

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 508

An Act to amend and reenact §§ 2.1-327, 2.1-328, 2.1-328.9, 23-38.80, 26-40, 26-40.01 and 51.1-803 of the Code of Virginia, relating to investment of public funds.

[H 1192]

Approved April 1, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-327, 2.1-328, 2.1-328.9, 23-38.80, 26-40, 26-40.01 and 51.1-803 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-327. Legal investments for public sinking funds.

The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any sinking funds belonging to them or within their control in the following securities:

1. Obligations of the Commonwealth. Bonds, notes and other evidences of indebtedness of the Commonwealth, and securities unconditionally guaranteed as to the payment of principal and interest by the Commonwealth.

2. Obligations of the United States, etc. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof. The evidences of indebtedness enumerated by this subdivision may be held directly, or in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of ~~1949~~ 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness, *or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.*

3. Obligations of Virginia counties, cities, etc. Bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body of the Commonwealth upon which there is no default; provided, that such bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body are either direct legal obligations of, or those unconditionally guaranteed as to the payment of principal and interest by the county, city, town, district, authority or other public body in question; and revenue bonds issued by agencies or authorities of the Commonwealth or its political subdivisions upon which there is no default.

4. Obligations of International Bank for Reconstruction and Development, Asian Development Bank and African Development Bank. Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, bonds and other obligations issued, guaranteed or assumed by the Asian Development Bank and bonds and other obligations issued, guaranteed or assumed by the African Development Bank.

5. Saving accounts or time deposits. Savings accounts or time deposits in any bank or savings and loan association within this Commonwealth provided such bank or savings and loan association is approved for the deposit of other funds of the Commonwealth or other political subdivision thereof.

§ 2.1-328. Legal investments for other public funds.

A. The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds, in the following:

1. Obligations of the Commonwealth. Stocks, bonds, notes, and other evidences of indebtedness of the Commonwealth of Virginia, and those unconditionally guaranteed as to the payment of principal and interest by the Commonwealth of Virginia.

2. Obligations of the United States, etc. Stocks, bonds, treasury notes and other evidences of indebtedness of the United States, including the guaranteed portion of any loan guaranteed by the Small Business Administration, an agency of the United States government, and those unconditionally guaranteed as to the payment of principal and interest by the United States; bonds of the District of Columbia; bonds and notes of the Federal National Mortgage Association and the Federal Home Loan Banks; bonds, debentures or other similar obligations of federal land banks, federal intermediate credit banks, or banks of cooperatives, issued pursuant to acts of Congress; and obligations issued by the United States Postal Service when the principal and interest thereon is guaranteed by the government of the United States. The evidences of indebtedness enumerated by this paragraph may be held directly *or in the form of repurchase agreements collateralized by such debt securities* or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or

investment trust is limited to such evidences of indebtedness *or repurchase agreements collateralized by such securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.*

3. Obligations of other states. Stocks, bonds, notes and other evidences of indebtedness of any state of the United States upon which there is no default and upon which there has been no default for more than ninety days; provided, that within the twenty fiscal years next preceding the making of such investment, such state has not been in default for more than ninety days in the payment of any part of principal or interest of any debt authorized by the legislature of such state to be contracted.

4. Obligations of Virginia counties, cities, etc. Stocks, bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body in the Commonwealth of Virginia upon which there is no default; provided, that if the principal and interest be payable from revenues or tolls and the project has not been completed, or if completed, has not established an operating record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, the standards of judgment and care required in § 26-45.1, without reference to this section, shall apply.

In any case in which an authority, having an established record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, issues additional evidences of indebtedness for the purposes of acquiring or constructing additional facilities of the same general character that it is then operating, such additional evidences of indebtedness shall be governed fully by the provisions of this section without limitation.

5. Obligations of cities, counties, etc., of other states. Legally authorized stocks, bonds, notes and other evidences of indebtedness of any city, county, town or district situated in any one of the states of the United States upon which there is no default and upon which there has been no default for more than ninety days; provided, that (i) within the twenty fiscal years next preceding the making of such investment, such city, county, town or district has not been in default for more than ninety days in the payment of any part of principal or interest of any stock, bond, note or other evidence of indebtedness issued by it; (ii) such city, county, town or district shall have been in continuous existence for at least twenty years; (iii) such city, county, town or district has a population, as shown by the federal census next preceding the making of such investment, of not less than 25,000 inhabitants; (iv) the stocks, bonds, notes or other evidences of indebtedness in which such investment is made are the direct legal obligations of the city, county, town or district issuing the same; (v) the city, county, town or district has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount; and (vi) the net indebtedness of such city, county, town or district (including the issue in which such investment is made), after deducting the amount of its bonds issued for self-sustaining public utilities, does not exceed ten percent of the value of the taxable property in such city, county, town or district, to be ascertained by the valuation of such property therein for the assessment of taxes next preceding the making of such investment.

6. Obligations of International Bank, Asian Development Bank and African Development Bank. Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, by the Asian Development Bank or by the African Development Bank.

This section shall not apply to retirement funds and deferred compensation plans to be invested pursuant to §§ 51.1-124.30 through 51.1-124.35 or § 51.1-601.

B. Investments made prior to July 1, 1991, pursuant to § 51.1-601 are hereby ratified and deemed valid to the extent that such investments were made in conformity with the standards set forth in Chapter 6 of Title 51.1.

§ 2.1-328.9. Investment of certain public moneys in certain mutual funds.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds which are governed by the provisions of § 2.1-327, in one or more open-end investment funds, provided that the funds are registered under the Securities Act (§ 13.1-501 et seq.) of the Commonwealth of Virginia or the Federal Investment Co. Act of 1940, and that the ~~investment of investments~~ *by such funds by political subdivisions is* are restricted to investments otherwise permitted by law *for political subdivisions* as set forth in this chapter, *or investments in other such funds whose portfolios are so restricted.*

§ 23-38.80. Standard of care; investment and administration of Fund.

A. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of the Fund, the Board shall act as trustee and shall exercise the judgment of care under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but to the permanent disposition of funds, considering the probable income as well as the probable safety of their capital. If the annual accounting and audit required by § 23-38.85 reveal that there are insufficient funds to ensure the actuarial soundness of the Fund, the Board shall be authorized to adjust the terms of subsequent prepaid tuition contracts or arrange refunds for current purchasers to ensure actuarial soundness.

B. The assets of the Fund shall be preserved, invested, and expended solely pursuant to and for the purposes of this chapter and shall not be loaned or otherwise transferred or used by the Commonwealth for any other purpose. Within the standard prescribed in subsection A of this section, the Board is authorized to acquire and retain every kind of property and every kind of investment, specifically including but not limited to (i) debentures and other corporate obligations of foreign or domestic corporations; (ii) common or preferred stocks traded on foreign or domestic stock exchanges, limited to sixty percent of total trust fund investments based on cost; (iii) not less than all of the stock of a corporation organized by the Board under the laws of the Commonwealth for the purposes of acquiring and retaining real property that the Board is authorized under this chapter to acquire and retain; and (iv) securities of any open-end or closed-end management type investment company or investment trust registered under the federal Investment Company Act of 1940, as amended, *including such investment companies or investment trusts which, in turn, invest in the securities of such investment companies or investment trusts*, which persons of prudence, discretion, and intelligence acquire or retain for their own account. Within the limitations of the foregoing standard, the Board may retain property properly acquired, without time limitation and without regard to its suitability for original purchase. This section shall not be construed to prohibit the investment of the Fund, by purchase or otherwise, in bonds, notes, or other obligations of the Commonwealth or its agencies and instrumentalities.

C. The selection of services related to the management, purchase, or sale of authorized investments, including but not limited to actuarial services, shall be governed by the foregoing standard and shall not be subject to the provisions of the Virginia Public Procurement Act (§ 11-35 et seq.).

§ 26-40. In what securities fiduciaries may invest.

For purposes of §§ 36-55.44 and 62.1-221 only, the following investments shall be considered lawful investments and shall be conclusively presumed to have been prudent:

(1) Obligations of the Commonwealth. Stocks, bonds, notes, and other evidences of indebtedness of the Commonwealth of Virginia, and those unconditionally guaranteed as to the payment of principal and interest by the Commonwealth of Virginia.

(2) Obligations of the United States, etc. Stocks, bonds, treasury notes and other evidences of indebtedness of the United States, including the guaranteed portion of any loan guaranteed by the Small Business Administration, an agency of the United States government, and those unconditionally guaranteed as to the payment of principal and interest by the United States; and bonds of the District of Columbia, and bonds and notes of the Federal National Mortgage Association and the Federal Home Loan Banks, and bonds, debentures or other similar obligations of federal land banks, federal intermediate credit banks, or banks of cooperatives, issued pursuant to acts of Congress, and obligations issued by the United States Postal Service when the principal and interest thereon is guaranteed by the government of the United States. The evidences of indebtedness enumerated by this paragraph may be held directly *or in the form of repurchase agreements collateralized by such debt securities* or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness *or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted*.

(3) Obligations of other states. Stocks, bonds, notes and other evidences of indebtedness of any state of the United States upon which there is no default and upon which there has been no default for more than ninety days; provided, that within the twenty fiscal years next preceding the making of such investment, such state has not been in default for more than ninety days in the payment of any part of principal or interest of any debt authorized by the legislature of such state to be contracted.

(4) Obligations of Virginia counties, cities, etc. Stocks, bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body in the Commonwealth of Virginia upon which there is no default; provided, that if the principal and interest be payable from revenues or tolls and the project has not been completed, or if completed, has not established an operating record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, the standards of judgment and care required in § 26-45.1, without reference to this section, shall apply.

In any case in which an authority, having an established record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, issues additional evidences of indebtedness for the purposes of acquiring or constructing additional facilities of the same general character that it is then operating, such additional evidences of indebtedness shall be governed fully by the provisions of this section without limitation.

(5) Obligations of cities, counties, etc., of other states. Legally authorized stocks, bonds, notes and other evidences of indebtedness of any city, county, town or district situated in any one of the states of the United States upon which there is no default and upon which there has been no default for more than ninety days; provided, that (a) within the twenty fiscal years next preceding the making of such investment, such city, county, town or district has not been in default for more than ninety days in the payment of any part of principal or interest of any stock, bond, note or other evidence of indebtedness

issued by it; (b) such city, county, town or district shall have been in continuous existence for at least twenty years; (c) such city, county, town or district has a population, as shown by the federal census next preceding the making of such investment, of not less than 25,000 inhabitants; (d) the stocks, bonds, notes or other evidences of indebtedness in which such investment is made are the direct legal obligations of the city, county, town or district issuing the same; (e) the city, county, town or district has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount; and (f) the net indebtedness of such city, county, town or district (including the issue in which such investment is made), after deducting the amount of its bonds issued for self-sustaining public utilities, does not exceed ten percent of the value of the taxable property in such city, county, town or district, to be ascertained by the valuation of such property therein for the assessment of taxes next preceding the making of such investment.

(5a) Obligations subject to repurchase. Investments set forth in the first five paragraphs of this statute may also be made subject to the obligation or right of the seller to repurchase these on a specific date.

(6) Bonds secured on real estate. Bonds and negotiable notes directly secured by a first lien on improved real estate or farm property in the Commonwealth of Virginia, or in any state contiguous to the Commonwealth of Virginia within a fifty-mile area from the borders of the Commonwealth of Virginia, not to exceed eighty percent of the fair market value of such real estate, including any improvements thereon at the time of making such investment, as ascertained by an appraisal thereof made by two reputable persons who are not interested in whether or not such investment is made.

(7) Bonds secured on city property in Fifth Federal Reserve District. Bonds and negotiable notes directly secured by a first lien on improved real estate situated in any incorporated city in any of the states of the United States which lie wholly or in part within the Fifth Federal Reserve District of the United States as constituted on June 18, 1928, pursuant to the act of Congress of December 23, 1913, known as the Federal Reserve Act, as amended, not to exceed sixty percent of the fair market value of such real estate, with the improvements thereon, at the time of making such investment, as ascertained by an appraisal thereof made by two reputable persons who are not interested in whether or not such investment is made; provided, that such city has a population, as shown by the federal census next preceding the making of such investments, of not less than 5,000 inhabitants.

(8) Bonds of Virginia educational institutions. Bonds of any of the educational institutions of the Commonwealth of Virginia, which have been or may be authorized to be issued by the General Assembly of the Commonwealth of Virginia.

(9) Securities of the R. F. & P. Stocks, bonds and other securities of the Richmond, Fredericksburg and Potomac Railroad Company, including bonds or other securities guaranteed by the Richmond, Fredericksburg and Potomac Railroad Company.

(10) Obligations of railroads. Bonds, notes and other evidences of indebtedness, including equipment trust obligations, which are direct legal obligations of or which have been unconditionally assumed or guaranteed as to the payment of principal and interest by, any railroad corporation operating within the United States which meets the following conditions and requirements:

(a) The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have not been less than ten million dollars;

(b) The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned an average of at least two times annually during the seven fiscal years preceding the making of the investment and at least 1 1/2 times during the fiscal year immediately preceding the making of the investment (the term "total fixed charges" as used in this paragraph shall be deemed to refer to the term used in the accounting reports of common carriers as prescribed by the regulations of the Interstate Commerce Commission); and

(c) The aggregate of the average market prices of the total amounts of each of the individual securities of such corporation junior to its bonded debt and outstanding at the time of the making of such investment shall be equal to at least two-thirds of the total fixed charges, as defined in paragraph (b) of clause (10) of this section, for such railroad corporation for the fiscal year next preceding the making of such investment capitalized at an interest rate of five percent per annum. Such average market price of any one of such individual securities shall be determined by the average of the highest quotation and the lowest quotation of the individual security for a period immediately preceding the making of such investment, which period shall be the full preceding calendar year plus the then expired portion of the calendar year in which such investment is made; provided, that if more than six months of the calendar year in which such investment is made shall have expired, then such period shall be only the then expired portion of the calendar year in which such investment is made; and provided further, that if such individual security shall not have been outstanding during the full extent of such period, such period shall be deemed to be the length of time such individual security shall have been outstanding.

(11) Obligations of leased railroads. Stocks, bonds, notes, other evidences of indebtedness and any other securities of any railroad corporation operating within the United States the railroad lines of which

have been leased by a railroad corporation, either alone or jointly with other railroad corporations, whose bonds, notes and other evidences of indebtedness shall, at the time of the making of such investment, qualify as lawful investments for fiduciaries under the terms of clause (10) of this section; provided, that the terms of such lease shall provide for the payment by such lessee railroad corporation individually, irrespective of the liability of other joint lessee railroad corporations, if any, in this respect, of an annual rental of an amount sufficient to defray the total operating expenses and maintenance charges of the lessor railroad corporation plus its total fixed charges, plus, in the event of the purchase of such a stock as aforesaid, a fixed dividend upon any issue of such stock in which such investment is made; and provided, that, if such investment so purchased shall consist of an obligation of definite maturity, such lease shall be one which shall, according to its terms, provide for the payment of the obligation at maturity or extend for a period of not less than twenty years beyond the maturity of such obligations so purchased, or if such investment so purchased shall be a stock or other form of investment having no definite date of maturity, such lease shall be one which shall, according to its terms, extend for a period of at least fifty years beyond the date of the making of such investment.

(12) Equipment trust obligations. Equipment trust obligations issued under the "Philadelphia Plan" in connection with the purchase for use on railroads of new standard gauge rolling stock; provided that the owner, purchaser, or lessee of such equipment or one or more of such owners, purchasers, or lessees shall be a railroad corporation whose bonds, notes and other evidences of indebtedness shall, at the time of the making of such investment, qualify as lawful investments for fiduciaries under the terms of clause (10) of this section; and provided that all of such owners, purchasers, or lessees shall be both jointly and severally liable under the terms of such contract of purchase or lease, or both, for the fulfillment thereof.

(13) Preferred stock of railroads. Any preference stock of any railroad corporation operating within the United States; provided such stock and such railroad corporation meet the following conditions and requirements:

(a) Such stock shall be preferred as to dividends, such dividends shall be cumulative and such stock shall be preferred as to assets in the event of liquidation or dissolution;

(b) The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than ten million dollars;

(c) The total fixed charges, as defined in paragraph (b) of clause (10) of this section, of such corporation, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned an average of at least $2\frac{1}{2}$ times annually for the seven fiscal years preceding the making of such investment and at least two times for the fiscal year immediately preceding the making of such investment; and

(d) The aggregate of the average market prices of the total amount of each of the individual securities of such corporation, junior to such preference stock and outstanding at the time of the making of such investment, shall be at least equal to the par value of the total issue of the preference stock in question plus the total par value of all other issues of its preference stock having either the same rank as, or a senior rank to, the issue of such preference stock plus total fixed charges, as defined in paragraph (b) of clause (10) of this section, for such railroad corporation for the fiscal year next preceding the making of such investment capitalized at an interest rate of five percent annually. Such average market price of any one of such individual securities shall be determined in the same manner as prescribed in paragraph (c) of clause (10) of this section.

(14) Obligations of public utilities. Bonds, notes and other evidences of indebtedness of any public utility operating company operating within the United States; provided such company meets the following conditions and requirements:

(a) The gross operating revenue of such public utility operating company for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than five million dollars;

(b) The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned, after deducting operating expenses, depreciation and taxes, other than income taxes, an average of at least $1\frac{3}{4}$ times annually during the seven fiscal years preceding the making of the investment and at least $1\frac{1}{2}$ times during the fiscal year immediately preceding the making of the investment;

(c) In the fiscal year next preceding the making of such investment the ratio of the total par value of the bonded debt of such public utility operating company including the total bonded indebtedness of all its subsidiary companies, whether assumed by the public utility operating company in question or not, to its gross operating revenue shall not be greater than four to one; and

(d) Such public utility operating company shall be subject to permanent regulation by a state commission or other duly authorized and recognized regulatory body.

The term "public utility operating company" as used in this clause (14) shall mean a public utility or public service corporation (i) of whose total income available for fixed charges for the fiscal year next preceding the making of such investment at least fifty-five percent thereof shall have been derived from direct payments by customers for service rendered them, (ii) of whose total operating revenue for the fiscal year next preceding the making of such investment at least sixty percent thereof shall have been derived from the sale of electric power, gas, water, or telephone service and not more than ten percent thereof shall have been derived from traction operations, and (iii) whose gas properties are all within the limits of one state, if more than twenty percent of its total operating revenues are derived from gas.

(15) Preferred stock of public utilities. Any preference stock of any public utility operating company operating within the United States; provided such stock and such company meet the following conditions and requirements:

(a) Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;

(b) The gross operating revenue of such public utility operating company for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than five million dollars;

(c) The total fixed charges of such public utility operating company, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned, after deducting operating expenses, depreciation and taxes, including income taxes, an average of at least two times annually for the seven fiscal years preceding the making of such investment and at least two times for the fiscal year immediately preceding the making of such investment;

(d) In the fiscal year next preceding the making of such investment, the ratio of the sum of the total par value of the bonded debt of such public utility operating company, the total par value of the issue of such preference stock, and the total par value of all other issues of its preference stock having the same or senior rank to its gross operating revenue shall not be greater than four to one; and

(e) Such public utility operating company shall be subject to permanent regulation by a state commission or other duly authorized and recognized regulatory body.

For the purposes of this clause (15) of this section, the term "public utility operating company" shall be construed in the same manner as defined in clause (14) of this section.

(16) Obligations of the following telephone companies. Bonds, notes and other evidences of indebtedness of American Telephone and Telegraph, Bell Atlantic, Bell South, Southwestern Bell, Pacific Telesis, Nynex, American Information Technologies, or U.S. West; and bonds, notes and other evidences of indebtedness unconditionally assumed or guaranteed as to the payment of principal and interest by any such company; provided, that the total fixed charges, as reported for the fiscal year next preceding the making of the investment, of such company and all of its subsidiary corporations on a consolidated basis shall have been earned, after deducting operating expenses, depreciation and taxes, other than income taxes, an average of at least 1 3/4 times annually during the seven fiscal years preceding the making of the investment and at least 1 1/2 times during the fiscal year immediately preceding the making of the investment.

(17) Obligations of municipally owned utilities. The stocks, bonds, notes and other evidences of indebtedness of any electric, gas or water department of any state, county, city, town or district whose obligations would qualify as legal for purchase under clause (3), (4) or (5) of this section, the interest and principal of which are payable solely out of the revenues from the operations of the facility for which the obligations were issued; provided, that the department issuing such obligations meet the requirements applying to public utility operating companies as set out in paragraphs (a), (b) and (c) of clause (14) of this section.

(18) Obligations of industrial corporations. Bonds, notes and other evidences of indebtedness of any industrial corporation incorporated under the laws of the United States or of any state thereof; provided such corporation meets the following conditions and requirements:

(a) The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than ten million dollars;

(b) The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned, after deducting operating expenses, depreciation and taxes, other than income taxes, and depletion in the case of companies commonly considered as depleting their natural resources in the course of business, an average of at least three times annually during the seven fiscal years preceding the making of the investment and at least 2 1/2 times during the fiscal year immediately preceding the making of the investment;

(c) The net working capital of such industrial corporation, as shown by its last published fiscal

year-end statement prior to the making of such investment, or in the case of a new issue, as shown by the financial statement of such corporation giving effect to the issuance of any new security, shall be at least equal to the total par value of its bonded debt as shown by such statement; and

(d) The aggregate of the average market prices of the total amounts of each of the individual securities of such industrial corporation, junior to its bonded debt and outstanding at the time of the making of such investment, shall be at least equal to the total par value of the bonded debt of such industrial corporation at the time of the making of such investment, such average market price of any one of such individual securities being determined in the same manner as prescribed in paragraph (c) of clause (10) of this section.

(19) Preferred stock of industrial corporations. Any preference stock of any industrial corporation incorporated under the laws of the United States or of any state thereof; provided such stock and such industrial corporation meet the following conditions and requirements:

(a) Such stock shall be preferred as to dividends, such dividends shall be cumulative and such stock shall be preferred as to assets in the event of liquidation or dissolution;

(b) The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than ten million dollars;

(c) The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned, after deducting operating expenses, depreciation and taxes, including income taxes, and depletion in the case of companies commonly considered as depleting their natural resources in the course of business, an average of at least four times annually for the seven fiscal years preceding the making of such investment and at least three times for the fiscal year immediately preceding the making of such investment;

(d) The net working capital of such industrial corporation, as shown by its last published fiscal year-end statement prior to the making of such investment, or, in the case of a new issue, as shown by the financial statement of such corporation giving effect to the issuance of any new security, shall be at least equal to the total par value of its bonded debt plus the total par value of the issue of such preference stock plus the total par value of all other issues of its preference stock having the same or senior rank; and

(e) The aggregate of the lowest market prices of the total amounts of each of the individual securities of such industrial corporation junior to such preference stock and outstanding at the time of the making of such investment shall be at least 2 1/2 times the par value of the total issue of such preference stock plus the total par value of all other issues of its preference stock having the same or senior rank plus the par value of the total bonded debt of such industrial corporation. Such lowest market price of any one of such individual securities shall be determined by the lowest single quotation of the individual security for a period immediately preceding the making of such investment, which period shall be the full preceding calendar year plus the then expired portion of the calendar year in which such investment is made; and provided, that if such individual security shall not have been outstanding during the full extent of such period, such period shall be deemed to be the length of time such individual security shall have been outstanding.

(20) Obligations of finance corporations. Bonds, notes and other evidences of indebtedness of any finance corporation incorporated under the laws of the United States or of any state thereof; provided such corporation meets the following conditions and requirements:

(a) The gross operating income of such corporation for the fiscal year preceding the making of such investment or the average of the gross operating income for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than five million dollars;

(b) The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned, after deducting operating expenses, depreciation and taxes, other than income taxes, an average of at least 2 1/2 times annually during the seven fiscal years preceding the making of the investment and at least two times during the fiscal year immediately preceding the making of the investment;

(c) The aggregate indebtedness of such finance corporation as shown by its last fiscal year-end statement, or, in the case of a new issue, as shown by the financial statement giving effect to the issuance of any new securities, shall be no greater than three times the aggregate net worth, as represented by preferred and common stocks and surplus of such corporation; and

(d) The aggregate of the average market prices of the total amounts of each of the individual securities of such finance corporation, junior to its bonded debt and outstanding at the time of the making of such investment, shall be at least equal to one-third of the sum of the par value of the bonded debt plus all other indebtedness of such finance corporation as shown by the last published fiscal

year-end statement, such average market price of any one of such individual securities being determined in the same manner as prescribed in paragraph (c) of clause (10) of this section.

(21) Preferred stock of finance corporations. Any preference stock of any finance corporation, incorporated under the laws of the United States or of any state thereof; provided, such stock and such corporation meet the following conditions and requirements:

(a) Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;

(b) The gross operating income of such corporation for the fiscal year preceding the making of such investment or the average of the gross operating income for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than five million dollars;

(c) The total fixed charges of such finance corporation, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned, after deducting operating expenses, depreciation and taxes, including income taxes, an average of at least 3 1/2 times annually for the seven fiscal years preceding the making of such investment and at least three times for the fiscal year immediately preceding the making of such investment;

(d) The aggregate indebtedness and par value of the purchased stock, both the issue in question and any issues equal or senior thereto, of such finance corporation as shown by its last published fiscal year-end statement, or in the case of a new issue as shown by the financial statement giving effect to the issuance of any new securities, shall be no greater than three times the aggregate par value of the junior securities and surplus of such corporation; and

(e) The aggregate of the lowest market prices of the total amounts of each of the individual securities of such finance corporation junior to such preference stock and outstanding at the time of the making of such investment shall be at least equal to one-third of the sum of the par value of such preference stock plus the total par value of all other issues of preference stock having the same or senior rank plus the par value of the total bonded debt plus all other indebtedness of such finance corporation as shown by the last published fiscal year-end statement, such lowest market price of any one of such individual securities being determined in the same manner as prescribed in paragraph (e) of clause (19) of this section.

(22) Federal housing loans. First mortgage real estate loans insured by the Federal Housing Administrator, under Title II of the National Housing Act.

(23) Certificates of deposit and savings accounts. Certificates of deposit of, and savings accounts in, any bank, banking institution or trust company, whose deposits are insured by the Federal Deposit Insurance Corporation at the prevailing rate of interest on such certificates or savings accounts; provided, however, no such fiduciary shall invest in such certificates of, or deposits in, any one bank, banking institution or trust company an amount from any one fund in his or its care which shall be in excess of such amount as shall be fully insured as a deposit in such bank, banking institution or trust company by the Federal Deposit Insurance Corporation. A corporate fiduciary shall not, however, be prohibited by the terms of this clause (23) of this section from depositing in its own banking department, in the form of demand deposits, savings accounts, time deposits or certificates of deposit, funds in any amount awaiting investments or distribution, provided that it shall have complied with the provisions of §§ 6.1-23 and 6.1-21, with reference to the securing of such deposits.

(24) Obligations of International Bank, Asian Development Bank and African Development Bank. Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, by the Asian Development Bank or by the African Development Bank.

(25) Deposits in savings institutions. Certificates of deposit of, and savings accounts in, any state or federal savings institution or savings bank lawfully authorized to do business in this Commonwealth whose accounts are insured by the Federal Deposit Insurance Corporation or other federal insurance agency; however, no such fiduciary shall invest in such shares of any one such association an amount from any one fund in his or its care which shall be in excess of such amount as shall be fully insured as an account in such association by the Federal Deposit Insurance Corporation or other federal insurance agency.

(26) Certificates evidencing ownership of undivided interests in pools of mortgages. Certificates evidencing ownership of undivided interests in pools of bonds or negotiable notes directly secured by first lien deeds of trust or mortgages on real property located in the Commonwealth of Virginia improved by single-family residential housing units or multi-family dwelling units; provided that (i) such certificates are rated AA or better by a nationally recognized independent rating agency; (ii) the loans evidenced by such bonds or negotiable notes do not exceed eighty percent of the fair market value, as determined by an independent appraisal thereof, of the real property and the improvements thereon securing such loans; and (iii) such bonds or negotiable notes are assigned to a corporate trustee for the benefit of the holders of such certificates.

(27) Shares and share certificates in any credit union lawfully authorized to do business in this Commonwealth whose accounts are insured by the National Credit Union Share Insurance Fund or the Virginia Credit Union Share Insurance Corporation; provided no such fiduciary shall invest in such shares an amount from any one fund in his or its care which shall be in excess of such amount as shall be fully insured as an account in such credit union by the National Credit Union Share Insurance Fund or the Virginia Credit Union Share Insurance Corporation.

§ 26-40.01. In what securities fiduciaries may invest; definitions.

A. As used in this section:

"Fiduciary" shall be defined as in § 8.01-2 and shall also include any attorney in fact or agent acting for a principal under a written power of attorney.

"National rating service" shall mean Standard & Poor's Corporation, Moody's Investors Service, Inc., Duff and Phelps, Inc., Fitch Investors Corporation and any successor to the rating business of any of them.

B. Notwithstanding any other provision of law designating as legal investments for fiduciaries the bonds, notes, obligations or other evidences of indebtedness issued by a governmental entity or political subdivision of the Commonwealth, including but not limited to agencies, authorities, commissions, districts, boards, or local governments, and except as specifically provided in § 26-40, fiduciaries, whether individual or corporate, shall be conclusively presumed to have been prudent in investing the funds held by them in a fiduciary capacity in only the following securities:

1. Obligations of the Commonwealth, its agencies and political subdivisions. The following obligations:

a. Bonds, notes and other evidences of indebtedness of the Commonwealth, and securities unconditionally guaranteed as to the payment of principal and interest by the Commonwealth;

b. Revenue bonds, revenue notes or other evidences of revenue indebtedness issued by agencies or authorities of the Commonwealth upon which there is no default; and

c. Bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body in the Commonwealth upon which there is no default provided that such bonds, notes and other evidences of indebtedness are (i) direct legal obligations of the public body, for the payment of which the public body has pledged its full faith and credit and unlimited taxing power, or (ii) unconditionally guaranteed as to the payment of principal and interest by the public body.

In every case referred to in subsection B 1, such bonds, notes or other evidences of indebtedness shall be rated in one of the two highest rating categories of at least one national rating service and not rated in a category lower than the two highest rating categories of any national rating service. Determination of an obligation's rating in one of the two highest rating categories shall be made without regard to any refinement or gradation of such rating category by numerical or other modifier. In addition, the remaining maturity of such bonds, notes or other evidences of indebtedness shall not be greater than five years.

2. Obligations of the United States. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States with a remaining maturity not greater than five years, except in the case of savings bonds, which may have a longer maturity. The obligations enumerated in this subdivision may be held directly *or in the form of repurchase agreements collateralized by such obligations* or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such obligations *or repurchase agreements collateralized by such obligations, or securities of other such investment companies or investment trusts whose portfolios are so restricted*.

3. Savings accounts, time deposits or certificates of deposit. Savings accounts, time deposits or certificates of deposit in any bank, savings bank, trust company, savings and loan association or credit union authorized to do business as such in this Commonwealth, but only to the extent that such accounts, deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or any successor federal agency or by the National Credit Union Share Insurance Fund or any successor to it.

C. Notwithstanding the provisions of this section, investments listed in § 26-40 as in effect prior to July 1, 1992, which continue to be held on July 1, 1992, shall be subject to § 26-45.1, and any reference to the Virginia "legal list" or to § 26-40 or any predecessor statute contained in a will, trust, or other instrument that was irrevocable on June 30, 1992, shall be construed to refer to such section as in effect on June 30, 1992, or at such earlier time as may be specified in the controlling document, absent an expression of intent to the contrary contained in such document.

D. The permissible investments specified in subsection B are not exclusive and shall not be construed to limit a fiduciary's investments as permitted pursuant to § 26-45.1.

§ 51.1-803. Investments of retirement systems.

If the governing body of any county, city, or town establishes a retirement system pursuant to the provisions of this article, any funds that may be allocated, segregated, or otherwise designated for the retirement system, which are on hand at any time and are not necessary for immediate payment of pensions or benefits, shall be invested in the following:

1. Obligations of the Commonwealth. Stocks, bonds, notes, and other evidences of indebtedness of the Commonwealth of Virginia, and those unconditionally guaranteed as to the payment of principal and interest by the Commonwealth of Virginia.

2. Obligations of the United States, etc. Stocks, bonds, treasury notes and other evidences of indebtedness of the United States, including the guaranteed portion of any loan guaranteed by the Small Business Administration, an agency of the United States government, and those unconditionally guaranteed as to the payment of principal and interest by the United States; and bonds of the District of Columbia, and bonds and notes of the Federal National Mortgage Association and the Federal Home Loan Banks, and bonds, debentures or other similar obligations of federal land banks, federal intermediate credit banks, or banks of cooperatives, issued pursuant to acts of Congress, and obligations issued by the United States Postal Service when the principal and interest thereon are guaranteed by the government of the United States. The evidences of indebtedness enumerated by this paragraph may be held directly *or in the form of repurchase agreements collateralized by such debt securities* or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness *or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.*

3. Obligations of other states. Stocks, bonds, notes and other evidences of indebtedness of any state of the United States upon which there is no default and upon which there has been no default for more than ninety days; provided that within the twenty fiscal years next preceding the making of such investment, such state has not been in default for more than ninety days in the payment of any part of principal or interest of any debt authorized by the legislature of such state to be contracted.

4. Obligations of Virginia counties, cities, etc. Stocks, bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body in the Commonwealth of Virginia upon which there is no default; provided, that if the principal and interest be payable from revenues or tolls and the project has not been completed, or if completed, has not established an operating record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, the standards of judgment and care required in § 26-45.1, without reference to this section, shall apply.

In any case in which an authority, having an established record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, issues additional evidences of indebtedness for the purposes of acquiring or constructing additional facilities of the same general character that it is then operating, such additional evidences of indebtedness shall be governed fully by the provisions of this section without limitation.

5. Obligations of cities, counties, etc., of other states. Legally authorized stocks, bonds, notes and other evidences of indebtedness of any city, county, town or district situated in any one of the states of the United States upon which there is no default and upon which there has been no default for more than ninety days; provided that (i) within the twenty fiscal years next preceding the making of such investment, such city, county, town or district has not been in default for more than ninety days in the payment of any part of principal or interest of any stock, bond, note or other evidence of indebtedness issued by it; (ii) such city, county, town or district shall have been in continuous existence for at least twenty years; (iii) such city, county, town or district has a population, as shown by the federal census next preceding the making of such investment, of not less than 25,000 inhabitants; (iv) the stocks, bonds, notes or other evidences of indebtedness in which such investment is made are the direct legal obligations of the city, county, town or district issuing the same; (v) the city, county, town or district has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount; and (vi) the net indebtedness of such city, county, town or district (including the issue in which such investment is made), after deducting the amount of its bonds issued for self-sustaining public utilities, does not exceed ten percent of the value of the taxable property in such city, county, town or district, to be ascertained by the valuation of such property therein for the assessment of taxes next preceding the making of such investment.

6. Obligations of International Bank, Asian Development Bank and African Development Bank. Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, by the Asian Development Bank or by the African Development Bank.

7. Other investments made in conformity with the standards and requirements set forth in § 51.1-124.32.