

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4779

BY DELEGATE CRISS

[Introduced February 15, 2022; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §7-6-2 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §8-13-22a of said code; and to amend and reenact §12-1-4 of said code, all
3 relating to county depositories; relating to the bonds of depositories; and relating to the
4 investment of municipal funds for municipal corporations and bonds to be given by state
5 depositories.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-2. Bond of depositories.

1 (a) No designation is binding on any county, nor shall any public money be deposited
2 thereunder in excess of the amount insured by an agency of the federal government, until the
3 banking institution designated executes a bond with good and sufficient sureties, to be accepted
4 and approved by the county commission, payable to the State of West Virginia, in a sum as the
5 county commission shall direct, and which may not be less than the amount of the deposit that
6 exceeds the amount insured by an agency of the federal government in the depository at any one
7 time. The bond shall be executed by at least four resident freeholders as sureties owning in the
8 aggregate unencumbered real estate having an assessed valuation thereon equal to the penalty
9 of the bond, or by a fidelity or indemnity company authorized to do business within the state,
10 satisfactory to, and acceptable by the county commission, and having not less than \$600,000
11 capital; and the bond shall be conditioned for the receipt, safekeeping, and payment over of all
12 money which may be deposited in or come under the custody of the banking institution designated
13 a county depository under the provisions hereof, together with the interest thereon at the rate
14 specified by this article; and the bond shall be further conditioned for the faithful performance, by
15 the banking institution so designated, of all the duties imposed by this article upon a depository
16 of public moneys: *Provided*, That the clerk of the county commission shall keep a record of each

17 surety on all personal bonds given as hereinbefore provided and the clerk shall notify the county
18 commission of every recorded conveyance of real estate made by any surety on said personal
19 bond.

20 (b) An action shall lie on the bond at the instance of the county commission, or the sheriff,
21 for the recovery of any money deposited in the depository, upon failure or default of the depository
22 to fully and faithfully account for and pay over any and all public moneys deposited by the sheriff
23 and of all interests earned and accrued thereon as required by this article. A bond may not be
24 accepted by the county commission until it has been submitted to the prosecuting attorney, and
25 certified by him or her to be in due and legal form, and conformable to the provisions of this article,
26 which certificate shall be endorsed thereon: *Provided*, That the county commission may, in lieu of
27 the bond provided hereinbefore, accept as security for money deposited as aforesaid, interest-
28 bearing securities of the United States, or of a state, county, district or municipal corporation, or
29 of the federal land banks, or endorsed county and district warrants of the county in which the
30 depository is located, or letters of credit of the federal land banks, or federal home loan banks, or
31 any other letters of credit approved by the treasurer; the face value of which securities may not
32 be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of
33 which the securities are accepted; or the county commission may accept the securities as partial
34 security to the extent of their face value for the money so deposited, and require bond for the
35 remainder of the full amount hereinbefore specified, to be named in the bond, and in the bond so
36 required, the acceptance of securities as partial security, and the extent thereof, shall be set forth:
37 *Provided*, however, That a banking institution is not required to provide a bond or security in lieu
38 of bond if the public deposits accepted are placed in certificates of deposit meeting the following
39 requirements:

- 40 (1) The funds are invested through a designated state depository selected by the county;
41 (2) The selected depository arranges for the deposit of the funds in certificates of deposit
42 in one or more banks or savings and loan associations wherever located in the United States, for

43 the account of the county;

44 (3) The full amount of principal and accrued interest of each certificate of deposit is insured
45 by the Federal Deposit Insurance Corporation;

46 (4) The selected depository acts as custodian for the county with respect to such
47 certificates of deposit issued for the county's account; and

48 ~~(5) At the same time that the county's funds are deposited and the certificates of deposit~~
49 ~~are issued, the selected depository receives an amount of deposits from customers of other~~
50 ~~financial institutions wherever located in the United States equal to or greater than the amount of~~
51 ~~the funds invested by the county through the selected depository. On the same date the public~~
52 ~~moneys are redeposited by the public depository, the public depository may, in its sole discretion,~~
53 ~~choose whether to receive deposits, in any amount, from other banks, savings banks, or savings~~
54 ~~and loan associations.~~

55 (c) The hypothecation of the securities shall be by proper legal transfer as collateral
56 security to protect and indemnify by trust any and all loss in case of any default on the part of the
57 banking institution in its capacity as depository as aforesaid. All the securities shall be delivered
58 to or deposited for the account of the county commission, and withdrawal or substitution thereof
59 may be permitted from time to time upon approval by the county commission by order of record,
60 but the collateral security shall be released only by order of record of the county commission when
61 satisfied that full and faithful accounting and payment of all the moneys has been made under the
62 provisions hereof. In the event actual possession of the hypothecated securities are delivered to
63 the county commission, it shall make ample provision for the safekeeping thereof and the interest
64 thereon when paid shall be turned over to the banking institution, so long as it is not in default as
65 aforesaid. The county commission may permit the deposit under proper receipt of the securities
66 with one or more banking institutions within or without the State of West Virginia and may contract
67 with any institution for safekeeping and exchange of any hypothecated securities and may
68 prescribe the rules for handling and protecting the same.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-22a. Investment of municipal funds.

1 (a) All municipal funds, the investment of which is not governed by other provisions of this
2 code and not required for the payment of current obligations and not otherwise prohibited, may
3 be invested and reinvested in:

4 (1) Any direct obligation of, or obligation guaranteed as to the payment of both principal
5 and interest by, the United States of America;

6 (2) Any evidence of indebtedness issued by any United States government agency
7 guaranteed as to the payment of both principal and interest, directly or indirectly, by the United
8 States of America including, but not limited to, the following: Government National Mortgage
9 Association, federal land banks, federal home loan banks, federal intermediate credit banks,
10 banks for cooperatives, Tennessee Valley Authority, United States postal service, farmers home
11 administration, export-import bank, federal financing bank, federal home loan mortgage
12 corporation, student loan marketing association and federal farm credit banks;

13 (3) Any evidence of indebtedness issued by the Federal National Mortgage Association to
14 the extent such indebtedness is guaranteed by the government National Mortgage Association;

15 (4) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage
16 upon real property situate within this state, if the payment thereof is substantially insured or
17 guaranteed by the United States of America or any agency thereof;

18 (5) Direct and general obligations of this state;

19 (6) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real
20 property and, unless all of such property is situate within the state and insured, the trust at the
21 time of the acquisition of the undivided interest, is rated in one of the three highest rating grades
22 by an agency which is nationally known in the field of rating pooled mortgage trusts;

23 (7) Any bond, note, debenture, commercial paper or other evidence of indebtedness of
24 any private corporation or association: *Provided*, That any such security is, at the time of its
25 acquisition, rated in one of the three highest rating grades by an agency which is nationally known
26 in the field of rating corporate securities: *Provided*, however, That if any commercial paper or any
27 such security will mature within one year from the date of its issuance, it shall, at the time of its
28 acquisition, be rated in one of the two highest rating grades by any such nationally known agency
29 and commercial paper or other evidence of indebtedness of any private corporation or association
30 shall be purchased only upon the written recommendation from an investment advisor that has
31 over \$300 million in other funds under its management;

32 (8) Negotiable certificates of deposit issued by any bank, trust company, national banking
33 association or savings institution which mature in no more than five years and are fully
34 collateralized;

35 (9) Interest earning deposits including certificates of deposit, with any duly designated
36 state depository, which deposits are fully secured by a collaterally secured bond as provided in
37 §12-1-4 of this code: *Provided*, That a banking institution is not required to provide this collaterally
38 secured bond, or other security in lieu of bond, if the public deposits accepted are placed in
39 certificates of deposit meeting the following requirements:

40 (A) The funds are invested through a designated state depository selected by the
41 municipality;

42 (B) The selected depository arranges for the deposit of the funds in certificates of deposit
43 in one or more banks or savings and loan associations wherever located in the United States, for
44 the account of the municipality;

45 (C) The full amount of principal and accrued interest of each certificate of deposit is insured
46 by the Federal Deposit Insurance Corporation;

47 (D) The selected depository acts as custodian for the municipality with respect to such
48 certificates of deposit issued for the municipality's account; ~~and~~

49 ~~(E) At the same time that the municipality's funds are deposited and the certificates of~~
50 ~~deposit are issued, the selected depository receives an amount of deposits from customers of~~
51 ~~other financial institutions wherever located in the United States equal to or greater than the~~
52 ~~amount of the funds invested by the municipality through the selected depository~~ On the same
53 date the public moneys are redeposited by the public depository, the public depository may, in its
54 sole discretion, choose whether to receive deposits, in any amount, from other banks, savings
55 banks, or savings and loan associations.

56 (10) Mutual funds registered with the Securities and Exchange Commission which have
57 assets in excess of \$300 million; and

58 (11) Deposits with any duly designated state depository that is selected and authorized by
59 the municipality to arrange for the redeposit of the funds through a deposit placement program
60 that meets the following conditions:

61 ~~(a)~~ (b) On or after the date that the municipal funds are received the selected depository:

62 ~~(i)~~ (1) Arranges for the redeposit of the funds into deposit accounts in one or more federally
63 insured banks or savings and loan associations that are located in the United States; and

64 ~~(ii)~~ (2) serves as custodian for the municipality with respect to the funds deposited into
65 such accounts.

66 ~~(b)~~ (c) Municipal funds deposited in a selected depository in accordance with this section
67 and held at the close of business in the selected depository in excess of the amount insured by
68 the Federal Deposit Insurance Corporation shall be secured in accordance with §12-1-4 of this
69 code.

70 ~~(c)~~ (d) The full amount of the funds of the municipality redeposited by the selected
71 depository into deposit accounts in banks or savings and loan associations pursuant to this
72 subsection (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance
73 Corporation.

74 ~~(d)~~ (e) On the same date that the funds of the municipality are redeposited pursuant to

75 this subsection, the selected depository receives an amount of deposits from customers of other
76 financial institutions through the direct placement program that are equal to the amount of the
77 municipality's funds redeposited by the selected depository.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-4. Bonds to be given by depositories.

1 (a) Before allowing any money to be deposited with any eligible depository in excess of
2 the amount insured by an agency of the federal government or insured by a deposit guaranty
3 bond issued by a valid bankers surety company acceptable to the treasurer, the state Treasurer
4 shall require the depository to give a collaterally secured bond, in the amount of not less than
5 \$10,000, payable to the State of West Virginia, conditioned upon the prompt payment, whenever
6 lawfully required, of any state money, or part thereof, that may be deposited with that depository,
7 or of any accrued interest on deposits. The bond shall be a continuous bond but may be increased
8 or decreased in amount or replaced by a new bond with the approval of the state Treasurer. The
9 collateral security for the bond shall consist of bonds of the United States, or bonds or letters of
10 credit of the federal land banks, of the federal home loan banks, or bonds of the State of West
11 Virginia or of any county, district or municipality of this state, or other bonds, letters of credit, or
12 securities approved by the treasurer. All bonds so secured are here designated as collaterally
13 secured bonds. Withdrawal or substitution of any collateral pledged as security for the
14 performance of the conditions of the bond may be permitted with the approval in writing of the
15 treasurer. All depository bonds shall be recorded by the treasurer in a book kept in his or her office
16 for the purpose, and a copy of the record, certified by the treasurer, shall be prima facie evidence
17 of the execution and contents of the bond in any suit or legal proceeding. All collateral securities
18 shall be delivered to or deposited for the account of the treasurer of the State of West Virginia
19 and in the event said securities are delivered to the treasurer, he or she shall furnish a receipt

20 therefor to the owner thereof. The treasurer and his or her bondsmen shall be liable to any person
21 for any loss by reason of the embezzlement or misapplication of the securities by the treasurer or
22 any of his or her employees, and for the loss thereof due to his or her negligence or the negligence
23 of his or her employees; and the securities shall be delivered to the owner thereof when liability
24 under the bond which they are pledged to secure has terminated. The treasurer may permit the
25 deposit under proper receipt of the securities with one or more banking institutions within or
26 outside the State of West Virginia and may contract with any institution for safekeeping and
27 exchange of any collateral securities and may prescribe the rules for handling and protecting the
28 collateral securities.

29 (b) A banking institution is not required to provide a bond or security in lieu of bond if the
30 deposits accepted are placed in certificates of deposit meeting the following requirements:

31 (1) The funds are invested through a designated state depository selected by the
32 Treasurer;

33 (2) The selected depository arranges for the deposit of the funds in certificates of deposit
34 in one or more banks or savings and loan associations wherever located in the United States, for
35 the account of the state;

36 (3) The full amount of principal and accrued interest of each certificate of deposit is insured
37 by the Federal Deposit Insurance Corporation;

38 (4) The selected depository acts as custodian for the state with respect to such certificates
39 of deposit issued for the state's account; ~~and~~

40 ~~(5) At the same time that the state's funds are deposited and the certificates of deposit are~~
41 ~~issued, the selected depository receives an amount of deposits from customers of other financial~~
42 ~~institutions wherever located in the United States equal to or greater than the amount of the funds~~
43 ~~invested by the state through the selected depository~~ On the same date the public moneys are
44 redeposited by the public depository, the public depository may, in its sole discretion, choose
45 whether to receive deposits, in any amount, from other banks, savings banks, or savings and loan

46 associations.

47 (c) A banking institution is not required to provide a bond or security in lieu of bond
48 pursuant to this section if the deposits accepted are placed in a designated state depository that
49 is selected and authorized by the state to arrange for the redeposit of the funds through a deposit
50 placement program that meets the following conditions:

51 (1) On or after the date that the funds are received the selected depository: (i) Arranges
52 for the redeposit of the funds into deposit accounts in one or more federally insured banks or
53 savings and loan associations that are located in the United States; and (ii) serves as custodian
54 for the state with respect to the funds redeposited into such accounts.

55 (2) State funds deposited in a selected depository in accordance with this section and held
56 at the close of business in the selected depository in excess of the amount insured by the Federal
57 Deposit Insurance Corporation shall be secured in accordance with §7-6-2 of this code.

58 (3) The full amount of the funds of the state redeposited by the selected depository into
59 deposit accounts in banks or savings and loan associations pursuant to this section (plus accrued
60 interest, if any) shall be insured by the Federal Deposit Insurance Corporation.

61 (4) On the same date that the funds of the state are redeposited pursuant to this section,
62 the selected depository receives an amount of deposits from customers of other financial
63 institutions through the deposit placement program that are equal to the amount of the state funds
64 redeposited by the selected depository.

NOTE: The purpose of this bill is to permit banks the discretion to choose whether to receive deposits, in any amount, from other banks, savings banks, or savings and loan associations when arranging for the re-deposits of county, municipal, and state funds.

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