

ENROLLED

**Senate Bill No. 577**

(By Senators D. Hall, Boley, Karnes,  
Laird, Plymale, Romano, Stollings,  
Takubo and Sypolt)

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[Passed March 14, 2015; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §12-1-12e, relating to allowing governing boards of certain four-year colleges and universities to invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that institution and which exists on January 1, 2015.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §12-1-12e, to read as follows:

**ARTICLE 1. STATE DEPOSITORIES.**

**§12-1-12e. Investments by state colleges.**

1           (a) Notwithstanding any provision of this article to the contrary, the governing boards of four-  
2 year public colleges and universities, with the exception of those schools provided for in section  
3 twelve-d of this article, after first consulting with the West Virginia Investment Management Board  
4 and the state Board of Treasury Investments to determine what their estimated rate of return on  
5 investment, including administrative expenses, would be if the moneys to be invested with the  
6 foundation were instead to be invested with the Investment Management Board or the Board of  
7 Treasury Investments when compared to any estimated return on investment, including  
8 administrative expenses, provided by the foundation, each may invest certain funds with its

1     respective nonprofit foundation that has been established to receive contributions exclusively for that  
2     institution and which exists on January 1, 2015. The investment is subject to the limitations of this  
3     section.

4             (b) A governing board, through its chief financial officer, may enter into agreements,  
5     approved as to form by the State Treasurer, for the investment by its foundation of certain funds  
6     subject to their administration. Any interest or earnings on the moneys invested is retained by the  
7     investing institution.

8             (c) Moneys of a four-year public college or university that may be invested with its  
9     foundation pursuant to this section are those subject to the administrative control of the institution  
10    and that do not include any funds made available to the institution from the state General Revenue  
11    Fund or the funds established in section eighteen or eighteen-a, article twenty-two, chapter twenty-  
12    nine of this code. Moneys permitted to be invested under this section may be aggregated in an  
13    investment fund for investment purposes.

14            (d) Of the moneys authorized for investment by this section, each four-year public college  
15    or university that may be invested with its foundation pursuant to this section, may have invested  
16    with its foundation at any time no more than \$1 million excluding investment gains.

17            (e) Investments by foundations that are authorized under this section shall be made in  
18    accordance with and subject to the provisions of the Uniform Prudent Investor Act, codified as  
19    article six-c, chapter forty-four of this code. As part of its fiduciary responsibilities, each governing  
20    board shall establish investment policies in accordance with the Uniform Prudent Investor Act for  
21    those moneys invested with its foundation. The governing board shall review, establish and modify,  
22    if necessary, the investment objectives as incorporated in its investment policies so as to provide for  
23    the financial security of the moneys invested with its foundation. The governing boards shall give  
24    consideration to the following:

- 25            (1) Preservation of capital;
- 26            (2) Diversification;

- 1 (3) Risk tolerance;
- 2 (4) Rate of return;
- 3 (5) Stability;
- 4 (6) Turnover;
- 5 (7) Liquidity; and
- 6 (8) Reasonable cost of fees.

7 (f) Prior to the initial transfer of funds to a foundation, the four-year public college or  
8 university shall submit its plan for the investment of the funds with its foundation to the Higher  
9 Education Policy Commission for its review. The purpose of review shall solely be to determine if  
10 the plan is financially prudent for the institution. Upon the commission's written finding that the  
11 plan is financially prudent for the institution, the institution is authorized to transfer its funds to the  
12 foundation for purposes of investment under this section.

13 (g) No four-year public college or university may transfer funds to its foundation pursuant  
14 to this section unless the college or university has a long-term bond from not less than two of the  
15 following rating entities of at least A3 by Moody's Investors Service, A- by Standard & Poor's and  
16 A- by Fitch Ratings.

17 (h) A governing board shall report annually by December 31 to the Governor and to the Joint  
18 Committee on Government and Finance on the performance of investments managed by its  
19 foundation pursuant to this section.