

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4001

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[Originating in the Committee on Finance; January 29,
2020.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §12-6E-1, §12-6E-2, §12-6E-3, §12-6E-4, §12-6E-5, §12-6E-6,
3 §12-6E-7, §12-6E-8, §12-6E-9, §12-6E-10, §12-6E-11, §12-6E-12, §12-6E-13, §12-6E-
4 14, §12-6E-15, §12-6E-16, §12-6E-17, §12-6E-18 and §12-6E-19, all relating to creating
5 West Virginia Impact Fund, Investment Committee and Mountaineer Impact Office to
6 invest funds in certain projects with the goal of furthering economic development,
7 infrastructure development and job creation in the State of West Virginia, generally;
8 providing definitions; creating West Virginia Impact Fund; providing for the transfer of
9 funds to Investment Committee and the purposes for the expenditure of the funds;
10 providing purpose and goal and investment standards; creating Investment Committee
11 and providing for its membership, appointments; terms; removals; vacancies and
12 quorums; providing for powers and duties of Investment Committee; requiring disclosures
13 of interest; establishing standard of care; creating Mountaineer Impact Office and
14 providing for powers, duties, staffing, management and processes for proposing and
15 administering investments in projects approved by Investment Committee; providing for
16 audits and reports; providing opportunity for consultation with West Virginia Investment
17 Management Board; providing for immunities and exemptions; prohibiting political
18 activities; and providing for confidentiality of information.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6E. WEST VIRGINIA IMPACT FUND.

§12-6E-1. Definitions.

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

2 “Approved investment” means a proposed investment in a final project as approved by the
3 Investment Committee.

4 “Approved project proposal” means a project proposal that has been approved by the
5 Investment Committee.

6 “Final project” means the final project or investment product developed by a selected
7 manager.

8 “Investment Committee” means the committee established in §12-6E-4 of this code.

9 “Investment Management Board” means the West Virginia Investment Management
10 Board established under §12-6-1, et seq. of this code.

11 “Mountaineer Impact Office” means the agency and government instrumentality of the
12 State of West Virginia established under §12-6E-6 of this code to implement, invest and
13 administer the assets transferred from the West Virginia Impact Fund to the Investment
14 Committee.

15 “Project proposal” means a proposal for a particular project identified by the Mountaineer
16 Impact Office to implement the goal of the West Virginia Impact Fund described in §12-6E-3 of
17 this code.

18 “Selected manager” means one or more asset or project managers selected by the
19 Mountaineer Impact Office under §12-6E-6 of this code.

20 “West Virginia Impact Fund” means the fund established in §12-6E-2 of this code.

§12-6E-2. West Virginia Impact Fund.

1 (a) There is hereby created within the State Treasury a special revenue account,
2 designated the “West Virginia Impact Fund” to be administered by the Governor for the purposes
3 set forth in this article.

4 (b) The fund shall consist of all moneys made available for the purposes of this article from
5 any source, including, but not limited to, any moneys that may be appropriated and designated
6 for those purposes by the Legislature; all interest or other return earned or received from
7 investment of the fund; any moneys which the fund is authorized to receive under any provision
8 of this code for the purposes of this article; all gifts, grants, bequests or transfers made to the fund
9 from any source; all interest or other return received from the Investment Committee’s deposits
10 or investments, as provided by this article; and any other funds which the Investment Committee

11 directs to be deposited into the fund. Expenditures from the fund shall be made by transfer to the
12 Investment Committee solely for the purposes set forth in this article pursuant to resolution of the
13 Investment Committee adopted under §12-6E-3 of this code. Any balance, including accrued
14 interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to
15 the General Revenue Fund but shall remain in the fund and be expended as provided by this
16 article.

§12-6E-3. Purpose and goal; investment standards.

1 (a) The purpose of this article is to continue the efforts of this state to further economic
2 development, infrastructure development, and job creation in the State of West Virginia for the
3 public benefit. It is not the intent of this article that the state compete with private entities by
4 investing in projects to further economic development, infrastructure development and job
5 creation for the public benefit where private capital investment is available for that purpose, but
6 where private capital is not available for major investments to further that purpose, it is in the
7 public interest that the state act to facilitate those major investments. To that end, it is necessary
8 that the state provide the opportunity and support for major investments of capital in this state for
9 projects that would not otherwise be expected to attract private investment in the usual course of
10 business transactions without state sponsorship of and partnership in the investments. The
11 establishment and functions of the West Virginia Impact Fund, the Investment Committee, and
12 the Mountaineer Impact Office as provided in this article are intended to facilitate these
13 investments.

14 (b) The assets of the West Virginia Impact Fund, upon transfer to the Investment
15 Committee as provided by this article, shall be:

16 (1) Invested in any final project presented by the Mountaineer Impact Office under this
17 article that is approved by resolution of the Investment Committee that requires an aggregate
18 investment of moneys in the project of not less than \$25 million by either the Investment
19 Committee, as sole investor, or by the Investment Committee and one or more co-investors,

20 public or private, with the goal of furthering economic development, infrastructure development
21 and job creation in the State of West Virginia; and

22 (2) Expended by the Investment Committee in such amounts necessary to provide for the
23 payment of expenses incurred in the administration of this article.

24 (c) The Mountaineer Impact Office shall identify specific project proposals for projects,
25 which may be single target companies, blind pool investment funds or other, to implement the
26 goal of the West Virginia Impact Fund.

27 (d) The Mountaineer Impact Office shall present such project proposals for approval or
28 disapproval to the Investment Committee pursuant to §12-6E-6 of this code.

29 (e) When determining whether to approve a final project, the Investment Committee shall
30 take into consideration:

31 (1) The ability of the project to leverage other sources of funding;

32 (2) Whether investment funding for the project from other sources, public or private, is
33 available or could otherwise reasonably be expected to be available without the state's
34 participation in the investment made under this article.

35 (3) The ability of the project to create or retain jobs, considering the number of jobs, the
36 type of jobs, whether benefits are or will be paid, the type of benefits involved, and the
37 compensation reasonably anticipated to be paid to persons filling new jobs or the compensation
38 currently paid to persons whose jobs would be retained;

39 (4) Whether, and the extent to which, the project will promote economic development,
40 infrastructure development, and job creation in the state; and

41 (5) Whether the project is in the best interest of the public.

§12-6E-4. Establishment of the Investment Committee; appointments; removal; vacancy;
quorum.

1 (a) There is hereby created the Investment Committee, as an agency of the State of West
2 Virginia, to manage the investment of the assets transferred to the Investment Committee from
3 the West Virginia Impact Fund.

4 (b) The Investment Committee shall consist of seven voting members. The President of
5 the Senate and the Speaker of the House of Delegates shall serve *ex officio* as non-voting
6 members. The voting members shall consist of:

7 (1) The Governor and the Secretary of the Department of Commerce, or their designees
8 shall serve as members of the Investment Committee. They shall serve by virtue of their office
9 and are not entitled to compensation under the provisions of this article. The Governor and the
10 Secretary of the Department of Commerce or their designees are subject to all duties,
11 responsibilities and requirements of the provisions of this article, including, but not limited to, the
12 provisions of paragraph (A), subdivision (2) of this subsection and subdivision (3) of this
13 subsection.

14 (2)(A) Five members of the Investment Committee shall be appointed by the Governor,
15 with the advice and consent of the Senate. The terms of the appointed members shall be three
16 years, subject to the following: The initial appointment of one member shall be for a term of one
17 year; the initial appointment of two members shall be for terms of two years; and the initial
18 appointment of two members shall be for terms of three years. At the end of each member's term,
19 the Governor may reappoint, or appoint a successor, who shall serve for a term ending on the
20 thirty-first day of January in the third year following the year of his or her appointment. Except for
21 vacancy appointments made pursuant to this paragraph, all subsequent appointments shall be
22 for terms ending on the thirty-first day of January in the third year following the expiration of the
23 prior term for the position to which the appointment is made. No more than three of the five
24 appointed members may belong to the same political party. In the event of a vacancy among the
25 trustees, the Governor shall promptly make an appointment to fill the unexpired term.

26 (B) The Governor may remove any appointed member in case of gross negligence or
27 misfeasance and may declare that position vacant and may appoint a person for the vacancy as
28 provided in this subsection. A removal by the Governor must be in writing and must state the
29 reason for the removal. A member who is removed by the Governor may not participate in

30 Investment Committee business and may not be counted for purposes of establishing a quorum
31 after the member receives written notice of removal from the Governor.

32 (C) The appointed members may not hold any other state or federal office, position or
33 employment, either elective or appointive, except as a member of the armed forces of either the
34 United States or of this state or as a member of a governing board of an institution of higher
35 education of this state, and must have recognized competence and experience in finance,
36 investments, or other business management-related fields.

37 (3) Each appointed member is entitled to receive and, at the member's option, the
38 Investment Committee shall pay to the member compensation in the amount of \$400 for each day
39 on which the member attended a meeting of the Investment Committee. In addition, all appointed
40 members shall receive reasonable and necessary expenses actually incurred in discharging
41 member duties pursuant to this article.

42 (c) The Investment Committee may continue to act notwithstanding any vacancy.

43 (d) The presence of four voting members of the Investment Committee shall constitute a
44 quorum for the exercise of any authority granted to the Investment Committee in this article.
45 Action may be taken only upon affirmative vote of four voting members of the Investment
46 Committee, which vote may be in person or in writing.

**§12-6E-5. Powers and duties of Investment Committee; disclosure of interests; standard
of care.**

1 (a) The Investment Committee shall have the authority to (1) appoint the managing
2 director of the Mountaineer Impact Office, (2) approve or disapprove project proposals, (3)
3 approve or disapprove the negotiated terms of any proposed investment of funds held by the
4 Investment Committee in any final project, and (4) approve or disapprove of the managing
5 director's appointment of employees and retention of consultants to carry out the duties of the
6 Mountaineer Impact Office.

7 (b) The Investment Committee shall approve or disapprove project proposals and the
8 negotiated terms of a proposed investment in any final project solely pursuant to its determination
9 of whether the projects or the negotiated terms of the proposed investment in the final project
10 meet the goal prescribed in §12-6E-3 of this code.

11 (c) The Investment Committee may, in its own right or through the Mountaineer Impact
12 Office:

13 (1) Adopt and use a common seal and alter it at pleasure;

14 (2) Sue and be sued;

15 (3) Enter into contracts and execute and deliver instruments;

16 (4) Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal
17 property, deeds, mortgages, and other instruments;

18 (5) Notwithstanding any other provision of law, retain and employ legal, accounting,
19 financial and investment advisors, and consultants;

20 (6) Maintain accounts with banks, securities dealers, and financial institutions both within
21 and outside this state;

22 (7) Exercise all powers generally granted to and exercised by the holders of investment
23 securities with respect to management of the investment securities;

24 (8) Contract with one or more banking institutions in or outside the state for the custody,
25 safekeeping and management of securities held by the committee;

26 (9) Make and, from time to time, amend and repeal bylaws, rules and procedures
27 consistent with the provisions of this article;

28 (10) Hire its own employees, consultants, managers, and advisors as it considers
29 necessary and fix their compensation and prescribe their duties;

30 (11) Develop, implement and maintain its own banking accounts and investments; and

31 (12) Do all things necessary to implement and operate the Investment Committee and the
32 Mountaineer Impact Office and carry out the intent of this article;

33 (d) Disclosure of interests. — If a member of the Investment Committee acquires, owns,
34 or controls an interest, direct or indirect, in any final project in which West Virginia Impact Fund
35 assets are invested or proposed to be invested, the member shall immediately disclose the
36 interest to the Investment Committee and shall be recused from voting on the matter in
37 accordance with the provisions of the West Virginia Governmental Ethics Act. The disclosure is
38 a matter of public record and shall be included in the minutes of the Investment Committee
39 meeting next following the disclosure.

40 (e) Standard of care. — When making decisions, the Investment Committee shall
41 exercise the judgment and care under the circumstances then prevailing that an institutional
42 investor of ordinary prudence, discretion, and intelligence exercises in the designation and
43 management of large investments entrusted to it, not in regard to speculation, but in regard to the
44 permanent disposition of funds, considering preservation of the purchasing power of the West
45 Virginia Impact Fund over time, while maximizing the expected total return from both income and
46 the appreciation of capital and accomplishing the goal of the West Virginia Impact Fund as set
47 forth in §12-6E-3 of this code.

§12-6E-6. Establishment of the Mountaineer Impact Office; managing director; project proposals; monitoring performance; consultation with Investment Management Board; insurance.

1 (a) There is hereby created the Mountaineer Impact Office. The Mountaineer Impact
2 Office is an agency and instrumentality of the State of West Virginia managed by the Investment
3 Committee. The purpose of the Mountaineer Impact Office is to implement, invest and administer
4 the assets transferred to the Investment Committee from the West Virginia Impact Fund.

5 (b) The Investment Committee shall appoint a managing director, as a state employee, to
6 manage the affairs of the Mountaineer Impact Office. The managing director shall have a strong
7 background in business and significant experience in investments and the development of
8 projects.

9 (c) The salary of the managing director is not restricted by state compensation rules but
10 shall be determined by the Governor in accordance with customary salaries for officers and
11 directors with similar responsibilities and experience in the private sector.

12 (d) The managing director may, with the approval of the Investment Committee, appoint
13 permanent or temporary employees and/or retain consultants to carry out the duties of the
14 Mountaineer Impact Office. An employee of the Mountaineer Impact Office, including the
15 managing director, may not be a member of the Investment Committee.

16 (e) The Mountaineer Impact Office shall identify specific proposals for projects, which may
17 be single target companies, blind pool investment funds or other, to implement the goal prescribed
18 in 12-6E-3 of this code.

19 (f) The Mountaineer Impact Office shall present such project proposals for approval or
20 disapproval to the Investment Committee.

21 (g) The Mountaineer Impact Office shall establish a procurement process for selecting one
22 or more selected managers to develop final projects in accordance with each approved project
23 proposal. This procurement process shall be streamlined and efficient and is not required to
24 comply with §5A-3-1 et seq. of this code. Pursuant to the procurement process, the Mountaineer
25 Impact Office shall identify, procure and enter into a non-binding memorandum of understanding
26 with a selected manager to develop a final project in accordance with each approved project
27 proposal.

28 (h) The Mountaineer Impact Office shall, with the selected manager, negotiate the terms
29 and amount of any proposed investment of funds held by the Investment Committee in any final
30 project.

31 (i) The Mountaineer Impact Office shall present such final negotiated terms and amount
32 of a proposed investment in a final project for approval or disapproval to the Investment
33 Committee, together with any disclosures of conflicts of interest in the proposed investment as
34 required pursuant to §12-6E-5(d) of this code.

35 (j) The Mountaineer Impact Office shall monitor the qualitative and quantitative
36 performance of each approved investment on an ongoing basis, with respect to the goal of
37 investments prescribed in §12-6E-3 of this code, including without limitation, the exit and
38 termination of each approved investment.

39 (k) The Mountaineer Impact Office may consult the Investment Management Board about
40 investments made or proposed under this article.

41 (l) The Mountaineer Impact Office may exercise all powers necessary or appropriate to
42 carry out the duties or responsibilities conferred upon it by law or the Investment Committee under
43 the provisions of this article.

1 (m) The Mountaineer Impact Office shall procure and maintain in effect, for the benefit of
2 the members of the Investment Committee, commercially customary property, liability, crime, and
3 other insurance to cover risks of loss from the operations of the Investment Committee. The types
4 and amounts of the insurance coverages shall be determined by the Mountaineer Impact Office,
5 from time to time, in its reasonable discretion, with reference to the types and amounts of
6 insurance coverages purchased or maintained by other public institutions performing functions
7 similar to those performed by the Investment Committee, and in an amount of not less than \$10
8 million. The Investment Committee may require that appropriate types and amounts of insurance
9 be procured and maintained by, or a fiduciary or surety bond from a surety company qualified to
10 do business in this state for, any person who has charge of, or access to, any securities, funds or
11 other moneys held by the Investment Committee and the amount of the fiduciary or surety bond
12 shall be fixed by the Investment Committee. The premiums payable on any insurance or fiduciary
13 or surety bonds that the Committee may require, from time to time, shall be an expense of the
14 Committee.

§12-6E-7. Computation of income; audits; annual report.

1 (a) The Mountaineer Impact Office shall cause the income from investments made by the
2 Investment Committee to be deposited back into the West Virginia Impact Fund, net of amounts

3 determined by the Investment Committee to be necessary to provide for the payment of expenses
4 incurred in the administration of this article.

5 (b) The Mountaineer Impact Office shall compute the net income of the Investment
6 Committee's investments annually as of the last day of the fiscal year in accordance with generally
7 accepted accounting principles, excluding any unrealized gains or losses.

8 (c) The Mountaineer Impact Office shall annually cause combined annual financial and
9 compliance audits of the assets in the West Virginia Impact Fund, and of the moneys transferred
10 to and held by the Investment Committee, to be made by a certified public accounting firm which
11 has a minimum staff of ten certified public accountants and which is a member of the American
12 institute of certified public accountants and, if doing business in West Virginia, a member of the
13 West Virginia society of certified public accountants. The Mountaineer Impact Office shall cause
14 copies of the audits report to be furnished to the Governor, State Treasurer, State Auditor,
15 President of the Senate, and the Speaker of the House of Delegates.

16 (d) By December 1 of each year, the Mountaineer Impact Office shall publish a report of
17 the Investment Committee investments for distribution to the Governor, the President of the
18 Senate, the Speaker of the House of Delegates, and the public. The Mountaineer Impact Office
19 shall notify the Legislature that the report is available and otherwise comply with §4-1-23 and §5-
20 1-20 of this code.

21 (e) The report published pursuant to subsection (d) of this section must include financial
22 statements audited by independent outside auditors, a statement of the amount of money
23 received by the Investment Committee and the West Virginia Impact Fund from each investment
24 during the period covered, a statement of investments by the Investment Committee, including an
25 appraisal at market value, a description of investment activities during the period covered by the
26 report, a comparison of the investment performance with the intended goal contained in §12-6E-
27 3 of this code and any other information the Mountaineer Impact Office determines would be in

28 the public interest upon which the efforts of the Investment Committee and the Mountaineer
29 Impact Office to meet the goals and objectives of this article may be measured.

30 (f) The reports described in this section shall be public record.

§12-6E-8. Role of the Investment Management Board.

1 The Investment Committee or the Mountaineer Impact Office may consult the Investment
2 Management Board regarding their activities. To the extent the Investment Management Board
3 determines that to do so is not inconsistent with its duties and responsibilities imposed by this
4 code, it may consult with Investment Committee or the Mountaineer Impact Office regarding those
5 activities.

§12-6E-9. Immunities and exemptions.

1 (a) The doctrine and principles of sovereign immunity extend to the West Virginia Impact
2 Fund, the Mountaineer Impact Office, the Investment Committee and their operations.

3 (b) The members, advisors, officers, and employees of the Investment Committee, the
4 Mountaineer Impact Office and the Investment Management Board are not liable personally,
5 either jointly or severally, for any debt or obligation created by the Investment Committee or the
6 Mountaineer Impact Office: *Provided*, That the members, advisors, officers, and employees are
7 liable for acts of misfeasance or gross negligence.

8 (c) The assets held by the Investment Committee in any account are exempt from all taxes
9 and assessments in the State of West Virginia. All security instruments issued by the Investment
10 Committee or the Mountaineer Impact Office, their transfer, and their income are exempt from all
11 taxes and assessments in the State of West Virginia.

§12-6E-10. Political activities.

1 The resources of the West Virginia Impact Fund, the Investment Committee and the
2 Mountaineer Impact Office may not be used to finance or influence political activities.

§12-6E-11. Confidential information.

1 The reports described in §12-6E-7 of this code shall be public record. If the standard
2 confidentiality agreements, policies or procedures of a private enterprise or investor with which
3 an investment in a project is proposed or made prohibit, restrict or limit the disclosure of
4 information pertaining to the investment, the information is confidential and shall not form part of
5 the public record and is exempt from disclosure under the provisions of chapter twenty-nine-b of
6 this code. Such information may be publicly disclosed only for the purposes of an official law
7 enforcement investigation or when its production is required in a court proceeding.