

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3244

FISCAL
NOTE

BY DELEGATE TONEY

[Introduced March 16, 2021; Referred to the
Committee on Banking and Insurance then the
Judiciary]

1 A BILL to amend and reenact §12-1-1, §12-1-2, §12-1-3, §12-1-6, §12-1-7, §12-1-9, §12-1-10,
 2 §12-1-11, and §12-1-12 of the Code of West Virginia, 1931, as amended; and to amend
 3 said code by adding thereto a new article, designated §12-9-1, §12-9-2, §12-9-3, §12-9-
 4 4, §12-9-5, §12-9-6, §12-9-7, §12-9-8, §12-9-9, §12-9-10, §12-9-11, §12-9-12, §12-9-13,
 5 §12-9-14, §12-9-15, §12-9-16, §12-9-17, §12-9-18, §12-9-19, §12-9-20, §12-9-21, §12-9-
 6 22, §12-9-23, §12-9-24, and §12-9-25, all relating to creating the Bank of West Virginia as
 7 a state bank; transferring the banking authorities of the State Treasurer to the State Bank;
 8 designating the Bank of West Virginia be the depositor of all state funds; providing the
 9 Bank of West Virginia provide or contract for banking services; authorizing contracting with
 10 state and federal credit unions; establishing the mission of the Bank of West Virginia;
 11 providing for a Citizens Advisory Commission; providing for the selection of an Advisory
 12 Board of Directors; describing the authority of the board of directors; providing for a bank
 13 president; establishing powers of the bank; providing for partnering with local financial
 14 institutions to create access to capital loans for community development; requiring annual
 15 audits; requiring reporting; authorizing the electronic transfer of funds; authorizing the
 16 bank to promulgate legislative rules; providing for the confidentiality of bank records; and
 17 prohibiting conflicts of interest.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-1. Legislative findings and purpose.

1 The Legislature finds and declares that the efficient collection, disbursement,
 2 management and investment of public moneys in the State Treasury ~~will~~ shall be invested in the
 3 Bank of West Virginia, in the name of the state pursuant to §12-9-1 et. seq. of this code to benefit
 4 the citizens, teachers and public employees of this state by reducing the costs of government and
 5 providing sources of increased revenue without the necessity of increased taxation; and to
 6 achieve these goals, the ~~State Treasurer~~ Bank of West Virginia shall provide a stable and

7 continuous source of professional financial management, and shall be given the authority to
8 develop and maintain modern systems, consistent with sound financial practices, for the
9 collection, disbursement, management and investment of such moneys in conjunction with the
10 State Treasurer.

**§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive
bidding for disbursement accounts; maintenance of deposits by ~~State Treasurer~~ the
Bank of West Virginia; definition of spending unit and the Bank of West Virginia.**

1 (a) The State Treasurer shall designate the Bank of West Virginia as the sole depository
2 of all funds that comprise the State Treasury, and the Bank of West Virginia shall designate and
3 contract or partner with the state and national banks and the state and federal savings and loan
4 associations, and the state and federal credit unions in this state meeting the requirements of this
5 chapter as depositories for all state funds placed in demand deposits.

6 (b)(1) Demand deposit accounts shall consist of receipt and disbursement accounts.
7 Receipt accounts are accounts in which are deposited moneys belonging to or due the State of
8 West Virginia or any official, department, board, commission or agency of the state.

9 (2) Disbursement accounts are accounts from which are paid moneys due from the State
10 of West Virginia or any official, department, board, commission, political subdivision or agency of
11 the state to any political subdivision, person, firm or corporation, except moneys paid from
12 investment accounts.

13 (3) Investment accounts are accounts established by the West Virginia Investment
14 Management Board, the West Virginia Board of Treasury Investments or the ~~state Treasurer~~ Bank
15 of West Virginia for the buying and selling of securities for investment purposes.

16 (c) The ~~State Treasurer~~ Bank of West Virginia shall propose rules for legislative approval,
17 in accordance with the provisions of §29A-3-1 *et seq.* of this code, concerning depositories for
18 receipt accounts prescribing the selection criteria, procedures, compensation and any other
19 contractual terms it considers to be in the best interests of the state giving due consideration to:

20 (1) The activity of the various accounts maintained in the depositories; (2) the reasonable value
21 of the banking services rendered or to be rendered the state by the depositories; and (3) the value
22 and importance of the deposits to the economy of the communities and the various areas of the
23 state affected by the deposits: Provided, That the rules promulgated by the State Treasurer
24 pursuant to the provisions of this article shall remain in effect and shall be continued until
25 amended, repealed, or reenacted by the Legislature, as may be recommended by the Bank of
26 West Virginia pursuant to the provisions of §12-9-1 et seq. of this code.

27 (d) The ~~State Treasurer~~ Bank of West Virginia shall select depositories for disbursement
28 accounts through competitive bidding by eligible banks and state and federal credit unions in this
29 state. If none of the eligible banks or credit unions in this state are able to provide the needed
30 services, then the ~~state Treasurer~~ Bank of West Virginia may include eligible banks outside this
31 state in the competitive bidding process. The ~~State Treasurer~~ Bank of West Virginia shall propose
32 rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this this
33 code, prescribing the procedures and criteria for the bidding and selection. The ~~State Treasurer~~
34 ~~shall, in the invitations for bids~~ shall, at a minimum, specify the approximate amounts of deposits,
35 the duration of contracts to be awarded and any other contractual terms the ~~state Treasurer~~ Bank
36 of West Virginia considers to be in the best interests of the state, consistent with obtaining the
37 most efficient service at the lowest cost.

38 The amount of money needed for current operation purposes of the state government, as
39 determined by the state Treasurer, shall be maintained at all times in the ~~state Treasurer~~ Bank of
40 West Virginia, in cash, in short term investments not to exceed five days or in disbursement
41 accounts with financial institutions designated as depositories in accordance with the provisions
42 of this section. No state officer or employee shall make or cause to be made any deposits of state
43 funds in financial institutions which have not been designated as depositories.

44 (e) Except as otherwise provided in this code, only banks, ~~and state and federal savings~~
45 and loan associations, and state and federal credit unions designated by the ~~state Treasurer~~ Bank

46 of West Virginia as depositories may accept deposits of state funds. Only the Legislature and the
47 state Treasurer may determine whether funds are state funds and only the ~~state Treasurer~~ Bank
48 of West Virginia may approve the opening of an account or processing of a transaction with a
49 financial institution.

50 (f) Boards, commissions and spending units with authority pursuant to this code to deposit
51 moneys in a financial institution without approval of the ~~state Treasurer~~ Bank of West Virginia
52 shall retain that authority and are not required to have the ~~state Treasurer~~ Bank of West Virginia
53 designate a financial institution as a depository: *Provided, That* after July 1, 2021, any state funds
54 or any other public money of any state agency, authority, board, commission, council,
55 instrumentality of the state, not under the control of the State Treasurer, and any city, municipal,
56 county or political subdivision funds may be deposited in the Bank of West Virginia by the person
57 in control of such funds: *Provided however, That* boards, commissions and spending units with
58 moneys deposited in financial institutions not approved for that purpose by the state Treasurer or
59 the Bank of West Virginia shall submit a report on those moneys annually on or before December
60 31 to the Legislative Auditor, the Bank of West Virginia, and the State Treasurer.

61 (g) The provisions of this section shall not apply to the proceeds from the sale of general
62 obligation bonds or bonds issued by the School Building Authority, the Parkways, Economic
63 Development and Tourism Authority, the Housing Development Fund, the Economic
64 Development Authority, the Infrastructure and Jobs Development Council, the Water
65 Development Authority or the Hospital Finance Authority.

66 (h) As used in this chapter, "spending unit" means a department, agency, board,
67 commission or institution of state government for which an appropriation is requested, or to which
68 an appropriation is made by the Legislature.

69 (i) As used in this code, the "Bank of West Virginia" means the depository for the funds of
70 the state for all deposits of any fund for all spending units and in the name of the state for providing
71 banking services as authorized for the benefit of the people of this state pursuant to the provisions

72 of §12-9-1 et seq. of this code.

§12-1-3. Depositories for interest earning deposits; qualifications.

1 Any state or national bank, ~~or~~ any state or federal savings and loan association, or any
 2 state or federal credit union in this state shall, upon request made to the ~~State Treasurer~~ Bank of
 3 West Virginia, be designated as an eligible depository for interest earning deposits of state funds
 4 if such bank or state or federal savings and loan association meets the requirements set forth in
 5 this chapter. For purposes of this article, the term "interest earning deposits" includes certificates
 6 of deposit or other financial institution products. The ~~State Treasurer~~ Bank of West Virginia shall
 7 make and apportion such interest earning deposits and shall prescribe the interest rates, terms
 8 and conditions of deposits, all in accordance with the provisions of ~~articles six and six-c of this~~
 9 ~~chapter~~ §12-6-1 et seq., §12-6C-1 et seq., and §12-9-1 et seq., of this code: *Provided, That* state
 10 or federal savings and loan associations insured by an agency of the federal government shall be
 11 eligible for such deposits not in excess of the amount insured by any agency of the federal
 12 government.

§12-1-6. Unlawful acceptance of deposits by depositories; exemption.

13 It is unlawful for any depository to accept and retain state deposits in excess of the amount
 14 permitted by application of the preceding section or in an amount greater than its paid up capital
 15 stock and surplus: *Provided, That the Bank of West Virginia is exempt from any limitation on*
 16 *amount of deposits where the bank is authorized to deposit interest and earnings from its activities*
 17 *benefiting the citizens of this state pursuant to the provisions this article and §12-9-1 et seq., of*
 18 *this code.*

§12-1-7. Rules; banking contracts and agreements; depositors; agreements.

1 In addition to rules specially authorized in this article, the West Virginia Investment
 2 Management Board, the Bank of West Virginia, and the State Treasurer are generally authorized
 3 to promulgate any rules necessary to protect the interests of the state, its depositories and
 4 taxpayers. All rules promulgated are subject to the provisions of article three, chapter twenty-nine-

5 a of this code. Any rules previously established by the board of public works, the Board of
6 Investments, the Investment Management Board or the State Treasurer pursuant to this article
7 shall remain in effect until amended, superseded or rescinded.

8 Only the ~~treasurer~~ Bank of West Virginia may enter into contracts or agreements with
9 financial institutions, state and federal credit unions, for banking goods or services required by
10 spending units. Boards, commissions and spending units with authority pursuant to this code to
11 enter into contracts or agreements with financial institution for banking goods and services without
12 approval of the State Treasurer or the Bank of West Virginia shall retain that authority: ~~and are~~
13 ~~not required to have the treasurer designate a financial institution as a depository~~ Provided, That
14 a board, commission, or spending unit funds may be deposited in the Bank of West Virginia by
15 the person in control of such funds. The provisions of this section shall not apply to trust and
16 investment accounts and activities for general obligation bonds or bonds issued by the School
17 Building Authority, the Parkways, Economic Development and Tourism Authority, the Housing
18 Development Fund, the economic development authority, the infrastructure and jobs development
19 council, the water development authority or the hospital finance authority. A state spending unit
20 requiring banking goods or services shall submit a request for the goods or services to the
21 ~~treasurer~~ Bank of West Virginia. If the ~~treasurer~~ Bank of West Virginia enters into a contract or
22 agreement for the required goods or services, spending units using the contract or agreement
23 shall pay either the vendor or the ~~treasurer~~ Bank of West Virginia for the goods or services used.

24 The ~~treasurer~~ Bank of West Virginia is also authorized to enter into any depositors'
25 agreements for the purpose of reorganizing or rehabilitating any depository in which state funds
26 are deposited, and for the purpose of transferring the assets, in whole or in part, of any depository
27 to any other lawful depository when, in the judgment of the Bank of West Virginia and with the
28 advice of the treasurer, the interests of the state are promoted thereby, and upon condition that
29 no right of the state to preferred payment is waived.

§12-1-9. Transfer of funds by check or electronic funds transfer; requirements.

1 Subject to applicable banking regulations or state law, the ~~treasurer~~ Bank of West Virginia
2 may transfer funds by check or electronic funds transfer whenever actually needed to pay the
3 warrants drawn by the Auditor upon the treasury, to equalize deposits or to provide funds to
4 purchase investments for the account of the state. All checks drawn for transfer of funds shall
5 have printed or stamped on the face of same "for transfer of funds only", or if the transfer is made
6 by electronic funds transfer, the electronic funds transfer and supporting documents shall be
7 marked "for transfer of funds only".

**§12-1-10. The ~~treasurer~~ Bank of West Virginia to keep accounts with depositories;
settlements with depositories; statements of depository balances; reconciliation of
statements and records; and review by the Bank of West Virginia.**

1 (a) The ~~treasurer~~ Bank of West Virginia shall keep ~~in his office or her office~~ a record
2 showing the account of each depository. Under the account of each depository an entry shall be
3 made showing the amount and date of each deposit, the amount and date of each withdrawal and
4 the balance on deposit. The treasurer shall direct the Bank of West Virginia and cause the state's
5 account with each depository to be settled at the end of every month of the year and the balance
6 in the depository to the credit of the treasury to be carried forward to the account of the next
7 month.

8 (b) All the statements and records shall be reconciled monthly and the reconciled reports
9 shall be kept by the Bank of West Virginia and shall be reported to and shall be available in the
10 Treasurer's Office. The reconciled records for each month shall be kept in the Treasurer's Office
11 for a period of five years.

12 (c) The Bank of West Virginia may review any account in the State Treasury for
13 compliance with all applicable statues, rules or policies and may contract with the state Auditor to
14 conduct independent financial audits of any account.

**§12-1-11. Reports by depositories to Treasurer and the Bank of West Virginia;
discontinuance of depositories.**

1 (a) Each depository of state funds shall at the end of each quarter cause its president or
2 designated officer to report to the ~~Treasurer~~ Bank of West Virginia the amount of state funds on
3 deposit and the report shall be verified by the affidavit of the officer making it. The form and
4 contents of the report shall be prescribed by the ~~Treasurer~~ Bank of West Virginia and may be in
5 an electronic format.

6 (b) For the failure to file the report, or for other good cause, the ~~Treasurer~~ Bank of West
7 Virginia may discontinue any depository as an eligible depository and cause all state funds to be
8 withdrawn from any depository or depositories discontinued.

9 (c) When a depository is discontinued, the ~~Treasurer~~ Bank of West Virginia shall
10 immediately notify such depository of its discontinuance, and shall immediately withdraw by
11 current checks or by transfer to another depository or depositories the full amount of the deposits
12 held by any depository discontinued. After discontinuance, it shall be unlawful for the Treasurer
13 or the Bank of West Virginia to deposit any state funds in any depository discontinued until such
14 time as the depository may be reinstated to eligibility.

§12-1-12. Investing funds in treasury; depositories outside the state.

1 (a) When the funds in the Treasury exceed the amount needed for current operational
2 purposes, as determined by the state Treasurer, the ~~state Treasurer~~ Bank of West Virginia shall
3 make all excess funds available for investment by the board of Treasury Investments which shall
4 invest the excess for the benefit of the General Revenue Fund: *Provided*, That the Bank of West
5 Virginia upon the advice and recommendation of the state Treasurer, after reviewing the cash
6 flow needs of the state, may withhold and invest amounts not to exceed \$125 million of the
7 operating funds needed to meet current operational purposes. Investments ~~made~~ recommended
8 by the state Treasurer under this section shall be made in short term investments not to exceed
9 five days. Operating funds means the consolidated fund established in §12-6-8 of this code,
10 including all cash and investments of the fund.

11 (b) Spending units with authority to retain interest or earnings on a fund or account may

12 submit requests to the ~~state Treasurer~~ Bank of West Virginia to transfer moneys to a specific
 13 investment pool of the Investment Management Board or the board of Treasury Investments and
 14 retain any interest or earnings on the money invested. The ~~General Revenue Fund~~ Bank of West
 15 Virginia shall receive all interest or other earnings on money invested that are not designated for
 16 a specific fund or account: Provided, That upon a declaration of a state of emergency by the
 17 Governor, the Bank of West Virginia shall make available all interest and earnings of the bank,
 18 and as needed, loan to the General Revenue Fund or as needed to the Revenue Shortfall Reserve
 19 Fund in such amounts as resiliency and recovery funds may be anticipated to be received, or as
 20 such funds are needed and appropriated by the Legislature.

21 (c) Whenever the funds in the Treasury exceed the amount for which depositories within
 22 the state have qualified, or the depositories within the state which have qualified are unwilling to
 23 receive larger deposits, the Bank of West Virginia, with advice from the State Treasurer, may
 24 designate depositories outside the state, disbursement accounts being bid for in the same manner
 25 as required by depositories within the state, and when depositories outside the state have
 26 qualified by giving the bond prescribed in section four of this article, the State Treasurer shall
 27 deposit funds in the same manner as funds are deposited in depositories within the state under
 28 this article.

29 (d) The ~~State Treasurer~~ Bank of West Virginia may transfer funds to financial institutions
 30 outside the state to meet obligations to paying agents outside the state if the financial institution
 31 meets the same collateral requirements as set forth in this article.

ARTICLE 9. BANK OF WEST VIRGINIA.

§12-9-1. Authorization and establishment of the Bank of West Virginia; declaration of purpose.

1 (a) A Bank of West Virginia is authorized to address the financial and economic needs of
 2 the state and its citizens, and for that purpose the Bank of West Virginia shall be dedicated to the
 3 interests of the state and its residents, authorized to deliver access to financial and banking

4 services for the benefit of the state and the citizens of this state and their enterprises, through
5 facilitating access to financial investment capital and banking services, and by providing for
6 resiliency in times of state need. The Bank of West Virginia shall facilitate access to banking
7 services delivery, for all state government funds, and by its partnerships and contract services,
8 provide access to public banking resources to the citizens of this state. The Legislature declares
9 that providing access to banking services including investment capital is vitally important to
10 creating and expanding opportunities for the continued health, security and well-being of all state
11 residents and businesses in this state.

12 (b) The Bank of West Virginia is established to invest in qualifying state residents and shall
13 act as a full banking services resource for state agencies, boards, commissions, institutions, and
14 spending units, including in partnership and by contract with financial institutions, banks, state
15 and federal credit unions, economic development groups, and guaranty agencies, to provide to
16 the citizens and to this state the benefits of state banking services as authorized pursuant to the
17 provisions of this article, and this chapter in the name of the state and for the benefit of this state.

18 (c) The Legislature finds and declares that the Bank of West Virginia shall engage in the
19 business of banking for all state spending units and engage in, partner with or contract for such
20 banking services and financial activities as needed and shall use such income resources to invest
21 in the qualifying residents of this state. The system of banking owned, controlled, and operated
22 as the “Bank of West Virginia”, and all services provided by it, including by partnership or contract,
23 shall be conducted in the name of the state.

24 (d) The Bank of West Virginia is authorized and shall provide banking and financial
25 services pursuant to the provisions of this article for the purpose of benefiting this state and its
26 residents, including by providing banking services for fees, and by entering into such partnerships
27 and contracts as authorized pursuant to the provisions of this article, to provide access to banking
28 and financial services for this state, boards, commissions, spending units and citizens.

§12-9-2. Definitions.

1 For the purposes of this article the following terms have the meanings described in this
2 section, unless in the context used, the meaning clearly indicates otherwise:

3 (1) "Bank of West Virginia" means the state-owned financial institution established to
4 provide banking services for the state and its agencies and instrumentalities, to the benefit of the
5 state and its residents, through providing or contracting for access to banking services and
6 investment capital opportunities and to assist in community related development investments;

7 (2) "Board" or "Advisory Board" means the Advisory Board of Directors of the Bank of West
8 Virginia;

9 (3) "Citizens Advisory Commission" means the group assigned to select the Advisory
10 Board of Directors of the Bank of West Virginia;

11 (4) "Commissioner" means the Commissioner of Financial Institutions;

12 (5) "Division" means the Division of Financial Institutions;

13 (6) "Income" means the money of the state, in the form of all authorized deposits, interest
14 and earnings, and administrative fees that the bank is authorized to accept for providing banking
15 services to be managed by the Bank of West Virginia for the benefit of this state and its residents.

16 (7) "President" means the President of the Bank of West Virginia;

17 (8) "Resident", "state resident" or "qualifying state resident" means a citizen of this state
18 qualified by a minimum of one year of permanent residency; and

19 (9) "Resiliency" means the capacity of the investment capital of the state to provide
20 immediate relief to residents of this state in the form of capital available for immediate investment
21 in infrastructure and other state needs after natural or other disasters or extraordinary events, and
22 can be in addition to or in anticipation of federal and other relief moneys.

§12-9-3. Mission of the Bank of West Virginia; noncompetition.

1 (a) The Bank of West Virginia shall partner with local financial institutions pursuant to the
2 provisions of this article to provide low-cost capitalization for the benefit of the citizens of this
3 state.

4 (b) The Bank of West Virginia may not compete with local financial institutions for banking
5 services and shall work with state agencies and local financial institutions towards the goal of
6 expanding the number of community banks, credit unions, and other financial institutions within
7 the state to provide access to capital to promote business startups and growth, agricultural and
8 community development, and access to low-cost affordable housing in this state.

§12-9-4. Bank of West Virginia deposits and income; fees for services.

1 (a) On July 1, 2021, in the name of the state, the Bank of West Virginia shall be the
2 repository for all state funds as deposited in the name of the State Treasury for any public
3 purpose.

4 (b) After July 1, 2021, any state funds or any other public money of any state agency,
5 authority, board, commission, council, spending unit or instrumentality of the state, not under the
6 control of the State Treasurer, and any city, municipal, county, or political subdivision funds may
7 be deposited in the Bank of West Virginia by the person in control of such funds.

8 (c) On or before August 1, 2021, notwithstanding any other provisions of this code to the
9 contrary, the State Treasurer, pursuant to §12-1-1 et seq., of this code, and pursuant to the
10 provisions of this chapter and this article, shall deposit all state money, funds, special revenue
11 accounts and all finances under his or her control to the appropriate accounts in the Bank of West
12 Virginia. The bank shall facilitate the administration of the state's accounts and pay all debts of
13 the state as directed and authorized by the State Treasurer and the State Auditor pursuant to the
14 provisions of this code.

15 (d) Income of the Bank of West Virginia, including any fees for banking services, shall be
16 invested by the Bank of West Virginia, in the name of the state, for the benefit of the state and its
17 residents pursuant to the provisions of this article.

§12-9-5. Division of Financial Institutions; business of bank.

1 (a) The Commissioner of the Division of Financial Institutions shall authorize the operation,
2 management and control of the Bank of West Virginia, including its location or locations and its

3 places of business, of which shall be within the state, and may make and enforce such orders,
4 rules, regulations and bylaws for the transaction of its business, pursuant to the provisions of this
5 article and §31A-2-1 et seq. of this code.

6 (b) The business and financial transactions of the bank, in addition to other matters
7 specified in this article, may include anything that any bank, bank holding company, credit union
8 or other applicable financial institution lawfully may do, except as it may be restricted by the
9 provisions of this article: *Provided*, That this provision may not be held in any way to limit or qualify
10 either the powers of the Division of Financial Institutions, or the functions of the bank as defined
11 in this article: *Provided, however*, That the powers of the Bank of West Virginia and the functions
12 of the bank shall be implemented in conformity and compliance with all applicable rules and
13 policies promulgated by the Division of Financial Institutions.

14 (c) The Division of Financial Institutions shall grant the Bank of West Virginia the
15 authorization to deposit all permit, licensing, and other regulatory funds and fees as may be
16 required for any lawfully authorized activity and may charge transaction fees for processing payroll
17 and other business processing transactions as authorized pursuant to this article: *Provided*, That
18 where an employer pays a transaction processing fee for payroll services, banking services shall
19 be provided to its employees without fees.

**§12-9-6. Bank of West Virginia Citizen Advisory Commission created; and selection of
Bank Advisory Board of Directors.**

1 (a) The Legislature finds it is to the benefit of the people of this state to have access to
2 investment capital for individuals, farmers, home owners, entrepreneurs, small business owners,
3 and for general public welfare through public investment capital for qualifying resident citizens to
4 invest in a thriving economy in this state. In order to govern the Bank of West Virginia with the
5 relevant experience necessary to be sustainable and to benefit the citizens of this state, a Citizens
6 Advisory Commission is created to select the Advisory Board of Directors to the Bank of West
7 Virginia. The commission shall meet on or before December 31, 2021 and elect from its members

8 a commission chair for a two-year term. Upon the call of the Chair or upon the written request of
9 four members, the commission shall meet on or before February 1, 2022 and select the Advisory
10 Board of Directors to the Bank of West Virginia pursuant to the provisions of this section. The
11 commission shall meet at a minimum annually thereafter to fill any vacancies on the Advisory
12 Board of Directors to the Bank of West Virginia.

13 (b) The Citizens Advisory Commission shall consist of seven voting members for four-year
14 terms, three of whom shall be appointed by the Governor with the advice and consent of the
15 Senate as follows: *Provided*, That the initial terms of appointment shall be staggered pursuant to
16 the provisions of this subsection:

17 (1) One member, for an initial four-year term, representing the interests of banking and
18 financial institutions from a list of three names submitted by the West Virginia Bankers
19 Association, who shall have a minimum of five consecutive years of bank management
20 experience in this state;

21 (2) One member, for an initial two-year term, representing the interests of credit unions
22 from a list of three names submitted by the West Virginia Credit Union League, who shall have a
23 minimum of five consecutive years of credit union management experience in this state; and

24 (3) One member, for an initial four-year term, representing the interests of community
25 banking institutions from a list of three names submitted by the Association of Community Bankers
26 of West Virginia, who shall have a minimum of five consecutive years of community banking
27 management experience in this state; and

28 (4) Four citizen members selected by popular election at the General Election of 2021 and
29 at each of the next general elections held in even numbered years, who shall be qualified by
30 having earned a minimum of a four-year college degree prior to their election and shall have lived
31 in this state for the previous five consecutive years. Citizen member elections shall be non-
32 partisan and candidates may qualify for matching public funding. Two citizen members initial
33 terms shall be for two years, and two citizen member initial terms shall be for four years.

34 (c) Disqualification of Citizens Advisory Commission members. — Commission members
35 shall be disqualified if at any time before or during their term of office:

36 (1) They have or develop any financial interest in the Bank of West Virginia;

37 (2) They cease to be a citizen of this state; or

38 (3) They are convicted of a felony.

39 (d) The Advisory Board of Directors to the Bank of West Virginia shall be comprised of 17
40 voting members qualified pursuant to the requirements of this section and shall include three ex-
41 officio constitutional officer holders. The ex-officio voting members of the board are the State
42 Treasurer, the State Auditor and the Commissioner of Agriculture: *Provided*, That a constitutional
43 officer pursuant to this section, may not vote on any matter after the general election in the year
44 the term of their constitutional office ends. In addition, 12 members of the Advisory Board of
45 Directors to the Bank of West Virginia shall be appointed by the Citizens Advisory Commission
46 as follows for four-year terms, except for the initial appointments, which shall be staggered
47 pursuant to this subsection:

48 (1) One appointee shall be an officers of a bank, credit union, or similar financial institution
49 in this state with five consecutive years of experience, the initial appointment shall be for three
50 years.

51 (2) One appointee shall be an officer of a state-chartered or federally chartered financial
52 institution in this state with five consecutive years of experience, with the initial appointment for
53 three years.

54 (3) Three citizen members, who shall have obtained a minimum of a college or university
55 degree or greater, with one citizen member initially appointed for two years, and two citizen
56 members shall initially be appointed for three years;

57 (4) One family farmer, selected from a list of three names as recommended by the West
58 Virginia Farm Bureau, with the initial appointment for three years;

59 (5) One member representing consumers, selected from a list of three names as

60 recommended by the West Virginia Association for Justice, with the initial appointment for three
61 years;

62 (6) One member representing community land banks, selected from a list of three names
63 as recommended by a City Council where a community land bank has been established, with the
64 initial appointment for three years;

65 (7) One member representing consumer interests, selected from a list of three names as
66 recommended by the West Virginia Attorney General, who shall have been licensed to practice
67 law in this state for a minimum the previous five years, with the initial appointment for three years;

68 (8) One member representing veteran interests, selected from a list of three names as
69 recommended by the West Virginia Department of Veterans Assistance, who shall be United
70 States Armed Forces Veterans who are discharged from service and have resided in this state
71 for a minimum of the preceding five years, with an initial term of two years;

72 (9) One member representing county government interests, selected from a list of three
73 names as recommended by the West Virginia Association of Counties, who shall reside in this
74 state for a minimum the previous five years, with the initial appointment for two years;

75 (10) One member representing municipal government interests, selected from a list of
76 three names as recommended by the West Virginia Municipal League, who shall reside in this
77 state for a minimum the previous five years, with the initial appointment for three years; and

78 (e) The President of the Bank of West Virginia shall be an ex-officio voting member of the
79 Board; and

80 (f) An employee representative of the Bank of West Virginia elected annually by the
81 employees of the bank shall be an ex-officio voting member of the board.

§12-9-7. Authority of the Board of Directors to the Bank of West Virginia; legislative rules.

1 (a) The Advisory Board of Directors to the Bank of West Virginia shall:

2 (1) Meet on or before March 31, 2022 and select a chair from among its members, and
3 shall appoint a bank president;

4 (2) After the initial meeting, the board shall meet at least quarterly with the management
5 of the Bank of West Virginia, to review the bank's operations, to schedule and review audits, to
6 determine whether recommendations should be made by the board to the Board of Banking and
7 Financial Institutions relating to improved management performance, better customer service,
8 and overall improvement in internal methods, procedures and operating policies of the bank;

9 (3) Make recommendations to the Board of Banking and Financial Institutions relating to
10 the establishment of additional objectives for the operation of the Bank of West Virginia;

11 (4) Make recommendations to and meet quarterly with the Board of Banking and Financial
12 Institutions to present any recommendations concerning the Bank of West Virginia;

13 (5) On or before July 1, 2022, propose legislative and emergency rules establishing the
14 loan programs, policies and procedures and qualifications for citizens of this state to receive loans
15 from the state bank through its partnerships with institutions and agencies of state government;
16 and

17 (6) On or before December 31, beginning in 2021, report annually to the Governor and
18 the Legislature regarding the operations of the Bank, including the findings of audits and with any
19 recommendations for improving the operational authority of the Bank as may be necessary to
20 provide the effective and efficient services to benefit the citizens of this state.

§12-9-8. Board to employ president and employees; fix compensation; and expenditures
limited to appropriations, revenue, or capital.

1 (a) The Advisory Board of Directors to the Bank of West Virginia shall employ a President
2 of the Bank of West Virginia, and may appoint and employ such subordinate officers, employees
3 and agents as it may judge expedient and in the interests of the state. The board shall define the
4 duties, designate the titles and fix the compensation of all such persons. The board may designate
5 the president as its agent in respect to the functions of the bank, subject to its supervision,
6 limitation and control.

7 (b) The total compensation of the appointees and employees, together with other

8 expenditures for the operation and maintenance of the bank, shall remain within the appropriation,
9 revenues or capital lawfully available for these purposes.

§12-9-9. Removal and discharge of appointees.

1 The Advisory Board of Directors to the Bank of West Virginia may remove and discharge
2 any person appointed in the exercise of the powers granted by this article, whether by the board
3 or by the president of the bank. All appointments and removals contemplated by this article must
4 be made as the board considers fit to promote the efficiency of the public service.

§12-9-10. State funds deposited in The Bank of West Virginia; income of the bank; administration of grants.

1 (a) State funds and funds of all state regulatory activities shall be deposited in the Bank of
2 West Virginia by the persons having control of these funds or must be deposited in accordance
3 with constitutional and statutory provisions.

4 (b) All income earned by the bank for its own account on state moneys that are deposited
5 in or invested with the bank to the credit of the state shall be credited to and become a part of the
6 revenues and income of the bank.

7 (c) The Bank of West Virginia may accept, solicit and administer grants pursuant to the
8 provisions of this article for the purposes of promoting small and innovative businesses, local
9 agriculture, community development, affordable housing and for financing activities related to
10 sustainable community development in this state.

§12-9-11. Nonliability of officers and sureties after deposit.

1 Whenever any of the public funds herein designated are deposited in the Bank of West
2 Virginia, as herein provided, the official having control thereof and the sureties on the bond of
3 every such official is exempt from all liability by reason of loss of any such funds while so
4 deposited.

§12-9-12. Guaranty of deposits - Exemption from all taxation.

1 The Bank of West Virginia has the full faith and credit of the state and all deposits in the

2 Bank of West Virginia are guaranteed by the state. These deposits are exempt from state, county
3 and municipal taxes of any and all kinds.

§12-9-13. Bank a clearinghouse.

1 For banks that make the Bank of West Virginia a reserve depository, it may perform the
2 functions and render the services of a clearinghouse, including all facilities for providing domestic
3 and foreign exchange, and may rediscount paper, on such terms as the Board of Banking and
4 Financial Institutions provides: *Provided*, That the Bank of West Virginia shall not compete with
5 available commercial banking activities.

§12-9-14. Powers.

1 (a) The Bank of West Virginia shall recommend rules for legislative approval pursuant to
2 the provisions of §29A-3-1 *et seq.* of this code on or before July 1, 2022, to establish the bank
3 policies and procedures for making, purchasing, guaranteeing, contracting for, entering into public
4 private partnerships, and to hold and otherwise provide loans:

5 (1) To state-chartered or federally chartered lending agencies or institutions or any other
6 financial institutions;

7 (2) To holders of Bank of West Virginia certificates of deposit and savings accounts up to
8 ninety percent of the value of the certificates and savings accounts offered as security;

9 (3) To residents of this state, if the loans are secured by recorded mortgages giving the
10 Bank of West Virginia a first lien on real estate in West Virginia in amounts not to exceed 80
11 percent of the value of the security;

12 (4) That are insured or guaranteed, in whole or in part, by the United States, its agencies
13 or instrumentalities;

14 (5) That are eligible to be guaranteed under any provision of this code. Loans made
15 pursuant to this subdivision may provide for interest that remains unpaid at the end of any period
16 specified in the loan to be added to the principal amount of the debt and thereafter accumulate
17 interest;

18 (6) To individuals or bank holding companies for the purpose of purchasing or refinancing
19 the purchase of bank stock of a bank located in the state;

20 (7) To nonprofit organizations that are exempt from federal taxation under section
21 501(c)(3) of the Internal Revenue Code, the proceeds of the loans to be used for construction,
22 reconstruction, repair, renovation, maintenance, and associated costs on property under the
23 control of the parks and recreation department;

24 (8) Under Public Law No.99-198, codified at 7 U.S.C.1932 et seq., as amended through
25 December 31, 1996, to nonprofit corporations for the purpose of relending loan funds to rural
26 businesses;

27 (9) Under title 7, Code of Federal Regulations, part 1948, subpart C; part 1951, subparts
28 F and R; and part 1955, subparts A, B and C, as amended through December 31, 1996, to finance
29 businesses and community development projects in rural areas;

30 (10) Obtained as security pledged for or originated in the restructuring of any other loan
31 properly originated or participated in by the bank;

32 (11) To instrumentalities of this state; or

33 (12) As otherwise provided by this article or other provisions of this code to the state and
34 state residents during time of need.

35 (b) If the bank is participating in the loan and the bank determines it is in the best interests
36 of the bank to do so, it may purchase the remaining portion of the loan from a participating lender
37 that is closed by regulatory action or from the receiver of the participating lender's assets:

38 (1) To an investment company created for completing a trust preferred securities
39 transaction for the benefit of a financial institution located in this state;

40 (2) Make agricultural real estate loans in order to participate in the agricultural mortgage
41 secondary market program established pursuant to the Agricultural Credit Act, Pub. L. 100-233;
42 as amended through December 31, 1996;

43 (3) Purchase participation interests in loans made or held by banks, bank holding

44 companies, state-chartered or federally chartered lending agencies or institutions, any other
45 financial institutions, or any other entity that provides financial services and that meets
46 underwriting standards that are generally accepted by state or federal financial regulatory
47 agencies;

48 (4) Invest its funds:

49 (A) In conformity with policies of the Board of Banking and Financial Institutions;

50 (B) In a public venture capital corporation organized and doing business in this state
51 through the purchase of shares of stock;

52 (C) In student loan forgiveness programs that reward state residents for longevity of
53 service in areas of critical staffing shortages in underserved or economically disadvantaged areas
54 of this state as may be provided in other provisions of this code;

55 (D) Buy and sell federal funds;

56 (E) Lease, assign, sell, exchange, transfer, convey, grant, pledge or mortgage all real and
57 personal property, title to which has been acquired in any manner;

58 (F) Acquire real or personal property or property rights by purchase, lease, or, subject to
59 chapter fifty-four of this code, the exercise of the right of eminent domain and may construct,
60 remodel and repair buildings;

61 (G) Receive deposits from any source and deposit its funds in any bank or other financial
62 institution;

63 (H) Perform all acts and do all things necessary, convenient, advisable or desirable to
64 carry out the powers expressly granted or necessarily implied in this article through or by means
65 of its president, officers, agents or employees or by contracts with any person, firm or corporation;

66 and

67 (I) Purchase mortgage loans on residential real property originated by financial institutions.

§12-9-15. Loans to general fund authorized; continuing appropriation.

1 The State Treasurer and the Secretary of Administration may, when the balance in the

2 State General Fund is insufficient to meet legislative appropriations, execute and issue on behalf
3 of the state evidences of indebtedness on the State General Fund which at no time exceed the
4 total principal amount of \$10 million with principal maturity of not more than 12 months. As a
5 condition precedent to the issuance and sale of the evidences of indebtedness, the State
6 Treasurer must request and obtain a statement from the Secretary of Administration and State
7 Tax Commissioner certifying that anticipated general fund revenues for the balance of the fiscal
8 year in which the evidences of indebtedness are to be issued will exceed the principal amount
9 and interest on the evidences of indebtedness to be issued. The State Board of Banking and
10 Financial Institutions may in turn direct the Bank of West Virginia to make loans to the State
11 General Fund by the purchase of the evidences of indebtedness at such rates of interest as the
12 Board of Banking and Financial Institutions may prescribe. After evidences of indebtedness have
13 been issued and sold pursuant to this section, the State Treasurer shall establish a fund for the
14 repayment of the principal upon maturity and the interest when due. The State Treasurer shall
15 place all available general fund revenues into this fund until the fund contains a sufficient balance
16 for the repayment of the principal at maturity and interest when due, which moneys are hereby
17 appropriated for this purpose.

§12-9-16. Limitations on loans by The Bank of West Virginia; disclosure of interests in certain loans.

1 (a) Notwithstanding any other provision of law, the Bank of West Virginia may not make
2 any loan or otherwise give its credit to a member of the Advisory Board of Directors to the Bank
3 of West Virginia during the member's term on the board. Before taking office, a member of the
4 Advisory Board of Directors to the Bank of West Virginia shall file a statement with the West
5 Virginia Ethics Commission indicating any personal interest that the member has in any loan or
6 loan application in existence or pending at any time during the member's term on the Advisory
7 Board of Directors to the Bank of West Virginia.

8 (b) Notwithstanding any other provision of law, the Bank of West Virginia may not make

9 any loan or otherwise give its credit to a person who is not a resident of this state, or who has not
10 been a resident of this state for a minimum of 12 consecutive months preceding the loan
11 application: *Provided*, That a returning veteran who was not dishonorably discharged, who was a
12 state resident for a minimum of 12 consecutive months prior to deployment, shall be considered
13 eligible for loans pursuant to the provision of this article.

§12-9-17. Name in which business conducted and titles taken; execution of instruments.

1 (a) All business of the bank must be conducted under the name of “The Bank of West
2 Virginia”. Title to property pertaining to the operation of the bank must be obtained and conveyed
3 in the name of the “State of West Virginia, doing business as the Bank of West Virginia”.

4 (b) Instruments must be executed in the name of the State of West Virginia. Within the
5 scope of authority granted by the Board of Banking and Financial Institutions, the president may
6 execute instruments on behalf of the bank, including any instrument granting, conveying or
7 otherwise affecting any interest in or lien upon real or personal property. Other officers or
8 employees of, and legal counsel to, the bank may execute instruments on behalf of the bank when
9 authorized by the Board of Banking and Financial Institutions.

10 (c) Any instrument executed prior to July 1, 2022, by the president, an attorney for the
11 bank, or an officer or employee of the bank, and otherwise proper, is valid and effective.

§12-9-18. Civil actions on bank transactions; name of parties; service; and venue.

1 (a) Civil actions may be brought against the State of West Virginia on account of claims
2 for relief claimed to have arisen out of transactions connected with the operation of the Bank of
3 West Virginia upon condition that the provisions of this section are complied with. In such actions,
4 the state must be designated as the “State of West Virginia, doing business as the Bank of West
5 Virginia”. The actions may be brought in the same manner and are subject to the same provisions
6 of law as other civil actions. The action must be brought in Kanawha County.

7 (b) If the bank seeks to participate in a loan that involves multiple banks and if the loan
8 documents require the bank to agree that civil actions will be commenced in a state outside of

9 West Virginia, the bank may agree to venue outside of West Virginia if approved by the Attorney
10 General.

**§12-9-19. Surety on appeal, attachment, claim and delivery, and other cases in which
undertaking required, not required of Bank of West Virginia.**

1 Provisions of law requiring that a surety or sureties be given on undertakings in actions on
2 appeal, attachment, claim and delivery and other cases in which an undertaking is required, are
3 not applicable to the State of West Virginia, doing business as the Bank of West Virginia, as the
4 party seeking such relief. It is required to give its own undertaking without surety and to reimburse
5 the adverse party when required by law.

§12-9-20. Examinations and audit reports.

1 (a) Upon the conclusion of each fiscal year, the State Auditor may contract with an
2 independent certified public accounting firm for an annual audit of the Bank of West Virginia in
3 accordance with generally accepted government auditing standards. The State Auditor shall audit
4 annually or contract for an annual audit of the separate programs and funds administered by the
5 Bank of West Virginia. On request of the State Auditor, the Board of Banking and Financial
6 Institutions shall assist the State Auditor in the auditing firm selection process, but the selection
7 of the auditing firm is the State Auditor's responsibility. The auditor selected shall prepare an audit
8 report that includes financial statements presented in accordance with the audit and accounting
9 guide for banks and savings institutions issued by the American Institute of Certified Public
10 Accountants. The auditor also shall prepare audited financial statements for inclusion in the
11 comprehensive annual financial report for the state.

12 (b) The State Auditor and Legislative Auditors may conduct performance and financial
13 audits of the Bank of West Virginia, including for any of the separate programs and funds
14 administered by the bank. The auditors shall report the results of each audit to the Board of
15 Banking and Financial Institutions, to the Governor, and to the Joint Committee on Government
16 and Finance within 30 days of the completion of each audit.

17 (c) The Board of Banking and Financial Institutions, through the commissioner, shall
18 examine the Bank of West Virginia at least once each 24 months and conduct any investigation
19 of the bank which may be necessary. The commissioner shall report the examination results, and
20 the results of any necessary investigation, to the Board of Banking and Financial Institutions, to
21 the Governor, and to the Joint Committee on Government and Finance within 30 calendar days
22 of the completion of the examination report or investigation. The Board of Banking and Financial
23 Institutions shall charge a fee for any examination or investigation at an hourly rate to be set by
24 the commissioner, sufficient to cover all reasonable expenses of the department associated with
25 the examinations and investigations provided by this section.

26 (d) The Bank and the Advisory Board of Directors to the Bank of West Virginia may direct
27 an audit of any account held by it in the name of the state for compliance with all applicable laws,
28 rules and policies. A summary of each audit conducted pursuant to this subsection shall be
29 included in the annual report of the bank to the Governor and Legislature.

§12-9-21. Electronic fund transfer systems; authorized legislative rules.

1 (a) The Bank of West Virginia may establish legislative rules pursuant to the provisions
2 §29A-3-1 et seq. of this code, to describe a system to provide fund transfer services to its
3 customers and to the customers of state-chartered and federally chartered banks located within
4 the State of West Virginia, and to other financial institutions otherwise authorized to utilize the
5 services of electronic fund transfer systems, to acquire such equipment as is necessary to
6 establish electronic fund transfer systems, and to make such reasonable charges for services
7 rendered to other banks hereunder as may be established by the Board of Banking and Financial
8 Institutions.

9 (b) The Bank of West Virginia may provide by legislative rule for the deposit of any
10 regulatory permit fees, licensing fees and other funds resulting from any regulatory activity for any
11 regulatory activities as authorized by this code in this state.

§12-9-22. Confidentiality of Bank records.

1 The following records of the Bank of West Virginia are confidential:

2 (1) Commercial or financial information of a customer, whether obtained directly or
3 indirectly, except for routine credit inquiries or unless required by due legal process. As used in
4 this subsection, "customer" means any person who has transacted or is transacting business with,
5 or has used or is using the services of, the Bank of West Virginia or for whom the Bank of West
6 Virginia has acted as a fiduciary with respect to trust property;

7 (2) Internal or interagency memorandums or letters which would not be available by law
8 to a party other than in litigation with the bank;

9 (3) Information contained in or related to examination, operating, or condition reports
10 prepared by, on behalf of or for the use of a state or federal agency responsible for the regulation
11 or supervision of any bank activity;

12 (4) Information obtained from the state department of financial institutions which would not
13 be available from that agency under §31A-2A-1 et seq., of this code; and

14 (5) The report by a bank officer or member of the bank's advisory board of directors
15 concerning personal financial statements.

§12-9-23. Bank of West Virginia; custodian of securities.

1 Notwithstanding any other provision of law to the contrary, the Bank of West Virginia shall
2 replace the State Treasurer as the custodian of all securities that are required to be deposited
3 with the state except that the State Treasurer is the custodian of all securities resulting from the
4 investment of funds by the State Treasurer, or except as otherwise required by this section and
5 chapter twelve of this code.

§12-9-24. Required transfer; special education contract costs.

1 If the Board of Banking and Financial Institutions is notified by the State Superintendent
2 of Free Schools that, using all available sources, there are insufficient moneys with which to fully
3 reimburse school districts for the excess costs of serving the one percent of special education
4 students statewide who require the greatest school district expenditures in order to be provided

5 with special education and related services, the Board of Banking and Financial Institutions shall
6 transfer from the earnings and accumulated and undivided profits of the Bank of West Virginia
7 the amount that the State Superintendent of Free Schools certifies is necessary to provide the
8 statutorily required level of reimbursement. The State Superintendent of Free Schools shall file
9 for introduction legislation requesting that the ensuing Legislature return any amount transferred
10 under this section to the Bank of West Virginia.

§12-9-25. Conflict of interest prohibited.

1 (a) An employee or a person applying for a position with the Bank of West Virginia shall
2 disclose to the bank if his or her spouse or family member is an officer, director or employee of a
3 depository or owns greater than two percent of a depository. Any employee of the Bank of West
4 Virginia whose spouse or family member, is an officer, director or employee of a depository or
5 owns greater than two percent of a depository may not participate in any selection of or in any
6 contract negotiations with any depository.

7 (b) Members of the Advisory Board of Directors to the Bank of West Virginia, and members
8 of the Citizens Advisory Commission may not have a financial interest in the bank nor any
9 partnership, contract, loan or grant as administered by the bank or any of its partners.

NOTE: The purpose of this bill is to create a state Bank of West Virginia.

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