years.

2 (12) The board is authorized in its sole discretion to invest and reinvest any funds received
3 by it in the following fixed income securities:

4 (A) Obligations issued by the U. S. government, its agencies and instrumentalities;

5 (B) Obligations of foreign governments and their subdivisions, agencies and government-
6 sponsored enterprises;

7 (C) Obligations of international agencies or supranational entities;

8 (D) Mortgage-related and other asset-backed securities;

9 (E) Corporate debt securities, including convertible securities and corporate commercial
10 paper;

11 (F) Inflation-index bonds issued by corporations;

12 (G) Bank certificates of deposit, fixed time deposits and bankers acceptances; and

13 (H) Debt securities, issued by states or local governments and their agencies, authorities and
14 other instrumentalities.

15 (13)The board is authorized in its sole discretion to invest and reinvest any funds received
16 by it in the following cash and cash equivalents:

17 (A) Treasury bills;

18 (B) Money market funds;

19 (C) Short-term investment funds;

20 (D) Commercial paper;

21 (E) Bankers' acceptances;

22 (F) Repurchase agreements; and

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1 (G) Certificates of deposit.

2 (14) Investments in cash equivalents shall be of the highest quality and , if rated, shall be
3 ranked at least A2/P2 or higher.

4 (b) The board of trustees of each fund shall obtain an independent performance evaluation
5 of the funds at least annually and the evaluation shall consist of comparisons with other funds having
6 similar investment objectives for performance results with appropriate market indices; and

7 (c) Each entity conducting business for each pension fund shall fully disclose all fees and
8 costs of investing conducted on a quarterly basis to the trustees of the fund and to the oversight board
9 in the manner directed by the oversight board. Entities conducting business in mutual funds for and
10 on behalf of each pension fund shall timely file revised prospectus and normal quarterly and annual
11 Securities and Exchange Commission reporting documents with the board of trustees of each pension
12 fund.

(NOTE: The purpose of this bill is to further regulate investment of moneys in municipal policemen's and firemen's pension and relief funds. Investment authority may be delegated to appropriately registered professional investment advisors. Diversification of investments is required.

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