

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4801

By Delegates Criss, Barnhart, Westfall, Hott and
Espinosa

[Originating from the Committee on the Judiciary;

Reported on January 26, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §12-1-1b, and to amend and reenact §12-1-5; §12-1B-5; and §12-1B-7 of said
3 code; all relating generally to the banking authority of the State Treasurer's Office; setting
4 forth prohibited clauses in State Treasurer contracts consistent with general restrictions on
5 other state contracts; providing that the State Treasurer may implement the West Virginia
6 Security for Public Deposits Program; and requiring announcement of the West Virginia
7 Security for Public Deposits Program commencement date on the State Treasurer's
8 website.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-1b. Prohibited clauses in State Treasurer contracts.

1 (a) Notwithstanding any exemption from the requirements of §5A-3-1 et seq. of this code, a
2 contract entered into by the State Treasurer is void to the extent that it requires the State Treasurer
3 to agree to or abide by a contract clause or condition prohibited in §5A-3-62 of this code, as that
4 section applies to spending units.

5 (b) No official, employee, agent, or representative of the State Treasurer may contravene
6 this section, and no oral or written expression of consent to any term or condition declared void by
7 this section, or signature on a contract, may be considered as such. Any contract that contains a
8 term or condition declared void by this section shall otherwise be enforceable as if it did not contain
9 such term or condition. All contracts entered into by the State Treasurer, except for contracts with
10 another government, shall be governed by West Virginia law notwithstanding any term or condition
11 to the contrary.

§12-1-5. Limitation on amount on deposit; dedicated method; rules.

1 (a) The amount of state funds on deposit in any depository in excess of the amount insured
2 by an agency of the federal government shall be secured by a deposit guaranty bond issued by a
3 valid bankers' surety company or by other securities acceptable to the State Treasurer, pursuant

4 to the dedicated method ~~as defined in §12-1B-4 of this code~~, in an amount of at least 102 percent
5 of the amount on deposit. The value of the collateral shall be determined by the State Treasurer.

6 (b) The State Treasurer ~~shall~~ may propose rules for legislative approval in accordance with
7 the provisions of §29A-3-1 *et seq.* of this code and may promulgate emergency rules pursuant to
8 the provisions of §29A-3-15 of this code as are necessary to effectuate the provisions of this
9 section.

10 (c) For the purposes of this section, the term "dedicated method" means the securing of
11 public deposits without accepting the contingent liability for the losses of public deposits of other
12 designated state depositories as provided in this section.

ARTICLE 1B. WEST VIRGINIA SECURITY FOR PUBLIC DEPOSITS ACT.

§12-1B-5. West Virginia Security for Public Deposits Program established authorized.

1 The West Virginia Security for Public Deposits Program is hereby ~~established~~ authorized.
2 The requirements of this article shall become effective upon the date the West Virginia Security for
3 Public Deposits Program commences, which the State Treasurer shall announce by publishing a
4 notice on the West Virginia State Treasurer's Office website. The Treasurer shall implement and
5 administer the West Virginia Security for Public Deposits Program under the terms and conditions
6 required by this article. ~~The Public Deposits Program shall be operable on or before March 1, 2024~~

§12-1B-7. Powers and duties of the State Treasurer; rules; charges; contracts.

1 In order to implement and administer the Public Deposits Program, the State Treasurer
2 ~~shall~~ may:

3 (1) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et*
4 *seq.* of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of
5 this code as are necessary to effectuate the provisions of this article, including, but not limited to,
6 the following:

7 (A) The terms and conditions under which public deposits must be secured;

8 (B) The method for determining the pooled collateral requirements based on balance the of
9 public funds held in the designated state depository in excess of funds insured by an agency of the
10 federal government and the evaluation of the overall financial condition of the designated state
11 depository;

12 (C) The collateral requirements and collateral pledging level for each designated state
13 depository as determined to be prudent under the circumstances and based on nationally
14 recognized financial rating services information and established financial performance guidelines;

15 (D) The securities or instruments that constitute eligible collateral under this article and the
16 percentage of face value or market value of such securities or instruments that can be used to
17 secure public deposits;

18 (E) Reporting requirements for designated state depositories;

19 (F) The process for a designated state depository to withdraw from the pooled method of
20 securing public deposits and instead be governed by the procedures for securing such deposits by
21 the dedicated method or other approved method permitted in this code, consistent with the primary
22 purpose of protecting public deposits;

23 (G) The process for determining when a default or insolvency has occurred, or is likely to
24 occur, and the actions necessary for the protection, collection, compromise, or settlement of any
25 claim arising in case of default or insolvency;

26 (H) Requirements for the payment of losses by pooled or dedicated methods; and

27 (I) Any and all guidelines necessary and proper for the full and complete administration of
28 this article;

29 (2) Charge and collect any necessary administrative fees, fines, penalties, and service
30 charges in connection with the Public Deposits Program or any agreement, contract, or
31 transaction pursuant to this article;

32 (3) Execute contracts, agreements, or other instruments for goods and services necessary
33 to effectuate this article, including agreements with designated state depositories or any other
34 entity. Selection of these services is not subject to §5A-3-1 *et seq.* of this code; and

35 (4) Perform all other lawful actions necessary to effectuate the provisions of this article,
36 subject to applicable state and federal law.

NOTE: The purpose of this bill is to set forth prohibited clauses in State banking contracts and to remove the date by which the Public Deposits Program must be operable under the West Virginia Security for Deposits Act to allow discretion for program implementation.

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