

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 268

BY SENATOR BLAIR

[Originating in the Committee on Government

Organization; reported on January 29, 2016.]

1 A BILL to repeal §5A-1-4 of the Code of West Virginia, 1931, as amended; to amend and reenact
2 §4-11-5 of said code; to amend and reenact §12-1-12a of said code; to amend and reenact
3 §12-6-6 of said code; and to amend and reenact §12-6C-15 of said code, all relating to
4 Council of Finance and Administration; eliminating requirement for the Governor to receive
5 a recommendation from the council on matters related to appropriation of federal funds;
6 eliminating requirement for State Treasurer to submit reports to the council; eliminating
7 requirement for the West Virginia Investment Management Board to submit audits and
8 information to the council; and eliminating requirement for West Virginia Board of Treasury
9 Investments to submit audits, reports and information to the council.

Be it enacted by the Legislature of West Virginia:

1 That §5A-1-4 of the Code of West Virginia, 1931, as amended, be repealed; that §4-11-5
2 of said code be amended and reenacted; that §12-1-12a of said code be amended and reenacted;
3 that §12-6-6 of said code be amended and reenacted; and that §12-6C-15 of said code be
4 amended and reenacted, all to read as follows:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11. LEGISLATIVE APPROPRIATION OF FEDERAL FUNDS.

§4-11-5. Legislative appropriation authority.

1 (a) No spending unit may make expenditures of any federal funds, whether such funds
2 are advanced prior to expenditure or as reimbursement, unless such expenditures are made
3 pursuant to specific appropriations by the Legislature, except as may be hereinafter provided.

4 (b) To the extent not precluded by the terms and conditions under which federal funds are
5 made available to the spending unit by the United States government, the spending unit shall use
6 federal funds in accordance with any purposes, policies or priorities the Legislature may have
7 established for the activity being assisted or for the use of state, federal and other fiscal resources
8 in a particular fiscal year.

9 (c) If the federal funds received by a spending unit for a specific purpose are greater than
10 the amount of such funds contained in the appropriation by the Legislature for such purpose, the
11 total appropriation of federal funds and any state matching funds for such purpose shall remain
12 at the level appropriated, except as hereinafter provided.

13 (d) If federal funds become available to the spending unit for expenditure while the
14 Legislature is not in session and the availability of such funds could not reasonably have been
15 anticipated and included in the budget approved by the Legislature for the next fiscal year, the
16 treasurer may accept such funds on behalf of the spending unit and the Governor may authorize,
17 in writing, the expenditure of such funds by the spending unit during that fiscal year as authorized
18 by federal law and pursuant to the provisions of article two, chapter five-a of the code, which
19 permits expenditure of amounts in excess of the appropriation upon the filing of a proper
20 expenditure schedule: *Provided*, That the Governor may not authorize the expenditure of such
21 funds received for the creation of a new program or for a significant alteration of an existing
22 program. For purposes of this article, a mere new source of funding of federal moneys for a
23 program which has been prior approved by legislative appropriation will not be deemed to be a
24 “new program” or a “significant alteration of an existing program” and the Governor may authorize
25 the expenditure of such funds as herein provided. ~~Should a question arise concerning whether~~
26 ~~such expenditures would constitute a new program or significant alteration of an existing program,~~
27 ~~while the Legislature is not in session, the Governor shall seek the recommendation of the council~~
28 ~~of finance and administration, as created and existing pursuant to the provisions of section three,~~
29 ~~article one, chapter five-a of the code.~~ Upon application to the federal government for such funds
30 and upon receipt of such funds, the Governor shall submit to the Legislative Auditor two copies
31 of a statement:

32 (1) Describing the proposed expenditure of such funds in the same manner as it would be
33 described in the state budget; and

34 (2) Explaining why the availability of such federal funds and why the necessity of their

35 expenditure could not have been anticipated in time for such expenditures to have been approved
36 as part of the adopted budget for that particular fiscal year.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§ 12-1-12a. Investment of operating funds for cash flow needs.

1 (a) The Legislature hereby finds and declares that the cash-flow needs of the state require
2 short term and liquid investments, and that up to \$125 million of the operating funds of the state
3 should be sufficient to meet cash-flow needs. The Legislature further finds that the State
4 Treasurer may withhold from transfer to the Investment Management Board up to \$125 million of
5 the operating funds of the state and invest those funds in short-term and liquid investments.

6 (b) The State Treasurer may exercise any and all powers reasonably necessary or
7 appropriate to carry out and effectuate the purposes of this section.

8 (c) Investments shall be made in accordance with the provisions of the Uniform Prudent
9 Investor Act codified as article six-c, chapter forty-four of this code.

10 (d) The State Treasurer is authorized to invest the funds in repurchase agreements fully
11 collateralized by obligations of the United States government or its agencies or instrumentalities.

12 (e) The State Treasurer shall prepare monthly a report of the investments he or she
13 administers. A copy of each report shall be furnished to the President of the Senate, Speaker of
14 the House of Delegates, Legislative Auditor, ~~council of finance and administration~~, and, upon
15 request, to any legislative committee, banking institution, state or federal savings and loan
16 association in this state, and any member of the news media. The report shall also be kept
17 available for inspection by the public.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§ 12-6-6. Annual audits; reports and information to constitutional and legislative officers,
~~Council of Finance and Administration~~, Consolidated Public Retirement Board,

**Workers' Compensation Fund and Coal Workers' Pneumoconiosis Fund;
statements and reports open for inspection.**

1 (a) The board shall cause an annual financial and compliance audit of the assets managed
2 by the board to be made by a certified public accounting firm which has a minimum staff of ten
3 certified public accountants and which is a member of the American Institute of Certified Public
4 Accountants and, if doing business in West Virginia, a member of the West Virginia Society of
5 Certified Public Accountants. The financial and compliance audit shall be made of the board's
6 books, accounts and records with respect to its receipts, disbursements, investments, contracts
7 and all other matters relating to its financial operations. Copies of the audit report shall be
8 furnished to the Governor, State Treasurer, State Auditor, President of the Senate, Speaker of
9 the House of Delegates, ~~council of finance and administration~~ and Consolidated Public
10 Retirement Board.

11 (b) The board shall produce monthly financial statements for the assets managed by the
12 board and cause them to be delivered to each member of the board and the executive secretary
13 of the Consolidated Public Retirement Board as established in sections one and two, article ten-
14 d, chapter five of this code and to the executive director of the Workers' Compensation
15 Commission as administrator of the Workers' Compensation Fund and Coal Workers'
16 Pneumoconiosis Fund as provided in section one-b, article one, chapter twenty-three of this code,
17 section one, article three of said chapter and section seven, article four-b of said chapter.

18 (c) The board shall deliver in each quarter to ~~the council of finance and administration and~~
19 the Consolidated Public Retirement Board a report detailing the investment performance of the
20 401(a) plans.

21 (d) The board shall cause an annual audit of the reported returns of the assets managed
22 by the board to be made by an investment consulting or a certified public accounting firm meeting
23 the criteria set out in subsection (a) of this section. The board shall furnish copies of the audit
24 report to the Governor, State Treasurer, State Auditor, President of the Senate, Speaker of the

25 House of Delegates ~~council of finance and administration~~ and Consolidated Public Retirement
26 Board.

27 ~~(e) The board shall provide any other information requested in writing by the council of~~
28 ~~finance and administration.~~

29 ~~(f)~~ (e) All statements and reports with respect to participant plans required in this section
30 shall be available for inspection by the members and beneficiaries and designated
31 representatives of the participant plans.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§ 12-6C-15. Annual audits; financial statements; information.

1 (a) The board shall have an annual financial and compliance audit of the assets, funds,
2 pools and participant accounts managed by the board made by a certified public accounting firm
3 which has a minimum staff of ten certified public accountants and which is a member of the
4 American Institute of Certified Public Accountants and, if doing business in West Virginia, a
5 member of the West Virginia Society of Certified Public Accountants. The board shall have
6 financial and compliance audits of the board's books, accounts and records with respect to its
7 receipts, disbursements, investments, contracts and all other matters relating to its financial
8 operations completed annually.

9 (b) The board shall produce monthly financial statements for the assets managed by the
10 board and send them to each member of the board and provide copies as reasonably requested.

11 ~~(c) Each quarter the board shall deliver a report for the prior quarter to the Council of~~
12 ~~Finance and Administration.~~

13 ~~(d)~~ (c) The board shall contract with an investment consulting or a certified public
14 accounting firm meeting the criteria set out in subsection (a) of this section for an annual audit of
15 the reported returns of the assets managed by the board.

16 ~~(e)~~ (d) The board shall prepare an annual report detailing all fees charged by the board
17 under this article. The board shall furnish copies of the report to the Legislative Joint Committee
18 on Government and Finance.

19 ~~(f)~~ (e) Unless specifically otherwise stated, copies of the reports required in this section
20 shall be furnished to the board, Governor, President of the Senate, Speaker of the House of
21 Delegates, ~~Council of Finance and Administration~~, Legislative Librarian and, upon request, to any
22 legislator, legislative committee, financial institution, member of the media and the public.

23 ~~(g) The board shall provide any other information requested in writing by the Council of~~
24 ~~Finance and Administration or any member of the Legislature.~~

NOTE: This purpose of this bill is to abolish the Council of Finance and Administration.

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