

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Committee Substitute**

**for**

**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; to amend and reenact §12-1-4 of said code; and to  
3 amend and reenact §18-9-6 of said code, all relating to county, municipal, state, and  
4 county Board of Education depositories; relating to the bonds of county, municipal, state,  
5 and county Board of Education depositories; and relating to the redeposit of county,  
6 municipal, state, and county Board of Education funds by state 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.

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 9. SCHOOL FINANCES.**

**§18-9-6. Transfer of moneys; appointment of treasurer; bonding of treasurer; approval of  
bank accounts; authority to invest; security for funds invested.**

1           The sheriff of each county shall remit to the board of education all moneys in his or her  
2 possession held on behalf of the county board of education, whether or not deposited in a bank  
3 or depository, unless the sheriff has been designated treasurer of the board of education as  
4 provided in this section. The transfer of funds shall be made as of the balances on hand on June  
5 30 of the year in which the board of education appoints a treasurer other than the sheriff, and  
6 shall be completed no later than August 1 of that year. The transfer shall be adjudged complete  
7 and final upon the approval of the sheriff's official settlement for the fiscal year ending on June 30  
8 of the year in which the board of education appoints a treasurer other than the sheriff, and any  
9 minor adjustment made necessary by the actually known figures shall also be made at that time.  
10 All balances in all county school funds at the end of each month after June 30 of the year in which  
11 the board of Education appoints a treasurer other than the sheriff shall be transferred by the sheriff  
12 to the county board of education not later than the tenth day of the following month.

13           On or before the first Monday in May each county board of education shall upon  
14 recommendation of the county superintendent appoint a treasurer for the board. The treasurer is  
15 the fiscal officer of the board, or an employee commonly designated as the person in charge of  
16 the financial affairs of the county board, or the county sheriff: *Provided*, That once a board of  
17 education has appointed a treasurer other than the sheriff, the sheriff may not be named treasurer  
18 of the board in a subsequent year. Upon appointment this person shall be titled and referred to  
19 as treasurer of the board of education. For the faithful performance of this duty, the treasurer shall  
20 execute a bond, to be approved by the board of education, in the penalty to be fixed by the board  
21 of education, not to exceed the amount of school funds which it is estimated the treasurer will  
22 handle within any period of two months. The premium on the bond shall be paid by the board of  
23 education.

24           The board of education may open a bank account, or accounts, as required to adequately  
25 and properly transact the business of the district in a depository, or banks, within the county. The  
26 depositories, or banks, shall provide bond to cover the maximum amount to be deposited at any

27 one time. However, the county board of education may, in lieu of such bond, accept as security  
28 for money deposited letters of credit from a federal home loan bank, securities of the United  
29 States, or of a state, county, district or municipal corporation, or federal agency securities:  
30 *Provided*, That a banking institution is not required to provide a bond or security in lieu of bond if  
31 the deposits accepted are placed in certificates of deposit meeting the following requirements: (1)  
32 The funds are invested through a designated state depository selected by the county board of  
33 education; (2) the selected depository arranges for the deposit of the funds in certificates of  
34 deposit in one or more banks or savings and loan associations wherever located in the United  
35 States, for the account of the county board of education; (3) the full amount of principal and  
36 accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance  
37 Corporation; (4) the selected depository acts as custodian for the county board of education with  
38 respect to such certificates of deposit issued for the county's account; and (5) ~~at the same time~~  
39 ~~that the county board of education's funds are deposited and the certificates of deposit are issued,~~  
40 ~~the selected depository receives an amount of deposits from customers of other financial~~  
41 ~~institutions wherever located in the United States equal to or greater than the amount of the funds~~  
42 ~~invested by the county board of education through the selected depository~~ on the same date the  
43 public moneys are redeposited by the public depository, the public depository may, in its sole  
44 discretion, choose whether to receive deposits, in any amount, from other banks, savings banks,  
45 or savings and loan associations: *Provided, however*, That a banking institution is not required to  
46 provide a bond or security in lieu of bond if the deposits accepted are placed in a designated state  
47 depository that is selected and authorized by the county board of education to arrange for the  
48 redeposit of the funds through a deposit placement program that meets the following conditions:  
49 (1) On or after the date that the county board of education funds are received the selected  
50 depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more  
51 federally insured banks or savings and loan associations that are located in the United States;  
52 and (ii) serves as custodian for the county with respect to the money redeposited into such

53 accounts. (2) County board of education funds deposited in a selected depository in accordance  
54 with this section and held at the close of business in the selected depository in excess of the  
55 amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance  
56 with the second and third sentences of this paragraph. (3) The full amount of the funds of the  
57 county board of education redeposited by the selected depository into deposit accounts in banks  
58 or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be  
59 insured by the Federal Deposit Insurance Corporation. (4) ~~On the same date that the funds of the~~  
60 ~~county board of education are redeposited pursuant to this section, the selected depository~~  
61 ~~receives an amount of deposits from customers of other financial institutions through the deposit~~  
62 ~~placement program that are equal to the amount of the county board of education funds~~  
63 ~~redeposited by the selected depository~~ On the same date the public moneys are redeposited by  
64 the public depository, the public depository may, in its sole discretion, choose whether to receive  
65 deposits, in any amount, from other banks, savings banks, or savings and loan associations.

66 One hundred ten percent of the face or par value of the securities may not be less than  
67 the sum hereinbefore specified as the amount to be named in the bond in lieu of which the  
68 securities are accepted, or the county board of education may accept the securities as partial  
69 security to the extent of their face value for the money so deposited and require bond for the  
70 remainder of the full amount hereinbefore specified, to be named in the bond, and, in the bond so  
71 required, the acceptance of securities as partial security and the extent thereof shall be set forth.  
72 The hypothecation of the securities shall be by proper legal transfer as collateral security to protect  
73 and indemnify by trust any and all loss in case of any default on the part of the banking institution  
74 in its capacity as depository as aforesaid. All such securities shall be delivered to or deposited for  
75 the account of the county board of education, and withdrawal or substitution thereof may be  
76 permitted from time to time upon approval by the county board of education by order of record,  
77 but the collateral security shall be released only by order of record of the county board of  
78 education when satisfied that full and faithful accounting and payment of all the moneys has been

79 made under the provisions hereof. If actual possession of the hypothecated securities is delivered  
80 to the county board of education, it shall make ample provision for the safekeeping thereof, and  
81 the interest thereon when paid shall be turned over to the banking institution, so long as it is not  
82 in default as aforesaid. The county board of education may permit the deposit under proper receipt  
83 of such securities with one or more banking institutions within the State of West Virginia and may  
84 contract with any such institution for safekeeping and exchange of any such hypothecated  
85 securities, and may prescribe the rules for handling and protecting the same.

86 On and after July 1, 1973, all levies and any other school moneys received by the sheriff  
87 and paid to the treasurer of the county board of education shall be deposited in these accounts,  
88 and all proper payments from such funds shall be made by the designated depository or bank  
89 upon order or draft presented for payment and signed by the duly authorized signatories of the  
90 Board of Education: *Provided*, That in determining the depository for Board of Education funds a  
91 board member who has a pecuniary interest in a bank within the county shall not participate in  
92 the determination of the depository for such funds.

93 If it is considered that sufficient funds are on hand in any account at any one time which  
94 may be more than are normally required for the payment of incurred expenses, the funds in the  
95 amount so considered available may be invested by the treasurer of the county board with the  
96 West Virginia Municipal Bond Commission, or in guaranteed certificates of deposit issued by the  
97 depository or bank, or other guaranteed investments such as treasury bills, treasury notes or  
98 certificates of deposit issued by either the United States government or a banking institution in  
99 which federal or state guarantees are applicable. Interest earned in such investments is to be  
100 credited to the fund from which the moneys were originally available.

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, state, and county Board of Education 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.