



WEST VIRGINIA  
 SECRETARY OF STATE  
 KEN HECHLER  
 ADMINISTRATIVE LAW DIVISION

Do not mark in this box  
 Filing Date

JAN 9 9 10 AM '96

OFFICE OF WEST VIRGINIA  
 SECRETARY OF STATE

Form #7

Effective Date

*Feb. 16, 1996  
 disapproved*

NOTICE OF AN EMERGENCY RULE

AGENCY: Board of Investments TITLE NUMBER: 113

CITE AUTHORITY: WV Code 12-6-5 et seq

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Administration of the Consolidated Fund by the  
 WV State Board of Investments

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER  
 APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use additional sheets if necessary

*[Handwritten Signature]*  
 Signature

9.40

Board Members:

Honorable W. Gaston Caperton, III  
Governor/Chairman

Mr. John T. Poffenbarger  
Executive Secretary/Member

Honorable Larrie Bailey  
Treasurer/Member

Honorable Glen B. Gainer, III  
Auditor/Member

Mr. Carlyle Farnsworth  
Member

Ms. Marie Prezioso  
Member

Mr. William T. Tracy  
Member



State of West Virginia  
**Board of Investments**

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State Capitol  
Charleston, WV 25305  
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Staff:

H. Craig Slaughter  
Executive Director


D. Jerry Simpson  
Chief Operating Officer

Matthew E. Jones  
Chief Financial Officer

Diana Will  
Chief Investment Officer

Mark E. N. Asaad  
General Counsel

To: Honorable Ken Heckler  
Secretary of State

From: H. Craig Slaughter   
Executive Director

Date: January 6, 1996

Subject: Filing of Emergency Rules

The Legislature's Performance Evaluation and Research Division in their performance review report of the Board of Investments recommended restructuring the Enhanced Yield Pool to achieve a higher return (see attachment 1 and attachment 2, recommendation 4). The Board of Investments (Board) has also received inquiries from other State agencies about the possibility of increasing the yield on this pool.

Current limits on the pool were adopted due to liquidity concerns that have long since dissipated. The Board at their December 8, 1995 board meeting approved changes to this pool. The maturity length is extended from 3 years to 5 years and dollar weighted average-maturity was changed from 1 year to 2 years. In order to comply with the Performance Evaluation and Research Division's recommendation, we are requesting approval of these emergency rules. This should allow for an immediate increase in the earnings for this pool. Otherwise, the opportunity to increase the earnings will have to wait until the rules are considered by the 1997 Legislature.

Therefore, the only change to the current rule was section 5.2 (d). This section was changed to allow for implementing the above described change.

As required by the procedures for filing emergency rules, attached are the required forms. If you need any additional information, please call Jerry Simpson of my staff.

Large liquid balances that can be invested in longer term assets will generally earn a higher rate of return than repo rates. Generally speaking, the longer the average maturity of the portfolio, the higher the rate of return. Table 6 illustrates this using information from the BOI's quarterly reports.

The BOI has two pools within the Consolidated Operating Fund that are structured as money market funds, the Cash Liquidity Pool and the Government Money Market Pool. The guidelines for investing these pools are the same, investments are limited to purchases of securities with remaining maturities not greater than 397 days and the dollar weighted-average maturity of the securities may not exceed 90 days.

Table 6 illustrates that even within a money market structure investing with longer average maturity can result in higher yields in the long run. The Cash Liquidity Pool had an average maturity of 16 days from March 1993 to April 1995. The average total return during that time for the pool was 4.05%. Over the same period, the Government Money Market Pool had an average maturity of 52 days, and an average total return of 4.15%. The Enhanced Yield Pool is structured to have an average maturity longer than the money market structure. When the enhanced yield rates are compared with the money market pools, the result is similar. Over the period between July 1994 and April 1995, the Enhanced Yield had an average maturity of 151 days compared to 66 days for the Government Money Market and 39 days for the Cash Liquidity Pool. The average total return for the Government Money Market Pool was higher than the Cash Liquidity Pool by 12 basis points and the Enhanced Yield Pool was higher by 23 basis points.

There is a sizable amount of earnings to be gained from achieving 25 basis points more each year on investments. The PERD argues that 25 basis points is the minimum amount of lower earnings. Twenty-five basis points represent \$250,000 in earnings per \$100 million invested. Since the state invests several hundred million dollars in the Cash Liquidity Pool, and repo balances are too high for pension funds, the loss of earnings can easily add up to a few million dollars.

Furthermore, the PERD believes the earnings are lower by more than 25 basis points. Not only is it possible for the BOI to invest with a longer average maturity within the money market structure, the PERD believes that a portion of the excess liquidity could be invested in a structure that has a longer average maturity than the Enhanced Yield Pool.

### Conclusion

In conclusion, the PERD contends that the BOI has invested too much of the State's funds in cash-equivalent assets. The rate of return could be higher if the BOI's rules allowed the Consolidated Operating Fund to have an average maturity greater than the current 90 days. Current rules restrict most of the State's funds to money market rates. The amount of lost earnings to the State is likely a few million per year.

### **Recommendation 1**

Attachment 2

*The BOI should work with the Legislative Auditor's Budget and Fiscal Affairs Division to develop annual projections of daily cash flow for the General Revenue Fund for the upcoming fiscal year. Thereafter, the BOI will develop these projections on its own. These 12 month projections should then be made available to advisors every month.*

### **Recommendation 2**

*The BOI should consider giving advisors more specific guidelines that reflect the BOI's objectives for the Consolidated Operating Fund overall. The BOI should provide advisors specific information on what levels of liquidity the BOI desires, how much of a liquidity cushion is needed, and specific ranges of average maturities within the pool's structure, instead of giving only the top maturity limit. The performance measures may need to be adjusted periodically if specific guidelines preclude the possibility of the advisor meeting the performance measures.*

### **Recommendation 3**

*The BOI should consider rule changes that allow the Consolidated Operating Fund to be invested between the guidelines of a money market structure and a mutual fund structure.*

### **Recommendation 4**

*The BOI should consider restructuring the Enhanced Yield Pool to achieve a higher enhanced yield. The BOI should also consider increasing the amount within the Enhanced Yield Pool from the current level of \$25 million.*

### **Recommendation 5**

*The Legislature should consider amending WVC §5-10D-4 to require the actuary for the pension funds to provide the BOI with monthly projections of withdrawals and contributions for the fiscal year for each pension plan. In addition, the amendment should include the requirement that the projections be updated each quarter or more frequently if necessary. The actuary currently projects annual contributions and benefit payments for the pension funds.*

### **Recommendation 6**

*The Legislature should consider amending WVC §5a-2-11 to require the Department of Administration to provide the BOI with its monthly revenue projections. The Legislature should also consider requiring the Department of Administration to project daily revenue flows for the General Revenue Fund.*

WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
West Virginia State Board of Investments

Chapter 12-6  
Series I

Subject: Rules for the Administration of the Consolidated Fund by the West Virginia State Board of Investments.

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West Virginia State Board of Investments

Chapter 12-6  
Series I

Subject: Rules for the Administration of the Consolidated Fund by the West Virginia State Board of Investments.

**Section 1. General**

1.1. Scope - These rules implement the provisions of West Virginia Code §12-6-1 et seq. relating to the Consolidated Fund established by §12-6-8(b).

1.2. Authority - West Virginia Code §12-6-5 and §12-6-8.

1.3. Filing Date -

1.4. Effective Date -

1.5. Repeal of Former Rule - This legislative rule repeals and replaces West Virginia 113 CSR1 "Rules For the Administration of the Consolidated Fund by the West Virginia Board of Investments" filed May 17, 1991 and effective May 17, 1991.

1.6. Purpose - The general purpose of these rules is to aid in the implementation of the legislative findings and purpose set forth in the West Virginia Code §12-1-1, wherein the West Virginia State Board of Investments and the Treasurer are authorized to develop and maintain modern systems, consistent with sound financial practices, for the collection, disbursement, management and investment of public moneys. These rules and regulations implement such legislative intent by prescribing procedures for the administration of the Consolidated Fund by the Board and participation in the Consolidated Fund by State agencies (other than pension funds) and local governments.

## Section 2. Definitions

For purposes of these rules, unless a different meaning clearly appears from the context:

"Board" means the West Virginia State Board of Investments;

"Code" means the West Virginia Code of 1931, as amended;

"Consolidated Fund" means the investment fund managed by the Board and established pursuant to the West Virginia Code §12-6-8;

"Local Government" means and includes a county, municipality, or any agency, authority, board, commission or instrumentality of a county or municipality, police officers' pensions and relief funds, fire fighters' pension and relief funds, and regional councils created pursuant to the provisions of West Virginia Code §8-25-1 et. seq.;

"Local Government Account" means the special account for the common investment of local government funds within the Consolidated Fund established pursuant to West Virginia Code §12-6-8(b);

"Participant" means all State agencies, local governments and other entities or individuals investing moneys or assets with the Consolidated Fund;

"Securities" has the same meaning set forth in West Virginia Code §12-6-2;

"Select U. S. Government Agency Obligation" means any evidence of indebtedness issued by any of the following: the Government National Mortgage Association (GNMA), and Resolution Trust Corporation Securities (RTC);

"Treasurer" means the Treasurer of the State of West Virginia;

"U. S. Government Agency Obligation" means and includes any obligation of any United State government agency guaranteed as to the payment of both principal and interest, directly or

indirectly, by the United States of America, including but not limited to the following: the Government National Mortgage Association (GNMA); the Federal Farm Credit Bank (FFCB); Federal Land Banks (FLB); the Federal Home Loan Mortgage Corporation (FHLMC); the Federal National Mortgage Association (FNMA); Federal Home Loan Banks (FHLB); Federal Intermediate Credit Banks; Banks For Cooperatives; Tennessee Valley Authority (TVA); United States Postal Service; Farmers Home Administration (FHA); Export-Import Bank; Federal Financing Bank; Student Loan Marketing Association (SLMA); Resolution Trust Corporation Securities (RTC); and Veterans Administration (VA); and

"U. S. Government Obligations" means and includes any direct obligation of, or obligation guaranteed as to payment of both principal and interest by, the United States of America.

### **Section 3. Participation in the Consolidated Fund**

3.1. Participation by State Agencies - The Board of Investments may allow State agencies to participate in the Consolidated Fund upon written request by such State agencies. The Board of Investments is not required to execute a written or electronic request for deposit or withdrawals until the next business day. Requests for deposits or withdrawals shall state the amount which the agency wishes to make available for investment, or the amount which it wishes to withdraw, as the case may be. Such requests shall also contain such other information the Board of Investments considers necessary. The Board of Investments may require advance notice as determined by the Board for withdrawals of one million (\$1,000,000.00) or more.

### 3.2. Participation by Local Governments

(a) Local governments may commence participation in the Consolidated Fund by completing and returning to the Board of Investments an "account request form". The form of the "account request form" shall be prescribed by the Board of Investments, shall require such information as it considers necessary, and shall be made available to any local government upon request. The Board of Investments shall require each local government to submit copies of resolutions, orders or other proof of authorization or election to participate in the Consolidated Fund. Upon receipt of the account request form and other required information, the Board of Investments shall review and approve the account request form and if approved, the Board of Investments shall assign an account number to the local government within the Local Government Account of the Consolidated Fund. Local governments which require more than one account may request the establishment of additional accounts as needed, subject to the discretion of the Board of Investments.

(b) All notifications of deposit of funds by local governments into the Local Government Account, shall be made in a manner prescribed by the Board of Investments. The Board of Investments shall execute such request in a timely manner not to exceed 3 business days. All notifications of deposits shall be confirmed in writing by the local government and sent by mail on the same day the notification is made. The Board of Investments shall prescribe the forms which local governments shall use for the confirmation of such deposits by mail. All notifications of withdrawals of funds by the local governments from the Local Government Account shall be made by written or electronic request. The

Board of Investments shall prescribe the forms to be used for withdrawals. The Board of Investments shall prescribe the time period for the deposit or withdrawal of funds. The Board of Investments may require advance notice as determined by the Board for withdrawals of one million (\$1,000,000.00) or more.

(c) All deposits by local governments into the Local Government Account shall be made by means approved by the Board. All wired funds transferred by local governments shall be collected balances available for wire transfer and immediate credit at the Federal Reserve Bank. All checks accepted by the Board, shall be credited to the Local Government Account within two business days, following receipt by the Board of Investments. All funds transferred to the Board through ACH shall be credited to the Local Government Account on the day received by the Board.

(d) All withdrawals by local governments from the Local Government Account shall be made by check, Automated Clearing House, wire transfer, or any other method approved by the Board. The Board of Investments may require advance notice as determined by the Board for withdrawals of one million dollars (\$1,000,000.00) or more. Withdrawals of less than one hundred dollars (\$100.00) shall be made by check or through the Automated Clearing House.

#### **Section 4. Accounting**

4.1. Nature of Ownership - Each Participant shall own an undivided interest in the portfolio of the Consolidated Fund based on the Participant's prorata contribution of assets at any time. Ownership shall be expressed in terms of units. Each Participant, by completing and

returning an "Account Request Form" to the Board of Investments, has consented to the methods of sharing gains and losses and all other accounting methods required or adopted by the Board.

4.2. Accounting System - The Board of Investments shall implement an accounting system based on generally-accepted accounting principles.

4.3. Distribution of Earnings; Monthly Statement - The Board shall make a distribution from the pools undistributed earnings either by credit or debit to the principal account of the Participant or by means determined by the Board. The method of such distribution shall be at the Board's discretion. The Board of Investments shall furnish to each Participant a monthly statement of distributed earnings, deposits, withdrawals and changes in market value, if applicable, for each account. Participants will be periodically provided statements reflecting an accurate statement of the yield for the preceding period for the investment pool in which the Participant is investing.

## **Section 5. Investment of Consolidated Fund**

5.1. General Investment Policies, Objectives and Restrictions - All investment pools in the Consolidated Fund shall be individually subject to the policies, objectives and restrictions set forth herein.

(a) Purpose - The Board's purpose is to invest and protect the assets of the Consolidated Fund for the benefit of the citizens of the State of West Virginia.

(b) Standard of Care - All investments are to be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which people of experience, prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

(c) Permissible Investments - The Consolidated Fund shall comply with West Virginia Code §12-6-9 and these rules and regulations, with regard to permissible investments.

(d) Social Responsibility - To the extent that investments are consistent with all other standards established by the Board, selection of investments should consider the best interests of the people of the State of West Virginia.

(e) Custody - The Board shall designate and maintain custodial arrangements in its sole discretion. However, no investment advisor shall maintain custody of the securities of the Consolidated Fund.

(f) Investment Advisors - The Board may select and maintain investment advisors who shall act in accordance with the terms and conditions specified by the Board and the applicable requirements of State and Federal Law.

(g) Investment Objectives - All pools within the Consolidated Fund, except the single-purpose pools described in Subsection 5.02(e), are subject to the investment objectives listed below in descending order of priority:

(1) Preservation of Capital - To preserve the capital investment in the Consolidated Fund.

(2) Liquidity - To maintain sufficient liquidity to provide for all anticipated withdrawals or transfers and to invest in securities with sufficient marketability to provide for unexpected withdrawals.

(3) Diversification - To diversify the investment of the assets of the Consolidated Fund so as to minimize the risk of losses.

(4) Turnover - To minimize transaction costs.

(5) Stability - To maintain a high level of security in the Consolidated Fund by minimizing risk and volatility insofar as possible.

(6) Rate of Return - To achieve a rate of return consistent with the rate of return objectives set by the Board.

(h) Investment Restrictions

(1) The Consolidated Fund shall abide by the investment restrictions of West Virginia Code §12-6-10 and as further set forth by the Board.

(2) Not more than 20% of the portfolio of the Consolidated Fund may be invested in any single industry sector. (The utility sector shall be subdivided for the purpose of this restriction

between telephone, electric, gas distribution, and similar utility industry segments.)

(3) The Consolidated Fund shall maintain a reasonable balance between the various classes of fixed income securities, without over concentration.

(4) The Consolidated Fund shall abide by the quality restrictions of West Virginia Code §12-6-9.

(5) Investment in financial futures contracts, options and other similar investments is prohibited.

(6) Minimum Amount of Investment - The minimum amount for investment in the Consolidated Fund is One Hundred Dollars (\$100.00). There is no minimum time for which deposits will be retained.

5.2. Investment Pools - The Consolidated Fund is composed of various investment pools. It is the intent of the Board that there be separate portfolio guidelines for the administration of each investment pool in addition to the policies, objectives and restrictions set forth in Subsection 5.01. The Board of Investments shall administer each investment pool in the Consolidated Fund in accordance with the rules and regulations and such guidelines as may be further prescribed by the Board.

(a) Cash Liquidity Pool - This investment pool is composed of the operating funds of the State, funds held in trust by State agencies, and funds invested by local governments. This pool is limited to securities with remaining maturities of not greater than three hundred ninety-seven (397) days and the dollar weighted-average-maturity of the securities in the portfolio may not exceed ninety (90) days. Also, the pool must meet all requirements outlined in Tables I and II of this Rule.

(b) Government Money Market Pool - This investment pool is composed of Participants whose funds may only be invested in U. S. Government Obligations, select U. S. Government Agency Obligations or repurchase agreements. This pool is limited to securities with remaining maturities of three hundred ninety-seven (397) days or less and the dollar weighted average maturity of the securities in the portfolio may not exceed ninety (90) days. Also, the pool must meet all requirements outlined in Table A of this Rule.

(c) Municipal Bond Restricted Pool - This investment pool is for the Municipal Bond Commission whose funds shall only be invested in U. S. Government Obligations, select U. S. Government Agency Obligations or repurchase agreements. This pool is limited to

securities with remaining maturities of 5.0 years or less and the dollar weighted average maturity of the securities may not exceed 2.0 years. The pool must meet all requirements outlined in Table A of this Rule.

(d) Enhanced Yield Pool - This investment pool is composed of the operating funds of the State which the Board's staff have determined are not immediately needed to fund the State's liquidity requirements. This pool is limited to securities with remaining maturities of ~~not greater than (3.0) years and the (5.0) five years or less.~~ The dollar weighted-average-maturity of the securities in the portfolio may not exceed (1.0)(2.0) one two years. The pool must meet all requirements outlined in Tables I and II of this Rule.

(e) Single Purpose Pools - These investment pools are designed to meet the needs of individual State agencies. The Board of Investments shall invest only in the type of securities identified by the State agency controlling the pool, as recommended by the State agency and as necessary to meet the needs of each individual pool as to type of security and length of maturity, provided that such investments consist solely of those permitted by these rules.

(f) Other Investment Pools - The Board is further authorized to establish additional investment pools as the need may arise, provided that within eighteen months after their establishment these rules and regulations are amended to reflect their existence and appropriate investment guidelines are established for each pool. This provision does not apply to any new single purpose pool established pursuant to Subsection 5.02(c) of this rule.

(g) Instructions for Use of Tables - The percentage in the "Minimum" column are the minimum percentages which the Board must maintain in each type of investment instrument. For example, the 15% figure in Table I, Line 1, means that the Board of Investments must at all times keep at least 15% of the investment pool invested in U. S. Government Obligations. If the minimum percentage is "0", as in Table I, Line 2, the Board of Investments is not required to invest any moneys of the pool in securities of that type of investment.

The percentages in the "Maximum" column are the maximum percentages of the pool which may be maintained in each type of investment instrument. For example, in Table I, Line 1, the 100% figure in the "Maximum" column means that the Board of Investments may keep the entire pool invested in U. S. Government obligations.

If the maximum percentage is "10", as in Table I, Line 4, this means that the Board of Investments is permitted to invest in instruments of that type up to a maximum of 10% of the pool.

In Table I, the "Code Reference" column refers to the section of the West Virginia Code which authorized the kind of instrument described under the "Instrument" column.

TABLE I  
GUIDELINES FOR DIVERSIFICATION  
ACCORDING TO KIND OF INVESTMENT INSTRUMENT

<u>Instrument</u>	<u>Code Reference</u>	<u>Minimum</u>	<u>Maximum</u>
1. U. S. Government Obligation	§12-6-9(a)	0%	100%
2. U. S. Agency Obligation	§12-6-9(b)	0%	100%
3. Corporate bonds, notes debentures, commercial paper, and other evi- dence of indebtedness	§12-6-9(g) §12-6-10(1)	0%	75%
4. Commercial paper and other corporate ob- ligations maturing in less than one year	§12-6-9(g) §12-6-10(2)	0%	20%
5. Obligations of any single private corporation	§12-6-10(3)	0%	3%
6. Fully collateralized WV certificates of deposit maturing in less than one year	§12-6-9(h)	0%	30%
7. Repurchase agreements	§12-6-5(9)	0%	100%
8. Reverse repurchase agreement	§12-6-5(10)	0%	15%

TABLE II  
GUIDELINES FOR DIVERSIFICATION  
ACCORDING TO QUALITY OF CORPORATE DEBT INSTRUMENTS  
AUTHORIZED BY TABLE I

<u>Instrument</u>	<u>Minimum</u>	<u>Maximum</u>
1. Corporate bonds and notes rated "AAA" or equivalent	0%	100%
2. Corporate bonds and notes rated "AA" or equivalent	0%	50%
3. Corporate bonds and notes rated "A" or equivalent	0%	30%
4. Commercial paper rated in highest grade ("P-1" or equivalent)	0%	20%

Any Corporate debt instrument that is downgraded following purchase may be liquidated at the Board of Investments discretion if such downgrading puts the debt instruments out of compliance with Table II.

TABLE A  
GUIDELINES FOR DIVERSIFICATION  
ACCORDING TO KIND OF INVESTMENT INSTRUMENT

<u>Instrument</u>	<u>Code Reference</u>	<u>Minimum</u>	<u>Maximum</u>
1. U. S. Government Obligation	§12-6-9(a)	15%	100%
2. Select U. S. Government Agency Obligation	§12-6-9(b)	0%	100%
3. Repurchase agreements	§12-6-5(9)	0%	75%
4. Reverse repurchase agreements	§12-6-5(10)	0%	15%

## **Section 6. Miscellaneous**

6.1. Payment of Expenses from Earnings - The Board of Investments shall deduct expenses incurred in the administration of the Consolidated Fund from the gross earnings of the fund prior to distribution of the earnings. Such fees shall be established by the Board on a pro rata basis.

6.2. Reserve for Losses - The Board is authorized to establish, by appropriate accounting method, a reserve for loan losses. No interest shall be included in earnings calculations on any loans that are delinquent by sixty days or more, or for which the Board's staff determine collection to be doubtful.

6.3. Board Reports - The Board of Investments staff shall provide Board members monthly financial statements prepared in accordance with Generally Accepted Accounting Principles and financial schedules reflecting all purchases, sales and trades for each investment pool.

6.4. Authorized Financial Institutions and Brokers - The Board of Investments may not do business with any financial institution or brokerage firm that has not been approved by the Board. At the first Board meeting of each fiscal year, the Board's staff shall provide for the Board's review and approval a complete list of all financial institutions and brokerage firms for which the Board's staff request to transact business.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
West Virginia State Board of Investments

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MINUTES  
WEST VIRGINIA STATE BOARD OF INVESTMENTS MEETING  
DECEMBER 8, 1995

The West Virginia State Board of Investments met Friday, December 8, 1995, at 12:00 noon in the House Government Organization Committee conference room, Capitol Complex; Charleston, West Virginia. Treasurer Larrie Bailey, Auditor Glen B. Gainer III, Executive Secretary John Poffenbarger, William T. Tracy, Marie Prezioso, Carlyle Farnsworth, members of the Board, and Executive Director Craig Slaughter were present. Dana Eddy represented Governor W. Gaston Caperton III. The following observers were present:

Jerry Simpson, State Board of Investments  
Diana Will, State Board of Investments  
Matt Jones, State Board of Investments  
Kara Brown, State Board of Investments  
Brenda Jones, State Board of Investments  
James Sims, Consolidated Public Retirement Board  
Ron Jones, Hewitt Associates  
Keith Bruch, Hewitt Associates  
Melinda Ashworth, Workers' Compensation  
Mark Allison, Ernst & Young  
Dave McClure, Ernst & Young  
Tim Butler, Legislative Auditor's Office  
Mike Sizemore, Legislative Auditor's Office  
Don Adams, Public Employees Retirement System Association  
Alyson Patient  
Susan Connor  
Senator Robert Plymale

The agenda for the meeting consisted of the following:

- (1) Approval of minutes of the September 15, 1995 Board meeting;
- (2) Hear report on the performance of the Consolidated Pension Fund by Hewitt & Associates;
- (3) Hear report on the performance of the Consolidated Fund by staff;
- (4) Consider potential legislation affecting the Board;
- (5) Consider modification of investment guidelines for Enhanced Yield Pool;
- (6) Consider investment guidelines/asset allocation for the new state police retirement pool;
- (7) Consider the addition of Bear Stearns to the approved dealers list;
- (8) Consider resolution requested by Paine Webber;
- (9) Consider, if necessary, modifications to State Street's custodial banking contract;
- (10) Hear report on the purchase card program and consider issuance of RFP for services;
- (11) Consider issuance of a RFP to acquire the services of a consultant for the development of a disaster recovery plan;

- (12) Consider adoption of policy for sale of real estate;
- (13) To consider and act upon any other business which might properly come before a meeting of the West Virginia State Board of Investments.

Mr. Eddy, as acting Chairman, called the meeting to order at 12:00 noon.

Item No. 1. Approval of minutes of the September 15, 1995 Board meeting.

Auditor Gainer moved that the minutes of the September 15, 1995, Board meeting, a copy of which is made a part of these minutes as Attachment No. 1, be approved. Mr. Farnsworth seconded the motion which was passed unanimously.

Item No. 2. Hear report on the performance of the Consolidated Pension Fund by Hewitt & Associates.

Ron Jones reported on the Consolidated Pension Fund referring to the *Performance Review and Investment Manager Evaluation, Third Quarter 1995* report, a copy of which is made a part of these minutes as Attachment No. 2. Mr. Jones reported that third quarter of 1995 saw a continuation of the trends of the earlier part of the year which were positive, for both stocks and bonds. During the third quarter the stock market continued upward with the S&P 500 producing an 8% return. It has been a successful year for making money in stocks. The bond market has also done quite well by its own standards. The third quarter was average. The market value of the Consolidated Pension Fund has grown steadily through 1995, partly by virtue of some slightly positive net cash flow, but primarily because of capital appreciation. With regard to fund structure, Mr. Jones reported that in September 1994, there were three investment advisors, each responsible for either two or three plans, Duff & Phelps, Kemper and Investment Advisers with Investment Advisers managing the majority of the pension fund because they were responsible for Public Employees. In September 1995, the fund was allocated to divide the majority of the fund among four advisors, Investment Advisers, Lincoln Capital Management, Western Asset Management Company and Fischer, Francis, Trees & Watts with a State Loan Pool having 1.1%. This asset allocation allows all of the plans to share in investment advice of the several advisors rather than being subject to the advice of only one advisor. Treasurer Bailey stated his concern over not being able to point out individual advisor performances. Mr. Jones stated that there should be no concern over this because Hewitt & Associates continues to monitor each advisor's performance. Mr. Jones then reported that the fund has done well compared to other fixed income funds in the three year term. In more recent periods, calendar year 1995, returns have not been as good primarily because Investment Advisers, Inc. has not done as well. Mr. Jones then reported that the pension fund compared to other pension funds, which most are invested in a combination of equities and fixed income, has not done well. In the 7 3/4 years the fund ranked in the 4th percentile (9.87% return). This means that 96% of other

funds did better. In the most recent times, last nine months and last quarter, the fund ranked in the 2nd percentile (1.62% return). Mr. Jones stated that this chart shows the opportunity loss that comes from the fund not being able to invest in equities, although the fund has done well with what it is able to invest in. Keith Bruch then reported on each advisor.

With regard to the three new investment advisors, the first quarter should not be taken too seriously. They began July 1, 1995 and had to take on a new portfolio and had to restructure that portfolio. The transition was generally very smooth.

Investment Advisers, Inc. (IAI) - IAI has been out of sync with the fixed income market for approximately the last 18 months to two years. IAI came into 1995 with a defensive positioning, their duration was shorter than the market and for the first six months of the year IAI had a very cautious outlook with respect to the duration of the portfolio. IAI has eventually become neutral on the bond market and are cautious going forward in to the market.

Lincoln Capital Management (Lincoln) - Lincoln is responsible for approximately 25% of the portfolio. Lincoln is somewhat similar to IAI, also cautious in the market, but made a move to be defensive. Lincoln is shorter than the market from a duration standpoint.

Western Asset Management Company (WAMCO) - Similar to Lincoln, WAMCO is responsible for 25% of the portfolio. WAMCO is one of the few fixed income managers who has had a great year to date in fixed income. WAMCO is positioned longer and have longer term bonds in the portfolio. WAMCO makes a good complement to IAI because they are heavily weighted in corporate bonds, which have also helped them year to date.

Fischer Frances Trees & Watts, Inc. (FFTW) - FFTW advises on the short-term pool, about \$110 million or 3% of total assets. FFTW's performance for the quarter was 1.29% which trailed the benchmark.

Mr. Eddy asked Mr. Jones if he could put a dollar amount on the opportunity loss if the Board had been able to invest in equities. Mr. Jones estimated that had the fund been invested 20% in equities and 80% in fixed income, the fund would be worth roughly \$50 million more, for the third quarter only. For the year to date, approximately \$150 million more.

Item No. 3. Hear report on the performance of the Consolidated Fund by staff.

Diana Will reported on the Consolidated Fund referring to the *West Virginia State Board of Investments Consolidated Fund Returns, Third Quarter 1995* report, a copy of which is made a part of these minutes as Attachment No. 3. Ms. Will reported that the fund has continued to grow over the last two years, primarily because of the Cash Liquidity Fund, which is where the State participates and where special revenue money goes in. In September 1995, the Enhanced Yield Fund went up to \$102 million.

At the beginning of July 1995, \$75 million was transferred from the Cash Liquidity Fund to the Enhanced Yield Fund because the growth in the State's participation in the Cash Liquidity Fund provided sufficient liquidity to set more aside in higher yielding securities. With regard to the Cash Liquidity Fund, Bank One has continued to outperform Huntington Bank. Ms. Will reported that Brinson Partners, advisor to the Government Money Market Fund, has outperformed the index and the Cash Liquidity Fund, which is less restrictive than the Government Money Market Fund. With regard to the total returns of the Enhanced Yield Fund, Bank One beat the index in the third quarter 1995 for the first time. For the Municipal Bond Fund, Brinson Partners continues to beat the index.

Item No. 4. Consider potential legislation affecting the Board.

Mr. Eddy stated that the Governor's Office is contemplating legislation with respect to the pension funds. He stated that after the Supreme Court ruled that it is unconstitutional for the State to invest in equities, the Governor's Office has been working with primarily two people, Delegate Richard Browning and Senator Bob Plymale to find alternatives. It was decided that the one clear alternative was to have a constitutional amendment. However, the court's reasoning, indicated that one reason the pension fund, not State money but money of the beneficiaries of those funds, could not be invested in equities is that the State served as the trustee and had some interest which invoked the constitutional prohibition. Therefore, a proposal is going to be introduced to the Legislature by the Governor where by statute an independent board will be set up to operate as trustee for the pension funds. Mr. Eddy stated that there is no opposition by the Governor to a constitutional amendment, but the reality is that it may take a while to get a constitutional amendment on the ballot and the State can not afford to wait with regard to the pension funds. A copy of a memorandum regarding this matter is made a part of these minutes as Attachment No. 4.

Item No. 5. Consider modification of investment guidelines for Enhanced Yield Pool.

Craig Slaughter addressed this issue by stating that the Board of Investments has had an Enhanced Yield Pool since July 1994. Given the liquidity that the State has, it was recognized that the Board needed to go out on the yield curve and pick up additional income. This has been successful as of the year ended June 30, 1995, in which the Enhanced Yield Pool has performed 77 basis points better. The Board has had some interests from other State agencies to go out further on the yield curve with the Enhanced Yield Pool to gain a little bit more income with money they felt that they didn't need in the near future, the only case in which you'd consider doing this. The Department of Natural Resources are especially interested in this issue with their lifetime hunting license moneys. They would like to gain a rate of return that will allow them to finance a lot of their in house functions off of the interest they receive. The staff suggests that the guidelines for the Enhanced Yield Pool be extended to a maximum maturity of

five years and a two year average. The current guidelines are a three year maximum and a one year average. The five and two year change would be in line with what the Board has for the Municipal Bond Restricted Fund presently. Mr. Slaughter stated that there is a memorandum with a resolution addressed to the Board and that staff recommends the resolution be passed. Treasurer Bailey moved that the resolution be passed. Mr. Tracy seconded the motion which was passed unanimously. A copy of the memorandum is made a part of these minutes as Attachment No. 5.

Item No. 6. Consider investment guidelines/asset allocation for the new state police retirement pool.

Mr. Slaughter stated that in 1994, a bill was passed which created a new West Virginia State Police retirement system in addition to the Public Safety system. To date, the money that goes into that system has been deposited with the Public Safety system and the Board manages it as a whole. The Board has been asked by the Consolidated Public Retirement Board to create a separate pool for the new system. Consequently, we need to set up asset allocation guidelines for that pool. A memorandum and other documents regarding this issue are made a part of these minutes as Attachment No. 6. Treasurer Bailey moved the adoption of the asset allocation proposed for the new State Police Retirement System. Ms. Prezioso seconded the motion which was passed unanimously.

Item No. 7. Consider the addition of Bear Stearns to the approved dealers list.

Treasurer Bailey moved that Bear Stearns be placed back on the approved dealers list. Mr. Poffenbarger seconded the motion which was passed unanimously. A memorandum regarding this issue is made a part of these minutes as Attachment No. 7.

Item No. 8. Consider resolution requested by Paine Webber.

Mr. Slaughter stated that Paine Webber recently bought out Kidder, Peabody, a firm with which the Board has done significant repo business with and Paine Webber has expressed some concern over their potential liability in future transactions. Therefore, they have asked that the Board approve a resolution, a copy of the memorandum and resolution is made a part of these minutes as Attachment No. 8. After some discussion, it was the decision of the Board not to approve this resolution.

Item No. 9. Consider, if necessary, modifications to State Street's custodial banking contract.

Mr. Slaughter stated that the staff has not been completely happy with its relationship with State Street Bank & Trust, but thought that the problems could be resolved in time. Mr. Slaughter stated that the staff is interested in exploring the possibility of doing some of the work in house. The staff would like the authority to go ahead and pursue the purchase of an in-house system. At the same time it would like authority to develop an RFP in case there is not an in-house system to suit the needs of the staff and go ahead and issue the RFP if needed. Treasurer Bailey asked the staff to report back to the Board with regard to the in-house option if it is not chosen and the master custody bank is. Treasurer Bailey moved

that the staff have the authority to investigate the option of an in-house system and to issue an RFP that considers both a pure custody relationship and a custody/security lending relationship and that the staff report back to the Board the reasons that the in-house system may not have been chosen. Mr. Poffenbarger seconded the motion which was passed unanimously. A memorandum regarding this issue is made a part of these minutes as Attachment No. 9.

Item No. 10. Hear report on the purchase card program and consider issuance of RFP for services.

Jerry Simpson addressed this issue referring to his memorandum to Craig Slaughter, a copy of which is made a part of these minutes as Attachment No. 10. Mr. Simpson stated that he, the Auditor's Office and the Purchasing Division recommend that the State go ahead with the purchase card program. To do this, the Board needs to select a bank to handle the purchase cards themselves. The steering committee (Jerry Simpson, Paul Mollohan and Evan Williams) requested that the Board authorize them to authorize an RFP to be issued for the purchase card program, evaluate the bids and award the contract itself. Auditor Gainer moved that the steering committee proceed with the issuance of an RFP and also to evaluate the bids and award the contract. Mr. Farnsworth seconded the motion which was passed with Treasurer Bailey voting "No".

Item No. 11. Consider issuance of a RFP to acquire the services of a consultant for the development of a disaster recovery plan.

Mr. Slaughter addressed this issue by referring to a memorandum from Jerry Simpson to Craig Slaughter, a copy of which is made a part of these minutes as Attachment No. 11. Mr. Slaughter stated that the staff has been unable to find an Automated Information System (AIS) Director and the staff is requesting that the Board authorize a search for a consultant to assist in the disaster recovery plan until an AIS Director is found. It was suggested that we may want to offer more money to obtain a qualified person. Ms. Prezioso moved that the Board authorizes the staff to proceed with hiring a consultant to assist the AIS Division in formalizing a disaster recovery plan and that the contract may be terminated when an AIS Director is found. Mr. Tracy seconded the motion which was passed unanimously.

Item No. 12. Consider adoption of policy for sale of real estate.

Mr. Slaughter addressed this issue referring to a memorandum from him to the Board, a copy of which is made a part of these minutes as Attachment No. 12. Staff is asking the Board if it would accept negotiated sales with regard to the foreclosed properties owned by the Board. After some discussion the Board decided to hold off on this issue until next Board meeting and have either Treasurer Bailey or someone from West Virginia Housing Development Fund report to the Board.

Item No. 13. To consider and act upon any other business which might properly come before a meeting of the West Virginia State Board of Investments.

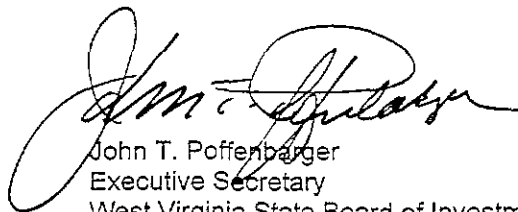
Mr. Tracy reported to the Board regarding the Audit Committee which met October 24, 1995, with Ernst & Young and the Legislative Auditors. Both Ernst & Young and the Legislative Auditors feel that the Board is cooperating with them and feel that Kara Brown, the Internal Auditor, is doing a good job.

Don Adams, representing Public Employees Retirement System Association, requested that he address the Board. There being no objections he addressed the Board. Mr. Adams stated that PERSA is disappointed with the Board's actions with regard to diluting Investment Advisers, Inc.'s portfolio management. Mr. Adams also stated that PERSA would like to see if the Board would consider requesting from Hewitt Associates a report called Managed versus Unmanaged, meaning the portfolio as it is being advised against the portfolio that is left alone. Treasurer Bailey moved that staff direct Hewitt Associates to include in their quarterly report a section called Management versus Unmanaged. Auditor Gainer seconded the motion. Mr. Jones stated that the Salomon Broad Investment Grade Index constitutes the Unmanaged alternative. Mr. Jones suggested that Hewitt Associates already does this. He stated that this is the only way that they know to get at the Unmanaged alternative. Treasurer Bailey then withdrew his motion.

Treasurer Bailey stated that at the last meeting of the Board that he received the impression that some of the non-investment activities overseen by the Board would be better served in the Treasurer's Office and nothing between the last meeting and the present meeting has taken place. Treasurer Bailey then moved that the Board go on record to support a Constitutional amendment to have equities in our portfolio. This motion died from lack of a second.

Mr. Poffenbarger then moved to adjourn the meeting. Mr. Tracy seconded the motion which was passed unanimously.

There being no further business, the meeting was adjourned at 1:35 p.m.



John T. Poffenbarger  
Executive Secretary  
West Virginia State Board of Investments

Board Members:

Honorable W. Gaston Caperton, III  
Governor/Chairman

Mr. John T. Poffenbarger  
Executive Secretary/Member

Honorable Larrie Bailey  
Treasurer/Member

Honorable Glen B. Gainer, III  
Auditor/Member

Mr. Carlyle Farnsworth  
Member

Ms. Marie Prezioso  
Member

Mr. William T. Tracy  
Member



State of West Virginia

## Board of Investments

Suite E-122

State Capitol

Charleston, WV 25305

Telephone: (304) 558-5000

Telefax: (304) 344-9284

Staff:

H. Craig Slaughter  
Executive Director

D. Jerry Simpson  
Chief Operating Officer

Matthew E. Jones  
Chief Financial Officer

Diana Will  
Chief Investment Officer

Mark E. N. Asaad  
General Counsel

TO: Board Members  
FROM: Craig Slaughter  
DATE: November 30, 1995  
SUBJECT: Enhanced Yield Pool Maturity Guideline Changes

Over the past couple years, several parties expressed concern that the State was not taking advantage of longer term investment opportunities and the higher yields associated with these opportunities. In partial response, the Board approved the establishment of the Enhanced Yield Pool (EYP) which began operating on July 1, 1994. For the year ended June 30, 1995, the EYP total return exceeded the Cash Liquidity Pool (CLP) by approximately seventy-seven basis points.

To date participation in the EYP is limited to the States participation as part of the total cash management. Staff has recently received requests from agencies to invest moneys in a longer term pool than the CLP. However there is concern that the current guidelines are too conservative and do not allow for their longer term investment goals. These concerns were also raised by the West Virginia Legislature Performance Evaluation and Research Division in their performance review report of the Board of Investments. The staff agrees with these concerns and recommends extending the EYP's maturity guideline to five years maximum with a two year average. The current guidelines are three years maximum with a one year average. The new maturity guidelines would be the same as the current guidelines for the Municipal Bond Restricted Fund. This change should allow for increased returns without a substantial increase in market risk. Note that we have only recently reached a level of liquidity to make this possible.

### RESOLUTION:

The Board hereby authorizes staff to amend the operating rules and regulations for the Enhanced Yield Pool to increase the maturity guidelines to read "This pool is limited to securities with remaining maturity of 5.0 years or less. The dollar weighted average maturity of the securities in the pool may not exceed 2.0 years."

DATE: December 20, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV State Board of Investments

EMERGENCY RULE TITLE: Administration of the Consolidated Fund by  
the WV State Board of Investments

1. Date of Filing December 20, 1995
2. Statutory authority for promulgating emergency rule:  
WV Code 12-6-5 et seq
3. Date of filing of proposed legislative rule: December 20, 1995
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?  
The emergency rule amends the current rules
5. Has the same or similar emergency rule previously been filed and expired?  
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.  
N/A

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See attachments

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8. The Legislature Performance Evaluation and Research Division in their performance review report of the Board of Investments recommended restructuring the Enhanced Yield Pool to achieve a higher return (see attachment 1 and attachment 2, recommendation 4). The Board of Investments (Board) has also received inquiries from other State agencies about the possibility of increasing the yield on this pool.

Current limits on the pool were adopted due to liquidity concerns that have long since dissipated. The Board at their December 8, 1995 board meeting approved changes to this pool. The maturity length is extended from 3 years to 5 years and dollar weighted average-maturity was changed from 1 year to 2 years. In order to comply with the Legislature Performance Evaluation and Research Division's recommendation, we are requesting approval of these emergency rules. This should allow for an immediate increase in the earnings for this pool upon the approval of the emergency rules. Otherwise, the opportunity to increase the earnings will have to wait until the rules are considered by the 1997 Legislature.

## Effect of Excess Liquidity

Large liquid balances that can be invested in longer term assets will generally earn a higher rate of return than repo rates. Generally speaking, the longer the average maturity of the portfolio, the higher the rate of return. Table 6 illustrates this using information from the BOI's quarterly reports.

The BOI has two pools within the Consolidated Operating Fund that are structured as money market funds, the Cash Liquidity Pool and the Government Money Market Pool. The guidelines for investing these pools are the same, investments are limited to purchases of securities with remaining maturities not greater than 397 days and the dollar weighted-average maturity of the securities may not exceed 90 days.

Table 6 illustrates that even within a money market structure investing with longer average maturity can result in higher yields in the long run. The Cash Liquidity Pool had an average maturity of 16 days from March 1993 to April 1995. The average total return during that time for the pool was 4.05%. Over the same period, the Government Money Market Pool had an average maturity of 52 days, and an average total return of 4.15%. The Enhanced Yield Pool is structured to have an average maturity longer than the money market structure. When the enhanced yield rates are compared with the money market pools, the result is similar. Over the period between July 1994 and April 1995, the Enhanced Yield had an average maturity of 151 days compared to 66 days for the Government Money Market and 39 days for the Cash Liquidity Pool. The average total return for the Government Money Market Pool was higher than the Cash Liquidity Pool by 12 basis points and the Enhanced Yield Pool was higher by 23 basis points.

There is a sizable amount of earnings to be gained from achieving 25 basis points more each year on investments. The PERD argues that 25 basis points is the minimum amount of lower earnings. Twenty-five basis points represent \$250,000 in earnings per \$100 million invested. Since the state invests several hundred million dollars in the Cash Liquidity Pool, and repo balances are too high for pension funds, the loss of earnings can easily add up to a few million dollars.

Furthermore, the PERD believes the earnings are lower by more than 25 basis points. Not only is it possible for the BOI to invest with a longer average maturity within the money market structure, the PERD believes that a portion of the excess liquidity could be invested in a structure that has a longer average maturity than the Enhanced Yield Pool.

## Conclusion

In conclusion, the PERD contends that the BOI has invested too much of the State's funds in cash-equivalent assets. The rate of return could be higher if the BOI's rules allowed the Consolidated Operating Fund to have an average maturity greater than the current 90 days. Current rules restrict most of the State's funds to money market rates. The amount of lost earnings to the State is likely a few million per year.

### **Recommendation 1**

*The BOI should work with the Legislative Auditor's Budget and Fiscal Affairs Division to develop annual projections of daily cash flow for the General Revenue Fund for the upcoming fiscal year. Thereafter, the BOI will develop these projections on its own. These 12 month projections should then be made available to advisors every month.*

### **Recommendation 2**

*The BOI should consider giving advisors more specific guidelines that reflect the BOI's objectives for the Consolidated Operating Fund overall. The BOI should provide advisors specific information on what levels of liquidity the BOI desires, how much of a liquidity cushion is needed, and specific ranges of average maturities within the pool's structure, instead of giving only the top maturity limit. The performance measures may need to be adjusted periodically if specific guidelines preclude the possibility of the advisor meeting the performance measures.*

### **Recommendation 3**

*The BOI should consider rule changes that allow the Consolidated Operating Fund to be invested between the guidelines of a money market structure and a mutual fund structure.*

### **Recommendation 4**

*The BOI should consider restructuring the Enhanced Yield Pool to achieve a higher enhanced yield. The BOI should also consider increasing the amount within the Enhanced Yield Pool from the current level of \$25 million.*

### **Recommendation 5**

*The Legislature should consider amending WVC §5-10D-4 to require the actuary for the pension funds to provide the BOI with monthly projections of withdrawals and contributions for the fiscal year for each pension plan. In addition, the amendment should include the requirement that the projections be updated each quarter or more frequently if necessary. The actuary currently projects annual contributions and benefit payments for the pension funds.*

### **Recommendation 6**

*The Legislature should consider amending WVC §5a-2-11 to require the Department of Administration to provide the BOI with its monthly revenue projections. The Legislature should also consider requiring the Department of Administration to project daily revenue flows for the General Revenue Fund.*

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Administration of the Consolidated Fund by the WV State Board of Investments  
 Type of Rule: X Legislative      Interpretive      Procedural  
 Agency WV State Board of Investments  
 Address State Capitol Building - Room E-122  
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

These proposed rules are an amendment to the original rules effective July 1, 1994. It is not anticipated that these amended rules will require the expenditure of any additional funds.

3. Objectives of these rules:

These amended rules affect only the Enhanced Yield Pool. The maturity length is extended from 3 years to 5 years and the dollar weighted average-maturity was changed from 1 year to 2 years.

Rule Title: Administration of the Consolidated Fund by the WV State Board of Investments

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

These proposed rules will allow those State agencies participating in this pool to earn a higher rate of return on their investments.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

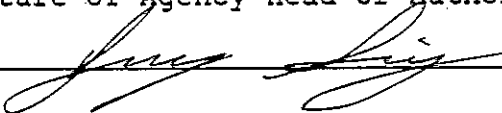
Currently no political subdivisions are investing in this pool.

C. Economic Impact on Citizens/Public at Large.

See 4A

Date: 1/6/96

Signature of Agency Head or Authorized Representative





KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

STEPHEN N. REED  
Deputy Secretary of State

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Supervisor, Corporations

## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

(Plus all the volunteer  
help we can get)

February 16, 1996

THIS DATE \_\_\_\_\_  
ADMINISTRATIVE LAW DIVISION

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Board of Investments

RULE: Amendments, Series 1, Administration of the Consolidated Fund by the WV State Board of Investments

DATE FILED AS AN EMERGENCY RULE: January 9, 1996

DECISION NO. 3-96

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be **disapproved**. A copy of the complete decision with required findings is available from this office.

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Feb. 16, 1996  
ADMINISTRATIVE LAW DIVISION

  
\_\_\_\_\_  
KEN HECHLER  
Secretary of State



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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(Plus all the volunteer  
help we can get)

## EMERGENCY RULE DECISION (ERD 3-95)

AGENCY: Board of Investments  
RULE: Amendments, Series 1, Administration of the Consolidated Fund by the WV State Board of Investments  
FILED AS AN EMERGENCY RULE: January 9, 1996

- par. 1 The Board of Investments (Board) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a(b))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Board filed this emergency rule with supporting documents with the Secretary of State January 9, 1996 and with the LRMRC January 22, 1996.

par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §12-6-5 reads in part:

*The Board may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes. The board may:*

*5. Promulgate and enforce bylaws and rules for the management and conduct of its affairs;*

par. 9 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(f) defines "emergency" as follows:

*(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Board are as follows:

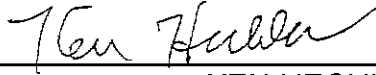
The Legislature's Performance Evaluation & Research Division in their performance review report of the Board of Investments recommended restructuring the Enhanced Yield Pool to achieve a higher return. The Board of Investments (Board) has also received inquiries from other State agencies about the possibility of increasing the yield on this pool.

Current limits on the pool were adopted due to liquidity concerns that have long since dissipated. The Board at their December 8, 1995 board meeting approved changes to this pool. The maturity length is extended from 3 years to 5 years and dollar weighted average-maturity was changed from 1 year to 2 years. In order to comply with the Performance Evaluation and Research Division's recommendation, we are requesting approval of these emergency rules. This should allow for an immediate increase in the earnings for this pool. Otherwise, the opportunity to increase the earnings will have to wait until the rules are considered by the 1997 Legislature.

Therefore, the only change to the current rule was section 5.2(d). This section was changed to allow for implementing the described changes.

par. 13 It is the determination of the Secretary of State that the Board failed to prove an emergency exists as defined in §29A-3-15(f) and therefore **disapproves** this as an emergency.

par. 14 This decision shall be cited as Emergency Rule Decision 3-96 or ERD 3-96 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Board of Investments, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Feb. 16, 1996  
ADMINISTRATIVE LAW DIVISION