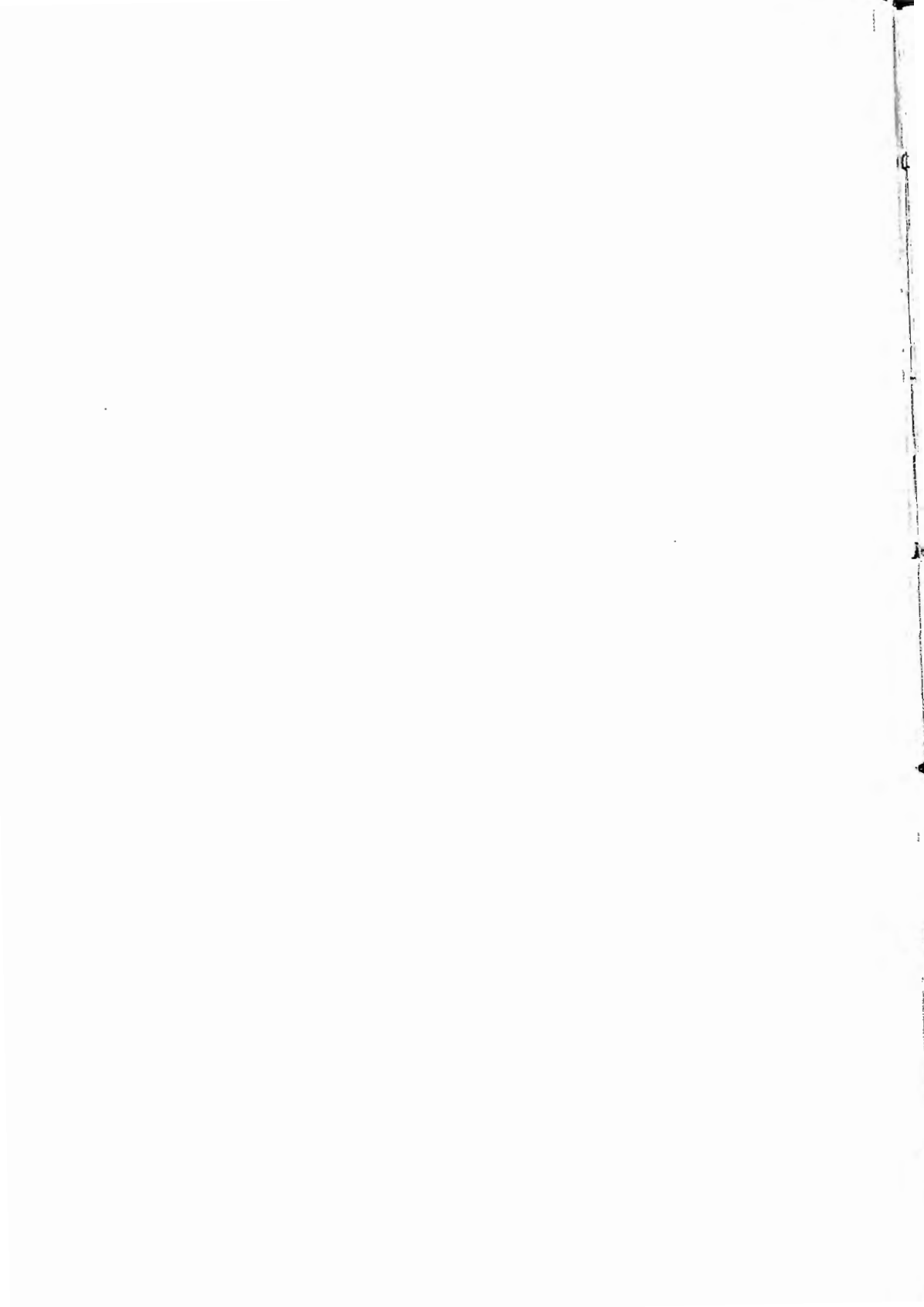


ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Third Extraordinary Session, 1990



FOREWORD

This volume contains the Acts of the Third Extraordinary Session of the 69th Legislature, 1990.

The Third Extraordinary Session convened at 6:00 p.m., on August 22, 1990, and adjourned *sine die* at 2:00 p.m., on August 31, 1990.

The Legislature was called together for the purpose of considering nine items: Salary increase for education employees, reform of state laws governing education, funding and funding methods for salary increases and education reform, public retirement systems, various supplemental appropriations, bonds to finance construction of prison and regional jail facilities, and transfer of the West Virginia Penitentiary Institutional Farm to the city of Moundsville and/or Marshall County.

The Legislature passed, and the Governor approved, ten bills: Four House bills and six Senate bills.

The Legislature adopted three House Concurrent Resolutions.

The House introduced and adopted two House Resolutions and the Senate introduced and adopted eight Senate Resolutions.

This volume will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the Code of West Virginia.

These Acts may be purchased from the Division of Purchasing, Department of Administration, State Capitol, Charleston, West Virginia 25305.

DONALD L. KOPP,
*Clerk of the House and
Keeper of the Rolls.*



TABLE OF CONTENTS

ACTS AND RESOLUTIONS

Third Extraordinary Session, 1990

GENERAL LAWS

Chapter		Page
	APPROPRIATIONS	
1.	Making Supplemental Appropriations to PEIA	1
2.	Supplementing, Amending, Reducing and Causing to Expire into State Fund, General Revenue of the State, Account Nos. 1030 and 1600.....	16
3.	Making Supplemental Appropriations into Various Accounts of Budget Bill.....	17
	EDUCATION	
4.	Education Reform Act of 1990.....	25
5.	Education Enhancement Act of 1990.....	107
	FARM MANAGEMENT COMMISSION	
6.	Authorizing the Farm Management Commission to Convey Properties to Facilitate the Construction of Regional Jails or Correctional Facilities	264
	PUBLIC EMPLOYEES INSURANCE	
7.	Relating to West Virginia Public Employees Insurance Act.....	268
	RETIREMENT	
8.	Public Retirement Systems	305
	STATE BUILDING COMMISSION	
9.	Permitting the State Building Commission to Issue Revenue Bonds on Behalf of the Regional Jail and Correctional Facility Authority	362
	LOCAL LAWS	
10.	Transferring the Penitentiary Institutional Farm at Moundsville to the City of Moundsville and the County of Marshall.....	369

RESOLUTIONS

(Only resolutions of general interest are included herein)

Number	Concurrent	Page
HCR 2	Urging the Governor and the Congressional Delegation of the State of Ohio to Oppose, Halt and Prevent the Construction of a Hazardous Waste Incineration Plant in East Liverpool	371
HCR 3	Urging Congress to Enact a National Health Plan Providing Access to Health Care for all Americans	372

LEGISLATURE OF WEST VIRGINIA

ACTS

THIRD EXTRAORDINARY SESSION, 1990

CHAPTER 1

(Com. Sub. for S. B. 9—By Senators Burdette, Mr. President, and Harman,
By Request of the Executive)

[Passed August 28, 1990; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-one, to the following accounts: Senate, Account No. 1010; House of Delegates, Account No. 1020; Joint Expenses, Account No. 1030; Supreme Court—General Judicial, Account No. 1110; Governor's Office, Account No. 1200; Governor's Office—Custodial Fund, Account No. 1230; Auditor's Office—General Administration, Account No. 1500; Treasurer's Office, Account No. 1600; Attorney General, Account No. 2400; Secretary of State, Account No. 2500; Department of Agriculture, Account No. 5100; Department of Agriculture—Soil Conservation Committee, Account No. 5120; Department of Agriculture—Division of Rural Resources (Matching Fund), Account No. 5130; Department of Agriculture—Meat Inspection, Account No. 5140; Division of Finance, Account No. 2110; Division of Purchasing, Account No. 2120; Division of General Services, Account No. 2130; Department of Administration—Office of the Secretary, Account No. 5310; Public Defender Services, Account

No. 5900; Education and State Employees Grievance Board, Account No. 6015; Ethics Commission, Account No. 6180; Office of Community and Industrial Development, Account No. 1210; Solid Waste Disposal Authority, Account No. 4020; Division of Labor, Account No. 4500; Division of Commerce, Account No. 4625; Division of Forestry, Account No. 4650; Board of Coal Mine Health and Safety, Account No. 4720; Coal Mine Safety and Technical Review Committee, Account No. 4750; Air Pollution Control Commission, Account No. 4760; Division of Energy, Account No. 4775; Geological and Economic Survey, Account No. 5200; Department of Commerce, Labor and Environmental Resources—Office of the Secretary, Account No. 5321; Water Resources Board, Account No. 5640; Division of Natural Resources, Account No. 5650; State Department of Education, Account No. 2860; State Department of Education—School Lunch Program, Account No. 2870; State Board of Education—Vocational Division, Account No. 2890; State Department of Education—State Aid to Schools, Account No. 2950; West Virginia Schools for the Deaf and the Blind, Account No. 3330; State FFA-FHA Camp and Conference Center, Account No. 3360; State Board of Rehabilitation—Division of Rehabilitation Services, Account No. 4405; Board of Directors of the State College System, Account No. 2785; Board of Trustees of the University System of West Virginia, Account No. 2795; Board of Trustees of the University System of West Virginia and Board of Directors of the State College System, Account No. 2800; Board of Trustees of the University System of West Virginia, Account No. 2855; Educational Broadcasting Authority, Account No. 2910; Library Commission, Account No. 3500; Division of Culture and History, Account No. 3510; Department of Education and the Arts—Office of the Secretary, Account No. 5332; Division of Health—Central Office, Account No. 4000; Division of Veterans' Affairs, Account No. 4040; Division of Human Services, Account No. 4050; Commission on Aging, Account No. 4060; Consolidated Medical Services Fund, Account No. 4190; Department of Health and Human Resources—Office of the Secretary, Account

No. 5343; Human Rights Commission, Account No. 5980; Office of Emergency Services and Advisory Council—Division of Emergency Services, Account No. 1300; Board of Probation and Parole, Account No. 3650; Division of Corrections—Central Office, Account No. 3680; Division of Corrections—Correctional Units, Account No. 3770; Division of Public Safety—Office of the Secretary, Account No. 5354; Division of Public Safety, Account No. 5700; Adjutant General—State Militia, Account No. 5800; Fire Commission, Account No. 6170; Municipal Bond Commission, Account No. 1700; Tax Division, Account No. 1800; Office of Nonintoxicating Beer Commissioner, Account No. 4900; Racing Commission, Account No. 4950; Department of Tax and Revenue—Office of the Secretary, Account No. 5365; Department of Transportation—Office of the Secretary, Account No. 5376; and Railroad Maintenance Authority, Account No. 5690, supplementing chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.

WHEREAS, the governor's executive message no. 3, dated August 25, 1990, advises that there now exists within the state fund, general revenue, an unappropriated balance of \$52,901,603, which is immediately available for appropriation during the fiscal year 1990-91, and

WHEREAS, it therefore appears that sufficient funds are available for the appropriations hereby made in this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That account nos. 1010, 1020, 1030, 1110; 1200; 1230; 1500; 1600; 2400; 2500; 5100; 5120; 5130; 5140; 2110; 2120; 2130; 5310; 5900; 6015; 6180; 1210; 4020; 4500; 4625; 4650; 4720; 4750; 4760; 4775; 5200; 5321; 5640; 5650; 2860; 2870; 2890; 2950; 3330; 3360; 4405; 2785; 2795; 2800; 2855; 2910; 3500; 3510; 5332; 4000; 4040; 4050; 4060; 4190; 5343; 5980; 1300; 3650; 3680; 3770; 5354; 5700; 5800; 6170; 1700; 1800; 4900; 4950; 5365; 5376 and 5690, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented by adding the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 LEGISLATIVE

4 1—Senate

5 Acct. No. 1010

6 11a Public Employees Insurance .. \$ — \$ 17,768

7 2—House of Delegates

8 Acct. No. 1020

9 6a Public Employees Insurance .. \$ — \$ 14,704

10 3—Joint Expenses

11 (WV Code Chapter 4)

12 Acct. No. 1030

13 5a Public Employees Insurance .. \$ — \$ 57,217

14 JUDICIAL

15 4—Supreme Court—General Judicial

16 Acct. No. 1110

17 12a Public Employees Insurance .. \$ — \$ 603,532

18 EXECUTIVE

19 5—Governor's Office

20 (WV Code Chapter 5)

21 Acct. No. 1200

22 2a Public Employees Insurance .. \$ — \$ 27,717

23 6—Governor's Office—Custodial Fund

24 (WV Code Chapter 5)

25 Acct. No. 1230

26 1a Public Employees Insurance .. \$ — \$ 3,460

27	<i>9—Auditor's Office—General Administration</i>		
28	(WV Code Chapter 12)		
29	Acct. No. 1500		
30	5a Public Employees Insurance ..	\$ — \$	57,910
31	<i>10—Treasurer's Office</i>		
32	(WV Code Chapter 12)		
33	Acct. No. 1600		
34	5a Public Employees Insurance ..	\$ — \$	18,002
35	<i>12—Attorney General</i>		
36	(WV Code Chapters 5, 14, 46 and 47)		
37	Acct. No. 2400		
38	5a Public Employees Insurance ..	\$ — \$	62,616
39	<i>13—Secretary of State</i>		
40	(WV Code Chapters 3, 5 and 59)		
41	Acct. No. 2500		
42	5a Public Employees Insurance ..	\$ — \$	22,098
43	<i>15—Department of Agriculture</i>		
44	(WV Code Chapter 19)		
45	Acct. No. 5100		
46	5a Public Employees Insurance ..	\$ — \$	85,396
47	<i>16—Department of Agriculture—</i>		
48	<i>Soil Conservation Committee</i>		
49	(WV Code Chapter 19)		
50	Acct. No. 5120		
51	4a Public Employees Insurance ..	\$ — \$	11,108
52	<i>17—Department of Agriculture—</i>		
53	<i>Division of Rural Resources</i>		
54	<i>(Matching Fund)</i>		
55	(WV Code Chapter 19)		
56	Acct. No. 5130		
57	4a Public Employees Insurance ..	\$ — \$	25,763

58	<i>18—Department of Agriculture—</i>		
59	<i>Meat Inspection</i>		
60	(WV Code Chapter 19)		
61	Acct. No. 5140		
62	4a Public Employees Insurance ..	\$ —	\$ 7,595
63	DEPARTMENT OF ADMINISTRATION		
64	<i>21—Division of Finance</i>		
65	(WV Code Chapter 5A)		
66	Acct. No. 2110		
67	9a Public Employees Insurance ..	\$ —	\$ 20,472
68	<i>22—Division of Purchasing</i>		
69	(WV Code Chapter 5A)		
70	Acct. No. 2120		
71	4a Public Employees Insurance ..	\$ —	\$ 22,852
72	<i>23—Division of General Services</i>		
73	(WV Code Chapter 5A)		
74	Acct. No. 2130		
75	5a Public Employees Insurance ..	\$ —	\$ 39,323
76	<i>26—Department of Administration—</i>		
77	<i>Office of the Secretary</i>		
78	(WV Code Chapter 5F)		
79	Acct. No. 5310		
80	1a Public Employees Insurance ..	\$ —	\$ 2,430
81	<i>27—Public Defender Services</i>		
82	(WV Code Chapter 29)		
83	Acct. No. 5900		
84	4a Public Employees Insurance ..	\$ —	\$ 6,002

85	<i>28—Education and State Employees</i>		
86	<i>Grievance Board</i>		
87	(WV Code Chapter 18)		
88	Acct. No. 6015		
89	4a Public Employees Insurance ..	\$ — \$	5,853
90	<i>31—Ethics Commission</i>		
91	(WV Code Chapter 6B)		
92	Acct. No. 6180		
93	1a Public Employees Insurance ..	\$ — \$	2,531
94	DEPARTMENT OF COMMERCE, LABOR		
95	AND ENVIRONMENTAL RESOURCES		
96	<i>32—Office of Community and</i>		
97	<i>Industrial Development</i>		
98	(WV Code Chapter 5B)		
99	Acct. No. 1210		
100	5a Public Employees Insurance ..	\$ — \$	38,001
101	<i>33—Solid Waste Disposal Authority</i>		
102	(WV Code Chapter 16)		
103	Acct. No. 4020		
104	4a Public Employees Insurance ..	\$ — \$	1,951
105	<i>34—Division of Labor</i>		
106	(WV Code Chapters 21 and 47)		
107	Acct. No. 4500		
108	4a Public Employees Insurance ..	\$ — \$	50,164
109	<i>35—Division of Commerce</i>		
110	(WV Code Chapter 5B)		
111	Acct. No. 4625		
112	4a Public Employees Insurance ..	\$ — \$	462,165

113	<i>36—Division of Forestry</i>		
114	(WV Code Chapter 19)		
115	Acct. No. 4650		
116	4a Public Employees Insurance ..	\$ —	\$ 75,195
117	<i>37—Board of Coal Mine</i>		
118	<i>Health and Safety</i>		
119	(WV Code Chapter 22)		
120	Acct. No. 4720		
121	4a Public Employees Insurance ..	\$ —	\$ 1,000
122	<i>40—Coal Mine Safety and</i>		
123	<i>Technical Review Committee</i>		
124	(WV Code Chapter 22)		
125	Acct. No. 4750		
126	3a Public Employees Insurance ..	\$ —	\$ 266
127	<i>41—Air Pollution</i>		
128	<i>Control Commission</i>		
129	(WV Code Chapter 16)		
130	Acct. No. 4760		
131	4a Public Employees Insurance ..	\$ —	\$ 20,415
132	<i>42—Division of Energy</i>		
133	(WV Code Chapter 22)		
134	Acct. No. 4775		
135	4a Public Employees Insurance ..	\$ —	\$ 152,002
136	<i>43—Geological and Economic Survey</i>		
137	(WV Code Chapter 29)		
138	Acct. No. 5200		
139	4a Public Employees Insurance ..	\$ —	\$ 40,301

140				
141				
142				
143				
144				
145	1a	Public Employees Insurance ..	\$ — \$	5,064
146				
147				
148				
149	4a	Public Employees Insurance ..	\$ — \$	911
150				
151				
152				
153	6a	Public Employees Insurance ..	\$ — \$	104,862
154				
155				
156				
157				
158	6a	Public Employees Insurance ..	\$ — \$	96,867
159				
160				
161				
162				
163	4a	Public Employees Insurance ..	\$ — \$	12,352
164				
165				
166				
167				
168	8a	Public Employees Insurance ..	\$ — \$	27,166

10		APPROPRIATIONS		[Ch. 1
169		<i>51—State Department of Education—</i>		
170		<i>State Aid to Schools</i>		
171		(WV Code Chapters 18 and 18A)		
172		Acct. No. 2950		
173	14	Public Employees		
174	15	Insurance Agency	\$ — \$29,483,546	
175		<i>53—West Virginia Schools for the</i>		
176		<i>Deaf and the Blind</i>		
177		(WV Code Chapters 18 and 18A)		
178		Acct. No. 3330		
179	4a	Public Employees Insurance ..	\$ — \$ 166,245	
180		<i>54—State FFA-FHA Camp and Conference Center</i>		
181		(WV Code Chapters 18 and 18A)		
182		Acct. No. 3360		
183	4a	Public Employees Insurance ..	\$ — \$ 4,310	
184		<i>55—State Board of Rehabilitation—</i>		
185		<i>Division of Rehabilitation Services</i>		
186		(WV Code Chapter 18)		
187		Acct. No. 4405		
188	8a	Public Employees Insurance ..	\$ — \$ 508,920	
189		DEPARTMENT OF EDUCATION		
190		AND THE ARTS		
191		<i>56—Board of Directors of the</i>		
192		<i>State College System</i>		
193		<i>Control Account</i>		
194		(WV Code Chapter 18B)		
195		Acct. No. 2785		
196	1a	Public Employees Insurance ..	\$ — \$1,598,740	

197				
198		<i>57—Board of Trustees of the</i>		
199		<i>University System of West Virginia</i>		
		<i>Control Account</i>		
200		(WV Code Chapter 18B)		
201		Acct. No. 2795		
202	1a	Public Employees Insurance ..	\$ —	\$2,703,371
203		<i>58—Board of Trustees of the University System</i>		
204		<i>of West Virginia and Board of Directors</i>		
205		<i>of the State College System</i>		
206		<i>Consolidated Staff Account</i>		
207		(WV Code Chapter 18B)		
208		Acct. No. 2800		
209	8a	Public Employees Insurance ..	\$ —	\$ 26,613
210		<i>59—Board of Trustees of the</i>		
211		<i>University System of West Virginia</i>		
212		<i>University of West Virginia</i>		
213		<i>Health Sciences Account</i>		
214		(WV Code Chapter 18B)		
215		Acct. No. 2855		
216	1a	Public Employees Insurance ..	\$ —	\$881,776
217		<i>60—Educational Broadcasting Authority</i>		
218		(WV Code Chapter 10)		
219		Acct. No. 2910		
220	4a	Public Employees Insurance ..	\$ —	\$ 40,841
221		<i>61—Library Commission</i>		
222		(WV Code Chapter 10)		
223		Acct. No. 3500		
224	4a	Public Employees Insurance ..	\$ —	\$ 35,690
225		<i>62—Division of Culture and History</i>		
226		(WV Code Chapter 29)		
227		Acct. No. 3510		
228	5a	Public Employees Insurance ..	\$ —	\$ 55,657

12		APPROPRIATIONS		[Ch. 1
229		<i>63—Department of Education and the Arts—</i>		
230		<i>Office of the Secretary</i>		
231		(WV Code Chapter 5F)		
232		Acct. No. 5332		
233	4a	Public Employees Insurance ..	\$ — \$	1,785
234		DEPARTMENT OF HEALTH		
235		AND HUMAN RESOURCES		
236		<i>64—Division of Health—</i>		
237		<i>Central Office</i>		
238		(WV Code Chapter 16)		
239		Acct. No. 4000		
240	8a	Public Employees Insurance ..	\$ — \$	245,759
241		<i>66—Division of Veterans' Affairs</i>		
242		(WV Code Chapter 9A)		
243		Acct. No. 4040		
244	4a	Public Employees Insurance ..	\$ — \$	48,777
245		<i>67—Division of Human Services</i>		
246		(WV Code Chapters 9, 48 and 49)		
247		Acct. No. 4050		
248	10a	Public Employees Insurance ..	\$ — \$	457,028
249		<i>68—Commission on Aging</i>		
250		(WV Code Chapter 29)		
251		Acct. No. 4060		
252	12a	Public Employees Insurance ..	\$ — \$	5,546
253		<i>69—Consolidated Medical Service Fund</i>		
254		Acct. No. 4190		
255	20a	Public Employees Insurance ..	\$ — \$	\$2,146,549

256				
257				
258				
259				
260				
261	1a	Public Employees Insurance . . .	\$ —	\$ 1,930
262				
263				
264				
265	4a	Public Employees Insurance . .	\$ —	\$ 17,878
266				
		DEPARTMENT OF PUBLIC SAFETY		
267				
268				
269				
270				
271				
272	4a	Public Employees Insurance . .	\$ —	\$ 7,617
273				
274				
275				
276	6a	Public Employees Insurance . .	\$ —	\$ 1,385
277				
278				
279				
280				
281	4a	Public Employees Insurance . .	\$ —	\$ 9,902
282				
283				
284				
285				
286	6a	Public Employees Insurance . .	\$ —	\$ 606,761

287	<i>76—Department of Public Safety—</i>		
288	<i>Office of the Secretary</i>		
289	(WV Code Chapter 5F)		
290	Acct. No. 5354		
291	1a Public Employees Insurance ..	\$ —	\$ 1,266
292	<i>77—Division of Public Safety</i>		
293	(WV Code Chapter 15)		
294	Account No. 5700		
295	4a Public Employees Insurance ..	\$ —	\$ 711,669
296	<i>78—Adjutant General—State Militia</i>		
297	(WV Code Chapter 15)		
298	Acct. No. 5800		
299	4a Public Employees Insurance ..	\$ —	\$ 78,555
300	<i>79—Fire Commission</i>		
301	(WV Code Chapter 29)		
302	Acct. No. 6170		
303	4a Public Employees Insurance ..	\$ —	\$ 24,761
304	DEPARTMENT OF TAX AND REVENUE		
305	<i>80—Municipal Bond Commission</i>		
306	(WV Code Chapter 13)		
307	Acct. No. 1700		
308	4a Public Employees Insurance ..	\$ —	\$ 2,992
309	<i>81—Tax Division</i>		
310	(WV Code Chapter 11)		
311	Acct. No. 1800		
312	7a Public Employees Insurance ..	\$ —	\$ 358,592
313	<i>83—Office of Nonintoxicating</i>		
314	<i>Beer Commissioner</i>		
315	(WV Code Chapter 11)		
316	Acct. No. 4900		
317	4a Public Employees Insurance ..	\$ —	\$ 11,546

318		<i>84—Racing Commission</i>	
319		(WV Code Chapter 19)	
320		Acct. No. 4950	
321	4a	Public Employees Insurance ..	\$ — \$ 27,920
322		<i>85—Department of Tax and Revenue—</i>	
323		<i>Office of the Secretary</i>	
324		(WV Code Chapter 5F)	
325		Acct. No. 5365	
326	1a	Public Employees Insurance ..	\$ — \$ 2,532

327 **DEPARTMENT OF TRANSPORTATION**

328		<i>86—Department of Transportation—</i>	
329		<i>Office of the Secretary</i>	
330		(WV Code Chapter 5F)	
331		Acct. No. 5376	
332	2a	Public Employees Insurance ..	\$ — \$ 1,899
333		<i>87—Railroad Maintenance Authority</i>	
334		(WV Code Chapter 29)	
335		Acct. No. 5690	
336	4a	Public Employees Insurance ..	\$ — \$ 18,611

337 The purpose of this supplementary appropriation bill
338 is to appropriate public money, as specified (general
339 revenues) with insertion of such moneys into accounts in
340 the budget bill and specified items thereof, together
341 with all adjustments of increase required to provide
342 funding for public employees health insurance. These
343 funds shall be immediately transferred to the Public
344 Employees Insurance Agency, Account No. 8265-05.
345 These public moneys, as newly provided for, shall be
346 available for such use and expenditure immediately
347 upon the effective date of the bill and in fiscal year 1990-
348 91, supplementing the budget bill for such fiscal year
349 earlier enacted.

CHAPTER 2

(Com. Sub. for S. B. 7—By Senators Burdette, Mr. President, and Harman,
By Request of the Executive)

[Passed August 28, 1990; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue, amounts from items of the existing appropriations for joint expenses, account no. 1030, and the treasurer's office, account no. 1600, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the following items of the total appropriations of Account No. 1030 and Account No. 1600, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, be supplemented, amended, reduced and caused to expire into the state fund, general revenue:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	LEGISLATIVE		
4	3— <i>Joint Expenses</i>		
5	(WV Code Chapter 4)		
6	Acct. No. 1030		
7	1	Joint Committee on	
8	2	Government and Finance ...	\$ — \$ 100,000
9	EXECUTIVE		
10	10— <i>Treasurer's Office</i>		
11	(WV Code Chapter 12)		
12	Acct. No. 1600		
13	2	Other Personal Services	\$ — \$ 690,816

14	4	Employee Benefits	\$ —	222,825
15	5	Unclassified	\$ —	1,749,733

16 The purpose of this supplementary appropriation bill
 17 is to supplement, amend, reduce and cause to expire into
 18 the state fund, general revenue, from the designated
 19 accounts, the amounts as specified from account no. 1030
 20 and from account no. 1600 to be thereafter immediately
 21 available upon passage of the bill for other and further
 22 appropriation in the current fiscal year 1990-91.

CHAPTER 3

(Com. Sub. for S. B. 6—By Senators Burdette, Mr. President, and Harman,
 By Request of the Executive)

[Passed August 31, 1990; in effect from passage. Approved by the Governor.]

AN ACT making supplementary appropriation of public moneys, as specified, out of the treasury with insertion thereof into appropriation accounts, as specified, and with all necessary adjustments of increase or decrease of items and language of appropriation in the following accounts: Acct. No. 1240, Governor's Office-Civil Contingent Fund; Acct. No. 1255, Governor's Office-Educational Programs; Acct. No. 1800, Tax Division; Acct. No. 1900, Board of Investments; Acct. No. 2785, Board of Directors of the State College System Control Account; Acct. No. 2795, Board of Trustees of the University System of West Virginia Control Account; Acct. No. 2855, Board of Trustees of the University System of West Virginia University of West Virginia Health Sciences Account; Acct. No. 2860, State Department of Education; Acct. No. 2870, State Department of Education-School Lunch Program; Acct. No. 2890, State Board of Education-Vocational Division; Acct. No. 2950, State Department of Education-State Aid to Schools; Acct. No. 3330, West Virginia School for the Deaf and Blind; Acct. No. 4000, Division of Health-Central Office; Acct. No. 4190, Consolidated Medical Services Fund; Acct. No. 5332, Department of Education and the Arts-Office of the Secretary; Acct. No. 5700,

Division of Public Safety; transferring amounts between line items of the existing appropriation for the following accounts: Acct. No. 8215-18, Division of Health Laboratory Services; and Acct. No. 8216-18, Health Care Cost Review Authority-Planning; all supplementing and amending chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.

WHEREAS, The governor's executive message no. 4, dated August 30, 1990, with revised revenue estimates attached, advises that there now exists within the state fund, general revenue, an unappropriated balance of \$133,264,000 which is immediately available for appropriation during the fiscal year 1990-91; and

WHEREAS, It therefore appears that sufficient funds are available for the appropriations hereby made in this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented by adding thereto the following new accounts, designated account no. 1255 and account no. 1900 and that account nos. 1240, 1800, 2785, 2795, 2855, 2860, 2870, 2890, 2950, 3330, 4000, 4190, 5332 and 5700, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented by adding amounts specified herein, and that amounts in line items of account nos. 8215-18 and 8216-18, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill be transferred within said accounts; all amended by the items and language of appropriation as set forth herein, itemized with all other items and language of appropriation of such accounts, as set forth in the budget bill, to remain unchanged and unaffected, to read as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 Sec. 2. Appropriations of federal funds.

4

EXECUTIVE

5

7—Governor's Office

6

Civil Contingent Fund

7

(WV Code Chapter 5)

8

Account No. 1240

9

3 Civil Contingent

10

4 Fund \$ — \$ 600,000

11

Any unexpended balances remaining in this appropriation at the close of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.

15

8a—Governor's Office

16

Educational Programs

17

Account No. 1255

18

1 Early Childhood Development \$ — \$1,000,000

19

2 Center for Professional Development — 2,000,000

20

3 Total \$ — \$3,000,000

22

Any unexpended balances remaining in this appropriation at the close of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.

26

EXECUTIVE

27

11a—Board of Investments

28

(WV Code Chapter 12)

29

Account No. 1900

30

1 Unclassified \$ — \$2,663,374

31

2 Total \$ — \$2,663,374

32

DEPARTMENT OF EDUCATION

33

48—State Department of Education

34

(WV Code Chapters 18 and 18A)

35

Account No. 2860

36

1 Personal Services \$ — \$ 133,271

37

3 Employee Benefits — 19,991

20		APPROPRIATIONS		[Ch. 3
38	4	Unclassified	—	6,720,000
39	5	Education of Institutionalized		
40	6	Juveniles	\$ —	\$ 774,000
41		<i>49—State Department of Education</i>		
42		<i>School Lunch Program</i>		
43		(WV Code Chapters 18 and 18A)		
44		Account No. 2870		
45	1	Personal Services	\$ —	\$ 3,516
46	3	Employee Benefits	—	527
47		<i>50—State Board of Education</i>		
48		<i>Vocational Division</i>		
49		(WV Code Chapters 18 and 18A)		
50		Account No. 2890		
51	1	Personal Services	\$ —	\$ 355,252
52	3	Employee Benefits	—	50,666
53	7	Wood Products-Forestry		
54	8	Vocational Programs	—	70,000
55		<i>51—State Department of Education</i>		
56		<i>State Aid to Schools</i>		
57		(WV Code Chapters 18 and 18A)		
58		Account No. 2950		
59	1	Professional Educators	\$ —	\$33,558,261
60	2	Service Personnel	—	8,933,683
61	4	Fixed Charges	—	9,882,099
62	7	Other Current Expenses	—	4,411,600
63	8	Improve Instructions		
64	9	Programs	—	6,083,470
65	21a	Rural Counties	—	500,000
66		<i>53—West Virginia School for the</i>		
67		<i>Deaf and the Blind</i>		
68		(WV Code Chapters 18 and 18A)		
69		Account No. 3330		
70	4	Unclassified	\$ —	\$ 174,939

71

**DEPARTMENT OF EDUCATION
AND THE ARTS**

72

73

56—Board of Directors of the

74

State College System

75

Control Account

76

(WV Code Chapter 18B)

77

Account No. 2785

78 1 Unclassified \$ — \$1,665,000

79 From the Unclassified line in account no. 2785, the
80 board of directors of the state college system shall
81 expend moneys for salary increases for each full-time
82 faculty and full-time staff which, in combination with
83 the salary increases granted from funds appropriated
84 during the regular and second extraordinary sessions of
85 the Legislature, one thousand nine hundred ninety, are
86 at least one thousand dollars greater on an annual basis
87 than the salaries paid such full-time faculty and staff
88 during fiscal year one thousand nine hundred ninety. In
89 addition, each full-time faculty shall receive an increase
90 of one thousand dollars across-the-board effective the
91 first day of September, one thousand nine hundred
92 ninety.

93

57—Board of Trustees of the

94

University System of West Virginia

95

Control Account

96

(WV Code Chapter 18B)

97

Account No. 2795

98 1 Unclassified \$ — \$2,530,000

99 From the Unclassified line in account no. 2795, the
100 board of trustees of the university system of West
101 Virginia shall expend moneys for salary increases for
102 each full-time faculty and full-time staff which, in
103 combination with the salary increases granted from
104 funds appropriated during the regular and second
105 extraordinary sessions of the Legislature, one thousand
106 nine hundred ninety, are at least one thousand dollars
107 greater on an annual basis than the salaries paid such

108 full-time faculty and staff during fiscal year one
 109 thousand nine hundred ninety. In addition, each full-
 110 time faculty shall receive an increase of one thousand
 111 dollars across-the-board effective the first day of
 112 September, one thousand nine hundred ninety.

113 *59—Board of Trustees of the*
 114 *University System of West Virginia*
 115 *University of West Virginia*
 116 *Health Sciences Account*

117 (WV Code Chapter 18B)

118 Account No. 2855

119 1 Unclassified \$ — \$1,135,000

120 From the Unclassified line in account no. 2855, the
 121 board of trustees of the university system of West
 122 Virginia shall expend moneys for salary increases for
 123 each full-time faculty and full-time staff which, in
 124 combination with the salary increases granted from
 125 funds appropriated during the regular and second
 126 extraordinary sessions of the Legislature, one thousand
 127 nine hundred ninety, are at least one thousand dollars
 128 greater on an annual basis than the salaries paid such
 129 full-time faculty and staff during fiscal year one
 130 thousand nine hundred ninety. In addition, each full-
 131 time faculty shall receive an increase of one thousand
 132 dollars across-the-board effective the first day of
 133 September, one thousand nine hundred ninety.

134 *63—Department of Education and the Arts*
 135 *Office of the Secretary*

136 (WV Code Chapter 5F)

137 Account No. 5332

138 1 Unclassified \$ — \$ 750,000
 139 3 Underwood-Smith Scholarship
 140 4 Program-Student Awards .. — 200,000
 141 4a Accreditation, Certification
 142 4b and Research — 2,000,000

143	DEPARTMENT OF HEALTH		
144	AND HUMAN RESOURCES		
145	<i>64—Division of Health</i>		
146	<i>Central Office</i>		
147	(WV Code Chapter 16)		
148	Account No. 4000		
149	1	Personal Services	\$ — \$ 200,000
150	7	Employee Benefits	— 40,000
151	<i>69—Consolidated Medical Services Fund</i>		
152	Account No. 4190		
153	3	Institutional Facilities	
154	4	Operations	\$ — \$2,300,000
155	5	Employee Benefits	— 460,000
156	9	State Aid to Local Agencies...	— 400,000
157	20a	Preventative Re-vaccination ..	— 200,000

158 **DEPARTMENT OF PUBLIC SAFETY**

159 *77—Division of Public Safety*

160 (WV Code Chapter 15)

161 Account No. 5700

162 4 Unclassified \$420,266 \$ —0—

163 The amount of \$420,266 appropriated to the Unclas-
 164 sified line item by this supplemental appropriation bill
 165 represents federal funds received by the state for the
 166 West Virginia uniform crime reporting redesign
 167 program and the automation of criminal history records
 168 of the division of public safety subsequent to the passage
 169 of the budget bill for the fiscal year 1990-91. Said
 170 amount is appropriated pursuant to the provisions of
 171 article eleven, chapter four of the code.

172 **DEPARTMENT OF TAX AND REVENUE**

173 *81—Tax Division*

174 (WV Code Chapter 11)

175 Account No. 1800

176 4 Unclassified \$ — \$ 850,000

177 Any unexpended balances remaining in this appropri-

178 ation at the close of the fiscal year 1990-91 is hereby
 179 reappropriated for expenditure during the fiscal year
 180 1991-92.

181 The purpose of this supplementary appropriation bill
 182 is to appropriate public money, as specified, with
 183 insertion of such moneys into accounts in the budget bill
 184 and those newly created herein and specified items
 185 thereof, together with all adjustments of increase
 186 required. These public moneys, as newly provided for,
 187 shall be available for such use and expenditure upon
 188 passage of the bill and in fiscal year 1990-91, supple-
 189 menting the budget bill for such fiscal year earlier
 190 enacted.

191 **Sec. 5. Appropriations from other funds.**—Not-
 192 withstanding the provisions of TITLE II—APPROPRI-
 193 ATIONS, Sec. 11 of this act, from the funds designated
 194 there are hereby appropriated conditionally upon the
 195 fulfillment of the provisions set forth in article two,
 196 chapter five-a of the code, the following amounts as
 197 itemized for expenditure during fiscal year one thou-
 198 sand nine hundred ninety-one.

199 Amounts in excess of the amounts herein appropriated
 200 are not subject to spending as authorized by article two,
 201 chapter five-a of the code.

202 The following account nos. 8215-18 and 8216-18 are
 203 supplemented, amended and transferred to read as
 204 follows, with no new moneys being hereby appropriated:

205 *145—Division of Health Laboratory Services*

206 (WV Code Chapter 16)

207 Account No. 8215-18

208 TO BE PAID FROM SPECIAL REVENUE FUND

209	1	Personal Services	\$ —	\$ 313,397
210	2	Annual Increment.....	—	4,248
211	3	Employee Benefits	—	92,000
212	4	Current Expenses	—	—0—
213	4a	Unclassified	—	878,960
214	5	Total	\$ —	\$1,288,605

215		<i>146—Health Care Cost Review</i>	
216		<i>Authority Planning</i>	
217		(WV Code Chapter 16)	
218		Account No. 8216-18	
219		TO BE PAID FROM SPECIAL REVENUE FUND	
220	1	Personal Services	\$ — \$ 133,531
221	2	Annual Increment.....	— 396
222	3	Employee Benefits	— 32,755
223	4	Current Expenses	— —0—
224	4a	Unclassified	— 283,935
225	5	Total	\$ — \$ 450,617

CHAPTER 4

(Com. Sub. for S. B. 1—By Senators Burdette, Mr. President, and Harman,
By Request of the Executive)

[Passed August 30, 1990; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections six-a, six-b, six-c, twenty-two and twenty-eight, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal articles two-c and two-f of said chapter; to repeal article six-c, chapter forty-nine of said code; to amend chapter five by adding thereto two new articles, designated articles twenty-six and twenty-seven; to amend article one, chapter eighteen by adding thereto a new section, designated section four; to amend and reenact sections five, six and twenty-six, article two of said chapter; to amend and reenact section five, article two-e of said chapter; to amend and reenact section four, article four of said chapter; to amend and reenact sections one-a and forty, article five of said chapter; to further amend said chapter by adding thereto a new article, designated article five-a; to amend and reenact sections one and sixteen, article nine-d of said chapter; to further amend said chapter by adding thereto a new article, designated article thirty-two; to

amend and reenact sections two, eight and nine, article two, chapter eighteen-a of said code; to further amend said article two by adding thereto a new section, designated section twelve; to amend and reenact sections one, two, three and eight, article three of said chapter; to further amend said article three by adding thereto four new sections, designated sections one-a, one-b, two-a and two-b; to further amend said chapter by adding thereto a new article, designated article three-a; to amend and reenact sections eight-b and eight-c, article four of said chapter; to further amend said article four by adding thereto a new section, designated section seven-a; to amend and reenact section four, article five of said chapter; to further amend said chapter by adding thereto a new article, designated article seven; and to amend chapter eighteen-b of said code by adding thereto two new articles, designated articles three-b and fifteen, all relating to the "Education Reform Act of 1990"; creating a governor's cabinet on children and youth to coordinate programs and services to children and families; providing severability clause; establishing educational goals for the year 2000; clarifying the powers and duties of the state board of education; requiring that the state board develop a three-year plan for the transition to developmentally based program for kindergarten through fourth grade; reorganizing and recodifying existing statutes; providing for implementation of a uniform regional computer information system for education data collection and reporting; requiring the state board of education to develop a plan providing for automatic cost of living adjustments; adding a code of conduct, focused curriculum, attention to the acquisition of student proficiencies to the performance-based accreditation system and the percentage of graduating students entering postsecondary education or training; adding education and training in evaluating personnel performance to the certification requirements of superintendents and principals; requiring a high school diploma, general educational development diploma and completion of an orientation course to county board member eligibility; adding boardsmanship and governance effectiveness training to county board

member eligibility requirements with penalties specified for noncompliance; requiring regulations relating to school entrance age to utilize flexibility; providing for local school involvement, including local school improvement councils with authority to adopt policies and request waivers in certain instances of policies, certain rules and interpretations, a schools of excellence award program, public school faculty senates and school curriculum teams; adding two members to the school building authority; requiring RESA's to prioritize their plan in accordance with school building authority criteria; providing a severability clause; providing for the general supervision of teacher education to be under the state board of education after consultation with the secretary of education and the arts; creating additional grounds for the suspension and dismissal of county board employees based on unsatisfactory performance and conviction of a felony; expanding prerequisites for administrative certificates for principals; establishing a uniform system for professional personnel performance evaluations; providing an alternative program and requirements for the education of teachers; codifying testing and degree standards for professional teaching and administrative certificates; creating certification for paraprofessionals; providing for the certification or permit of athletic and extracurricular coaches employed under a limited contract; creating a beginning teacher internship program; requiring teacher elected county staff development councils; creating a center for professional development assisted by an advisory council on professional development; specifying criteria which must be considered in judging the relative qualifications of professional personnel for promotion and filling of vacancies; providing for the calculation of seniority; providing for substitute teaching seniority; giving certification preference over permits in reductions in force; limiting voluntary transfers of professional personnel; allowing the county superintendent to fill vacancies prior to the next semester in certain instances; creating a time frame and criteria for posting of professional personnel positions; requiring county boards to adopt policies providing professional time or

extra duty compensation and adequate coverage; providing a severability clause; creating a West Virginia literacy council; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That sections six-a, six-b, six-c, twenty-two and twenty-eight, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that articles two-c and two-f of said chapter be repealed; that article six-c, chapter forty-nine of said code be repealed; that chapter five of said code be amended by adding thereto two new articles, designated articles twenty-six and twenty-seven; that article one, chapter eighteen of said code be amended by adding thereto a new section, designated section four; that sections five, six and twenty-six, article two of said chapter be amended and reenacted; that section five, article two-e of said chapter be amended and reenacted; that section four, article four of said chapter be amended and reenacted; that sections one-a and forty, article five of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article five-a; that sections one and sixteen, article nine-d of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article thirty-two; that sections two, eight and nine, article two, chapter eighteen-a of said code be amended and reenacted; that said article two be further amended by adding thereto a new section, designated section twelve; that sections one, two, three and eight, article three of said chapter be amended and reenacted; that said article three be further amended by adding thereto four new sections, designated sections one-a, one-b, two-a and two-b; that said chapter be further amended by adding thereto a new article, designated article three-a; that sections eight-b and eight-c, article four of said chapter be amended and reenacted; that said article four be further amended by adding thereto a new section, designated section seven-a; that section four, article five of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article seven; and that chapter eighteen-b of said code be amended by adding thereto two new articles, designated articles three-b and fifteen, all to read as follows:

Chapter

5. **General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**

18. **Education.**

18A. **School Personnel.**

18B. **Higher Education.**

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

Article

26. **Governor's Cabinet on Children and Families.**

27. **Severability.**

ARTICLE 26. GOVERNOR'S CABINET ON CHILDREN AND FAMILIES.

§5-26-1. **Legislative findings, statement of purpose.**

§5-26-2. **Cabinet established.**

§5-26-3. **Duties and responsibilities of cabinet generally.**

§5-26-4. **Powers and authority of cabinet generally.**

§5-26-5. **Powers and duties relating to funding and budgetary needs for children and families.**

§5-26-6. **Children's fund created; purpose.**

§5-26-7. **Use of public school and higher education facilities and resources.**

§5-26-8. **Effective date and termination date.**

§5-26-1. Legislative findings; statement of purpose.

1 (a) The Legislature finds that the early years of life
2 are a critical developmental and educational stage in the
3 total life cycle and declares that parents are the
4 children's first teachers and have the primary respon-
5 sibility for meeting the needs and addressing the
6 development of their children. Therefore, social pro-
7 grams and services for children and families shall be
8 built upon respect for the integrity of the family and the
9 belief in the strength and the ability of families to thrive
10 and the ability of parents to nurture and provide for
11 their children. However, families can experience severe

12 crises which result in life-threatening situations to
13 children or other family members or can have long-term
14 negative impact on the child. The Legislature further
15 finds that two of the crises which affect the ability of
16 children to thrive and develop are teenage pregnancies
17 and substance abuse. Successful intervention by a
18 combined effort of government, the people of West
19 Virginia and the Legislature can successfully reduce the
20 number of pregnancies to unmarried, adolescent fe-
21 males and the instances of drug and alcohol abuse by
22 children by the year 2000.

23 The state has an obligation to provide crisis interven-
24 tion and stabilization, with the goal of providing for
25 children's well-being in a permanent situation in the
26 home environment or in the least restrictive setting as
27 close to a home environment as possible.

28 The Legislature intends to accomplish its goals
29 relating to children and families through a family-
30 centered, comprehensive, community-based system for
31 the provision of social services, programs and facilities
32 for children and families overseen by the highest levels
33 of state government, although this may require funda-
34 mental changes in the way state government responds
35 to the needs of children and their families.

36 (b) The Legislature hereby declares that one purpose
37 of this article and the policy of the state is to achieve
38 the coordination of programs and services to children
39 and families through a cabinet in the governor's office
40 which is independent from any state agency and which
41 shall act as an interagency cabinet created to nurture
42 a flexible system for the comprehensive, unified,
43 effective and efficient administration of programs and
44 services to children and families which avoids fragmen-
45 tation and duplication of programs and services and
46 which facilitates and promotes cooperation among state
47 agencies, as well as regional, local and private service
48 agencies. It is the intent of the Legislature, through the
49 governor's cabinet, to emphasize preventive services to
50 children and families in order to avoid the human and
51 financial costs to the state of individual and family
52 instability and to benefit the state and society as a

53 whole. For maximum effectiveness, the Legislature
54 intends to provide such services in a long-term manner
55 with such intensity as the needs of the particular
56 situation require.

57 (c) The Legislature intends that participation in the
58 programs authorized or required in this article shall be
59 voluntary on the part of any child or family for whom
60 the program is available, and not otherwise required
61 under state or federal laws or regulations, and all
62 outreach shall emphasize the positive, voluntary nature
63 of the programs. The service delivery system shall be
64 driven by the needs and preferences of the child and
65 family, shall reflect local community characteristics and
66 resources, shall allow for local input, and shall focus on
67 prevention, education and early intervention. The
68 service providers shall convey an attitude of support,
69 compassion, understanding, friendliness and patience.

70 The Legislature intends, by this article, to allow
71 diversity and regional, cultural and ethnic sensitivity in
72 the development of programs and services for children
73 and families. To the greatest extent possible, families
74 are to be involved in all aspects of planning and delivery
75 of services to that family, and the community shall be
76 involved in the service delivery system in that commu-
77 nity. This is intended to foster strong family and
78 community program ownership while maintaining clear
79 parameters for program goals and purposes through the
80 governor's cabinet on children and families.

§5-26-2. Cabinet established.

1 There is hereby created the governor's cabinet on
2 children and families, hereinafter referred to as the
3 "cabinet". In addition to such other administrative heads
4 of government as the governor may appoint to the
5 cabinet, the cabinet shall include the secretary of health
6 and human resources; the secretary of commerce, labor
7 and environmental resources or a designee; the secre-
8 tary of administration or a designee; the state superin-
9 tendent of schools; and the attorney general; one
10 member of the senate, to be appointed by the governor,
11 and one member of the house of delegates, to be

12 appointed by the governor, both of whom shall serve in
13 an advisory capacity only.

14 The cabinet shall be chaired by the governor and shall
15 convene at least monthly during the first year and
16 thereafter shall meet at least quarterly. The cabinet
17 shall establish bylaws which govern its decision making.

§5-26-3. Duties and responsibilities of cabinet generally.

1 In addition to all other duties and responsibilities
2 assigned to the cabinet in this article and elsewhere by
3 law, the cabinet shall have the power and the duty to:

4 (1) Analyze ways to best utilize the information and
5 evaluations obtained through previously existing or
6 ongoing programs for children and families such as
7 "Home-Oriented Preschool Education" (HOPE), which
8 focuses on televised educational outreach to rural
9 children; "Parent and Child Education" (PACE), which
10 focuses on literacy; and "Parents as Teachers" (PAT),
11 which focuses on parents working with the children and
12 determine ways to implement or incorporate aspects of
13 the programs that would be of benefit to families and
14 children in this state;

15 (2) Designate an individual who shall monitor and
16 report on head-start, early intervention and other
17 preschool programs throughout the state;

18 (3) Provide for the holistic coordination of programs
19 and services for all children and families in such areas
20 as housing; health promotion and disease prevention;
21 education, transportation, reading and literacy; food and
22 nutrition; other necessities such as clothing and utilities;
23 job training and employment; child care; child protec-
24 tion; early intervention and crisis intervention; assess-
25 ment and diagnosis; home-based family development,
26 preservation and reunification; financial planning;
27 mental health and counseling; substance abuse preven-
28 tion counseling and treatment; in order to increase the
29 available drug and alcohol counseling, education and
30 addiction awareness training; pregnancy prevention for
31 adolescents with the goal being to reduce the number
32 of adolescent pregnancies by fifty percent by the year

33 2000; information, referral and placement and any other
34 such services;

35 (4) Promote the delivery of early prenatal care
36 services for all pregnant women through local health
37 care providers;

38 (5) Assure the development of parenting education
39 services and outreach efforts, child developmental
40 stages, including the utilization of media and supportive
41 activities for children and care givers with a focus on
42 children three to five years old living in rural areas;

43 (6) Provide for the coordination of programs and
44 services for comprehensive developmental screening and
45 well-baby visits for all preschool children and parental
46 involvement in all areas of a child's education and
47 development;

48 (7) Identify facilities and properties throughout the
49 state that may be required or available for the effective
50 and efficient provision of programs and services to
51 children and families, with an emphasis on utilizing
52 available state facilities, including public school facili-
53 ties and facilities within the state system of higher
54 education;

55 (8) Prepare a proposed budget for the operation of the
56 cabinet to be recommended to the governor for inclusion
57 in the executive budget to be submitted to the
58 Legislature;

59 (9) Create an independent case management system
60 for all children in the custody of the state, for families
61 requiring services from multiple agencies, and for any
62 other category of children or families as the cabinet may
63 deem appropriate;

64 (10) Develop coordinated information systems and
65 examples of forms, including eligibility forms, for use
66 at the local, regional and state levels designed (i) to
67 provide people with complete, easy-to-read information
68 on programs and services available to children and
69 families and (ii) to provide service providers with
70 sufficient information while minimizing the amount of
71 paperwork required of people seeking services or for
72 program participation;

73 (11) Promote the work of the governor's cabinet on
74 children and families in order to engender strong
75 support from the community, the Legislature, and
76 business leaders;

77 (12) Provide public information on services and
78 programs available to children and families which shall
79 include a staffed, statewide toll-free phone number
80 whereby children and families can receive information
81 on available services and programs and which may
82 include television programs, public service announce-
83 ments, and any other effective means of providing
84 information on, communicating or promoting any
85 service or program;

86 (13) Address specifically the provision of programs
87 and services to children and families living in the rural
88 areas of the state; and

89 (14) Report annually to the Legislature and to such
90 other units as the cabinet may deem appropriate on
91 issues relating to children and families.

§5-26-4. Powers and authority of cabinet generally.

1 In addition to all other powers granted to the cabinet
2 in this article and elsewhere by law, the cabinet shall
3 have the power and authority to:

4 (1) Negotiate written agreements and procedures
5 between and among departments of state government
6 which assure that children and families are provided
7 with health care, social services, appropriate education
8 and vocational training, and any other services to which
9 they may be entitled under state and federal law;

10 (2) Provide or contract with any agencies or persons
11 in this state and other states for any facilities, equip-
12 ment or service necessary to achieve the purposes of this
13 article; and hire such staff support sufficient to carry
14 out the duties and responsibilities of the cabinet;

15 (3) Develop and implement rules, regulations, stand-
16 ards and policies governing the internal operation and
17 administration of the cabinet;

18 (4) Delegate any of the cabinet's powers, duties or
19 functions as the cabinet may deem appropriate, expe-
20 dient and effective;

21 (5) Solicit and accept proposals in furtherance of any
22 program or service required by this article, especially
23 for the establishment of family resource networks at the
24 regional or local level and for the implementation of
25 pilot programs;

26 (6) Develop programmatic standards for early child-
27 hood programs, including recommendations regarding
28 development activities required to be provided by
29 licensed day care and child care facilities and programs;

30 (7) Review any rules and regulations, including
31 licensure requirements, to the extent that they impact
32 on or create barriers to the provision of programs and
33 services to children and families;

34 (8) Develop and require the implementation of
35 interdisciplinary and interagency standards for all
36 children in the custody of the state, with the goal of
37 providing for children's well-being in the home environ-
38 ment or the least restrictive setting;

39 (9) Waive rules and regulations that impede coordi-
40 nated service delivery;

41 (10) Solicit, accept and expend grants, gifts, bequests,
42 donations and other funds made available to the cabinet:
43 *Provided*, That all unrestricted grants, gifts, bequests
44 and donations shall be deposited in the children's fund
45 created pursuant to section six of this article;

46 (11) Establish family resource networks and services
47 in local communities by building on existing resources
48 to coordinate services to families and children;

49 (12) Authorize family resource networks or otherwise
50 develop service areas which will allow for the efficient
51 delivery of programs and services on a local or regional
52 basis so that programs and services are provided in or
53 as close to the local community level as possible in
54 accordance with guidelines to be established by the
55 cabinet; and

56 (13) Exercise any and all other powers, including the
57 adoption of an official seal and to charter public or
58 quasi-public corporations, necessary for the discharge of
59 the cabinet's duties and the implementation of the
60 purposes of this article.

**§5-26-5. Powers and duties relating to funding and
budgetary needs for children and families.**

1 (a) The cabinet shall analyze the budgets of the
2 departments of state government to the extent that they
3 address or impact upon programs and services for
4 children and families, review budgetary needs and
5 revenue sources, and make recommendations regarding
6 the governor's proposed budget and the redirection of
7 resources. In making such recommendations, the
8 cabinet shall educate themselves on the availability of
9 and eligibility for federal, local and private funding,
10 with the goal of maximizing federal, local and private
11 revenues for use in areas directly benefitting children
12 and families.

13 (b) Any legislative recommendation shall be accom-
14 panied by a proposal or plan for sufficient funding. In
15 exploring all aspects of funding possibilities, the cabinet
16 shall consider innovative, flexible funding such as
17 interagency funding, joint funding pools, interagency
18 reimbursement, and funding by the families serviced
19 based on ability to pay.

20 (c) Notwithstanding the provisions of section nineteen,
21 article two, chapter five-a of this code or any other
22 provision of law to the contrary, the cabinet shall have
23 the ability to transfer funds among, between and within
24 departments in accordance with rules for such purpose
25 adopted by the cabinet notwithstanding the provisions
26 of chapter twenty-nine-a of this code.

27 (d) The cabinet shall develop fiscal incentives for the
28 establishment of family resource networks and for
29 programs resulting in substantial cost savings, such as
30 programs which keep children at home and which
31 thereby avoid unnecessary out-of-home care. Any
32 savings resulting from the coordination of programs and
33 services for children and families shall be reinvested for

34 expenditure in areas directly benefitting children and
35 families.

§5-26-6. Children's fund created; purpose.

1 (a) The cabinet shall establish a children's fund for the
2 sole purpose of awarding grants, loans and loan
3 guaranties for children and families. All unrestricted
4 federal funds and grants, gifts, bequests or donations,
5 in addition to appropriations to the fund, shall be
6 deposited in the state treasury in a special revenue
7 account that is independent from any executive or other
8 department of government, other than the office of the
9 governor. Any moneys deposited in the children's trust
10 fund created pursuant to article six-c, chapter forty-nine
11 of this code on the effective date of this section, and any
12 interest accruing to such fund, shall be deposited in the
13 children's fund created pursuant to this section, and the
14 children's trust fund shall thereafter be discontinued.

15 (b) Each state taxpayer may voluntarily contribute a
16 portion of the taxpayer's state income tax refund to the
17 children's fund by so designating the contribution on the
18 state personal income tax return form. The cabinet shall
19 approve the wording of the designation on the income
20 tax return form, which designation shall appear on tax
21 forms as of the first day of January, one thousand nine
22 hundred ninety-one. The tax commissioner shall deter-
23 mine by the first day of July of each year the total
24 amount designated pursuant to this subsection and shall
25 report that amount to the state treasurer, who shall
26 credit that amount to the children's fund.

27 (c) All interest accruing from investment of moneys
28 in the children's fund shall be credited to the fund, and
29 the legislative auditor shall conduct an annual audit of
30 the fund.

31 (d) Grants, loans and loan guaranties may be awarded
32 from the children's fund by the cabinet for any purpose
33 required or authorized by this cabinet.

**§5-26-7. Use of public school and higher education
facilities and resources.**

1 At every level of planning, service providers and

2 administrators shall plan to utilize available facilities
 3 and resources under the control of the state and county
 4 boards of education and governing boards of the state
 5 institutions of higher education.

§5-26-8. Effective date and termination date.

1 This article shall be in effect from passage. The
 2 cabinet shall terminate on the thirtieth day of June, one
 3 thousand nine hundred ninety-three, unless extended by
 4 legislation enacted before the termination date.

ARTICLE 27. SEVERABILITY.

§5-27-1. Severability.

1 Pursuant to section ten, article two, chapter two of
 2 this code, if any provision of this chapter or the
 3 application thereof to any person or circumstance is held
 4 unconstitutional or invalid, such unconstitutionality or
 5 invalidity shall not affect other provisions or applica-
 6 tions of the chapter, and to this end the provisions of this
 7 chapter are declared to be severable.

CHAPTER 18. EDUCATION.

Article

1. Definitions; Limitations of Chapter.
2. State Board of Education.
- 2E. High Quality Educational Programs.
4. County Superintendent of Schools.
5. County Board of Education.
- 5A. Local School Involvement.
- 9D. School Building Authority.
32. Severability.

ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER.

§18-1-4. Educational improvement plan; "Goals for the Year 2000".

1 (a) The governor, the Legislature and the people of
 2 West Virginia agree that the education of their children
 3 is of utmost importance to the future well-being of the
 4 state and that the purpose of enacting education laws
 5 and providing funding to support a system of free
 6 schools is to assure that all of our children have every
 7 opportunity to secure an education which is thorough
 8 and is provided in an efficient manner. The governor,

9 the Legislature and the people of West Virginia further
10 agree that improvements are needed in the educational
11 system of West Virginia if these objectives are to be met.

12 (b) Therefore, the governor, the Legislature and the
13 people of West Virginia have established goals for
14 themselves which are measurable and achievable over
15 a ten-year period to be accomplished through the
16 combined efforts of the government, the school system
17 and the people through an increased focus on the needs
18 of children. These goals are that by the year 2000:

19 (1) All children entering the first grade will be ready
20 for the first grade;

21 (2) All students will have equal educational
22 opportunity;

23 (3) Student performance on national measures of
24 student performance will equal or exceed national
25 averages and the performance of students falling in the
26 lowest quartile will improve by fifty percent;

27 (4) Ninety percent of ninth graders will graduate
28 from high school;

29 (5) High school graduates will be fully prepared for
30 college, other postsecondary education, or gainful
31 employment. The number of high school graduates
32 entering postsecondary education will increase by fifty
33 percent; and

34 (6) All working age adults will be functionally
35 literate.

36 The intent of the governor and the Legislature is to
37 pursue the accomplishment of these goals through
38 strategies which focus on (i) early childhood develop-
39 ment; (ii) improving the quality of teaching; (iii)
40 technology and learning; (iv) helping at-risk students; (v)
41 work force preparation; and (vi) restructuring and
42 accountability in the educational system.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5. Powers and duties generally; public school entrance age; "public schools" not to include kindergartens.

- §18-2-6. Classification and standardization of schools; standards for degrees and diploma.
- §18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.
- §18-2-31. Plan for automatic cost of living adjustments.

§18-2-5. Powers and duties generally; public school entrance age; “public schools” not to include kindergartens.

1 Subject to and in conformity with the constitution and
2 laws of this state, the state board of education shall
3 exercise general supervision of the public schools of the
4 state, and shall make rules in accordance with the
5 provisions of article three-b, chapter twenty-nine-a of
6 this code for carrying into effect the laws and policies
7 of the state relating to education, including rules
8 relating to standards for performance and measures of
9 accountability, the physical welfare of pupils, the
10 education of all children of school age, school attend-
11 ance, evening and continuation or part-time day schools,
12 school extension work, the classification of schools, the
13 issuing of certificates upon credentials, the distribution
14 and care of free textbooks by the county boards of
15 education, the general powers and duties of county
16 boards of education, and of teachers, principals,
17 supervisors and superintendents, and such other matters
18 pertaining to the public schools of the state as may seem
19 to the state board to be necessary and expedient.

20 Notwithstanding any other provision of law which
21 may be to the contrary, and notwithstanding the rule-
22 making powers given to the state board of education by
23 this section, a child shall not be permitted to enter the
24 public schools of this state in any school year, beginning
25 with the school year one thousand nine hundred eighty-
26 three—eighty-four, unless such child be six years of age
27 prior to the first day of September of such school year
28 or is attending public school in accordance with article
29 twenty of this chapter: *Provided*, That children who
30 have successfully completed a kindergarten program in
31 the school year one thousand nine hundred eighty-two—
32 eighty-three, may enter the public schools notwithstand-

33 ing the provisions of this section. The term "public
34 schools" as used in the preceding sentence shall not be
35 deemed to include public kindergartens, but nothing
36 herein shall prevent a county board from permitting a
37 child enrolled in kindergarten from entering public
38 schools for attendance in particular curriculum areas.

39 The state board shall develop a three-year plan to
40 provide for the transition to developmental program-
41 ming and instruction to be provided to the students in
42 kindergarten through fourth grade and further shall,
43 include the method of information dissemination in
44 order to provide for parental preparation, and further
45 shall, in conjunction with the professional development
46 center, develop an ongoing program for training of
47 principals and classroom teachers in methods of
48 instruction to implement the developmental program.
49 The existing developmental programs throughout the
50 state shall be involved in this process and shall be
51 provided an opportunity to assist in pilot programs to
52 begin no later than the first day of September, one
53 thousand nine hundred ninety-one. The plan shall be
54 fully implemented by the first day of September, one
55 thousand nine hundred ninety-three.

**§18-2-6. Classification and standardization of schools;
standards for degrees and diploma.**

1 The state board shall make rules for the accreditation,
2 classification and standardization of all schools in the
3 state, except institutions of higher education, and shall
4 determine the minimum standards for the granting of
5 diplomas and certificates of proficiency by those schools.
6 Not later than the school year one thousand nine
7 hundred ninety—ninety-one, certificates of proficiency
8 including specific information regarding the graduate's
9 skills, competence, and readiness for employment or
10 honors and advanced education shall be granted, along
11 with the diploma, to every eligible high school graduate.
12 No institution of less than collegiate or university status
13 may grant any diploma or certificate of proficiency on
14 any basis of work or merit below the minimum stand-
15 ards prescribed by the state board.

16 No charter or other instrument containing the right
17 to issue diplomas or certificates of proficiency shall be
18 granted by the state of West Virginia to any institution
19 or other associations or organizations of less than
20 collegiate or university status within the state until the
21 condition of granting or issuing such diplomas or other
22 certificates of proficiency has first been approved in
23 writing by the state board.

§18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.

1 (a) In order to consolidate and administer more
2 effectively existing educational programs and services
3 so individual districts will have more discretionary
4 moneys for educational improvement and in order to
5 equalize and extend educational opportunities, the state
6 board of education shall establish multicounty regional
7 educational service agencies for the purpose of provid-
8 ing high quality, cost effective educational programs
9 and services to the county school systems, and shall
10 make such rules as may be necessary for the effective
11 administration and operation of such agencies.

12 (b) In furtherance of these purposes, it is the duty of
13 the board of directors of each regional educational
14 service agency to continually explore possibilities for the
15 delivery of services on a regional basis which will
16 facilitate equality in the educational offerings among
17 counties in its service area, permit the delivery of high
18 quality educational programs at a lower per student
19 cost, strengthen the cost effectiveness of education
20 funding resources, reduce administrative and/or opera-
21 tional costs, including the consolidation of administra-
22 tive, coordinating and other county level functions into
23 region level functions, and promote the efficient
24 administration and operation of the public school
25 systems generally.

26 Technical, operational, programmatic or professional
27 services would be among the types of services appro-
28 priate for delivery on a regional basis.

29 (c) In addition to performing the services and func-

30 tions required by the provisions of this or any other
31 section of this code, a regional educational service
32 agency may implement regional programs and services
33 by a majority vote of its board of directors. When said
34 vote is not unanimous, the board of directors shall file
35 a plan for the service or program delivery with the state
36 board describing the program or service, the manner of
37 delivery and the projected savings and/or the improved
38 quality of the program or service. The state board shall
39 promulgate rules requiring a county board that declines
40 to participate in such programs or services to show just
41 cause for not participating and the estimated savings
42 accruing to the county therefrom. If a county board fails
43 to show that savings will accrue to the county or that
44 the quality of the program will be significantly and
45 positively affected as a result of its decision not to
46 participate, the state board shall withhold from the
47 county's foundation allowance for administrative cost
48 the lesser of the amount of the estimated savings or the
49 allocation for the county's foundation allowance for
50 administrative cost.

51 (d) The state board, in conjunction with the various
52 regional educational service agencies, shall develop an
53 effective model for the regional delivery of instruction
54 in subjects where there exists low student enrollment or
55 a shortage of certified teachers or where such delivery
56 method substantially improves the quality of an instruc-
57 tional program. Such model shall incorporate an
58 interactive electronic classroom approach to instruction.
59 To the extent funds are appropriated or otherwise
60 available, county boards or regional educational service
61 agencies may adopt and utilize the model for the
62 delivery of such instruction.

63 (e) Each regional educational service agency shall
64 conduct a study setting forth how the following services
65 and functions may be performed by the agency for
66 public schools and school districts within the region
67 without terminating the employment of personnel
68 employed by school districts prior to the effective date
69 of this subsection: Accounting, purchasing, food service,
70 transportation, delivery of high cost services to low

71 incidence student populations, audiovisual material
72 distribution, facilities planning, federal program
73 coordination, personnel recruiting and an integrated
74 regional computer information system. On or before the
75 tenth day of January, one thousand nine hundred ninety,
76 each regional educational service agency shall submit
77 the study to the state board, to the standing committees
78 on education and finance of the West Virginia senate
79 and house of delegates, and to the secretary of education
80 and the arts: *Provided*, That in the event such study is
81 implemented those individuals employed prior to the
82 effective date thereof shall not have their employment
83 terminated as a result of the study.

84 (f) Each regional educational service agency shall
85 commence implementation of a uniform integrated
86 regional computer information system as recommended
87 by the state board of education on or before the first day
88 of January, one thousand nine hundred ninety-one. Each
89 county board of education shall use the computer
90 information system for data collection and reporting to
91 the state department of education beginning no later
92 than the first day of July, one thousand nine hundred
93 ninety-three. County boards of education shall fully
94 participate in the implementation of the system.

95 (g) Each regional educational service agency shall
96 submit a report and evaluation of the services provided
97 and utilized by the schools within each respective
98 region. Furthermore, each school shall submit an
99 evaluation of the services provided by the regional
100 educational service agency, which shall include an
101 evaluation of the regional educational service agency
102 program, suggestions as to how to improve utilization
103 and the individual school's plan as to development of
104 new programs and enhancement of existing programs.
105 The reports shall be due by the first day of January of
106 each year commencing with the year one thousand nine
107 hundred ninety-one and shall be made available to the
108 state board of education, standing committees on
109 education of the West Virginia senate and house of
110 delegates and to the secretary of education and the arts.

111 (h) A regional board shall be empowered to receive

112 and disburse funds from the state and federal govern-
113 ments, member counties, gifts and grants.

§18-2-31. Plan for automatic cost of living adjustments.

1 After consultation with the governor's office of
2 community and industrial development, the state board
3 of education shall develop within equity guidelines a
4 plan which provides for automatic cost of living
5 adjustments to the salary schedules, as provided in
6 chapter eighteen-a, whenever it is determined that the
7 purchasing power of salaries of teachers and service
8 personnel in areas of the state experiencing extraordi-
9 nary growth and/or increases in the factors comprising
10 the cost of living index is not equal to the purchasing
11 power of teacher and service personnel salaries state-
12 wide, such plan to be submitted to the Legislature by
13 the first day of the regular session one thousand nine
14 hundred ninety-one.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. School accreditation; standards compliance board; approval status; intervention to correct impairments.

1 (a) The purpose of this section is to provide assurances
2 that a thorough and efficient system of education is
3 being provided for all West Virginia public school
4 students on an equal educational opportunity basis and
5 that the high quality standards are being met. A system
6 for the review of school district educational plans,
7 performance-based accreditation and periodic, random,
8 unannounced on-site effectiveness reviews of district
9 educational systems, including individual schools within
10 the districts, shall provide assurances that the high
11 quality standards, established pursuant to subsection (b)
12 of this section, are being met. A performance-based
13 accreditation system shall provide assurances that the
14 high quality standards, established pursuant to subsec-
15 tion (c) of this section, are being met.

16 (b) On or before the first day of January, one thousand
17 nine hundred ninety-one, the state board of education
18 shall, in accordance with the provisions of article three-

19 b, chapter twenty-nine-a of this code, establish and
20 adopt high quality educational standards in the areas of
21 curriculum, finance, transportation, special education,
22 facilities, administrative practices, training of school
23 district board members and administrators, personnel
24 qualifications, professional development and evaluation,
25 student and school performance, a code of conduct for
26 students and employees and other such areas as
27 determined by the state board of education. The
28 standards established in the area of curriculum shall
29 assure that all graduates are prepared for the world of
30 work or for continuing postsecondary education and
31 training. Each school district shall submit an annual
32 improvement plan designed around locally identified
33 needs showing how the educational program of each
34 school in the district will meet or exceed the high
35 quality standards.

36 A performance-based accreditation system shall be
37 the only statewide system used for accrediting or
38 classifying the public schools in West Virginia. The state
39 board shall establish a schedule and shall review each
40 school within a district and each school district board
41 of education for accreditation based on information
42 submitted to the board under the performance-based
43 accreditation system as set forth in subsection (c) of this
44 section.

45 (c) On or before the first day of July, one thousand
46 nine hundred ninety-one, the state board of education
47 shall, in accordance with the provisions of article three-
48 b, chapter twenty-nine-a of this code, establish by rule
49 a system which measures the performance of each school
50 based on the following measures of student and school
51 performance: The acquisition of student proficiencies as
52 indicated by student performance by grade level in the
53 various subjects tested under the Statewide Testing of
54 Educational Progress program and other appropriate
55 measures; school attendance rates; the student dropout
56 rate; the percent of students promoted to next grade and
57 the number of waivers of the promotion standard
58 granted; the graduation rate; the average class size; the
59 pupil-teacher ratio; the number of exceptions to pupil-

60 teacher ratio requested by the county board and the
61 number of exceptions granted; the number of split-
62 grade classrooms; the percentage of graduating students
63 entering postsecondary education or training; the pupil-
64 administrator ratio; parent involvement; parent, teacher
65 and student satisfaction; and operating expenditures per
66 pupil.

67 The state board annually shall review the information
68 submitted for each school and shall issue to every school:
69 (1) Full accreditation status; or (2) probationary
70 accreditation status.

71 Full accreditation status shall be given to a school
72 when the school's performance on the above indicators
73 is at a level which would be expected when all of the
74 high quality educational standards are being met.
75 Probationary accreditation status shall be given to a
76 school when the measure of the school's performance is
77 below such level.

78 Whenever a school is given probationary accreditation
79 status, the district board shall implement an improve-
80 ment plan which is designed to increase the perform-
81 ance of the school to a full accreditation status level
82 within one year.

83 (d) Whenever the state board of education determines
84 that the quality of education in a school is seriously
85 impaired, the state superintendent, with approval of the
86 state board, shall appoint a team of three improvement
87 consultants to make recommendations within sixty days
88 of appointment for correction of the impairment. Upon
89 approval of the recommendations by the state board, the
90 recommendations shall be made to the district board of
91 education. If progress in correcting the impairment is
92 not made within six months of receipt of the recommen-
93 dations, the state superintendent shall provide consulta-
94 tion and assistance to the district board to (1) improve
95 personnel management, (2) establish more efficient
96 financial management practices, (3) improve instruc-
97 tional programs and policies or (4) make such other
98 improvements as may be necessary to correct the
99 impairment. If the impairment is not corrected within

100 one year of receipt of the recommendations, the district
101 shall be given probationary approval status or nonap-
102 proval status.

103 (e) Whenever a school is given probationary status or
104 is determined to be seriously impaired and fails to
105 improve its status within one year, any student attend-
106 ing such school may transfer once to the nearest fully
107 accredited school, subject to approval of the fully
108 accredited school and at the expense of the school from
109 which the student transferred.

110 (f) The state board of education shall issue one of the
111 following accreditation levels to each school district
112 board of education: (1) Full approval, (2) probationary
113 approval or (3) nonapproval.

114 Full approval shall be given to a district board whose
115 educational system meets or exceeds all of the high
116 quality standards adopted by the state board and whose
117 schools have all been given full accreditation status. Full
118 approval shall be for a period not to exceed four years.

119 Probationary approval shall be given to a district
120 board of education whose educational program has not
121 met the high quality standards, or which has one or
122 more schools in the district given probationary status.
123 Probationary approval is a warning that the district
124 board must make specified improvements. If the high
125 quality standards are not met during the succeeding
126 year, or the number of schools in the district given
127 probationary status is not reduced to a number that
128 would allow full accreditation to be granted in the
129 following year, the district board shall be automatically
130 given nonapproval. In addition, nonapproval shall be
131 given to a district board of education which fails to
132 submit an annual program plan or fails to demonstrate
133 a reasonable effort to meet the high quality standards.

134 (g) Whenever nonapproval status is given to a district,
135 the state board of education shall declare a state of
136 emergency in the district and may intervene in the
137 operation of the district to (1) limit the authority of the
138 district superintendent and district board of education
139 as to the expenditure of funds, the employment and

140 dismissal of personnel, the establishment and operation
141 of the school calendar, the establishment of instructional
142 programs and policies, and such other areas as may be
143 designated by the state board by rule, (2) take such
144 direct action as may be necessary to correct the
145 impairment and (3) declare that the office of the district
146 superintendent is vacant.

147 (h) To assist the state board in determinations of the
148 accreditation status of schools and the approval status
149 of school districts under this section, the state board
150 shall from time to time appoint an educational stand-
151 ards compliance review team to make unannounced on-
152 site reviews of the educational programs in any school
153 or school district in the state to assess compliance of the
154 school or district with the high quality standards
155 adopted by the state board, including, but not limited
156 to, facilities, administrative procedures, transportation,
157 food services and the audit of all matters relating to
158 school finance, budgeting and administration.

159 The teams shall be composed of not more than ten
160 persons, not more than half of whom may be members
161 of or currently employed by the state board, who possess
162 the necessary knowledge, skills and experience to make
163 an accurate assessment of such educational programs.
164 The educational standards compliance team shall report
165 the findings of its on-site reviews to the state board of
166 education for inclusion in the determination of a school's
167 or district's accreditation or approval status as applica-
168 ble. The state board of education shall encourage the
169 sharing of information to improve school effectiveness
170 among the districts.

171 The state board shall make accreditation information
172 available to the Legislature, the governor, the general
173 public and to any individuals who request such
174 information.

175 (i) The state board shall fully implement the accred-
176 itation system established under this article for all
177 schools on the first day of July, one thousand nine
178 hundred ninety-one, and may pilot test the system prior
179 to that date. The state board shall adopt rules in

180 accordance with the provisions of article three-b,
181 chapter twenty-nine-a of this code necessary to imple-
182 ment the provisions of this article.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-4. Compensation generally; master's degree or equivalent required for new appointee.

1 On or before the first day of May of the year in which
2 the superintendent is appointed, the board shall fix the
3 annual salary of the superintendent for the period of
4 appointment for the term beginning on the first day of
5 July following. The board shall pay the salary from the
6 general current expense fund of the district: *Provided,*
7 That the superintendent shall hold at least a master's
8 degree or its equivalent related to public school
9 education earned at an accredited institution of higher
10 education approved to offer graduate work: *Provided,*
11 *however,* That commencing with the first day of July,
12 one thousand nine hundred ninety-three, any newly
13 appointed superintendent employed as a superintendent
14 after the twenty-seventh day of June, one thousand nine
15 hundred eighty-eight, shall meet the requirements set
16 forth in section two of this article and at a minimum
17 shall qualify for an initial license as a superintendent,
18 hold at least a master's degree or its equivalent related
19 to public school education plus twenty-four semester
20 hours related to public school education earned at an
21 accredited institution of higher education approved to
22 offer graduate work, and shall qualify for a superintend-
23 ent's certificate within three years of being employed as
24 a superintendent: *Provided further,* That any assistant
25 superintendent or educational administrator employed
26 in such capacity in this state prior to the twenty-seventh
27 day of June, one thousand nine hundred eighty-eight,
28 who was employed as a county superintendent in this
29 state shall not be required to meet the requirements of
30 the superintendent's initial licensure, certificate and
31 said twenty-four semester hours beyond a master's
32 degree: *And provided further,* That after the first day
33 of July, one thousand nine hundred ninety-four, no
34 person may be issued a superintendent's certificate or
35 have such certificate renewed unless the state board

36 determines that such person has successfully completed
37 education and training in evaluation skills through the
38 center for professional development, or equivalent
39 education and training in evaluation skills approved by
40 the state board.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members.

§18-5-40. School entry age; operation of schools on semester basis.

§18-5-1a. Eligibility of members.

1 No person shall be eligible for membership on any
2 county board of education who is not a citizen, resident
3 in such county, or who accepts a position as teacher or
4 service personnel in any school district, or who is an
5 elected or an appointed member of any political party
6 executive committee, or who becomes a candidate for
7 any other office than to succeed oneself.

8 No member or member-elect of any board of educa-
9 tion shall be eligible for nomination, election or
10 appointment to any public office, other than to succeed
11 oneself, or for election or appointment as a member of
12 any political party executive committee, unless and until
13 after that membership on the board, or his status as
14 member-elect to the board, has been terminated at or
15 before the time of his filing for such nomination for, or
16 appointment to, such public office or committee.

17 Any person who is elected or appointed to a county
18 board of education on or after the fifth day of May, one
19 thousand nine hundred ninety-two, shall possess at least
20 a high school diploma or a general educational develop-
21 ment (GED) diploma: *Provided*, That this provision shall
22 not apply to members or members-elect who have taken
23 office prior to the fifth day of May, one thousand nine
24 hundred ninety-two, and who serve continuously
25 therefrom.

26 No person elected to a county board of education after
27 the first day of July, one thousand nine hundred ninety,
28 shall assume the duties of board member unless he or
29 she has first attended and completed a course of
30 orientation relating to boardsmanship and governance
31 effectiveness which shall be given between the date of

32 election and the beginning of the member's term of
33 office. Members appointed to the board shall attend and
34 complete the next such course offered following their
35 appointment. Commencing on the effective date of this
36 section, members shall annually receive seven clock
37 hours of training in areas relating to boardsmanship
38 and governance effectiveness. Such orientation and
39 training shall be approved by the state board of
40 education and conducted by the West Virginia school
41 board association or other organization or organizations
42 approved by the state board. Failure to attend and
43 complete such an approved course of orientation and
44 training relating to boardsmanship and governance
45 effectiveness without good cause shall constitute neglect
46 of duty.

§18-5-40. School entry age; operation of schools on semester basis.

1 (a) The state board shall establish guidelines prior to
2 the first day of January, one thousand nine hundred
3 eighty-nine, for the operation of public kindergarten and
4 elementary schools on a semester basis within the
5 applicable provisions of this article and chapter relating
6 to the school term. Notwithstanding any other provision
7 of this code to the contrary relating to compulsory school
8 attendance, any child required or allowed by proximity
9 to attend a school operated on a semester basis shall be
10 deemed to have reached compulsory school age and shall
11 enroll as follows: (1) For the fall semester, in such year
12 when the sixth birthday is reached on or between the
13 first day of July and the last day of December, and (2)
14 for the spring semester, when the sixth birthday is
15 reached on or between the first day of January and the
16 last day of June of that year: *Provided*, That the state
17 board shall establish guidelines for enrollment prior to
18 a child's reaching compulsory school age. Student
19 progress within and between the various grade levels
20 shall be determined on a semester by semester basis,
21 and promotion or assignment to the middle or junior
22 high school grade levels is conditioned upon completion
23 of either of the last two semesters offered at the
24 elementary school.

25 (b) By the school year one thousand nine hundred
 26 eighty-nine—ninety, the state board shall select at least
 27 four elementary schools with kindergarten programs
 28 which may be operated on a semester basis upon
 29 applications submitted, with preference being given in
 30 such selection to schools in different regional educa-
 31 tional service agency areas to the extent reasonable and
 32 practical based on the applications. The operation of
 33 these schools on a semester basis shall be phased in by
 34 grade level beginning with kindergarten and progress-
 35 ing by one additional grade level in each successive
 36 school year until all of the grade levels offered at that
 37 school are operated on a semester basis.

38 Any regulations adopted under this section shall
 39 utilize the flexibility contained herein so as to provide
 40 the students of West Virginia a more successful
 41 educational experience.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-1. Intent and purpose of article.

§18-5A-2. Local school improvement councils; election.

§18-5A-3. Authority and procedures for local school improvement councils to request waivers of certain rules, policies and interpretations.

§18-5A-4. State board to establish criteria for selecting schools of excellence; annual school of excellence awards.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

§18-5A-6. Establishment of school curriculum teams.

§18-5A-1. Intent and purpose of article.

1 The intent of this article is to facilitate and encourage
 2 the involvement of the school community in the opera-
 3 tion of the local schools to improve educational quality.
 4 This article is intended to establish processes at each
 5 school which provide opportunities for involvement of
 6 the school community in the operation of the local
 7 schools and to support local initiatives to improve school
 8 performance. It is not the intent of this article to restrict
 9 the ability of the county board of education in its efforts
 10 to effect county-wide school improvements.

§18-5A-2. Local school improvement councils; election.

1 A local school improvement council shall be estab-

2 lished at every school consisting of the principal, who
3 shall serve as the ex officio chairman of the council and
4 be entitled to vote, three teachers elected by the faculty
5 senate of the school, two school service personnel elected
6 by the school service personnel employed at the school,
7 three parents or legal guardians of students enrolled at
8 the school elected by the school's parent teacher
9 organization, and two at-large members appointed by
10 the principal, one of whom resides in the school's
11 attendance area and one of whom represents business or
12 industry, both of whom are not eligible for membership
13 under any of the other elected classes of members:
14 *Provided*, That if the school houses students in grade
15 seven or higher, then the student body president or other
16 student, elected by the student body in grade seven or
17 higher, shall also be a member of the council.

18 The principal shall arrange for such elections to be
19 held prior to the tenth day of May of each school year
20 to elect a council to serve for the next ensuing school
21 year and shall give notice of the elections at least one
22 week prior to the elections being held. To the extent
23 practical, all elections shall be held within the same
24 week. Persons elected to the council shall serve until the
25 next election and may only be replaced upon death,
26 resignation, failure to appear at three consecutive
27 meetings of the council for which notice was given or,
28 a change in personal circumstances so that the person
29 is no longer representative of the class of members from
30 which appointed. In the case of replacement, an election
31 shall be held to elect another qualified person to serve
32 the unexpired term of the person being replaced.

33 Each member of the school improvement council must
34 be given written notice two employment days in advance
35 of any council meeting.

36 School improvement councils shall meet at least once
37 every nine weeks or equivalent grading period at the
38 call of the chair or by three fourths of its members. At
39 the first meeting of the council, the chair shall provide
40 each member with a copy of the current applicable
41 section of this code and any state board rule or

42 regulation promulgated pursuant to the operation of
43 these councils, and the council shall elect from its
44 membership two members to assist the chair in setting
45 the agenda for each council meeting.

46 School improvement councils shall be considered for
47 the receipt of school of excellence awards under section
48 three of this article and competitive grant awards under
49 section twenty-nine, article two of this chapter, and may
50 receive and expend such grants for the purposes
51 provided in such section.

52 In any and all matters which may fall within the scope
53 of both the school improvement councils and the school
54 curriculum teams authorized in section five of this
55 article, the school curriculum teams shall be deemed to
56 have jurisdiction.

57 A school improvement council shall receive coopera-
58 tion from the school in implementing policies and
59 programs it may adopt to:

60 (1) Encourage the involvement of parents in their
61 child's educational process and in the school;

62 (2) Encourage businesses to provide time for their
63 employees who are parents to meet with teachers
64 concerning their child's education;

65 (3) Encourage advice and suggestions from the
66 business community;

67 (4) Encourage school volunteer programs and mentor-
68 ship programs; and

69 (5) Foster utilization of the school facilities and
70 grounds for public community activities.

**§18-5A-3. Authority and procedures for local school
improvement councils to request waivers of
certain rules, policies and interpretations.**

1 The intent of this section is to establish a mechanism
2 which allows local school level initiatives to be designed
3 and implemented to meet local school needs and
4 circumstances. In accordance with this intent, a local
5 school improvement council established under the

6 provisions of this article may propose alternatives to the
7 operation of the public school which alternatives will
8 meet or exceed the high quality standards established
9 by the state board and will increase administrative
10 efficiency, enhance the delivery of instructional pro-
11 grams, promote community involvement in the local
12 school system or improve the educational performance
13 of the school generally. The proposal of the council shall
14 set forth the objective or objectives to be accomplished
15 under the proposal, how the accomplishment of such
16 objective or objectives will meet or exceed the standards
17 established by the state board, the indicators upon
18 which the meeting of such standards should be judged
19 and a projection of any funds to be saved by the proposal
20 and how such funds will be reallocated within the
21 school. The alternatives proposed by the council may
22 include matters which require the waiver of policies or
23 rules promulgated by the state or county board of
24 education, state superintendent interpretations and
25 interpretations of the county or state boards of educa-
26 tion: *Provided*, That such request for waiver be submit-
27 ted to the appropriate board adopting said rule or policy
28 and that board may approve the waiver: *Provided*,
29 *however*, That the state superintendent need only be
30 notified that the local council intends to waive the
31 interpretation: *Provided further*, That notwithstanding
32 any other provisions of the law to the contrary, council
33 is not prohibited from permitting off-site classrooms to
34 be developed in conjunction with local businesses if those
35 sites have met the requirements established by the local
36 board of education and if sites are located off campus.
37 For an alternative to be proposed, at least two-thirds of
38 the members must vote in favor thereof: *And provided*
39 *further*, That if the alternative to be proposed relates to
40 a waiver of policies or rules, promulgated by the state
41 or county board of education, state superintendent
42 interpretations and interpretations of the county or state
43 boards of education affecting employees, then prior to
44 the proposal of the alternative, a majority of the local
45 affected employee group involved must agree.

46 A council may also submit a written statement, with
47 supporting reasons, to the legislative oversight commis-

48 sion on education accountability recommending a
49 waiver of a statute or legislative rule, which the
50 commission shall review and determine whether a
51 recommendation should be made to the Legislature to
52 waive such statute or rule.

53 When a council decides to propose an alternative, it
54 shall forward a copy of the proposal to the state board
55 of education and the affected local board of education.
56 The state board shall acknowledge receipt of the
57 proposed alternative, promptly review the proposed
58 alternative in consultation with the county board or
59 their agents and, in its discretion, approve implemen-
60 tation of the alternative or reply to the council within
61 a reasonable time as to its reasons for not approving the
62 proposed alternative. If the state board approves a
63 proposed alternative, the state board shall provide
64 appropriate notice to the local school improvement
65 council and the county board of education and shall
66 establish a process for evaluation of the operation of the
67 alternative. Approval for the operation of the alternative
68 may be continued or revoked at any time based on the
69 results and findings of the evaluation.

70 The state board shall submit a report to the legislative
71 oversight commission on education accountability and
72 the governor on the first day of July of each year
73 summarizing the proposed alternatives received, ap-
74 proved or rejected, continued or revoked during the
75 preceding school year and the results and findings of the
76 evaluations. The report shall specifically identify all
77 policy, rule, and interpretation waiver requests received
78 during the preceding year and the disposition of each.

**§18-5A-4. State board to establish criteria for selecting
schools of excellence; annual school of excel-
lence awards.**

1 The state board of education shall promulgate rules,
2 in accordance with the provisions of article three-b,
3 chapter twenty-nine-a of this code, outlining criteria for
4 the identification of schools of excellence. Such criteria
5 shall include, but not be limited to, improvement in
6 student achievement in comparison to state and national

7 norms, improvement in reducing drop-out rates, im-
8 provement in standardized test scores, implementation
9 of advanced or innovative programs, improvement in
10 parent and community involvement, improvement in
11 parent, teacher and student satisfaction, improvement
12 in student attendance and other factors which promote
13 excellence in education. Such rules shall be promulgated
14 by the first day of January, one thousand nine hundred
15 ninety-one. Such rules may not prohibit any school from
16 applying for consideration as a school of excellence.

17 Each year, the state board shall select one high school,
18 one middle or junior high school, and one elementary
19 school within each regional educational service agency
20 district, and one vocational school selected on a state-
21 wide basis to be awarded school of excellence status.

22 The rules promulgated by the state board shall outline
23 appropriate methods of recognizing and honoring the
24 students, teachers and other employees and parents or
25 members of the school community who have contributed
26 to excellence in education at the school.

**§18-5A-5. Public school faculty senates established;
election of officers; powers and duties.**

1 (a) There is established at every public school in this
2 state a faculty senate which shall be comprised of all
3 permanent, full-time professional educators employed at
4 the school who shall all be voting members. Professional
5 educators as used in this section means professional
6 educators as defined in chapter eighteen-a of this code.
7 A quorum of more than one-half of the voting members
8 of the faculty shall be present at any meeting of the
9 faculty senate at which official business is conducted.
10 Prior to the beginning of the instructional term each
11 year, but within the employment term, the principal
12 shall convene a meeting of the faculty senate to elect a
13 chair, vice chair and secretary and discuss matters
14 relevant to the beginning of the school year. The vice
15 chair shall preside at meetings when the chair is absent.
16 Meetings of the faculty senate shall be held on a regular
17 basis as determined by a schedule approved by the
18 faculty senate and amended from time to time if needed.

19 Emergency meetings may be held at the call of the chair
20 or a majority of the voting members by petition
21 submitted to the chair and vice chair. An agenda of
22 matters to be considered at a scheduled meeting of the
23 faculty senate shall be available to the members at least
24 two employment days prior to the meeting, and in the
25 case of emergency meetings, as soon as possible prior to
26 the meeting. The chair of the faculty senate may appoint
27 such committees as may be desirable to study and
28 submit recommendations to the full faculty senate, but
29 the acts of the faculty senate shall be voted upon by the
30 full body.

31 (b) In addition to any other powers and duties
32 conferred by law, or authorized by policies adopted by
33 the state or county board of education or by-laws which
34 may be adopted by the faculty senate not inconsistent
35 with law, the powers and duties listed in this subsection
36 are specifically reserved for the faculty senate. The
37 intent of these provisions is neither to restrict nor to
38 require the activities of every faculty senate to the
39 enumerated items except as otherwise stated. Each
40 faculty senate shall organize its activities as it deems
41 most effective and efficient based on school size,
42 departmental structure and other relevant factors.

43 (1) Each faculty senate shall control funds allocated
44 to the school from legislative appropriations pursuant to
45 section nine, article nine-a of this chapter. From such
46 funds, each classroom teacher and librarian shall be
47 allotted fifty dollars for expenditure during the instruc-
48 tional year for academic materials, supplies or equip-
49 ment which in the judgment of the teacher or librarian
50 will assist him or her in providing instruction in his or
51 her assigned academic subjects, or shall be returned to
52 the faculty senate. The remainder of funds shall be
53 expended for academic materials, supplies or equipment
54 in accordance with a budget approved by the faculty
55 senate. Notwithstanding any other provisions of the law
56 to the contrary, funds not expended in one school year
57 shall be available for expenditure in the next school
58 year: *Provided*, That the amount of county funds already
59 budgeted for the fiscal year one thousand nine hundred

60 ninety—ninety-one, shall not be reduced for such
61 materials, supplies and equipment. Accounts shall be
62 maintained of the allocations and expenditures of such
63 funds for the purpose of financial audit. Academic
64 materials, supplies or equipment shall be interpreted
65 broadly, but shall not include materials, supplies or
66 equipment which will be used in or connected with
67 interscholastic athletic events.

68 (2) A faculty senate may establish a process for faculty
69 members to interview new prospective professional
70 educators and paraprofessional employees at the school
71 and submit recommendations regarding employment to
72 the principal, who may also make independent recom-
73 mendations, for submission to the county superintend-
74 ent: *Provided*, That such process must permit the timely
75 employment of persons to perform necessary duties.

76 (3) A faculty senate may nominate teachers for
77 recognition as outstanding teachers under state and
78 local teacher recognition programs and other personnel
79 at the school, including parents, for recognition under
80 other appropriate recognition programs and may
81 establish such programs for operation at the school.

82 (4) A faculty senate may submit recommendations to
83 the principal regarding the assignment scheduling of
84 secretaries, clerks, aides and paraprofessionals at the
85 school.

86 (5) A faculty senate may submit recommendations to
87 the principal regarding establishment of the master
88 curriculum schedule for the next ensuing school year.

89 (6) A faculty senate may establish a process for the
90 review and comment on sabbatical leave requests
91 submitted by employees at the school pursuant to section
92 eleven, article two of this chapter.

93 (7) Each faculty senate shall elect three faculty
94 representatives to the local school improvement council
95 established pursuant to section two of this article.

96 (8) Each faculty senate may nominate a member for
97 election to the county staff development council pursu-
98 ant to section eight, article three, chapter eighteen-a of
99 this code.

100 (9) Each faculty senate shall have an opportunity to
101 make recommendations on the selection of faculty to
102 serve as mentors for beginning teachers under begin-
103 ning teacher internship programs at the school.

104 (10) A faculty senate may solicit, accept and expend
105 any grants, gifts, bequests, donations and any other
106 funds made available to the faculty senate: *Provided,*
107 That the faculty senate shall select a member who shall
108 have the duty of maintaining a record of all funds
109 received and expended by the faculty senate, which
110 record shall be kept in the school office and shall be
111 subject to normal auditing procedures.

112 (11) On or after the first day of January, one thousand
113 nine hundred ninety-two, any faculty senate may review
114 the evaluation procedure as conducted in their school to
115 ascertain whether such evaluations were conducted in
116 accordance with the written system required pursuant
117 to section twelve, article two of chapter eighteen-a of
118 this code and the general intent of this Legislature
119 regarding meaningful performance evaluations of school
120 personnel. If a majority of members of the faculty senate
121 determine that such evaluations were not so conducted,
122 they shall submit a report in writing to the state board
123 of education: *Provided,* That nothing herein shall create
124 any new right of access to or review of any individual's
125 evaluations.

126 (12) Each faculty senate shall be provided by its local
127 board of education, at least a two-hour per month block
128 of noninstructional time within the school day: *Provided,*
129 That any such designated day shall constitute a full
130 instructional day. This time may be utilized and
131 determined at the local school level and shall include,
132 but not be limited to, faculty senate meetings.

§18-5A-6. Establishment of school curriculum teams.

1 There shall be established at each elementary school
2 in the state a school curriculum team composed of the
3 school principal, the counselor designated to serve that
4 school and three teachers from the kindergarten
5 through fourth grade faculty chosen by that faculty.

6 The school curriculum team shall establish the
 7 programs and methods for implementing a curriculum
 8 based on state-approved learning outcomes for kinder-
 9 garten through fourth grade based on the needs of the
 10 individual school with a focus on the basic skills of
 11 reading, composition and mathematics. The curriculum
 12 thus established shall be submitted to the county board
 13 of education for approval or for return to the school for
 14 reconsideration.

15 The school curriculum team may apply through the
 16 school's local school improvement council for a waiver
 17 from the textbook adoption process established in article
 18 two-a, of this chapter if, in the judgment of the team,
 19 materials necessary for the implementation of such
 20 curriculum are not available through the normal
 21 adoption process.

22 The school team may apply for a grant from the state
 23 board of education for the development or implementa-
 24 tion, or both, of remedial and accelerated programs to
 25 meet the needs of the students at the individual school.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-1. School building authority; powers.

§18-9D-16. Facilities plans generally; need-based eligibility.

§18-9D-1. School building authority; powers.

1 The school building authority shall consist of ten
 2 persons, of whom one shall be the state superintendent
 3 of schools, ex officio; three shall be members of the state
 4 board of education, elected by the state board; and six
 5 shall be citizens of the state, appointed by the governor,
 6 by and with the advice and consent of the senate, who
 7 are knowledgeable in matters relevant to the issues
 8 addressed by the authority, one of whom shall be
 9 representative of the interests of the construction trades.

10 The citizen appointments shall be made as soon as
 11 possible after the effective date of this section, and no
 12 two citizen appointees shall be residents within the same
 13 region. Two of the initial appointments shall be for two-
 14 year terms, and two shall be for four-year terms, with

15 all successive appointments being for four-year terms.
16 Until such appointments take effect, the state board as
17 constituted under the provisions of section one, article
18 two of this chapter may act as the authority with such
19 power as was granted them under the prior enactment
20 of this section.

21 The school building authority shall meet at least
22 quarterly, and the citizen members shall be reimbursed
23 for reasonable and necessary expenses actually incurred
24 in the performance of their official duties from funds
25 appropriated or otherwise made available for such
26 purposes upon submission of an itemized statement
27 therefor. The state superintendent of schools shall serve
28 as president of the authority.

29 The acts performed by the members of the state board
30 of education in their capacity as members of the school
31 building authority are solely the acts of the authority.

**§18-9D-16. Facilities plans generally; need-based
eligibility.**

1 (a) To facilitate the goals as stated in section fifteen
2 of this article and to assure the prudent and resourceful
3 expenditure of state funds, each regional educational
4 service agency created pursuant to section twenty-six,
5 article two of this chapter shall submit a region-wide
6 facilities plan that addresses the facilities needs of each
7 district within the region pursuant to such guidelines as
8 shall be adopted by the authority in accordance with this
9 section. Any project receiving funding shall be in
10 furtherance of such approved facilities plan.

11 (b) To assure efficiency and productivity in the project
12 approval process, the facilities plan shall be submitted
13 only after a preliminary plan, a plan outline or a
14 proposal for a plan has been submitted to the authority.
15 Selected members of the authority, which selection shall
16 include citizen members, shall then meet promptly with
17 those persons designated by the regional educational
18 service agency, including one person from each county
19 within the region, to attend the facilities plan consulta-
20 tion. The purpose of the consultation is to assure
21 understanding of the general goals of the school building

22 authority and the specific goals encompassed in the
23 following criteria and to discuss ways the plan may be
24 structured to meet those goals.

25 (c) The guidelines for the development of a facilities
26 plan shall state the manner, timeline and process for
27 submission of any plan to the authority; such project
28 specifications as may be deemed appropriate by the
29 authority; and those matters which are deemed by the
30 authority to be important reflections of how the project
31 will further the overall goals of the authority.

32 The guidelines regarding submission of the plans shall
33 include requirements for public hearings, comments or
34 other means of providing broad-based input within a
35 reasonable time period as the authority may deem
36 appropriate. The submission of each facilities plan shall
37 be accompanied by a synopsis of all comments received
38 and a formal comment by each county board included
39 in the region. The guidelines regarding project specifi-
40 cations may include such matters as energy efficiency,
41 preferred siting, construction materials, maintenance
42 plans or any other matter related to how the capital
43 improvement project is to proceed. The guidelines
44 pertaining to quality education shall require that a
45 facilities plan address how the current facilities do not
46 meet and the proposed plan and any project thereunder
47 does meet the following goals:

48 (1) Student health and safety;

49 (2) Economies of scale, including compatibility with
50 similar schools that have achieved the most economical
51 organization, facility utilization and pupil-teacher
52 ratios;

53 (3) Reasonable travel time and practical means of
54 addressing other demographic considerations;

55 (4) Multi-county and regional planning to achieve the
56 most effective and efficient instructional delivery
57 system;

58 (5) Curriculum improvement and diversification,
59 including computerization and technology and advanced
60 senior courses in science, mathematics, language arts
61 and social studies;

62 (6) Innovations in education such as year-round
63 schools and community-based programs; and

64 (7) Adequate space for projected student enrollments.

65 If the project is to benefit more than one county in the
66 region, the facilities plan shall state the manner in
67 which the cost and funding of the project shall be
68 apportioned among the counties.

69 (d) Each plan shall prioritize all the projects both
70 within a county and among the counties, which priority
71 list shall be the basis for determining how available
72 funds shall be expended. In prioritizing the projects,
73 each regional educational service agency shall make
74 determinations in accordance with objective criteria to
75 be formulated by the school building authority prior to
76 the first day of January, one thousand nine hundred
77 ninety-one.

78 (e) Each plan shall include the objective means to be
79 utilized in evaluating implementation of the overall plan
80 and each project included therein. Such evaluation shall
81 measure each project's furtherance of each goal stated
82 in this section and any guidelines adopted hereunder, as
83 well as the overall success of any project as it relates
84 to the facilities plan of its region and the overall goals
85 of the authority.

86 (f) The authority may adopt guidelines for requiring
87 that a regional educational service agency modify,
88 update, supplement or otherwise submit changes or
89 additions to an approved plan and shall provide
90 reasonable notification and sufficient time for such
91 change or addition.

ARTICLE 32. SEVERABILITY.

§18-32-1. Severability.

1 Pursuant to section ten, article two, chapter two of
2 this code, if any provision of this chapter or the
3 application thereof to any person or circumstance is held
4 unconstitutional or invalid, such unconstitutionality or
5 invalidity shall not affect other provisions or applica-

6 tions of the chapter, and to this end the provisions of this
7 chapter are declared to be severable.

CHAPTER 18A. SCHOOL PERSONNEL.

Article

2. School Personnel.
3. Training, Certification, Licensing, Professional Development.
- 3A. Center for Professional Development.
4. Salaries, Wages, and Other Benefits.
5. Authority; Rights; Responsibility.
7. Severability.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

§18A-2-9. Duties and responsibilities of school principals; assistant principals.

§18A-2-12. Performance evaluations of school personnel; professional personnel evaluation process.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

1 Before entering upon their duties, all teachers shall
2 execute a contract with their boards of education, which
3 contract shall state the salary to be paid and shall be
4 in the form prescribed by the state superintendent of
5 schools. Every such contract shall be signed by the
6 teacher and by the president and secretary of the board
7 of education, and when so signed shall be filed, together
8 with the certificate of the teacher, by the secretary of
9 the office of the board.

10 A teacher's contract, under this section, shall be for
11 a term of not less than one nor more than three years,
12 one of which shall be for completion of a beginning
13 teacher internship pursuant to the provisions of section
14 two-b, article three of this chapter, if applicable; and if,
15 after three years of such employment, the teacher who
16 holds a professional certificate, based on at least a
17 bachelor's degree, has met the qualifications for the

18 same, and the board of education enter into a new
19 contract of employment, it shall be a continuing
20 contract: *Provided*, That any teacher holding a valid
21 certificate with less than a bachelor's degree who is
22 employed in a county beyond the said three-year
23 probationary period shall upon qualifying for said
24 professional certificate based upon a bachelor's degree,
25 if reemployed, be granted continuing contract status:
26 *Provided, however*, That a teacher holding continuing
27 contract status with one county shall be granted
28 continuing contract status with any other county upon
29 completion of one year of acceptable employment if such
30 employment is during the next succeeding school year
31 or immediately following an approved leave of absence
32 extending no more than one year.

33 The continuing contract of any teacher shall remain
34 in full force and effect except as modified by mutual
35 consent of the school board and the teacher, unless and
36 until terminated (1) by a majority vote of the full
37 membership of the board before the first day of April
38 of the then current year, after written notice, served
39 upon the teacher, return receipt requested, stating cause
40 or causes, and an opportunity to be heard at a meeting
41 of the board prior to the board's action thereon, or (2)
42 by written resignation of the teacher before that date,
43 to initiate termination of a continuing contract. Such
44 termination shall take effect at the close of the school
45 year in which the contract is so terminated: *Provided*,
46 That the contract may be terminated at any time by
47 mutual consent of the school board and the teacher, and
48 that this section shall not affect the powers of the school
49 board to suspend or dismiss a principal or teacher
50 pursuant to section eight of this article: *Provided*,
51 *however*, That a continuing contract for any teacher
52 holding a certificate valid for more than one year and
53 in full force and effect during the school year one
54 thousand nine hundred eighty-four, and one thousand
55 nine hundred eighty-five, shall remain in full force and
56 effect: *Provided further*, That a continuing contract shall
57 not operate to prevent a teacher's dismissal based upon
58 the lack of need for the teacher's services pursuant to
59 the provisions of law relating to the allocation to

60 teachers and pupil-teacher ratios. But in case of such
61 dismissal, the teachers so dismissed shall be placed upon
62 a preferred list in the order of their length of service
63 with that board, and no teacher shall be employed by
64 the board until each qualified teacher upon the pre-
65 ferred list, in order, shall have been offered the
66 opportunity for reemployment in a position for which
67 they are qualified: *And provided further*, That he has not
68 accepted a teaching position elsewhere. Such reemploy-
69 ment shall be upon a teacher's preexisting continuing
70 contract and shall have the same effect as though the
71 contract had been suspended during the time the
72 teacher was not employed.

73 In the assignment of position or duties of a teacher
74 under said continuing contract, the board shall have
75 authority to provide for released time of a teacher for
76 any special professional or governmental assignment
77 without jeopardizing the contractual rights of such
78 teacher or any other rights, privileges or benefits under
79 the provisions of this chapter.

80 Any teacher who fails to fulfill his contract with the
81 board, unless prevented from so doing by personal
82 illness or other just cause, or unless released from such
83 contract by the board, or who violates any lawful
84 provision thereof, shall be disqualified to teach in any
85 other public school in the state for a period of the next
86 ensuing school year, and the state department of
87 education or board may hold all papers and credentials
88 of such teacher on file for a period of one year for such
89 violation: *Provided*, That marriage of a teacher shall not
90 be considered a failure to fulfill, or violation of, the
91 contract.

92 Any classroom teacher, as defined in section one,
93 article one of this chapter, who desires to resign
94 employment with a board of education or request a leave
95 of absence, such resignation or leave of absence to
96 become effective on or before the fifteenth day of July
97 of the same year and after completion of the employ-
98 ment term, may do so at any time during the school year
99 by written notification thereof, and any such notification
100 received by a board of education shall automatically

101 extend such teacher's public employee insurance
102 coverage until the thirty-first day of August of the same
103 year.

**§18A-2-8. Suspension and dismissal of school personnel
by board; appeal.**

1 Notwithstanding any other provisions of law, a board
2 may suspend or dismiss any person in its employment
3 at any time for: Immorality, incompetency, cruelty,
4 insubordination, intemperance, willful neglect of duty,
5 unsatisfactory performance, the conviction of a felony or
6 a guilty plea or a plea of nolo contendere to a felony
7 charge. A charge of unsatisfactory performance shall
8 not be made except as the result of an employee
9 performance evaluation pursuant to section twelve of
10 this article. The charges shall be stated in writing
11 served upon the employee within two days of presenta-
12 tion of said charges to the board. The employee so
13 affected shall be given an opportunity, within five days
14 of receiving such written notice, to request, in writing,
15 a level four hearing and appeals pursuant to provisions
16 of article twenty-nine, chapter eighteen of the code of
17 West Virginia, one thousand nine hundred thirty-one, as
18 amended, except that dismissal for the conviction of a
19 felony or guilty plea or plea of nolo contendere to a
20 felony charge is not by itself a grievable dismissal. An
21 employee charged with the commission of a felony may
22 be reassigned to duties which do not involve direct
23 interaction with pupils pending final disposition of the
24 charges.

**§18A-2-9. Duties and responsibilities of school principals;
assistant principals.**

1 Upon the recommendation of the county superintend-
2 ent of schools, the county board of education shall
3 employ and assign, through written contract, public
4 school principals who shall supervise the management
5 and the operation of the school or schools to which they
6 are assigned. Such principals shall hold valid adminis-
7 trative certificates appropriate for their assignments.

8 Beginning on the first day of July, one thousand nine
9 hundred ninety-four, the prerequisites for issuance of an

10 administrative certificate for principals shall include
11 that the person has successfully completed at least six
12 credit hours of approved course work in public school
13 management techniques at an accredited institution of
14 higher education and has successfully completed
15 education and training in evaluation skills through the
16 center for professional development, or equivalent
17 education and training in evaluation skills approved by
18 the state board.

19 Under the supervision of the superintendent and in
20 accordance with the rules and regulations of the county
21 board of education, the principal shall assume adminis-
22 trative and instructional supervisory responsibility for
23 the planning, management, operation and evaluation of
24 the total educational program of the school or schools to
25 which he is assigned.

26 The principal may submit recommendations to the
27 superintendent regarding the appointment, assignment,
28 promotion, transfer and dismissal of all personnel
29 assigned to the school or schools under said principal's
30 control. Such recommendation shall be submitted in
31 writing as prescribed by the superintendent.

32 The principal shall perform such other duties as may
33 be assigned by the superintendent pursuant to the rules
34 and regulations of the county board of education.

35 Upon recommendation of the county superintendent of
36 schools, the county board of education shall, when
37 needed, employ and assign, through written contract,
38 assistant principals who shall work under the direction
39 of the school principal. Such assistant principals shall
40 hold valid administrative certificates appropriate for
41 their assignments.

42 On or before the first day of July, one thousand nine
43 hundred eighty-nine and continuing thereafter, each
44 county board of education shall assign a certificated
45 principal to each school and no principal may be
46 assigned more than two schools: *Provided*, That where
47 enrollment exceeds four hundred students there will be
48 no additional schools assigned to that principal.

49 No principal assigned to more than one school may be
50 assigned any teaching duties except on a temporary
51 emergency basis. No county shall have more teaching
52 principalships or multi-school principalships than was
53 present on the first day of January, one thousand nine
54 hundred eighty-eight.

55 On or before the first day of July, one thousand nine
56 hundred ninety-three and continuing thereafter, each
57 county board of education shall employ a full-time
58 supervising principal at each school whose net enroll-
59 ment equals or exceeds one hundred seventy students.
60 A principal assigned to a school with a net enrollment
61 equal to or greater than one hundred seventy students
62 may not be assigned any teaching duties except on a
63 temporary emergency basis. When a principal is
64 assigned on a full-time basis to a school whose net
65 enrollment is more than seventy-five students but less
66 than one hundred seventy students, such principal shall
67 have a minimum of twenty hours per week for nonteach-
68 ing duties. A principal assigned on a full-time basis to
69 a school with seventy-five students or less shall have a
70 minimum of ten hours per week for nonteaching duties:
71 *Provided*, That nothing in this section prohibits a county
72 board of education from assigning a full-time supervis-
73 ing principal to a school with a net enrollment of less
74 than one hundred seventy students.

75 Nothing contained in this section shall be construed
76 to reduce or limit the rights and privileges of principals
77 and assistant principals as teachers under the provisions
78 of section one, article one, chapter eighteen of the code
79 of West Virginia as amended; section one, article one,
80 chapter eighteen-a; and other provisions of this code:
81 *Provided*, That on or before the first day of July, one
82 thousand nine hundred ninety-three, the state board of
83 education shall not deny a county board of education the
84 right to place a principal in a school with less than one
85 hundred seventy students.

**§18A-2-12. Performance evaluations of school personnel;
professional personnel evaluation process.**

- 1 (a) The state board of education shall adopt a written

2 system for the evaluation of the employment perform-
3 ance of personnel, which system shall be applied
4 uniformly by county boards of education in the evalua-
5 tion of the employment performance of personnel
6 employed by the board.

7 (b) The system adopted by the state board of education
8 for evaluating the employment performance of profes-
9 sional personnel shall be in accordance with the
10 provisions of this section. Professional personnel means
11 professional personnel as defined in section one, article
12 one of this chapter. In developing the professional
13 personnel performance evaluation system, and amend-
14 ments thereto, the state board shall consult with the
15 professional development project of the center for
16 professional development created in section three,
17 article three-a of this chapter. The center shall actively
18 participate with the state board in developing written
19 standards for evaluation which clearly specify satisfac-
20 tory performance and the criteria to be used to deter-
21 mine whether the performance of each professional
22 personnel meets such standards.

23 The performance evaluation system shall contain, but
24 shall not be limited to the following information:

25 (1) The professional personnel positions to be evalu-
26 ated, whether they be teachers, substitute teachers,
27 administrators, principals, or others;

28 (2) The frequency and duration of the evaluations,
29 which shall be on a regular basis and of such frequency
30 and duration as to insure the collection of a sufficient
31 amount of data from which reliable conclusions and
32 findings may be drawn;

33 (3) The purposes of the evaluation, which shall serve
34 as a basis for the improvement of the performance of
35 the personnel in their assigned duties, serve as an
36 indicator of satisfactory performance for individual
37 professional personnel and serve as documentation for
38 a dismissal on the grounds of unsatisfactory perform-
39 ance, and serve as a basis for programs to increase the
40 professional growth and development of professional
41 personnel;

42 (4) The standards for satisfactory performance for
43 professional personnel and the criteria to be used to
44 determine whether the performance of each professional
45 meets such standards and other criteria for evaluation
46 for each professional position evaluated; and

47 (5) Provisions for a written improvement plan, which
48 shall be specific as to what improvements, if any, are
49 needed in the performance of the professional and shall
50 clearly set forth recommendations for improvements,
51 including recommendations for additional education and
52 training during the professional's recertification
53 process.

54 A professional whose performance is deemed to be
55 unsatisfactory shall be given notice of deficiencies. A
56 remediation plan to correct deficiencies shall be
57 developed by the employing county board of education
58 and the professional. The professional shall be given a
59 reasonable period of time for remediation of the
60 deficiencies and shall receive a statement of the
61 resources and assistance available for the purposes of
62 correcting the deficiencies.

63 No person may evaluate professional personnel for the
64 purposes of this section unless such person has an
65 administrative certificate issued by the state superin-
66 tendent and has successfully completed education and
67 training in evaluation skills through the center for
68 professional development, or equivalent education
69 training approved by the state board, which will enable
70 the person to make fair, professional, and credible
71 evaluations of the personnel whom the person is
72 responsible for evaluating. After the first day of July,
73 one thousand nine hundred ninety-four, no person may
74 be issued an administrative certificate or have an
75 administrative certificate renewed unless the state
76 board determines that such person has successfully
77 completed education and training in evaluation skills
78 through the center for professional development, or
79 equivalent education and training approved by the state
80 board.

81 Any professional personnel whose performance eval-

82 uation includes a written improvement plan shall be
 83 given an opportunity to improve his or her performance
 84 through the implementation of the plan. If the next
 85 performance evaluation shows that the professional is
 86 now performing satisfactorily, no further action shall be
 87 taken concerning the original performance evaluation.
 88 If such evaluation shows that the professional is still not
 89 performing satisfactorily, the evaluator shall either
 90 make additional recommendations for improvement or
 91 may recommend the dismissal of such professional in
 92 accordance with the provisions of section eight of this
 93 article.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

- §18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.
- §18A-3-1a. Alternative programs for the education of teachers.
- §18A-3-1b. Recommendation for certification of alternative program teachers.
- §18A-3-2. Teacher certification; required; expiration; qualifications; certification of aliens.
- §18A-3-2a. Authority of state superintendent to issue certificates; kinds of certificates.
- §18A-3-2b. Beginning teacher internships.
- §18A-3-3. Renewal of certificates; permanent certification.
- §18A-3-8. County professional staff development councils.

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

1 (a) The education of professional educators in the state
 2 shall be under the general direction and control of the
 3 state board of education after consultation with the
 4 secretary of education and the arts, who shall represent
 5 the board of directors of the state college system and the
 6 board of trustees of the university of West Virginia
 7 system. The education of professional educators in the
 8 state includes all programs leading to certification to
 9 teach or serve in the public schools including (1) those
 10 programs in all institutions of higher education,
 11 including student teaching in the public schools, (2)
 12 beginning teacher internship programs, (3) the granting
 13 of West Virginia certification to persons who received

14 their preparation to teach outside the boundaries of this
15 state, (4) any alternative preparation programs in this
16 state leading to certification, including programs
17 established pursuant to the provisions of section one-a
18 of this article and programs which are in effect on the
19 effective date of this section, and (5) any continuing
20 professional education, professional development and in-
21 service training programs for professional educators
22 employed in the public schools in the state.

23 The state board of education, after consultation with
24 the secretary of education and the arts, who shall
25 represent the board of directors of the state college
26 system and the board of trustees of the university of
27 West Virginia system, shall adopt standards for the
28 education of professional educators in the state and for
29 the awarding of certificates valid in the public schools
30 of this state.

31 The standards approved by the board for teacher
32 preparation shall include a provision for the study of
33 multicultural education. As used in this section,
34 multicultural education means the study of the plural-
35 istic nature of American society including its values,
36 institutions, organizations, groups, status positions and
37 social roles.

38 (b) To give prospective teachers the teaching expe-
39 rience needed to demonstrate competence as a prereq-
40 uisite to certification, the state board of education may
41 enter into an agreement with county boards of education
42 for the use of the public schools. Such agreement shall
43 recognize student teaching as a joint responsibility of
44 the teacher preparation institution and the cooperating
45 public schools and shall include (1) the minimum
46 qualifications for the employment of public school
47 teachers selected as supervising teachers; (2) the
48 remuneration to be paid public school teachers by the
49 state board, in addition to their contractual salaries, for
50 supervising student teachers; and (3) minimum stand-
51 ards to guarantee the adequacy of the facilities and
52 program of the public school selected for student
53 teaching. The student teacher, under the direction and
54 supervision of the supervising teacher, shall exercise the
55 authority of a substitute teacher.

56 (c) The state superintendent of schools may issue
57 certificates to graduates of teacher education programs
58 and alternative teacher education programs approved
59 by the state board of education and in accordance with
60 rules adopted by the state board after consultation with
61 the secretary of education and the arts, who shall
62 represent the board of directors of the state college
63 system and the board of trustees of the university of
64 West Virginia system. A certificate to teach shall not be
65 granted to any person who is not a citizen of the United
66 States, is not of good moral character and physically,
67 mentally and emotionally qualified to perform the duties
68 of a teacher and who has not attained the age of eighteen
69 years on or before the first day of October of the year
70 in which his certificate is issued; except, that an
71 exchange teacher from a foreign country, or an alien
72 person who meets the requirements to teach may be
73 granted a permit to teach within the public schools of
74 the state.

75 (d) In consultation with the secretary of education and
76 the arts, who shall represent the board of directors of
77 the state college system and the board of trustees of the
78 university of West Virginia system, institutions of
79 higher education approved for teacher preparation may
80 cooperate with each other, with the center for profes-
81 sional development and with one or more county boards
82 of education in the organization and operation of centers
83 to provide selected phases of the teacher preparation
84 program such as student teaching, beginning teacher
85 internship programs, instruction in methodology and
86 seminar programs for college students, teachers with
87 provisional certification, professional support team
88 members and supervising teachers.

89 Such institutions of higher education, the center and
90 county boards of education may by mutual agreement
91 budget and expend funds for the operation of such
92 centers through payments to the appropriate fiscal
93 office of the participating institutions, the center and the
94 county boards.

95 The provisions of this section shall not be construed
96 to require the discontinuation of an existing student
97 teacher training center or school which meets the
98 standards of the state board of education.

99 All institutions of higher education approved for
100 teacher preparation in the school year of one thousand
101 nine hundred sixty-two—sixty-three shall continue to
102 hold that distinction so long as they meet the minimum
103 standards for teacher preparation. Nothing contained
104 herein shall infringe upon the rights granted to any
105 institution by charter given according to law previous
106 to the adoption of this code.

**§18A-3-1a. Alternative programs for the education of
teachers.**

1 (a) By the first day of July, one thousand nine hundred
2 ninety-one, the state board of education, after consulta-
3 tion with the secretary of education and the arts, shall
4 adopt rules in accordance with the provisions of article
5 three-b, chapter twenty-nine-a of this code for the
6 approval and operation of teacher education programs
7 which are an alternative to the regular college or
8 university programs for the education of teachers. To
9 participate in an approved alternative teacher education
10 program, the candidate must hold an alternative
11 program teacher certificate issued by the superintend-
12 ent and endorsed for the instructional field in which the
13 candidate seeks certification. An alternative program
14 teacher certificate is a temporary certificate issued for
15 one year to a candidate who does not meet the standard
16 educational requirements for certification. To be eligible
17 for such a certificate, an applicant shall:

18 (1) Possess at least a bachelor's degree from an
19 accredited institution of higher education in a discipline
20 taught in the public schools, except that the rules
21 established by the board may exempt candidates in
22 selected vocational and technical areas who have at least
23 ten years experience in the subject field from this
24 requirement;

25 (2) Pass an appropriate state board approved basic
26 skills and subject matter test or complete three years of

27 successful experience within the last seven years in the
28 area for which licensure is being sought;

29 (3) Be a citizen of the United States, be of good moral
30 character and physically, mentally and emotionally
31 qualified to perform the duties of a teacher, and have
32 attained the age of eighteen years on or before the first
33 day of October of the year in which the alternative
34 program teacher certificate is issued; and

35 (4) Have been offered employment in a school included
36 in an alternative teacher education plan approved by the
37 board to offer an alternative teacher education program.

38 Persons who pass the appropriate test as set forth
39 in subdivision (2) above shall be granted a formal
40 document which will enable them to seek employment
41 as an alternative program teacher in a public school
42 approved to offer an alternative teacher education
43 program.

44 (b) The rules adopted by the board shall include
45 provisions for the approval of alternative teacher
46 education programs which may be offered by schools,
47 school districts, consortia of schools or regional educa-
48 tional service agency and for the setting of tuition
49 charges to offset the program costs. An approved
50 alternative teacher education program shall be in effect
51 for a school, school district, consortium of schools or
52 regional educational service agency before an alterna-
53 tive program teacher may be employed in that school,
54 school district, consortium of schools or regional
55 educational service agency. Approximately two hundred
56 hours of formal instruction shall be provided in all of
57 the three following phases combined. An approved
58 alternative program shall provide essential knowledge
59 and skills to alternative program teachers through the
60 following phases of training:

61 (1) A full-time seminar/practicum of no less than
62 twenty and no more than thirty days duration which is
63 accomplished before the alternative program teacher
64 has full responsibility for a classroom. The semi-
65 nar/practicum shall provide formal instruction in the
66 essential areas for professional study which shall

67 emphasize the topics of student assessment, development
68 and learning, curriculum, classroom management, and
69 the use of educational computers and other technology
70 and shall introduce basic teaching skills through
71 supervised teaching experiences with students. The
72 seminar and practicum components shall be integrated
73 and shall include an orientation to the policies, organ-
74 ization and curriculum of the employing district;

75 (2) A period of intensive on-the-job supervision
76 beginning the first day on which the alternative
77 program teacher assumes full responsibility for a
78 classroom and continuing for a period of at least ten
79 weeks. During this time, the alternative program
80 teacher shall be visited and critiqued no less than one
81 time per week by members of a professional support
82 team and shall be observed and formally evaluated at
83 the end of five weeks and at the end of ten weeks by
84 the appropriately certified members of the team.
85 During the same period, formal instruction shall be
86 continued in the essential areas for professional study
87 which shall emphasize the topics of teaching skills,
88 student assessment, development and learning, curric-
89 ulum, classroom management, and the use of educa-
90 tional computers and other technology. At the end of the
91 ten-week period, the alternative program teacher shall
92 receive a formal written progress report from the
93 chairperson of the support team; and

94 (3) An additional period of continued supervision and
95 evaluation of no less than twenty weeks duration.
96 During this period, the alternative program teacher
97 shall be visited and critiqued at least twice per month
98 and shall be observed formally and evaluated at least
99 twice. No more than two months shall pass without a
100 formal evaluation. Formal instruction shall continue in
101 the essential areas for professional study. Opportunities
102 shall be provided for the alternative program teacher to
103 observe the teaching of experienced colleagues.

104 (c) Training and supervision of alternative program
105 teachers shall be provided by a professional support
106 team comprised of a school principal, an experienced
107 classroom teacher, a college or university education

108 faculty member and a curriculum supervisor. Districts
109 or schools which do not employ curriculum supervisors
110 or have been unable to establish a relationship with a
111 college or university shall provide for comparable
112 expertise on the team. The school principal shall serve
113 as chairperson of the team.

114 (d) The training efforts of the districts shall be
115 coordinated by the center for professional development
116 and the center shall provide an orientation and training
117 program for professional support team members.

118 (e) A school, school district, consortium of schools or
119 regional educational service agency seeking to employ
120 an alternative program teacher must submit a plan to
121 the state board of education and receive approval in
122 accordance with the same procedures used for approval
123 of collegiate preparation programs. Each plan shall
124 describe how the proposed training program will
125 accomplish the key elements of an alternative program
126 for the education of teachers as set forth in this section.
127 Each school, school district, consortium of schools or
128 regional educational service agency shall show evidence
129 in its plan of having sought joint sponsorship of their
130 training program with institutions of higher education.

**§18A-3-1b. Recommendation for certification of alterna-
tive program teachers.**

1 At the conclusion of an alternative teacher education
2 program, the principal, chairperson of the professional
3 support team, shall prepare a comprehensive evaluation
4 report on the alternative program teacher's perform-
5 ance. This report shall be submitted directly to the state
6 superintendent of schools and shall contain a recommen-
7 dation as to whether or not a professional certificate
8 should be issued to the alternative program teacher. The
9 report shall be made on standard forms developed by
10 the state superintendent.

11 The comprehensive evaluation report shall include one
12 of the following recommendations:

13 (1) Approved: Recommends issuance of a professional
14 certificate;

15 (2) Insufficient: Recommends that a professional
16 certificate not be issued but that the candidate be
17 allowed to seek reentry on one or more occasions in the
18 future into an approved alternative teacher education
19 program; or

20 (3) Disapproved: Recommends that a professional
21 certificate not be issued and that the candidate not be
22 allowed to enter into another approved alternative
23 teacher education program in this state, but shall not
24 be prohibited from pursuing teacher certification
25 through other approved programs for the education of
26 teachers in this state.

27 The chairperson of the professional support team shall
28 provide the alternative program teacher with a copy of
29 the alternative program teacher's written evaluation
30 report and certification recommendation before submit-
31 ting it to the state superintendent. If the alternative
32 program teacher disagrees with the chairperson's
33 recommendation, the alternative program teacher may,
34 within fifteen days of receipt, request an appeal in
35 accordance with the certification appeals process
36 established by the state board of education.

**§18A-3-2. Teacher certification; required; expiration;
qualifications; certification of aliens.**

1 Any professional educator, as defined in article one of
2 this chapter, who is employed within the public school
3 system of the state shall hold a valid teaching certificate
4 licensing him or her to teach in the specializations and
5 grade levels as shown on the certificate for the period
6 of his or her employment. If a teacher is employed in
7 good faith on the anticipation that he or she is eligible
8 for a certificate and it is later determined that the
9 teacher was not eligible, the state superintendent of
10 schools may authorize payment by the county board of
11 education to the teacher for a time not exceeding three
12 school months or the date of notification of his or her
13 ineligibility, whichever shall occur first. All certificates
14 shall expire on the thirtieth day of June of the last year
15 of their validity irrespective of the date of issuance.

§18A-3-2a. Authority of state superintendent to issue certificates; kinds of certificates.

1 In accordance with state board of education rules for
2 the education of professional educators adopted after
3 consultation with the secretary of education and the
4 arts, the state superintendent of schools may issue
5 certificates valid in the public schools of the state:
6 *Provided*, That a certificate shall not be issued to any
7 person who is not a citizen of the United States, is not
8 of good moral character and physically, mentally and
9 emotionally qualified to perform the duties for which
10 the certification would be granted and who has not
11 attained the age of eighteen years on or before the first
12 day of October of the year in which the certificate is
13 issued: *Provided, however*, That an exchange teacher
14 from a foreign country, or an alien person who meets
15 the requirements to teach may be granted a permit to
16 teach within the public schools of the state.

17 Certificates authorized to be issued include:

18 (1) *Professional teaching certificates*.—A professional
19 teaching certificate for teaching in the public schools
20 may be issued to a person who:

21 (i) Has at least a bachelor's degree from an accredited
22 institution of higher education in this state, has
23 completed a program for the education of teachers
24 which meets the requirements approved by the state
25 board of education, or has met equivalent standards at
26 institutions in other states, and has passed appropriate
27 state board approved basic skills and subject matter
28 tests or has completed three years of successful expe-
29 rience within the last seven years in the area for which
30 licensure is being sought; or

31 (ii) Has at least a bachelor's degree in a discipline
32 taught in the public schools from an accredited institu-
33 tion of higher education, has passed appropriate state
34 board approved basic skills and subject matter tests or
35 has completed three years of successful experience
36 within the last seven years in the area for which
37 licensure is being sought, has completed an alternative
38 program for teacher education approved by the state
39 board and is recommended for a certificate by the

40 chairperson of the professional support team of the
41 persons alternative program or the state superintendent
42 based on documentation submitted.

43 The certificate shall be endorsed to indicate the grade
44 level or levels, or areas of specialization in which the
45 person is certified to teach or to serve in the public
46 schools. The initial professional certificate shall be
47 issued provisionally for a period of three years from the
48 date of issuance and may be converted to a professional
49 certificate valid for five years subject to successful
50 completion of a beginning teacher internship, if appli-
51 cable, or renewed subject to rules adopted by the state
52 board.

53 (2) *Professional administrative certificate.*—A profes-
54 sional administrative certificate, endorsed for serving in
55 the public schools, may be issued to a person who has
56 completed requirements all to be approved by the state
57 board as follows: for a master's degree in an institution
58 of higher education accredited to offer a master's
59 degree, has successfully completed education and
60 training in evaluation skills through the center for
61 professional development, or equivalent education and
62 training in evaluation skills, and three years of manage-
63 ment level experience. Beginning the first day of
64 September, one thousand nine hundred seventy, the
65 initial professional administrative certificate shall be
66 issued provisionally for a period of three years. This
67 certificate may be converted to a professional adminis-
68 trative certificate valid for five years or renewed,
69 subject to the regulations of the state board.

70 (3) *Paraprofessional certificate.*—A paraprofessional
71 certificate may be issued to a person who has completed
72 thirty-six semester hours of postsecondary education or
73 its equivalent in subjects directly related to performance
74 of the job, all approved by the state board, and can
75 demonstrate the proficiencies to perform duties as
76 required of a paraprofessional as defined in section
77 eight, article four of this chapter.

78 (4) *Other certificates; permits.*—Other certificates and
79 permits may be issued, subject to the approval of the

80 state board, to persons who do not qualify for the
81 professional or paraprofessional certificate. Such
82 certificates or permits shall not be given permanent
83 status and persons holding such shall meet renewal
84 requirements provided by law and by regulation, unless
85 the state board declares certain of these certificates to
86 be the equivalent of the professional certificate.

87 Within the category of other certificates and permits,
88 the state superintendent may issue certificates for
89 persons to serve in the public schools as athletic coaches
90 or other extracurricular activities coaches whose duties
91 may include the supervision of students, subject to the
92 following limitations: (i) Such person shall be employed
93 under a contract with the county board of education
94 which specifies the duties to be performed, which
95 specifies a rate of pay equivalent to the rate of pay for
96 professional educators in the district who accept similar
97 duties as extra duty assignments and which provides for
98 liability insurance associated with the activity:
99 *Provided*, That such persons shall not be considered
100 employees of the board for salary and benefit purposes
101 other than as specified in the contract; (ii) a currently
102 employed certified professional educator has not applied
103 for the position; and (iii) such person completes an
104 orientation program designed and approved in accord-
105 ance with state board rules which shall be adopted no
106 later than the first day of January, one thousand nine
107 hundred ninety-one.

§18A-3-2b. Beginning teacher internships.

1 (a) Every person to whom a professional teaching
2 certificate is awarded after the first day of January, one
3 thousand nine hundred ninety-two, shall successfully
4 complete a beginning teacher internship program under
5 the provisions of this section, except such persons who
6 were awarded a professional teaching certificate on the
7 basis of at least five years teaching experience in
8 another state.

9 The beginning teacher internship program is a school
10 based program intended to provide appropriate staff
11 development activities and supervision to beginning

12 teachers to assure their competency for licensure to
13 teach in the public schools of this state. The beginning
14 teacher internship program shall consist of the following
15 components:

16 (1) A professional support team comprised of the
17 school principal, who shall be the chair of the profes-
18 sional support team, a member of the county profes-
19 sional staff development council and an experienced
20 classroom teacher at the school who teaches the same or
21 similar subject and grade level as the beginning teacher
22 and who shall serve as a mentor for the beginning
23 teacher;

24 (2) An orientation program to be conducted prior to
25 the beginning of the instructional term, but within the
26 employment term, supervised by the mentor teacher;

27 (3) The scheduling of joint planning periods for the
28 mentor and beginning teacher throughout the school
29 year;

30 (4) Mentor observation of the classroom teaching skills
31 of the beginning teacher for at least one hour per week
32 during the first half of the school year and which may
33 be reduced at the discretion of the mentor to one hour
34 every two weeks during the second half of the school
35 year;

36 (5) Weekly meetings between the mentor and the
37 beginning teacher at which the mentor and the begin-
38 ning teacher discuss the performance of the beginning
39 teacher and any needed improvements, which meetings
40 may be reduced at the discretion of the mentor to
41 biweekly meetings during the second half of the school
42 year;

43 (6) Monthly meetings of the professional support team
44 to discuss the performance of the beginning teacher
45 which meetings may include all mentor members of all
46 professional support teams at the school if helpful in the
47 judgment of the participants;

48 (7) In-service professional development programs
49 provided through the professional development project
50 of the center for professional development for beginning

51 teachers and for mentors both of which will be held in
52 the first half of the school year;

53 (8) The provision of necessary release time from
54 regular duties for the mentor teacher, as agreed to by
55 the principal and the mentor teacher, and a stipend of
56 at least six hundred dollars for the mentor teacher for
57 duties as a mentor teacher; and

58 (9) A final evaluation of the performance of the
59 beginning teacher completed by the principal on a form
60 developed by the state board of education.

61 (b) The final evaluation form shall be submitted by the
62 principal to the county school superintendent and shall
63 include one of the following recommendations:

64 (1) Full professional status: A recommendation of full
65 professional status indicates that the beginning teacher
66 has successfully completed the internship program and
67 in the judgment of the principal has demonstrated
68 competence as a professional educator;

69 (2) Continuing internship status: A recommendation of
70 continuing internship status indicates that in the
71 judgment of the principal the beginning teacher
72 requires further supervision and further employment in
73 the district should be conditioned upon successful
74 completion of an additional year under a beginning
75 teacher internship program; or

76 (3) Discontinue employment: A recommendation to
77 discontinue employment indicates that in the judgment
78 of the principal the beginning teacher has completed
79 two years of employment under supervision in a
80 beginning teacher internship program, has not demon-
81 strated competence as a professional educator and will
82 not benefit from further supervised employment in the
83 district.

§18A-3-3. Renewal of certificates; permanent certification.

1 Until the person qualifies for a permanent certificate,
2 any professional or first class certificate based upon a
3 bachelor's degree shall be renewable provided the

4 holder: (1) Files application on a prescribed form with
5 the state department of education; (2) presents an
6 official transcript of six semester hours of approved
7 credit, as may be prescribed by the state board:
8 *Provided*, That such renewal is completed after the
9 beginning of the period of validity of the certificate to
10 be renewed and within the five-year period immediately
11 preceding the date of application for renewal; (3)
12 successfully completes a beginning teacher internship
13 program, if applicable; and (4) submits a recommenda-
14 tion based on successful teaching experience from the
15 county superintendent of schools of the county in which
16 the holder last taught or resides.

17 The holder of a professional certificate, valid for five
18 years, shall have the certificate made permanent upon
19 meeting either of the following requirements: (1)
20 Completion of the second renewal, in accordance with
21 the provisions set forth in (2) above; (2) after five years
22 of service in the public schools, presentation of a
23 transcript showing the completion of requirements for
24 a master's degree from an institution of higher educa-
25 tion accredited to offer the master's degree and in a
26 program relevant to the public school program or
27 completes the fifth year of training leading to a
28 bachelor's degree in library science from a school fully
29 approved by the American library association. In either
30 event the person must file application on a prescribed
31 form with the state department of education and must
32 submit a recommendation from the county superintend-
33 ent of schools of the county in which the person last
34 taught or resides.

35 All certificates and permits, other than the profes-
36 sional certificate, shall be renewed in accordance with
37 state board regulations.

38 If the applicant seeking renewal has cause to believe
39 that the county superintendent refuses to give a
40 recommendation without just cause, the applicant shall
41 have the right, in such case, to appeal to the state
42 superintendent of schools whose responsibility it shall be
43 to investigate the matter and issue a certificate if, in the

44 opinion of the state superintendent, the county superin-
45 tendent's recommendation was withheld arbitrarily.

46 A person who has reached the age of sixty and holds
47 a renewable certificate, as provided in this section, need
48 not present renewal credit but shall meet all other
49 renewal requirements.

§18A-3-8. County professional staff development councils.

1 The Legislature finds the professional expertise and
2 insight of the classroom teacher to be an invaluable
3 ingredient in the development and delivery of staff
4 development programs which meet the needs of class-
5 room teachers.

6 Therefore, a professional staff development council
7 comprised of proportional representation from the
8 major school levels and from vocational, special educa-
9 tion and other specialties in proportion to their employ-
10 ment numbers in said county shall be established in
11 each school district in the state in accordance with rules
12 adopted by the state board of education. Nominations of
13 instructional personnel to serve on the county staff
14 development council may be submitted by the faculty
15 senates of the district to the county superintendent who
16 shall prepare and distribute ballots and tabulate the
17 votes of the counties instructional personnel voting on
18 the persons nominated. Each county staff development
19 council shall consist of between nine and fifteen
20 members at the discretion of the county superintendent
21 based on the size of the county. Such councils shall have
22 final authority to propose staff development programs
23 for their peers based upon rules established by statute
24 and the council on professional education.

25 The county superintendent or a designee shall enjoy
26 an advisory, nonvoting role on said council. The county
27 board shall make available an amount equal to one tenth
28 of one percent of the amounts provided in accordance
29 with section four, article nine-a, chapter eighteen of this
30 code and credit such funds to an account to be used by
31 the council to fulfill its objectives. The local board will
32 have final approval of all proposed disbursements.

33 The professional staff development project of the

34 center for professional development shall assist in the
 35 development and delivery of staff development pro-
 36 grams by the county staff development councils and
 37 shall coordinate staff development efforts statewide.

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-1. Center for professional development created; intent; advisory council.

§18A-3A-2. Professional development project.

§18A-3A-2a. Development training project.

§18A-3A-3. Professional personnel evaluation project.

§18A-3A-4. Project for instructional renewal through science and technology (Project FIRST).

§18A-3A-5. West Virginia advanced placement center.

§18A-3A-6. Task force on teacher preparation.

§18A-3A-1. Center for professional development created; intent; advisory council.

1 (a) Teaching is a profession that directly correlates to
 2 the social and economic well-being of a society and its
 3 citizens. Superior teaching is essential to a well
 4 educated and productive populace. The intent of this
 5 article is to recognize the value of professional involve-
 6 ment by experienced educators in building and main-
 7 taining a superior teaching force and to establish
 8 avenues for applying such involvement.

9 In furtherance of this intent, the center for profes-
 10 sional development is established. The general mission
 11 of the center is to study matters relating to the quality
 12 of teaching and management in the schools of West
 13 Virginia and to promote the implementation of pro-
 14 grams and practices to assure the highest quality in
 15 such teaching and management. The center shall also
 16 perform such duties as are assigned to it by law.

17 The center shall consist of nine persons as members:
 18 The secretary of education and the arts, ex officio; the
 19 state superintendent of schools, ex officio; one member
 20 of the state board of education, elected by the state
 21 board; two experienced educators, of whom one shall be
 22 a working classroom teacher, appointed by the governor
 23 by and with the advice and consent of the senate; and
 24 four citizens of the state who are knowledgeable in
 25 matters relevant to the issues addressed by the center

26 appointed by the governor by and with the advice and
27 consent of the senate. No two appointees shall be
28 residents within the same region. The state superintend-
29 ent of schools shall convene the first meeting of the
30 center to elect a chair, vice chair and secretary.

31 The election and appointment of members shall be
32 made as soon as possible after the effective date of this
33 section. Of the initial appointed members, three shall be
34 appointed for two-year terms and four shall be ap-
35 pointed for four-year terms. All successive appointments
36 shall be for four-year terms.

37 The center for professional development shall meet at
38 least quarterly, and the appointed members shall be
39 reimbursed for reasonable and necessary expenses
40 actually incurred in the performance of their official
41 duties from funds appropriated or otherwise made
42 available for such purposes upon submission of an
43 itemized statement therefor.

44 The center may employ and fix the compensation of
45 an executive director and such other persons as may be
46 necessary to carry out the mission and duties of the
47 center. When practical, personnel employed by state
48 higher education agencies and state, regional and county
49 public education agencies shall be made available to the
50 center to assist in the operation of projects of limited
51 duration.

52 The center shall contract with existing agencies or
53 agencies created after the effective date of this section
54 or others to provide training programs in the most
55 efficient manner. Existing programs currently based in
56 agencies of the state shall be continued in the agency
57 of their origin unless the center establishes a compelling
58 need to transfer or cancel the existing program. The
59 center shall recommend to the governor the transfer of
60 funds to the providing agency, if needed, to provide
61 programs approved by the center.

62 (b) To assist the center for professional development
63 in the performance of its duties related to teacher
64 education and professional development, there is created
65 an advisory council on professional development which

66 shall consist of eleven persons as follows: An employee
67 of the center who shall chair the advisory council; two
68 shall be professors, or associate or assistant professors,
69 of teacher education, one from a public institution and
70 one from a private institution of higher education in this
71 state offering programs leading to certification to teach
72 in the public schools of this state; two county school
73 superintendents, one of whom shall be from a district
74 with a student enrollment above the statewide average
75 and one of whom shall be from a district with a student
76 enrollment below such average; two school principals,
77 one of whom shall be from a school including elementary
78 grade levels and one of whom shall be from a school
79 including secondary grade levels; and four professional
80 instructional personnel, two of whom shall be from a
81 school including elementary grade levels and two of
82 whom shall be from a school including secondary grade
83 levels. To the extent possible, the principals and
84 instructional personnel shall be appointed from the
85 members of county staff development councils. Except
86 for the employee of the center, the members shall be
87 appointed jointly by the secretary of education and the
88 arts and the state superintendent for two-year terms
89 which overlap so that one member from each of the
90 classes shall be appointed in each successive year, except
91 that two members from the professional instructional
92 personnel class shall be appointed in each successive
93 year. No two members of the council shall be from the
94 same college or university or school district. Members
95 of the council shall be granted release time from their
96 employment for attending meetings of the council.

§18A-3A-2. Professional development project.

1 (a) Through this project the center shall:

2 (1) Identify the knowledge, skills, attitudes and other
3 such pertinent complements deemed essential for an
4 individual to demonstrate appropriate performance as a
5 professional personnel in the public schools of West
6 Virginia. The center shall review the report of the
7 governor's committee on the preparation of teachers
8 established in section six of this article, shall participate
9 in the work of, and may contract with, the National

10 Board for Professional Teaching Standards, Inc., to
11 develop processes, procedures and assessment measures
12 for the certification of teachers, and shall consult
13 regularly with active members of the teaching profes-
14 sion in the public schools and higher education teacher
15 preparation programs. The center may make recom-
16 mendations to the state board of education and the
17 higher education governing boards regarding the
18 adoption of such work for application in the continuing
19 professional development of public school professional
20 educators;

21 (2) Serve in a coordinating capacity to assure that the
22 knowledge, skills, attitude and other pertinent comple-
23 ments of appropriate professional performance which
24 evolve over time in the public school environment are
25 appropriately reflected in the programs approved for
26 the education of professional personnel;

27 (3) Provide for the routine updating of professional
28 skills of professional educators through in-service and
29 other programs; and

30 (4) Provide consultation and assistance to county staff
31 development councils established under the provisions of
32 section eight, article three of this chapter in designing
33 and delivering staff development programs to meet the
34 staff development needs of the professional educators of
35 their county.

§18A-3A-2a. Development training project.

1 Through this project the center shall develop training
2 in the area of developmental instruction with an
3 emphasis in grades kindergarten through grade four.

§18A-3A-3. Professional personnel evaluation project.

1 Through this project, the center shall:

2 (1) Establish programs that provide education and
3 training in evaluation skills to administrative personnel
4 who will evaluate the employment performance of
5 professional personnel pursuant to the provisions of
6 section twelve, article two of this chapter; and

7 (2) Establish programs that provide instruction to

8 classroom teachers who will serve as beginning teacher
9 mentors in accordance with the provisions of section
10 two-b, article three of this chapter.

§18A-3A-4. Project for instructional renewal through science and technology (Project FIRST).

1 Through this project, the center shall:

2 (1) Determine the most effective and efficient ways to
3 integrate the capabilities of the state for producing,
4 delivering and receiving electronic instruction and
5 establish a comprehensive long-range plan to further the
6 cooperation and coordination of the various agencies of
7 the state, the county boards of education and the
8 regional educational service agencies involved in
9 distance learning technology; and

10 (2) Encourage the use of technology for educational
11 purposes that will enhance teaching and learning,
12 promote equality in educational offerings, facilitate the
13 delivery of instruction to nontraditional student popula-
14 tions and increase educational system management
15 capabilities, including assisting in the provision of
16 training programs for teachers involved in technology
17 assisted instruction programs.

18 In accomplishing this project, the center shall coop-
19 erate with and receive cooperation from other agencies
20 of the state and its political subdivisions which have
21 control over technologies appropriate for application in
22 the project or which have a need for the services
23 available as a result of the project.

24 A goal of the project is to create a statewide technol-
25 ogy network linking universities and colleges, schools,
26 libraries and, eventually, homes with software, data
27 bases and video learning capabilities.

§18A-3A-5. West Virginia advanced placement center.

1 There is established a West Virginia advanced
2 placement center to provide statewide coordination for
3 the continued growth and development of the advanced
4 placement programs in West Virginia high schools. The
5 center will assist the West Virginia department of

6 education, county boards of education, institutions of
7 higher education, the College Board, Inc., and the West
8 Virginia advanced placement advisory council in all
9 matters relative to the advanced placement in this state.

10 The specific functions of the center include:

11 (1) Coordinating advanced placement teacher training
12 institutes;

13 (2) Establishing a cadre of instructors for the ad-
14 vanced placement teacher training institutes;

15 (3) Providing follow-up teacher training for advanced
16 placement teachers;

17 (4) Identifying and obtaining external sources of
18 funding;

19 (5) Networking advanced placement teachers through
20 an advanced placement newsletter;

21 (6) Serving as a liaison for the College Board and the
22 West Virginia department of education, county boards
23 of education, institutions of higher education, the West
24 Virginia advanced placement advisory council, the
25 Legislature and the governor;

26 (7) Conducting research and evaluating the state's
27 advanced placement program;

28 (8) Assisting county boards of education and local
29 schools in establishing, evaluating and maintaining
30 advanced placement programs;

31 (9) Serving as a clearinghouse for advanced placement
32 materials and correspondence; and

33 (10) Certify individual courses that meet the estab-
34 lished standards of advanced placement programs.

§18A-3A-6. Task force on teacher preparation.

1 The task force on the preparation of teachers ap-
2 pointed by the governor and existing on the effective
3 date of this section shall undertake a comprehensive
4 review of programs to prepare teachers for employment
5 in West Virginia, shall identify ways to improve teacher
6 preparation programs and shall report to the governor

7 and the Legislature on such matters no later than the
8 fifteenth day of December, one thousand nine hundred
9 ninety. The report should address:

10 (1) Upgrading teacher education programs to make
11 the academic area of study more rigorous and more
12 effective;

13 (2) Streamlining and simplifying certification stand-
14 ards and processes;

15 (3) Establishing a delivery system in higher education
16 for the in-field masters program;

17 (4) An examination of the range of nontraditional
18 approaches to augment the teaching force including, but
19 not limited to, alternative programs leading to certifi-
20 cation and national teacher's exam testing;

21 (5) A survey of the demand for teachers over the next
22 ten years which identifies possible areas of teacher
23 shortage and over supply;

24 (6) Upgrading teacher education programs to make
25 the pedagogical area of study reflective of new develop-
26 ments in the classroom such as distance learning,
27 computer assisted instruction and early childhood
28 developmental programs;

29 (7) Continuing education and evaluation of the
30 teaching force; and

31 (8) Recommendations relating to the governance of
32 teacher preparation including, but not limited to,
33 assessment, accountability, funding and mechanisms to
34 assure appropriate program review and modifications in
35 response to the changing demands of the teaching work
36 force.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-7a. Employment, promotion and transfer of professional personnel;
seniority.

§18A-4-8b. Seniority rights for school service personnel.

§18A-4-8c. Seniority rights for personnel employed by multi-county
vocational centers.

**§18A-4-7a. Employment, promotion and transfer of
professional personnel; seniority.**

1 A county board of education shall make decisions
2 affecting the hiring of new classroom teachers or
3 professional personnel other than classroom teachers on
4 the basis of the applicant with the highest qualifications.
5 In judging qualifications, consideration shall be given to
6 each of the following: Appropriate certification and/or
7 licensure; amount of experience relevant to the position
8 or, in the case of a classroom teaching position, the
9 amount of teaching experience in the subject area
10 and/or grade level; the amount of course work and/or
11 degree level in the relevant field and degree level
12 generally; academic achievement; relevant specialized
13 training; past performance evaluations conducted
14 pursuant to section twelve, article two of this chapter;
15 and other measures or indicators upon which the
16 relative qualifications of the applicant may fairly be
17 judged. If one or more permanently employed instruc-
18 tional personnel apply for a classroom teaching position
19 and meet the standards set forth in the job posting, the
20 county board of education shall make decisions affecting
21 the filling of such positions on the basis of the following:
22 Appropriate certification and/or licensure; amount of
23 experience relevant to the position; the existence of
24 teaching experience in the subject area; degree level in
25 the relevant field; specialized training directly related
26 to the performance of the job; meeting satisfactory
27 standards in evaluations over the previous two years;
28 and seniority. If the applicant with the most seniority
29 is not selected for the position, upon the request of the
30 applicant a written statement of reasons shall be given
31 to the applicant with suggestions for improving the
32 applicant's qualifications.

33 The seniority of classroom teachers as defined in
34 section one, article one of this chapter with the exception
35 of guidance counselors shall be determined on the basis
36 of the length of time the employee has been employed
37 as a regular full-time certified and/or licensed profes-
38 sional educator by the county board of education and
39 shall be granted in all areas that the employee is
40 certified and/or licensed.

41 Upon completion of one hundred thirty-three days of

42 employment in any one school year, substitute teachers
43 shall accrue seniority exclusively for the purpose of
44 applying for employment as a permanent, full-time
45 professional employee. One hundred thirty-three days or
46 more of said employment shall be prorated and shall
47 vest as a fraction of the school year worked by the
48 permanent, full-time teacher.

49 Guidance counselors and all other professional em-
50 ployees, as defined in section one, article one of this
51 chapter, except classroom teachers, shall gain seniority
52 in their nonteaching area of professional employment on
53 the basis of the length of time the employee has been
54 employed by the county board of education in that area:
55 *Provided*, That if an employee is certified as a classroom
56 teacher, the employee accrues classroom teaching
57 seniority for the time that that employee is employed in
58 another professional area. For the purposes of accruing
59 seniority under this paragraph, employment as princi-
60 pal, supervisor or central office administrator, as
61 defined in section one, article one of this chapter, shall
62 be considered one area of employment.

63 Employment for a full employment term shall equal
64 one year of seniority, but no employee may accrue more
65 than one year of seniority during any given fiscal year.
66 Employment for less than the full employment term
67 shall be prorated. A random selection system estab-
68 lished by the employees and approved by the board shall
69 be used to determine the priority if two or more
70 employees accumulate identical seniority.

71 Whenever a county board is required to reduce the
72 number of professional personnel in its employment, the
73 employee with the least amount of seniority shall be
74 properly notified and released from employment pursu-
75 ant to the provisions of section two, article two of this
76 chapter: *Provided*, That all persons employed in a
77 certification area to be reduced who are employed under
78 a temporary permit shall be properly notified and
79 released before a fully certified employee in such a
80 position is subject to release: *Provided, however*, That an
81 employee subject to release shall be employed in any
82 other professional position where such employee is

83 certified and was previously employed or to any lateral
84 area for which such employee is certified and/or
85 licensed, if such employee's seniority is greater than the
86 seniority of any other employee in that area of certifi-
87 cation and/or licensure.

88 After the fifth day prior to the beginning of the
89 instructional term, or after the first day of the second
90 half of the instructional term, no person employed and
91 assigned to a professional position may transfer to
92 another professional position in the county during that
93 half of the instructional term: *Provided*, That such
94 person may apply for any posted, vacant positions with
95 the successful applicant assuming the position at the
96 beginning of the next half of the instructional term:
97 *Provided, however*, That professional personnel who have
98 been on an approved leave of absence may fill these
99 vacancies prior to the next semester. The superintendent
100 may fill a position before the next instructional term
101 when it is determined to be in the best interest of the
102 students.

103 All professional personnel whose seniority with the
104 county board is insufficient to allow their retention by
105 the county board during a reduction in work force shall
106 be placed upon a preferred recall list. As to any
107 professional position opening within the area where they
108 had previously been employed or to any lateral area for
109 which they have certification and/or licensure, such
110 employee shall be recalled on the basis of seniority if no
111 regular, full-time professional personnel, or those
112 returning from leaves of absence with greater seniority,
113 are qualified, apply for and accept such position. Before
114 position openings that are known or expected to extend
115 for twenty consecutive employment days or longer for
116 professional personnel may be filled by the board, the
117 board shall be required to notify all qualified profes-
118 sional personnel on the preferred list and give them an
119 opportunity to apply, but failure to apply shall not cause
120 such employee to forfeit any right to recall. The notice
121 shall be sent by certified mail to the last known address
122 of the employee, and it shall be the duty of each
123 professional personnel to notify the board of continued

124 availability annually of any change in address or of any
125 change in certification and/or licensure.

126 Boards shall be required to post and date notices of
127 all openings in established, existing or newly created
128 positions in conspicuous working places for all profes-
129 sional personnel to observe for at least five working
130 days. The notice shall be posted within twenty working
131 days of such position openings and shall include the job
132 description. Any special criteria or skills that are
133 required by the position shall be specifically stated in
134 the job description and directly related to the perform-
135 ance of the job. No vacancy shall be filled until after the
136 five-day minimum posting period. For the purposes of
137 this article, a position is deemed vacant when the
138 instructional position could be filled by a certified, full-
139 time professional personnel: *Provided*, That nothing
140 provided herein shall prevent the county board of
141 education from eliminating a position due to lack of
142 need.

143 Notwithstanding any other provision of the code to the
144 contrary, where the total number of classroom teaching
145 positions in an elementary school does not increase from
146 one school year to the next, but there exists in that
147 school a need to realign the number of teachers in one
148 or more grade levels, kindergarten through six, teachers
149 at the school may be reassigned to grade levels for which
150 they are certified without that position being posted:
151 *Provided*, That the employee and the county board of
152 education mutually agree to the reassignment.

153 When the total number of classroom teaching posi-
154 tions in an elementary school needs to be reduced, such
155 reduction shall be made on the basis of seniority with
156 the least senior classroom teacher being recommended
157 for transfer: *Provided*, That a specified grade level
158 needs to be reduced and the least senior employee in the
159 school is not in that grade level, the least senior
160 classroom teacher in the grade level that needs to be
161 reduced shall be reassigned to the position made vacant
162 by the transfer of the least senior classroom teacher in
163 the school without that position being posted: *Provided*,

164 *however*, That the employee is certified and/or licensed
165 and agrees to the reassignment.

§18A-4-8b. Seniority rights for school service personnel.

1 A county board of education shall make decisions
2 affecting promotion and filling of any service personnel
3 positions of employment or jobs occurring throughout
4 the school year that are to be performed by service
5 personnel as provided in section eight, article four of
6 this chapter, on the basis of seniority, qualifications and
7 evaluation of past service.

8 Qualifications shall mean that the applicant holds a
9 classification title in his category of employment as
10 provided in this section and must be given first
11 opportunity for promotion and filling vacancies. Other
12 employees then must be considered and shall qualify by
13 meeting the definition of the job title as defined in
14 section eight, article four of this chapter, that relates to
15 the promotion or vacancy. If the employee so requests,
16 the board must show valid cause why an employee with
17 the most seniority is not promoted or employed in the
18 position for which he applies. Applicants shall be
19 considered in the following order:

20 (1) Regularly employed service personnel;

21 (2) Service personnel whose employment has been
22 discontinued in accordance with this section;

23 (3) Professional personnel who held temporary service
24 personnel jobs or positions prior to the ninth day of June,
25 one thousand nine hundred eighty-two, and who apply
26 only for such temporary jobs or positions;

27 (4) Substitute service personnel; and

28 (5) New service personnel.

29 The county board of education may not prohibit a
30 service employee from retaining or continuing his
31 employment in any positions or jobs held prior to the
32 effective date of this section and thereafter.

33 A promotion shall be defined as any change in his
34 employment that the employee deems to improve his
35 working circumstance within his classification category

36 of employment and shall include a transfer to another
37 classification category or place of employment if the
38 position is not filled by an employee who holds a title
39 within that classification category of employment. Each
40 class title listed in section eight, article four of this
41 chapter shall be considered a separate classification
42 category of employment for service personnel, except for
43 those class titles having Roman numeral designations,
44 which shall be considered a single classification of
45 employment. The cafeteria manager class title shall be
46 included in the same classification category as cooks.
47 The executive secretary class title shall be included in
48 the same classification category as secretaries.

49 For purposes of determining seniority under this
50 section an employee's seniority begins on the date that
51 he enters into his assigned duties.

52 Notwithstanding any other provisions of this chapter
53 to the contrary, decisions affecting such personnel with
54 respect to extra-duty assignments shall be made in the
55 following manner: An employee with the greatest length
56 of service time in a particular category of employment
57 shall be given priority in accepting such assignments,
58 followed by other fellow employees on a rotating basis
59 according to the length of their service time until all
60 such employees have had an opportunity to perform
61 similar assignments. The cycle then shall be repeated:
62 *Provided*, That an alternative procedure for making
63 extra-duty assignments within a particular classifica-
64 tion category of employment may be utilized if the
65 alternative procedure is approved both by the county
66 board of education and by an affirmative vote of two
67 thirds of the employees within that classification
68 category of employment. For the purpose of this section,
69 extra-duty assignments are defined as irregular jobs
70 that occur periodically or occasionally such as, but not
71 limited to, field trips, athletic events, proms, banquets
72 and band festival trips.

73 Boards shall be required to post and date notices of
74 all job vacancies of established existing or newly created
75 positions in conspicuous working places for all school
76 service employees to observe for at least five working

77 days. The notice of such job vacancies shall include the
78 job description, the period of employment, the amount
79 of pay and any benefits and other information that is
80 helpful to the employees to understand the particulars
81 of the job. After the five day minimum posting period
82 all vacancies shall be filled within twenty working days
83 from the posting date notice of any job vacancies of
84 established existing or newly created positions.

85 All decisions by county boards of education concern-
86 ing reduction in work force of service personnel shall be
87 made on the basis of seniority, as hereinafter provided.

88 The seniority of any such service personnel shall be
89 determined on the basis of the length of time the
90 employee has been employed by the county board of
91 education within a particular job classification. For the
92 purpose of establishing seniority for a preferred recall
93 list as hereinafter provided, when an employee has been
94 employed in one or more classifications, the seniority
95 accrued in each previous classification shall be retained
96 by the employee.

97 Should a county board of education be required to
98 reduce the number of employees within a particular job
99 classification, the employee with the least amount of
100 seniority within that classification or grades of classifi-
101 cation shall be properly released and employed in a
102 different grade of that classification if there is a job
103 vacancy: *Provided*, That if there is no job vacancy for
104 employment within such classification or grades of
105 classification, he shall be employed in any other job
106 classification which he previously held with the county
107 board if there is a vacancy and shall retain any seniority
108 accrued in such job classification or grade of
109 classification.

110 If two or more employees accumulate identical
111 seniority, the priority shall be determined by a random
112 selection system established by the employees and
113 approved by the county board.

114 All employees whose seniority with the county board
115 is insufficient to allow their retention by the county
116 board during a reduction in work force shall be placed

117 upon a preferred recall list and shall be recalled to
118 employment by the county board on the basis of
119 seniority.

120 Employees placed upon the preferred list shall be
121 recalled to any position openings by the county board
122 within the classification(s), where they had previously
123 been employed, or to any lateral position for which the
124 employee is qualified or to a lateral area for which an
125 employee has certification and/or licensure.

126 Employees on the preferred recall list shall not forfeit
127 their right to recall by the county board if compelling
128 reasons require an employee to refuse an offer of
129 reemployment by the county board.

130 The county board shall be required to notify all
131 employees on the preferred recall list of all position
132 openings that from time to time exist. Such notice shall
133 be sent by certified mail to the last known address of
134 the employee; it shall be the duty of each such employee
135 to notify the county board of any change in the address
136 of such employee.

137 No position openings may be filled by the county
138 board, whether temporary or permanent, until all
139 employees on the preferred recall list have been
140 properly notified of existing vacancies and have been
141 given an opportunity to accept reemployment.

142 Any board failing to comply with the provisions of this
143 article may be compelled to do so by mandamus and
144 shall be liable to any party prevailing against the board
145 for court costs and his reasonable attorney fee, as
146 determined and established by the court. Further,
147 employees denied promotion or employment in violation
148 of this section shall be awarded the job, pay and any
149 applicable benefits retroactively to the date of the
150 violation and payable entirely from local funds. Further,
151 the board shall be liable to any party prevailing against
152 the board for any court reporter costs including copies
153 of transcripts.

**§18A-4-8c. Seniority rights for personnel employed by
multi-county vocational centers.**

1 Professional and service personnel employed by a
2 multi-county vocational center shall establish seniority
3 on the basis of the length of time the employee has been
4 employed by the multi-county vocational center, except
5 that any professional or service personnel whose
6 employment with the multi-county vocational center was
7 immediately preceded by employment with one of the
8 county boards participating in the operation of the
9 center or whose employment contract was with one of
10 the county boards participating in the operation of the
11 center (1) shall retain any seniority accrued during
12 employment by said county board; (2) shall accrue
13 seniority as a regular employee with said county board
14 during employment with the center; (3) shall attain
15 continuing contract status with both the county and the
16 center if the sum of the years employed by the county
17 and the center equals the statutory number required for
18 continuing contract status; and (4) shall retain and
19 continue to accrue county and center seniority in the
20 event of reemployment by said participating county as
21 a result of direct transfer from the center or recall from
22 the preferred list.

23 Reductions in work force in the center or employment
24 by the center or county board shall be made in
25 accordance with the provisions of sections seven-a and
26 eight-b of this article: *Provided*, That only years of
27 employment within the multi-county vocational center
28 shall be considered for purposes of reduction in force
29 within the center.

30 The seniority conferred herein shall apply retroac-
31 tively to all affected professional and service personnel,
32 but the rights incidental thereto shall commence as of
33 the effective date of this section.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-4. Educational meetings.

1 A county board of education may approve the attend-
2 ance of any or all teachers at educational conventions,
3 conferences, or other professional meetings of teachers
4 on school days when in the judgment of the superintend-
5 ent it is necessary or desirable. Attendance at such

6 meetings may be substituted for an equal amount of
7 teaching or employment and teachers attending shall
8 not suffer loss of pay. Further, the board is authorized
9 to pay all or any part of expenses of any personnel whom
10 it may designate to represent the board at any such
11 professional or educational meetings or in visitation to
12 another school system.

13 Every county board of education shall adopt a policy
14 under which professional educators serving as mentor
15 teachers, serving on state and county professional staff
16 development councils, serving on school curriculum
17 teams, and serving on professional support teams will
18 be granted professional time if required for perform-
19 ance of their duties during the instructional day or extra
20 duty compensation if required at other times and for
21 reimbursement for necessary expenses actually incurred
22 in attending meetings of the bodies upon which they
23 serve upon. Such policy shall provide for the coverage
24 of the professional personnel's regular duties during
25 such release times through the use of paraprofessional
26 aides, substitutes and other methods if necessary to
27 avoid the interruption of instruction.

ARTICLE 7. SEVERABILITY.

§18A-7-1. Severability.

1 Pursuant to section ten, article two, chapter two of
2 this code, if any provision of this chapter or the
3 application thereof to any person or circumstance is held
4 unconstitutional or invalid, such unconstitutionality or
5 invalidity shall not affect other provisions or applica-
6 tions of the chapter, and to this end the provisions of this
7 chapter are declared to be severable.

CHAPTER 18B. HIGHER EDUCATION.

Article

3B. West Virginia Literacy Project.

15. Severability.

ARTICLE 3B. WEST VIRGINIA LITERACY PROJECT.

§18B-3B-1. Purpose and intent of article.

§18B-3B-2. West Virginia literacy council established.

§18B-3B-1. Purpose and intent of article.

1 The enactment of this article is based on the finding
2 that many efforts are currently under way in West
3 Virginia to assist citizens in upgrading their literacy
4 skills. These efforts are due to both public sector
5 programs and private sector voluntary initiatives. The
6 enactment of this section recognizes that these efforts
7 are having a positive impact in addressing literacy
8 needs and that the many persons who have contributed
9 their own time to these efforts deserve the sincere
10 gratitude of the people of West Virginia for their service
11 in this cause.

12 The governor and the Legislature recognize that the
13 future strength and vitality of the state depend upon the
14 ability of its citizens to undertake and accomplish the
15 challenges presented in a competitive society and that
16 accomplishing these challenges requires an ever-
17 changing base of knowledge and skills. The governor
18 and the Legislature have, therefore, established a goal
19 for West Virginia that, by the year 2000, all working-
20 age adults will be functionally literate. Reaching this
21 goal will require a determined effort, one which
22 combines the successes already in place with a new focus
23 on the objectives of the future.

24 The intent of this article is to facilitate the beginning
25 of this effort.

§18B-3B-2. West Virginia literacy council established.

1 As soon as practical after the effective date of this
2 section, the governor shall appoint a literacy council
3 consisting of nine members who shall be individuals
4 broadly representative of citizens and organizations
5 within the state having an interest in adult literacy
6 education. Of the nine members, four shall be state
7 employees and shall be representative of state adult
8 basic education programs, the state library system, state
9 employment training programs and the state job
10 training council, one being appointed to represent each
11 area. Of the five remaining members, the appointments
12 shall include active members of adult literacy organi-
13 zations who are of various occupations in business,
14 industry, labor, homemaker or others.

15 The literacy council shall be under the jurisdiction of
16 the department of education and the arts pursuant to the
17 provisions of article one, chapter five-f of this code, and
18 shall be subject to the supervision of the secretary of the
19 department of education and the arts. Members of the
20 council shall be reimbursed for reasonable and neces-
21 sary expenses actually incurred in conducting the
22 business of the council.

23 The literacy council shall survey existing efforts to
24 address the literacy needs of the citizens of the state and
25 make recommendations to the governor and the Legis-
26 lature on or before the first day of January, one
27 thousand nine hundred ninety-one, as to how the state
28 could best serve to facilitate, encourage, coordinate and
29 augment these efforts.

ARTICLE 15. SEVERABILITY.

§18B-15-1. Severability.

1 Pursuant to section ten, article two, chapter two of
2 this code, if any provision of this chapter or the
3 application thereof to any person or circumstance is held
4 unconstitutional or invalid, such unconstitutionality or
5 invalidity shall not affect other provisions or applica-
6 tions of the chapter, and to this end the provisions of this
7 chapter are declared to be severable.

CHAPTER 5

**(Com. Sub. for S. B. 8—By Senators Burdette, Mr. President, and Harman,
By Request of the Executive)**

[Passed August 31, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, four, five, seven, eight, ten and twelve, article one-c, chapter eleven; to amend and reenact section two-a, article three of said chapter; to amend and reenact sections six-e and six-f, article eight of said chapter eleven; to further amend said article by adding thereto a new section, designated section six-g;

to amend and reenact section two-n, article thirteen of said chapter; to amend and reenact sections nine, sixteen and thirty, article fifteen of said chapter; to further amend said article by adding thereto two new sections, designated sections eight-c and eight-d; to amend and reenact sections eight and seventy-four, article twenty-one of said chapter; to amend and reenact section nine-a, article twenty-four of said chapter; to further amend said chapter by adding thereto a new article, designated article twelve-b; to amend and reenact sections one, two, three, four, nine, ten, twelve and thirteen, article one, chapter twelve of said code; to amend and reenact sections one, two, three, four, five, six and seven, article one-a of said chapter; to amend and reenact sections two, three, four and five, article two of said chapter; to amend and reenact sections one and eleven, article three of said chapter twelve; to amend and reenact section thirteen, article four of said chapter; to amend and reenact sections two, four and six, article five of said chapter twelve; to amend and reenact sections four, five and six, article six of said chapter; to further amend said article six by adding thereto two new sections, designated sections one-a and nine-d; to amend and reenact sections fourteen, seventeen and eighteen, article one, chapter thirteen of said code; to amend and reenact sections one, four, five-a, eight, nine, thirteen-b and fifteen, article nine-a, chapter eighteen of said code; to further amend said article nine-a by adding thereto a new section, designated section eight-a; to amend and reenact sections two, four, five, six, eight and nine, article twenty-two-d of said chapter eighteen; to amend and reenact section five, article thirty, chapter eighteen of said code; to amend and reenact sections one, two, five, five-a, five-b, five-d, eight, eight-a and nine, article four, chapter eighteen-a of said code; and to amend article two, chapter twenty-four of said code by adding thereto two new sections, designated sections one-g and eleven-b, all relating to the education enhancement act of 1990; providing adequate funding, adequate teacher pay scales, and independent professional management of public funds in order to enhance the future of public education in this state;

removing board of investments from department of tax and revenue; setting forth legislative findings; adding an additional citizen member to the property evaluation training and procedures commission; transferring authority to promulgate legislative rules for sale of microfilm, photographs and maps; requiring county assessors to develop, maintain and sell tax maps in accordance with legislative rules promulgated by the commission; deleting the requirement that assessors approve certain contracts; providing that increases and valuation may be estimated and uniformly distributed over a three-year period; continuing the two percent valuation until repayment of loan; removing residency requirement for appraisers; requiring money disbursed from the county revolving valuation fund to be disbursed in the same manner as other funds provided to the assessor; requiring the cost of appraising industrial and natural resources property to be borne by the state; requiring the tax commissioner and all assessors to send to each person owning or controlling property appraised by them a pamphlet explaining the reappraisal process and its equalization goal; providing for regular and special levy rate reductions generally; requiring local levying bodies with certain increases in special levy revenues to hold public hearing; providing a minimum severance tax to be imposed at a rate of fifty cents per ton of coal produced by the taxpayer for sale, profit or commercial use; permitting a credit for minimum severance paid against the severance tax on coal imposed in article thirteen-a, chapter eleven of the code not to exceed the liability for severance tax on coal for the year, exclusive of the additional tax on coal imposed by section six of said article thirteen-a and determined after application of certain credits to which the taxpayer is entitled; providing short title, definitions, accounting periods and methods; requiring minimum severance tax returns to be made on a separate consolidated composite or unitary basis identical to the separate consolidated composite or unitary basis on which severance tax returns are filed; providing for an annual return and periodic installment payments of estimated tax, time and place for payment, extensions of time for filing

return and paying tax, signing of returns and documents; allowing tax commissioner to require taxpayer compliance bond or to require first purchaser to withhold tax of delinquent taxpayer; providing for the retention of records; making minimum severance tax subject to all the provisions of "West Virginia Tax Procedures and Administration Act" and the "West Virginia Tax Crimes and Penalties Act"; and further providing for severability, effective date and the filing of combined returns and reports for article twelve-b and thirteen-a taxes under said chapter eleven; increasing business and occupation tax rates for the privileges set forth in section two-n, article thirteen, chapter eleven of the code; requiring business and occupation tax to be based on the alternative methods, with liability for tax being the greater of the two; providing immediate pass-through to purchasers of increase in tax; specifying effective date of such changes in the business and occupation tax; eliminating exemption from sales tax for sales of tangible personal property to be consumed in the construction of real property that is or will be used by governmental entity for a governmental or proprietary purpose; providing transition rules continuing said exemption for certain written contractual obligations entered into on or before the fifteenth day of September, one thousand nine hundred ninety; prohibiting contractors and agents from asserting sales tax exemptions to which the persons for whom they perform services are entitled; requiring, in certain instances, accelerated payment of consumers sales tax collected from consumers and personal income tax withheld from employees during the month of June each year; removing the credit for severance tax against the personal income tax and against the corporation net income tax, and specifying effective date of such removal; permitting loans from the consolidated pension fund to the state for educational improvements and providing the terms and conditions for repayment of such loans; creating a special education enhancement fund in the state treasury; dedicating certain revenues from consumers sales and service tax to repayment of said loans; clarifying and expanding the duties of the West Virginia state board of investments;

setting forth legislative findings; designating state depositories; reciting legislative findings; providing for maintenance of deposits by the board of investments; designating depositories for interest earnings; providing for records of depository bonds by the board of investments; allowing the board to transfer funds by check or bank wire; requiring board of investments to keep records for each depository used; making funds available to the board of investments; providing for board payments for banking services; providing for board management of the linked deposit program; defining terms; reciting legislative findings; limiting linked deposits; providing for loan applications to the board of investments; providing for acceptance or rejection of loan package; providing for certification of compliance by the board; providing for liability of the board; providing for payment and deposit of taxes and other amounts due the state or any political subdivision; providing for deposits with the board; providing for deposit of money by the board; specifying duty of depositories; providing for deposits in corresponding banks of state depositories; providing for appropriations, expenditures and deductions; prescribing manner of payment from treasury; setting forth accounts, reports and general provisions; providing for bank reconciliations by the board; designing the board as the custodian of securities; requiring board to keep records of securities received; specifying when notes deemed securities; reciting legislative findings relating to board of investments; specifying composition of board members; expanding powers of the board; setting forth fees for services and special revenue account; authorizing bond issues for original indebtedness; making bonds payable at office of the board; providing for bonds to be registered at offices of the board; allowing exchange of bonds at offices of the board; causing the student loan assistance program to be administered by the board instead of the state treasurer; defining terms; providing for board investment and linked deposits; providing applications to the board; providing for board acceptance or rejection of loan packages; providing for board certification of compliance; providing that board not

liable; providing for board participation in higher education tuition trust; specifying composition of board of directors; amending the public school support plan; deleting expired language; deleting a scheduled increase in the professional instructional personnel ratio, freezing the growth of administrative and pay grade "H" personnel and requiring the governor to submit a recommendation to the Legislature for establishing responsible administrative support; changing the mandate for reductions in professional education to be conducted in a certain order to a statement of intent; changing the foundation allowance for administrative cost to a per person basis and providing for a separate foundation allowance for regional educational service agency; deleting a scheduled increase in the current expense multiplier, basing the distribution of funds for substitutes or current expense on the number of employees, limiting growth in the county allowance to four percent per year and providing for a separate allocation to be distributed to schools for expenditure by faculty senates; requiring a one-time appropriation for certain counties; changing the computation of funds accrued from decreases in adjusted enrollment to a yearly basis and changing the allocation of such funds; requiring requests for supplemental appropriations related to increased net enrollment; enacting salary increases for professional educators and service personnel and providing appropriate definitions; providing a definition of salary equity among the counties; removing the growth caps on supplemental salaries for professional educators and service personnel; providing for payment of minimum salary equity adjustments within the minimum salary schedules; providing a definition and salary classification for paraprofessionals; providing that extra duty assignments must be outside the normal working day for additional compensation; providing that employee pay shall be accompanied by an accounting of withholdings and the dollar value of benefits provided by the state; and providing rate incentives for utility investment in qualified clean coal and clean air technology facilities, and continuing prudence reviews by the public service commission.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, three, four, five, seven, eight, ten and twelve, article one-c, chapter eleven be amended and reenacted; that section two-a, article three of said chapter be amended and reenacted; that sections six-e and six-f, article eight of said chapter be amended and reenacted; that said article eight be further amended by adding thereto a new section, designated section six-g; that section two-n, article thirteen of said chapter be amended and reenacted; that sections nine, sixteen and thirty, article fifteen of said chapter be amended and reenacted; that said article fifteen be further amended by adding thereto two new sections, designated sections eight-c and eight-d; that sections eight and seventy-four, article twenty-one of said chapter eleven be amended and reenacted; that section nine-a, article twenty-four of said chapter be amended and reenacted; that said chapter be amended by adding thereto a new article, designated article twelve-b; that sections one, two, three, four, nine, ten, twelve and thirteen, article one, chapter twelve of said code be amended and reenacted; that sections one, two, three, four, five, six and seven, article one-a of said chapter be amended and reenacted; that sections two, three, four and five, article two of said chapter be amended and reenacted; that sections one and eleven, article three of said chapter be amended and reenacted; that section thirteen, article four of said chapter be amended and reenacted; that sections two, four and six, article five of said chapter be amended and reenacted; that sections four, five and six, article six of said chapter be amended and reenacted; that article six of said chapter be further amended by adding thereto two new sections, designated sections one-a and nine-d; that sections fourteen, seventeen and eighteen, article one, chapter thirteen of said code be amended and reenacted; that sections one, four, five-a, eight, nine, thirteen-b and fifteen, article nine-a, chapter eighteen of said code be amended and reenacted; that said article nine-a be further amended by adding thereto a new section, designated section eight-a; that sections two, four, five, six, eight and nine, article twenty-two-d of said chapter be amended and reenacted; that section five, article thirty of said chapter eighteen be amended and reenacted; that sections one,

two, five, five-a, five-b, five-d, eight, eight-a and nine, article four, chapter eighteen-a of said code be amended and reenacted; and that article two, chapter twenty-four be amended by adding thereto two new sections, designated sections one-g and eleven-b, all to read as follows:

Chapter

5F. Reorganization of the Executive Branch of State Government.

- 11. Taxation.**
- 12. Public Moneys and Securities.**
- 18. Education.**
- 18A. School Personnel.**
- 24. Public Service Commission.**

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFERS OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards.

1 (a) The following agencies and boards, including all
2 of the allied, advisory, affiliated or related entities and
3 funds associated with any such agency or board, are
4 hereby transferred to and incorporated in and shall be
5 administered as a part of the department of
6 administration:

7 (1) Building commission provided for in article six,
8 chapter five of this code;

9 (2) Records management and preservation advisory
10 committee provided for in article eight, chapter five of
11 this code;

12 (3) Public employees retirement system and board of
13 trustees provided for in article ten, chapter five of this
14 code;

15 (4) Public employees insurance agency and public
16 employees advisory board provided for in article sixteen,
17 chapter five of this code;

18 (5) Department of finance and administration and
19 council of finance and administration provided for in
20 article one, chapter five-a of this code;

21 (6) Employee suggestion award board provided for in
22 article one-a, chapter five-a of this code;

23 (7) Governor's mansion advisory committee provided
24 for in article four-a, chapter five-a of this code;

25 (8) Advisory commission to the information system
26 services division in the department of finance and
27 administration provided for in article seven, chapter
28 five-a of this code;

29 (9) Teachers retirement system and teachers' retire-
30 ment board provided for in article seven-a, chapter
31 eighteen of this code;

32 (10) Commission on uniform state laws provided for
33 in article one-a, chapter twenty-nine of this code;

34 (11) Department of personnel of the civil service
35 system and the civil service commission provided for in
36 article six, chapter twenty-nine of this code;

37 (12) Education and state employees grievance board
38 provided for in article twenty-nine, chapter eighteen
39 and article six-a, chapter twenty-nine of this code;

40 (13) Board of risk and insurance management pro-
41 vided for in article twelve, chapter twenty-nine of this
42 code;

43 (14) Boundary commission provided for in article
44 twenty-three, chapter twenty-nine of this code;

45 (15) Public legal services council provided for in
46 article twenty-one, chapter twenty-nine of this code;

47 (16) Division of personnel which may be hereafter
48 created by the Legislature; and

49 (17) The West Virginia ethics commission which may
50 be hereafter created by the Legislature.

51 (b) The following agencies and boards, including all
52 of the allied, advisory, affiliated or related entities and
53 funds associated with any such agency or board, are

54 hereby transferred to and incorporated in and shall be
55 administered as a part of the department of commerce,
56 labor and environmental resources:

57 (1) Forest management review commission provided
58 for in article twenty-four, chapter five of this code;

59 (2) Department of commerce provided for in article
60 one, chapter five-b of this code;

61 (3) Office of community and industrial development
62 provided for in article two, chapter five-b of this code;

63 (4) Enterprise zone authority provided for in article
64 two-b, chapter five-b of this code;

65 (5) Office of federal procurement assistance provided
66 for in article two-c, chapter five-b of this code;

67 (6) Export development authority provided for in
68 article three, chapter five-b of this code;

69 (7) Labor-management council provided for in article
70 four, chapter five-b of this code;

71 (8) Industry and jobs development corporation pro-
72 vided for in article one, chapter five-c of this code;

73 (9) Public energy authority and board provided for in
74 chapter five-d of this code;

75 (10) Air pollution control commission provided for in
76 article twenty, chapter sixteen of this code;

77 (11) Resource recovery—solid waste disposal authority
78 provided for in article twenty-six, chapter sixteen of this
79 code;

80 (12) Division of forestry and forestry commission
81 provided for in article one-a, chapter nineteen of this
82 code;

83 (13) Department of natural resources and natural
84 resources commission provided for in article one,
85 chapter twenty of this code;

86 (14) Water resources board provided for in article five,
87 chapter twenty of this code;

88 (15) Water development authority and board provided
89 for in article five-c, chapter twenty of this code;

- 90 (16) Department of labor provided for in article one,
91 chapter twenty-one of this code;
- 92 (17) Labor-management relations board provided for
93 in article one-b, chapter twenty-one of this code;
- 94 (18) Public employees occupational safety and health
95 advisory board provided for in article three-a, chapter
96 twenty-one of this code;
- 97 (19) Minimum wage rate board provided for in article
98 five-a, chapter twenty-one of this code;
- 99 (20) Board of manufactured housing construction and
100 safety provided for in article nine, chapter twenty-one
101 of this code;
- 102 (21) Department of energy provided for in article one,
103 chapter twenty-two of this code;
- 104 (22) Reclamation board of review provided for in
105 article four, chapter twenty-two of this code;
- 106 (23) Board of appeals provided for in article five,
107 chapter twenty-two of this code;
- 108 (24) Board of coal mine health and safety and coal
109 mine safety and technical review committee provided
110 for in article six, chapter twenty-two of this code;
- 111 (25) Shallow gas well review board provided for in
112 article seven, chapter twenty-two of this code;
- 113 (26) Oil and gas conservation commission provided for
114 in article eight, chapter twenty-two of this code;
- 115 (27) Board of miner training, education and certifica-
116 tion provided for in article nine, chapter twenty-two of
117 this code;
- 118 (28) Mine inspectors' examining board provided for in
119 article eleven, chapter twenty-two of this code;
- 120 (29) Oil and gas inspectors' examining board provided
121 for in article thirteen, chapter twenty-two of this code;
- 122 (30) Geological and economic survey provided for in
123 article two, chapter twenty-nine of this code;

124 (31) Blennerhassett historical park commission pro-
125 vided for in article eight, chapter twenty-nine of this
126 code;

127 (32) Tourist train and transportation board provided
128 for in article twenty-four, chapter twenty-nine of this
129 code;

130 (33) Economic development authority provided for in
131 article fifteen, chapter thirty-one of this code;

132 (34) Board of members of the forest industries
133 industrial foundation provided for in article sixteen,
134 chapter thirty-one of this code;

135 (35) Department of banking provided for in article
136 two, chapter thirty-one-a of this code;

137 (36) Board of banking and financial institutions
138 provided for in article three, chapter thirty-one-a of this
139 code;

140 (37) Consumer affairs advisory council provided for in
141 article seven, chapter forty-six-a of this code; and

142 (38) Lending and credit rate board provided for in
143 chapter forty-seven-a of this code.

144 (c) The following agencies and boards, including all
145 of the allied, advisory, affiliated or related entities and
146 funds associated with any such agency or board, are
147 hereby transferred to and incorporated in and shall be
148 administered as a part of the department of education
149 and the arts:

150 (1) Library commission provided for in article one,
151 chapter ten of this code;

152 (2) Educational broadcasting authority provided for in
153 article five, chapter ten of this code;

154 (3) Board of regents provided for in article twenty-six,
155 chapter eighteen of this code; and

156 (4) Department of culture and history, archives and
157 history commission and commission on the arts provided
158 for in article one, chapter twenty-nine of this code.

159 (d) The following agencies and boards, including all

160 of the allied, advisory, affiliated or related entities and
161 funds associated with any such agency or board, are
162 hereby transferred to and incorporated in and shall be
163 administered as a part of the department of health and
164 human resources:

165 (1) Human rights commission provided for in article
166 eleven, chapter five of this code;

167 (2) Department of human services provided for in
168 article two, chapter nine of this code;

169 (3) Department of health and board of health provided
170 for in article one, chapter sixteen of this code;

171 (4) Health care planning council provided for in
172 article two-d, chapter sixteen of this code;

173 (5) Office of emergency medical services and advisory
174 council thereto provided for in article four-c, chapter
175 sixteen of this code;

176 (6) Continuum of care board for the elderly, disabled
177 and terminally ill provided for in article five-d, chapter
178 sixteen of this code;

179 (7) Hospital finance authority provided for in article
180 twenty-nine-a, chapter sixteen of this code;

181 (8) Health care cost review authority provided for in
182 article twenty-nine-b, chapter sixteen of this code;

183 (9) Structural barriers compliance board provided for
184 in article ten-f, chapter eighteen of this code;

185 (10) Department of employment security, state advi-
186 sory council thereto and board of review provided for
187 in chapter twenty-one-a of this code;

188 (11) Office of workers' compensation commissioner,
189 advisory board thereto and workers' compensation
190 appeal board provided for in chapter twenty-three of
191 this code;

192 (12) Commission on aging provided for in article
193 fourteen, chapter twenty-nine of this code;

194 (13) Commission on mental retardation and advisory
195 committee thereto provided for in article fifteen,
196 chapter twenty-nine of this code;

- 197 (14) Women's commission provided for in article
198 twenty, chapter twenty-nine of this code; and
- 199 (15) Commission on children and youth provided for
200 in article six-c, chapter forty-nine of this code.
- 201 (e) The following agencies and boards, including all
202 of the allied, advisory, affiliated or related entities and
203 funds associated with any such agency or board, are
204 hereby transferred to and incorporated in and shall be
205 administered as a part of the department of public
206 safety:
- 207 (1) Adjutant general's department provided for in
208 article one-a, chapter fifteen of this code;
- 209 (2) Armory board provided for in article six, chapter
210 fifteen of this code;
- 211 (3) Military awards board provided for in article one-
212 g, chapter fifteen of this code;
- 213 (4) Department of public safety and commission on
214 drunk driving prevention provided for in article two,
215 chapter fifteen of this code;
- 216 (5) Office of emergency services and emergency
217 services advisory council provided for in article five,
218 chapter fifteen of this code;
- 219 (6) Sheriffs' bureau provided for in article eight,
220 chapter fifteen of this code;
- 221 (7) Department of corrections provided for in chapter
222 twenty-five of this code;
- 223 (8) Fire commission and state fire administrator
224 provided for in article three, chapter twenty-nine of this
225 code;
- 226 (9) Regional jail and prison authority provided for in
227 article twenty, chapter thirty-one of this code;
- 228 (10) Board of probation and parole provided for in
229 article twelve, chapter sixty-two of this code; and
- 230 (11) Department of veterans' affairs and veterans'

231 council provided for in article one, chapter nine-a of this
232 code.

233 (f) The following agencies and boards, including all of
234 the allied, advisory, affiliated or related entities and
235 funds associated with any such agency or board, are
236 hereby transferred to and incorporated in and shall be
237 administered as a part of the department of tax and
238 revenue:

239 (1) Tax department provided for in article one,
240 chapter eleven of this code;

241 (2) Appraisal control and review commission provided
242 for in article one-a, chapter eleven of this code;

243 (3) Office of nonintoxicating beer commissioner
244 provided for in article sixteen, chapter eleven of this
245 code;

246 (4) Municipal bond commission provided for in article
247 three, chapter thirteen of this code;

248 (5) Racing commission provided for in article twenty-
249 three, chapter nineteen of this code;

250 (6) Lottery commission and position of lottery director
251 provided for in article twenty-two, chapter twenty-nine
252 of this code;

253 (7) Agency of insurance commissioner provided for in
254 article two, chapter thirty-three of this code;

255 (8) Office of alcohol beverage control commissioner
256 provided for in article two, chapter sixty of this code;
257 and

258 (9) Division of professional and occupational licenses
259 which may be hereafter created by the Legislature.

260 (g) The following agencies and boards, including all
261 of the allied, advisory, affiliated or related entities and
262 funds associated with any such agency or board, are
263 hereby transferred to and incorporated in and shall be
264 administered as a part of the department of
265 transportation:

266 (1) Road commission provided for in article two,
267 chapter seventeen of this code;

268 (2) Department of highways provided for in article
269 two-a, chapter seventeen of this code;

270 (3) Turnpike commission provided for in article
271 sixteen-a, chapter seventeen of this code;

272 (4) Department of motor vehicles provided for in
273 article two, chapter seventeen-a of this code;

274 (5) Driver's licensing advisory board provided for in
275 article two, chapter seventeen-b of this code;

276 (6) Motorcycle safety standards and specifications
277 board provided for in article fifteen, chapter seventeen-
278 c of this code;

279 (7) Aeronautics commission provided for in article
280 two-a, chapter twenty-nine of this code;

281 (8) Railroad maintenance authority provided for in
282 article eighteen, chapter twenty-nine of this code; and

283 (9) Port authority which may be hereafter created by
284 the Legislature.

285 (h) Except for such powers, authority and duties as
286 have been delegated to the secretaries of the depart-
287 ments by the provisions of section two of this article, the
288 existence of the position of administrator and of the
289 agency and the powers, authority and duties of each
290 administrator and agency shall not be affected by the
291 enactment of this chapter.

292 (i) Except for such powers, authority and duties as
293 have been delegated to the secretaries of the depart-
294 ments by the provisions of section two of this article, the
295 existence, powers, authority and duties of boards and
296 the membership, terms and qualifications of members
297 of such boards shall not be affected by the enactment
298 of this chapter, and all boards which are appellate
299 bodies or were otherwise established to be independent
300 decision-makers shall not have their appellate or
301 independent decision-making status affected by the
302 enactment of this chapter.

303 (j) Wherever elsewhere in this code, in any act, in

304 general or other law, in any rule or regulation, or in any
 305 ordinance, resolution or order, reference is made to any
 306 department transferred to and incorporated in a
 307 department created in section two, article one of this
 308 chapter, such reference shall henceforth be read,
 309 construed and understood to mean a division of the
 310 appropriate department so created, and any such
 311 reference elsewhere to a division of a department so
 312 transferred and incorporated shall henceforth be read,
 313 construed and understood to mean a section of the
 314 appropriate division of the department so created.

315 (k) The crime victims compensation fund provided for
 316 in article two-a, chapter fourteen of this code, including
 317 all of the allied, advisory, affiliated or related entities
 318 and funds associated therewith, is hereby transferred to
 319 and incorporated in and shall be administered as a part
 320 of the court of claims.

CHAPTER 11. TAXATION.

Article

- 1C. Fair and Equitable Property Valuation.
- 3. Assessments Generally.
- 8. Levies.
- 12B. Minimum Severance Tax on Coal.
- 13. Business and Occupation Tax.
- 15. Consumers Sales Tax.
- 21. Personal Income Tax.
- 24. Corporation Net Income Tax.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

- §11-1C-1. Legislative findings.
- §11-1C-3. Property valuation training and procedures commission generally; appointment; term of office; meetings; compensation.
- §11-1C-4. Commission powers and duties; rulemaking.
- §11-1C-5. Tax commissioner powers and duties.
- §11-1C-7. Duties of county assessors; property to be appraised at fair market value; exceptions; initial equalization; valuation plan.
- §11-1C-8. Additional funding for assessors' offices; maintenance funding.
- §11-1C-10. Valuation of industrial property and natural resources property by tax commissioner; penalties; methods; values sent to assessors.
- §11-1C-12. Board of equalization and review; assessments; board of public works.

§11-1C-1. Legislative findings.

- 1 (a) The Legislature hereby finds and declares that all
- 2 property in this state should be fairly and equitably
- 3 valued wherever it is situated so that all citizens will

4 be treated fairly and no individual species or class of
5 property will be overvalued or undervalued in relation
6 to all other similar property within each county and
7 throughout the state.

8 (b) The Legislature by this article seeks to create a
9 method to establish and maintain fair and equitable
10 values for all property. The Legislature does not intend
11 by this article to implement the reappraisal as con-
12 ducted under articles one-a and one-b of this chapter nor
13 does it intend to affect tax revenue in any manner.

14 (c) The Legislature finds that requiring the valuation
15 of property to occur in three-year cycles with an annual
16 adjustment of assessments as to those properties for
17 which a change in value is discovered shall not violate
18 the equal and uniform provision of section one, article
19 ten of the West Virginia Constitution, the Legislature
20 further finding that such three-year cycle and annual
21 adjustment are an integral and indispensable part of a
22 systematic review of all properties in order to achieve
23 equality of assessed valuation within and among the
24 counties of this state. Notwithstanding such finding, the
25 Legislature intends to permit the assessors and the
26 board of public works to place proportionately uniform
27 percentage changes in values on the books during the
28 two tax years preceding the tax year beginning on the
29 first day of July, one thousand nine hundred ninety-
30 three, in accordance with the provisions of section seven
31 of this article.

32 (d) The Legislature deems that the goal of this article
33 is that by the end of the three-year cycle contemplated
34 by this article, and thereafter from year to year, all
35 property shall be annually assessed at sixty percent of
36 its then current fair market value except for the values
37 derived for farms and managed timberland properties,
38 which are to be valued as prescribed by this article one-
39 c and article four of this chapter.

**§11-1C-3. Property valuation training and procedures
commission generally; appointment; term of
office; meetings; compensation.**

1 (a) There is hereby created, under the department of

2 tax and revenue, a property valuation training and
3 procedures commission which consists of the state tax
4 commissioner, or a designee, who shall serve as chair-
5 person of the commission, three county assessors, five
6 citizens of the state, one of which shall be a certified
7 appraiser, and two county commissioners. The assessors,
8 five citizen members and two county commissioners
9 shall be appointed by the governor with the advice and
10 consent of the Senate. For each assessor to be appointed,
11 the West Virginia assessors association shall nominate
12 three assessors, no more than two of whom shall belong
13 to the same political party, and shall submit such list
14 of nominees to the governor. For each of the two county
15 commissioners to be appointed, the county commis-
16 sioner's association of West Virginia shall nominate three
17 commissioners, no more than two of whom shall belong
18 to the same political party, and shall submit such list
19 of nominees to the governor. Except for the tax
20 commissioner, there may not be more than one member
21 from any one county. No more than seven members of
22 the commission shall belong to the same political party:
23 *Provided*, That any member of the commission who is
24 a direct party to any dispute before the board shall
25 excuse himself or herself from any consideration or vote
26 regarding the dispute. By the first day of November, one
27 thousand nine hundred ninety, the governor shall
28 appoint the fifth citizen member, who shall serve a two-
29 year term.

30 (b) All members, except the tax commissioner, shall
31 serve for four-year terms: *Provided*, That of the
32 members initially appointed, two assessors, one county
33 commission member and two citizens shall serve two-
34 year terms, and one assessor, one county commissioner
35 member and three citizen members shall serve four-
36 year terms. Any assessor member and county commis-
37 sioner member ceases to be a member immediately upon
38 leaving the office of assessor or county commissioner.
39 Members shall remain members of the commission until
40 their successors have been appointed. In case of a

41 vacancy occurring prior to the end of the term of a
42 member, a replacement shall be appointed within thirty
43 days in the same manner as the member was appointed
44 and shall serve until the end of the term of the member
45 so replaced.

46 (c) The tax commissioner shall call the first meeting
47 of the commission within thirty days of the appointment
48 of the assessor, county commissioner and citizen
49 members. Subsequently, meetings shall be at the call of
50 the chairperson or at the written request of any four
51 members, except that the commission shall meet at least
52 twice annually. Assessor members, county commissioner
53 members and the tax commissioner shall serve without
54 compensation, and citizen members shall receive fifty
55 dollars per day for each day of actual service rendered.
56 All members shall be reimbursed for all reasonable and
57 necessary expenses actually incurred in the perform-
58 ance of their duties as members of the commission.

59 (d) The commission shall be funded by an appropri-
60 ation by the Legislature through a separate line item
61 appropriated to the state tax commissioner.

§11-1C-4. Commission powers and duties; rulemaking.

1 (a) On or before the first day of October, one thousand
2 nine hundred ninety, and thereafter as necessary the
3 property valuation training and procedures commission
4 shall perform the following duties:

5 (1) Devise training and certification criteria for
6 county assessors and their employees and members of
7 county commissions, which shall include a definition of
8 "appropriate staff member" as the term is used in
9 section six of this article relating to required training,
10 which definition shall include deputy assessors as
11 provided for in section three, article two of this chapter;

12 (2) Establish uniform, statewide procedures and
13 methodologies for the mapping, visitation, identification
14 and collection of information on the different species of
15 property, which procedures and methodologies shall
16 include reasonable requirements for visitation of
17 property, including a requirement that a good faith
18 effort be made to contact any owner of owner-occupied

19 residential property: *Provided*, That the commission is
20 not authorized to establish the methods to value real and
21 personal property, but shall have the authority to
22 approve such methods;

23 (3) Develop an outline of items to be included in the
24 county property valuation plan required in section seven
25 of this article, which shall include information to assist
26 the property valuation training and procedures commis-
27 sion in its determination of the distribution of state
28 funds provided pursuant to section eight of this article.

29 (b) On or before the first day of July, one thousand
30 nine hundred ninety-one, the commission shall establish
31 objective criteria for the evaluation of the performance
32 of the duties of county assessors and the tax
33 commissioner.

34 (c) In the event the tax commissioner and a county
35 assessor cannot agree on the content of the plan required
36 under section seven of this article, the commission shall
37 examine the plan and the objections of the tax commis-
38 sioner and shall resolve the dispute on or before the first
39 day of the fiscal year following the fiscal year in which
40 the plan was submitted to the commission for resolution.

41 (d) The commission shall have the power to make such
42 rules as it deems necessary to carry out the provisions
43 of this section, which rules shall include procedures for
44 the maintenance, use, sale and reproduction of micro-
45 film, photography and tax maps. Any rules adopted by
46 the commission prior to the first day of October, one
47 thousand nine hundred ninety, under subsection (a) of
48 this section are exempt from the provisions of article
49 three of chapter twenty-nine-a of this code: *Provided*,
50 That the commission shall file a copy of any rule so
51 exempted from the provisions of chapter twenty-nine-a
52 of this code with the legislative rule-making review
53 committee created pursuant to section eleven, article
54 three of said chapter prior to the thirtieth day of
55 November, one thousand nine hundred ninety.

56 (e) The commission shall have the authority to make
57 and enter into all contracts and agreements necessary

58 or incidental to the performance of its duties and the
59 execution of its powers under this article.

60 (f) In order to fund the costs of the requirements of
61 this article, the valuation commission shall have the
62 authority, on a one-time basis, to borrow five million
63 dollars and to distribute such funds according to need
64 and the valuation plan submitted by the counties. Upon
65 request of the valuation commission, the state board of
66 investments shall loan, under commercially reasonable
67 terms to be determined by the parties, up to five million
68 dollars to the valuation commission, on a one-time basis,
69 from one of the various funds administered by the state
70 board of investments.

71 (g) The commission shall be required, in the event that
72 the tax commissioner has failed to do so, to appoint one
73 or more special assessors if it is the determination of the
74 commission that an assessor has substantially failed to
75 perform the duties required by sections seven and eight
76 of this article. A writ of mandamus shall be the proper
77 remedy if the commission fails to perform any of its
78 duties required by law.

§11-1C-5. Tax commissioner powers and duties.

1 (a) In addition to the powers and duties of the tax
2 commissioner in other provisions of this article and this
3 code, the tax commissioner shall have the power and
4 duty to:

5 (1) Perform such duties and exercise such powers as
6 may be necessary to accomplish the purposes of this
7 article;

8 (2) Determine the methods of valuation for both real
9 and personal property in accordance with the following:

10 (A) As to personal property, the tax commissioner
11 shall provide a method to appraise each major specie of
12 personal property in the state so that all such items of
13 personal property are valued in the same manner no
14 matter where situated in the state, shall transmit these
15 methods to each county assessor who shall use these
16 methods to value the various species of personal
17 property. The tax commissioner shall periodically

18 conduct such studies as are necessary to determine that
19 such methods are being followed. Such method shall be
20 in accordance with the provisions of article five of this
21 chapter: *Provided*, That notwithstanding any other
22 provision of this code to the contrary, the several county
23 assessors shall appraise motor vehicles as follows: The
24 state tax commissioner shall annually compile a sched-
25 ular of automobile values based upon the lowest values
26 shown in a nationally accepted used car guide, which
27 said schedule shall be furnished to each assessor and
28 shall be used by the several county assessors to deter-
29 mine the assessed value for all motor vehicles in an
30 amount equal to sixty percent of said lowest values.

31 (B) As to managed timberland as defined in section
32 two of this article, the tax commissioner shall provide
33 a method to appraise such property in the state so that
34 all such property is valued in the same manner no
35 matter where it is situated in the state, which shall be
36 a valuation based on its use and productive potential as
37 managed timberland, which may be accorded special
38 valuation as forestlands as authorized by section fifty-
39 three, article six of the Constitution of West Virginia:
40 *Provided*, That timberland that does not qualify for
41 identification as managed timberland shall be valued at
42 market value: *Provided, however*, That the tax commis-
43 sioner may not implement any rules or regulations in
44 title one hundred ten, which relate to valuation or
45 classification of timberland: *Provided further*, That on or
46 before the first day of October, one thousand nine
47 hundred ninety, the tax commissioner shall, in accord-
48 ance with chapter twenty-nine-a of this code, promul-
49 gate new rules relating to the valuation and classifica-
50 tion of timberland.

51 (C) As to farmland used, occupied and cultivated by
52 an owner or bona fide tenant, the tax commissioner shall
53 provide a method to appraise such property in the state
54 so that all such property is valued in the same manner
55 no matter where it is situated in the state, which
56 valuation shall be arrived at according to the fair and
57 reasonable value of the property for the purpose for
58 which it is actually used regardless of what the value

59 of the property would be if used for some other purpose,
60 in accordance with section one, article three of this
61 chapter and as authorized by subsection B, section one-
62 b, article X of the Constitution of West Virginia.

63 (D) As to public utility property, the tax commissioner
64 shall prescribe appropriate methods for the appraisal of
65 the various types of property subject to taxation as
66 public utilities and the types of property which are to
67 be included in the operating property of a public utility
68 and thereby not subject to taxation by the county
69 assessor. Only parcels or other property, or portions
70 thereof, which are an integral part of the public utility's
71 function as a utility shall be included as operating
72 property and assessed by the board of public works
73 under provisions of article six of this chapter;

74 (3) Evaluate the performance of each assessor based
75 upon the criteria established by the commission and
76 each county's approved plan and take appropriate
77 measures to require any assessor who does not meet
78 these criteria or adequately carry out the provisions of
79 the plan to correct any deficiencies. Such evaluation
80 shall include the periodic review of the progress of each
81 assessor in conducting the appraisals required in
82 sections seven and nine of this article and in following
83 the approved valuation plan. If the tax commissioner
84 determines that an assessor has substantially failed to
85 perform the duties required by said sections, the tax
86 commissioner shall take all necessary steps, including
87 the appointment of one or more special assessors in
88 accordance with the provisions of section one, article
89 three of this chapter, or utilize such other authority as
90 the commissioner has over county assessors pursuant to
91 other provisions of this code as may be necessary to
92 complete the tasks and duties imposed by this article:
93 *Provided*, That a writ of mandamus shall be the
94 appropriate remedy if the tax commissioner fails to
95 perform his or her statutory duty provided for in section
96 five, article one of this chapter.

97 (4) Submit to the Legislature, on or before the
98 fifteenth day of February of each year, a preliminary
99 statewide aggregate tax revenue projection and other

100 information which shall assist the Legislature in its
101 deliberations regarding county board of education levy
102 rates pursuant to section six-f, article eight of this
103 chapter, which information shall include any amount of
104 reduction required by said section six-f;

105 (5) Maintain the valuations each year by making or
106 causing to be made such surveys, examinations, audits
107 and investigations of the value of the several classes of
108 property in each county which should be listed and
109 taxed under the several classifications; and

110 (6) Establish by uniform rules a procedure for the sale
111 of computer generated material and appraisal manuals.
112 Any funds received as a result of the sale of such
113 reproductions shall be deposited to the appropriate
114 account from which the payment for reproduction is
115 made.

116 (b) The tax commissioner may adopt any regulation
117 adopted prior to the first day of January, one thousand
118 nine hundred ninety, pursuant to article one-a of this
119 chapter, which adoption shall not constitute an imple-
120 mentation of the statewide mass reappraisal of property.
121 Such adoption, including context modifications made
122 necessary by the enactment of this article, shall occur
123 on or before the first day of July, one thousand nine
124 hundred ninety-one, through inclusion in the plan
125 required by section ten of this article or inclusion in the
126 minute record of the valuation commission. Upon the
127 adoption of any such regulations, any modification or
128 repeal of such regulation shall be in accordance with the
129 provisions of article three, chapter twenty-nine-a of this
130 code.

**§11-1C-7. Duties of county assessors; property to be
appraised at fair market value; exceptions;
initial equalization; valuation plan.**

1 (a) Except for property appraised by the state tax
2 commissioner under section ten of this article and
3 property appraised and assessed under article six of this
4 chapter, all assessors shall, within three years of the
5 approval of the county valuation plan required pursuant
6 to this section, appraise all real and personal property

7 in their jurisdiction at fair market value except for
8 special valuation provided for farmland and managed
9 timberland. They shall utilize the procedures and
10 methodologies established by the property valuation
11 training and procedures commission and the valuation
12 system established by the tax commissioner.

13 (b) In determining the fair market value of the
14 property in their jurisdictions, assessors may use as an
15 aid to valuation any information available on the
16 character and values of such property including, but not
17 limited to, the updated information found on any
18 statewide electronic data processing system network
19 established pursuant to section twenty-one, article one-
20 a of this chapter. Valuations shall not be based exclu-
21 sively on such statewide electronic data processing
22 system network, and usage of the information on such
23 files as an aid to proper valuation shall not constitute
24 an implementation of the statewide mass reappraisal of
25 property.

26 (c) Before beginning the valuation process, each
27 assessor shall develop a county valuation plan for using
28 information currently available, for checking its
29 accuracy and for correcting any errors found. The plan
30 must be submitted to the tax commissioner on or before
31 the first day of December, one thousand nine hundred
32 ninety, for review and approval, and such plan must be
33 revised as necessary and resubmitted every three years
34 thereafter. Whenever a plan is submitted to the tax
35 commissioner, a copy shall also be submitted to the
36 county commission of that county and the property
37 valuation training and procedures commission, and that
38 county commission and the property valuation training
39 and procedures commission may forward comments to
40 the tax commissioner. The tax commissioner shall
41 respond to any plan submitted or resubmitted within
42 sixty days of its receipt. The valuation process shall not
43 begin nor shall funds provided in section eight of this
44 article be available until the plan has received approval
45 by the tax commissioner: *Provided*, That any initial plan
46 that has not received approval by the commissioner
47 prior to the first day of May, one thousand nine hundred

48 ninety-one, shall be submitted on or by such date to the
49 valuation commission for resolution prior to the first day
50 of July, one thousand nine hundred ninety-one, by which
51 date all counties shall have an approved valuation plan
52 in effect.

53 (d) Upon approval of the valuation plan, the assessor
54 shall immediately begin implementation of the valuation
55 process. Any change in value discovered subsequent to
56 the certification of values by the assessor to the county
57 commission, acting as the board of equalization and
58 review, in any given year shall be placed upon the
59 property books for the next certification of values:
60 *Provided*, That notwithstanding any other provision of
61 this code to the contrary, the property valuation training
62 and procedures commission may authorize the tax
63 commissioner to approve a valuation plan and the board
64 of public works to submit such a plan which would
65 permit the placement of proportionately uniform
66 percentage changes in values on the books that estimate
67 the percentage difference between the current assessed
68 value and sixty percent of the fair market value for
69 classes or identified sub-classes of property and distrib-
70 ute the change between the two tax years preceding the
71 tax year beginning on the first day of July, one thousand
72 nine hundred ninety-three. This procedure may be used
73 in lieu of placing individual values on the books at sixty
74 percent of value as discovered, or may be in addition to
75 such valuation. If such procedure is adopted by a county,
76 then property whose reevaluation is the responsibility of
77 the board of public works and the state tax commis-
78 sioner shall have its values estimated and placed on the
79 books in like manner. Such estimates shall be based on
80 the best information obtained by the assessor, the board
81 of public works and the tax commissioner, and the
82 changes shall move those values substantially towards
83 sixty percent of fair market value, such sixty percent
84 to be reached on or before the first day of July, one
85 thousand nine hundred ninety-three.

86 (e) The county assessor shall establish and maintain
87 as official records of the county tax maps of the entire
88 county drawn to scale or aerial maps, which maps shall

89 indicate all property and lot lines, set forth dimensions
90 or areas, indicate whether the land is improved, and
91 identify the respective parcels or lots by a system of
92 numbers or symbols and numbers, whereby the owner-
93 ship of such parcels and lots can be ascertained by
94 reference to the appropriate records: *Provided*, That all
95 such records shall be established and maintained and
96 the sale or reproduction of microfilm, photography and
97 maps shall be in accordance with legislative rules
98 promulgated by the commission.

99 (f) Willing and knowing refusal of the assessor or the
100 county commission to comply with and effect the
101 provisions of this article, or to correct any deficiencies
102 as may be ordered by the tax commissioner with the
103 concurrence of the valuation commission under any
104 authority granted pursuant to this article or other
105 provisions of this code, shall constitute grounds for
106 removal from office. Such removal may be appealed to
107 the circuit court.

**§11-1C-8. Additional funding for assessors' offices; main-
tenance funding.**

1 (a) In order to finance the extra costs associated with
2 the valuation and training mandated by this article,
3 there is hereby created a revolving valuation fund in
4 each county which shall be used exclusively to fund the
5 assessor's office. The valuation and training programs,
6 for the fiscal year commencing on the first day of July,
7 one thousand nine hundred ninety, shall be funded
8 through the valuation commission and distributed in
9 accordance with need on a county by county basis and
10 the county's approved plan. The necessary funds shall
11 be transferred to each county's valuation fund following
12 approval of the plans submitted by the respective
13 assessors. The said funds shall be transferred by the
14 valuation commission on condition that no persons shall
15 be hired hereunder without the approval of the valua-
16 tion commission, such hirings shall be without regard
17 to political favor or affiliation, and such persons hired
18 hereunder shall be subject to the provisions of the ethics
19 act in chapter six-b of this code, including, but not
20 limited to, the conflict of interest provisions thereunder.

21 Notwithstanding any other provisions of this code to the
22 contrary, assessors may employ citizens of any West
23 Virginia county for the purpose of performing, assessing
24 and appraising duties under this chapter upon approval
25 of such employment by the valuation commission.

26 During the fiscal year commencing the first day of
27 July, one thousand nine hundred ninety-four, and
28 thereafter as necessary, any county receiving moneys
29 provided by the valuation commission under this section
30 shall use the county's valuation fund first to repay the
31 valuation commission the money so received plus
32 accrued interest: *Provided*, That the fund should not
33 drop below one percent of the total municipal, county
34 commission and county school board revenues generated
35 by application of the respective regular levy rates.

36 (b) To finance the ongoing extra costs associated with
37 the valuation and training mandated by this article,
38 beginning with the fiscal year commencing on the first
39 day of July, one thousand nine hundred ninety-one, and
40 for a period of at least three consecutive years, an
41 amount equal to two percent of the previous year's
42 projected tax collections from the regular levy set by,
43 or for, the county commission, the county school board
44 and any municipality in the county shall be prorated as
45 to each levying body, set aside and placed in the
46 valuation fund. Such two percent payment shall con-
47 tinue in any county where funds borrowed from the
48 state pursuant to subsection (a) of this section have not
49 been fully repaid until such moneys, together with
50 accrued interest thereon, has been fully repaid or until
51 the first day of July, one thousand nine hundred ninety-
52 four, whichever comes last. Each year thereafter, the
53 valuation fund shall be continued at an annual amount
54 of one percent of the previous year's projected tax
55 collections from such regular levies: *Provided*, That
56 county commissions and municipalities may present
57 written evidence, prior to the thirty-first day of March
58 each year, acceptable to the valuation commission
59 showing that a lesser amount would be adequate to fund
60 the extra costs associated with the valuation mandated
61 by section seven of this article: *Provided, however*, That

62 the valuation commission shall meet prior to the
63 fifteenth day of April to consider and decide upon all
64 written evidence so submitted: *Provided further*, That
65 the county commissions, in addition, shall fund the
66 county assessor's office at least the level of funding
67 provided during the fiscal year in which this section was
68 initially enacted.

69 These additional funds are intended to enable asses-
70 sors to maintain current valuations and to perform the
71 periodic reevaluation required under section nine of this
72 article. Beginning with the fiscal year ending the
73 thirtieth day of June, one thousand nine hundred ninety-
74 six, any unexpended balance in the valuation fund at the
75 end of the fiscal year shall expire back proportionately
76 into the respective accounts of the levying bodies.

77 (c) Any funds provided by the valuation commission
78 shall be distributed among the counties by the property
79 valuation training and procedures commission based
80 upon workload, need and other relevant factors as shown
81 by the valuation plans developed under section seven of
82 this article.

83 (d) Moneys due the valuation fund shall be deposited
84 by the sheriff of the county on a monthly basis for the
85 benefit of the assessor and shall be available to and may
86 be spent by the assessor without prior approval of the
87 county commission, which shall not exercise any control
88 over the fund. Clerical functions related to the fund shall
89 be performed in the same manner as done with other
90 normal funding provided to the assessor.

**§11-1C-10. Valuation of industrial property and natural
resources property by tax commissioner;
penalties; methods; values sent to assessors.**

1 (a) As used in this section:

2 (1) "Industrial property" means real and personal
3 property integrated as a functioning unit intended for
4 the assembling, processing and manufacturing of
5 finished or partially finished products.

6 (2) "Natural resources property" means coal, oil,
7 natural gas, limestone, fireclay, dolomite, sandstone,

8 shale, sand and gravel, salt, lead, zinc, manganese, iron
9 ore, radioactive minerals, oil shale, managed timberland
10 as defined in section two of this article, and other
11 minerals.

12 (b) All owners of industrial property and natural
13 resources property each year shall make a return to the
14 state tax commissioner and, if requested in writing by
15 the assessor of the county where situated, to such county
16 assessor at a time and in the form specified by the
17 commissioner of all industrial or natural resources
18 property owned by them. The commissioner may
19 require any information to be filed which would be
20 useful in valuing the property covered in the return.
21 Any penalties provided for in this chapter or elsewhere
22 in this code relating to failure to list any property or
23 to file any return or report may be applied to any owner
24 of property required to make a return pursuant to this
25 section.

26 (c) The state tax commissioner shall value all indus-
27 trial property in the state at its fair market value within
28 three years of the approval date of the plan for
29 industrial property required in subsection (e) of this
30 section. The commissioner shall thereafter maintain
31 accurate values for all such property. The tax commis-
32 sioner shall forward each industrial property appraisal
33 to the county assessor of the county in which that
34 property is located and the assessor shall multiply each
35 such appraisal by sixty percent and include the result-
36 ing assessed value in the land book or the personal
37 property book, as appropriate for each tax year. The
38 commissioner shall supply support data that the assessor
39 might need to evaluate the appraisal.

40 (d) Within three years of the approval date of the plan
41 required for natural resources property required
42 pursuant to subsection (e) of this section, the state tax
43 commissioner shall determine the fair market value as
44 defined in section one, article three of this chapter of all
45 natural resources property in the state. The commis-
46 sioner shall thereafter maintain accurate values for all
47 such property.

48 (1) In order to qualify for identification as managed
49 timberland for property tax purposes the owner must
50 annually certify, in writing to the division of forestry,
51 that the property meets the definition of managed
52 timberland as set forth in this article and contracts to
53 manage property according to a plan that will maintain
54 the property as managed timberland. In addition, each
55 owner's certification must state that forest management
56 practices will be conducted in accordance with approved
57 practices from the publication "Best Management
58 Practices for Forestry". Property certified as managed
59 timberland shall be valued according to its use and
60 productive potential. The tax commissioner shall
61 promulgate rules and regulations for certification as
62 managed timberland.

63 (2) In the case of all other natural resources property,
64 the commissioner shall develop an inventory on a county
65 by county basis of all such property and may use any
66 resources, including, but not limited to, geological
67 survey information; exploratory, drilling, mining and
68 other information supplied by natural resources prop-
69 erty owners; and maps and other information on file
70 with the state department of energy. Any information
71 supplied by natural resources owners or any proprietary
72 or otherwise privileged information supplied by the
73 state department of energy shall be kept confidential
74 unless needed to defend an appraisal challenged by a
75 natural resources owner. Formulas for natural resour-
76 ces valuation may contain differing variables based
77 upon known geological or other common factors. The tax
78 commissioner shall forward each natural resources
79 property appraisal to the county assessor of the county
80 in which that property is located and the assessor shall
81 multiply each such appraisal by sixty percent and
82 include the resulting assessed value in the land book or
83 the personal property book, as appropriate, for each tax
84 year. The commissioner shall supply support data that
85 the assessor might need to explain or defend the
86 appraisal. The commissioner shall directly defend any
87 challenged appraisal when the assessed value of the
88 property in question exceeds two million dollars or an
89 owner challenging an appraisal holds or controls

90 property situated in the same county with an assessed
91 value exceeding two million dollars. At least every five
92 years, the commissioner shall review current technology
93 for the recovery of natural resources property to
94 determine if valuation methodologies need to be ad-
95 justed to reflect changes in value which result from
96 development of new recovery technologies.

97 (e) The tax commissioner shall develop a plan for the
98 valuation of industrial property and a plan for the
99 valuation of natural resources property. The plans shall
100 include expected costs and reimbursements, and shall be
101 submitted to the property valuation training and
102 procedures commission on or before the first day of
103 January, one thousand nine hundred ninety-one, for its
104 approval on or before the first day of July of such year.
105 Such plan shall be revised, resubmitted to the commis-
106 sion and approved every three years thereafter.

107 (f) To perform the valuation duties under this section,
108 the state tax commissioner shall have the authority to
109 contract with a competent property appraisal firm or
110 firms to assist with or to conduct the valuation process
111 as to any discernible species of property statewide if the
112 contract and the entity performing such contract is
113 specifically included in a plan required by subsection (e)
114 of this section or otherwise approved by the commission.
115 If the tax commissioner desires to contract for valuation
116 services only in one county or a group of counties, the
117 contract must be approved by the commission.

118 (g) The county assessor may accept the appraisal
119 provided, pursuant to this section, by the state tax
120 commissioner: *Provided*, That if the county assessor fails
121 to accept the appraisal provided by the state tax
122 commissioner, the county assessor shall show just cause
123 to the valuation commission for the failure to accept
124 such appraisal and shall further provide to the valuation
125 commission a plan by which a different appraisal will
126 be conducted.

127 (h) The costs of appraising the industrial and natural
128 resources property within each county, and any costs of
129 defending same shall be paid by the state: *Provided*,

130 That the office of the state attorney general shall
131 provide legal representation on behalf of the tax
132 commissioner or assessor, at no cost, in the event the
133 industrial and natural resources appraisal is challenged
134 in court.

135 (i) For purposes of revaluing managed timberland as
136 defined in section two of this article, any increase or
137 decrease in valuation by the commissioner shall not
138 become effective prior to the first day of July, one
139 thousand nine hundred ninety-one. The property owner
140 may request a hearing by the director of the division of
141 forestry, who may thereafter rescind the disqualification
142 or allow the property owner a reasonable period of time
143 in which to qualify the property. A property owner may
144 appeal a disqualification to the circuit court of the
145 county in which the property is located.

**§11-1C-12. Board of equalization and review; assess-
ments; board of public works.**

1 (a) As valuations of property in a county are com-
2 pleted to the extent that a total valuation of property can
3 be determined, such valuation shall be delivered by the
4 assessor to the county commission, and the county
5 commission, sitting as a board of equalization and
6 review, shall use such appraised valuations as a basis
7 for determining the true and actual value for assessment
8 purposes of the several classes of property.

9 (b) For the tax year subsequent to the end of the initial
10 valuation period in each county, and for each year
11 thereafter, each county shall implement a uniform
12 assessment that is equal to sixty percent of the most
13 current appraised value for all real and personal
14 property situated within the county. Such implementa-
15 tion shall be in accordance with provisions to be
16 included in the plan required by section seven of this
17 article.

18 (c) Until such time as the uniform sixty percent
19 assessment required in subsection (b) is effected, the
20 total assessed valuation in each of the four classes of
21 property shall not be less than sixty percent nor more

22 than one hundred percent of the appraised valuation of
23 each said class of property.

24 (d) The board of public works, in performing the
25 duties required in article six of this chapter relating to
26 the assessment of public service businesses, shall submit
27 on or before the first day of January, one thousand nine
28 hundred ninety-one, a plan to the property valuation
29 training and procedures commission for implementing
30 on or before the first day of July, one thousand nine
31 hundred ninety-four, and for each year thereafter, a
32 uniform assessment that is equal to sixty percent of the
33 most current valuation for all property valued by the
34 board of public works. Such plan shall be approved on
35 or before the first day of July, one thousand nine
36 hundred ninety-one.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-2a. Notice of increased assessment required; exceptions to notice; notice of special valuation.

1 (a) If the assessor determines the assessed valuation
2 of any item of real property is more than ten percent
3 greater than the valuation assessed for that item in the
4 last tax year and the increase be entered in the property
5 books as provided in section nineteen of this article, the
6 assessor shall give notice of the increase to the person
7 assessed or the person controlling the property as
8 provided in section two of this article. The notice must
9 be given at least fifteen days prior to the first meeting
10 in February at which the county commission meets as
11 the board of equalization and review for that tax year
12 and advise the person assessed or the person controlling
13 the property of his right to appear and seek an
14 adjustment in the assessment. The notice shall be made
15 by first class United States postage mailed to the
16 address of the person assessed or the person controlling
17 the property for payment of tax on the item in the
18 previous year, unless there was a general increase of the
19 entire valuation in any one or more districts in which
20 case the notice shall be by publication thereof by a Class
21 II-0 legal advertisement in compliance with the provi-
22 sions of article three, chapter fifty-nine of this code, and

23 the area for the publication is the county. The require-
24 ment of notice under this section is satisfied and waived
25 if personal notice of the increase is shown by:

26 (1) The taxpayer having signed the assessment form
27 after it had been completed showing the increase;

28 (2) Notice was given as provided in section three-a of
29 this article; or

30 (3) The person so assessed executing acknowledgment
31 of the notice of the increase.

32 (b) During the initial reappraisal of all property under
33 section seven, article one-c of this chapter, the tax
34 commissioner and each county assessor shall send every
35 person owning or controlling property appraised by the
36 tax commissioner or the county assessor, as the case may
37 be, a pamphlet which explains the reappraisal process
38 and its equalization goal in a detailed yet informal
39 manner. The property valuation training and proce-
40 dures commission, created under section three, article
41 one-c of this chapter, shall design the pamphlet for use
42 in all counties while allowing individual county informa-
43 tion to be included if it determines that the information
44 would improve understanding of the process.

ARTICLE 8. LEVIES.

§11-8-6e. Effect on regular levy rate when appraisal results in tax increase;
public hearings.

§11-8-6f. Effect on regular school board levy rate when appraisal results in
tax increase.

§11-8-6g. Effect on special levy rates when appraisal results in tax revenue
increase; public hearings.

§11-8-6e. Effect on regular levy rate when appraisal results in tax increase; public hearings.

1 (a) Notwithstanding any other provision of law, where
2 any annual appraisal, triennial appraisal or general
3 valuation of property would produce an assessment that
4 would cause an increase of one percent or more in the
5 total projected property tax revenues that would be
6 realized were the then current regular levy rates by the
7 county commission and the municipalities to be imposed,
8 the rate of levy shall be reduced proportionately as
9 between the county commission and the municipalities

10 and for all classes of property for the forthcoming tax
11 year so as to cause such rate of levy to produce no more
12 than one hundred one percent of the previous year's
13 projected property tax revenues from extending the
14 county commission and municipality levy rates, unless
15 there has been compliance with subsection (c) of this
16 section.

17 An additional appraisal or valuation due to new
18 construction or improvements to existing real property,
19 including beginning recovery of natural resources, and
20 newly acquired personal property shall not be an annual
21 appraisal or general valuation within the meaning of
22 this section, nor shall the assessed value of such
23 improvements be included in calculating the new tax
24 levy for purposes of this section. Special levies shall not
25 be included in the reduced levy calculation set forth in
26 subsection (b) of this section.

27 (b) The reduced rates of levy shall be calculated in the
28 following manner:

29 (1) The total assessed value of each class of property
30 as it is defined by section five, article eight of this
31 chapter for the assessment period just concluded shall
32 be reduced by deducting the total assessed value of
33 newly created properties not assessed in the previous
34 year's tax book for each class of property;

35 (2) The resulting net assessed value of Class I property
36 shall be multiplied by .01; the value of Class II by .02;
37 and the values of Class III and IV, each by .04;

38 (3) Total the current year's property tax revenue
39 resulting from regular levies for each county commis-
40 sion and municipality and multiply the resulting sum by
41 one hundred one percent: *Provided*, That the one
42 hundred one percent figure shall be increased by the
43 amount the county's or municipality's increased levy
44 provided for in subsection (b), section eight, article one-
45 c of this chapter.

46 (4) Divide the total regular levy tax revenues, thus
47 increased in subdivision (3), above, by the total weighted
48 net assessed value as calculated in paragraph two of this

49 section and multiply the resulting product by one
50 hundred; the resulting number is the Class I regular
51 levy rate, stated as cents-per-one hundred dollars of
52 assessed value;

53 (5) The Class II rate is two times the Class I rate;
54 Classes III and IV, four times the Class I rate as
55 calculated in the preceding subdivision.

56 (c) The governing body of a county or municipality
57 may, after conducting a public hearing, which may be
58 held at the same time and place as the annual budget
59 hearing, increase the rate above the reduced rate
60 required in this section if any such increase is deemed
61 to be necessary by such governing body: *Provided*, That
62 in no event shall the governing body of a county or
63 municipality increase the rate above the reduced rate
64 required by subsection (b) of this section for any single
65 year in a manner which would cause total property tax
66 revenues accruing to the governing body of the county
67 or municipality, excepting additional revenue attributa-
68 ble to assessed valuations of newly created properties
69 not assessed in the previous year's tax book for each
70 class of property, to exceed by more than ten percent
71 those property tax revenues received by the governing
72 body of the county or municipality for the next preced-
73 ing year: *Provided, however*, That this provision shall not
74 restrict the ability of a county or municipality to enact
75 excess levies as authorized under existing statutory or
76 constitutional provisions.

77 Notice of the public hearing and the meeting in which
78 the levy rate shall be on the agenda shall be given at
79 least seven days before the date for each public hearing
80 by the publication of a notice in at least one newspaper
81 of general circulation in such county or municipality:
82 *Provided*, That a Class IV town or village as defined in
83 section two, article one, chapter eight of this code, in lieu
84 of the publication notice required by this subsection,
85 may post no less than four notices of each public
86 hearing, which posted notices shall contain the informa-
87 tion required by the publication notice and which shall
88 be in available, visible locations including the town hall.
89 The notice shall be at least the size of one-eighth page

90 of a standard size newspaper or one-fourth page of a
91 tabloid size newspaper, and the headline in the adver-
92 tisement shall be in a type no smaller than twenty-four
93 point. The publication notice shall be placed outside that
94 portion, if any, of the newspaper reserved for legal
95 notices and classified advertisements and shall also be
96 published as a Class II-O legal advertisement in
97 accordance with the provisions of article three, chapter
98 fifty-nine of this code. The publication area is the
99 county. The notice shall be in the following form and
100 contain the following information, in addition to such
101 other information as the local governing body may elect
102 to include:

103 NOTICE OF PROPOSED TAX INCREASE

104 The (name of the county or municipality) proposes to
105 increase property tax levies.

106 1. Appraisal/Assessment Increase: Total assessed
107 value of property, excluding additional assessments due
108 to new or improved property, exceeds last year's total
109 assessed value of property by _____ percent.

110 2. Lowered Rate Necessary to Offset Increased
111 Assessment: The tax rate which would levy the same
112 amount of property tax as last year, when multiplied by
113 the new total assessed value of property with the
114 exclusions mentioned above, would be \$_____ per \$100
115 of assessed value for Class I property, \$_____ per \$100
116 of assessed value for Class II property, \$_____ per \$100
117 of assessed value for Class III and \$_____ per \$100 of
118 assessed value for Class IV property. These rates will
119 be known as the "lowered tax rates".

120 3. Effective Rate Increase: The (name of the county
121 or municipality) proposes to adopt a tax rate of \$_____
122 per \$100 of assessed value for Class I property, \$_____
123 per \$100 of assessed value for Class II property, \$_____
124 per \$100 of assessed value for Class III property and
125 \$_____ per \$100 of assessed value for Class IV property.
126 The difference between the lowered tax rates and the
127 proposed rates would be \$_____ per \$100, or _____
128 percent for Class I; \$_____ per \$100, or _____ percent
129 for Class II; \$_____ per \$100, or _____ percent for Class

130 III and \$_____ per \$100, or _____ percent for Class IV.
131 These differences will be known as the "effective tax
132 rate increases".

133 Individual property taxes may, however, increase at
134 a percentage greater than or less than the above
135 percentage.

136 4. Revenue produced last year: \$_____

137 5. Revenue projected under the effective rate in-
138 creases: \$_____

139 6. Revenue projected from new property or improve-
140 ments: \$_____

141 7. General areas in which new revenue is to be
142 allocated: A public hearing on the increases will be held
143 on (date and time) at (meeting place). A decision
144 regarding the rate increase will be made on (date and
145 time) at (meeting place).

146 (d) All hearings are open to the public. The governing
147 body shall permit persons desiring to be heard an
148 opportunity to present oral testimony within such
149 reasonable time limits as are determined by the
150 governing body.

151 (e) This section shall be effective as to any regular levy
152 rate imposed by the county commission or a municipal-
153 ity for taxes due and payable on or after the first day
154 of July, one thousand nine hundred ninety-one. If any
155 provision of this section is held invalid, such invalidity
156 shall not affect other provisions or applications of this
157 section which can be given effect without the invalid
158 provision or its application and to this end the provisions
159 of this section are declared to be severable.

**§11-8-6f. Effect on regular school board levy rate when
appraisal results in tax increase.**

1 (a) Notwithstanding any other provision of law, where
2 any annual appraisal, triennial appraisal or general
3 valuation of property would produce a statewide
4 aggregate assessment that would cause an increase of
5 one percent or more in the total property tax revenues
6 that would be realized were the then current regular

7 levy rates of the county boards of education to be
8 imposed, the rate of levy for county boards of education
9 shall be reduced uniformly statewide and proportion-
10 ately for all classes of property for the forthcoming tax
11 year so as to cause such rate of levy to produce no more
12 than one hundred one percent of the previous year's
13 projected statewide aggregate property tax revenues
14 from extending the county board of education levy rate,
15 unless subsection (b) of this section is complied with. The
16 reduced rates of levy shall be calculated in the following
17 manner: (1) The total assessed value of each class of
18 property as it is defined by section five, article eight of
19 this chapter for the assessment period just concluded
20 shall be reduced by deducting the total assessed value
21 of newly created properties not assessed in the previous
22 year's tax book for each class of property; (2) the
23 resulting net assessed value of Class I property shall be
24 multiplied by .01; the value of Class II by .02; and the
25 values of Class III and IV, each by .04; (3) total the
26 current year's property tax revenue resulting from
27 regular levies for the boards of education throughout
28 this state and multiply the resulting sum by one
29 hundred one percent: *Provided*, That the one hundred
30 one percent figure shall be increased by the amount the
31 boards of educations' increased levy provided for in
32 subsection (b), section eight, article one-c of this chapter;
33 (4) divide the total regular levy tax revenues, thus
34 increased in subdivision (3), above, by the total weighted
35 net assessed value as calculated in paragraph two of this
36 subsection and multiply the resulting product by one
37 hundred; the resulting number is the Class I regular
38 levy rate, stated as cents-per-one hundred dollars of
39 assessed value; and (5) the Class II rate is two times the
40 Class I rate; Classes III and IV, four times the Class I
41 rate as calculated in the preceding subdivision.

42 An additional appraisal or valuation due to new
43 construction or improvements, including beginning
44 recovery of natural resources, to existing real property
45 or newly acquired personal property shall not be an
46 annual appraisal or general valuation within the
47 meaning of this section, nor shall the assessed value of
48 such improvements be included in calculating the new

49 tax levy for purposes of this section. Special levies shall
50 not be included in any calculations under this section.

51 (b) After conducting a public hearing, the Legislature
52 may, by act, increase the rate above the reduced rate
53 required in subsection (a) of this section if any such
54 increase is deemed to be necessary.

55 (c) This section shall be effective as to any regular levy
56 rate imposed for the county boards of education for
57 taxes due and payable on or after the first day of July,
58 one thousand nine hundred ninety-one. If any provision
59 of this section is held invalid, such invalidity shall not
60 affect other provisions or applications of this section
61 which can be given effect without the invalid provision
62 or its application and to this end the provisions of this
63 section are declared to be severable.

**§11-8-6g. Effect on special levy rates when appraisal
results in tax revenue increase; public
hearings.**

1 (a) As to any special levy in effect on the first day of
2 March, one thousand nine hundred ninety, and notwith-
3 standing any other provision of law, where any annual
4 appraisal, triennial appraisal or general valuation of
5 property would produce an assessment that would cause
6 an increase of four percent or more in the total projected
7 property tax revenues that would be realized were the
8 special levy rates then in effect by the county commis-
9 sion, the municipalities or the county board of education
10 to be imposed, the local levying body shall comply with
11 subsection (b) of this section.

12 An additional appraisal or valuation due to new
13 construction or improvements to existing real property,
14 including beginning recovery of natural resources, and
15 newly acquired personal property shall not be an annual
16 appraisal or general valuation within the meaning of
17 this section, nor shall the assessed value of such
18 improvements be included in calculating the new tax
19 levy for purposes of this section.

20 (b) Any local levying body projected to realize such
21 increase greater than four percent shall conduct a

22 public hearing no later than the twentieth day of March,
23 which hearing may be held at the same time and place
24 as the annual budget hearing. Notice of the public
25 hearing and the meeting in which the levy rate shall be
26 on the agenda shall be given at least seven days before
27 the date for each public hearing by the publication of
28 a notice in at least one newspaper of general circulation
29 in such county or municipality: *Provided*, That a Class
30 IV town or village as defined in section two, article one,
31 chapter eight of this code, in lieu of the publication
32 notice required by this subsection, may post no less than
33 four notices of each public hearing, which posted notices
34 shall contain the information required by the publica-
35 tion notice and which shall be in available, visible
36 locations including the town hall. The notice shall be at
37 least the size of one-eighth page of a standard size
38 newspaper or one-fourth page of a tabloid size news-
39 paper, and the headline in the advertisement shall be
40 in a type no smaller than twenty-four point. The
41 publication notice shall be placed outside that portion,
42 if any, of the newspaper reserved for legal notices and
43 classified advertisements and shall also be published as
44 a Class II-O legal advertisement in accordance with the
45 provisions of article three, chapter fifty-nine of this code.
46 The publication area is the county. The notice shall be
47 in the following form and contain the following infor-
48 mation, in addition to such other information as the local
49 governing body may elect to include:

50 HEARING REGARDING SPECIAL LEVY RATES

51 The (name of the local levying body) hereby gives
52 notice that the special levy rate imposed by the (local
53 levying body) causes an increase in property tax
54 revenues due to increased valuations.

55 1. Appraisal/Assessment Increase: Total assessed
56 value of property, excluding additional assessments due
57 to new or improved property, exceeds last year's total
58 assessed value of property by _____ percent.

59 2. Current Year's Revenue Produced Under Special
60 Levy:

61 3. Projected Revenue Under Special Levy for Next
62 Tax Year:

63 4. Revenue Projected from New Property or Improve-
64 ments: \$_____

65 5. General areas in which new revenue is to be
66 allocated:

67 A public hearing on the issue of special levy rates will
68 be held on (date and time) at (meeting place). A decision
69 regarding the special levy rate will be made on (date
70 and time) at (meeting place).

71 (c) All hearings are open to the public, and the local
72 levying body shall permit persons desiring to be heard
73 an opportunity to present oral testimony within such
74 reasonable time limits as are determined by the
75 governing body. A decision regarding the special levy
76 rate shall be made within ten days of the hearing.

77 (d) As to any special levy in effect on the first day of
78 March, one thousand nine hundred ninety, a local
79 levying body may reduce the rate of the special levy for
80 all classes of property for the forthcoming tax year so
81 as to cause such rate of special levy to produce no more
82 than one hundred four percent of the previous year's
83 projected property tax revenues from extending such
84 special levy rates or such lesser reduction the local
85 levying body considers adequate: *Provided*, That no
86 levying body shall reduce any special levy if such levy
87 rate has been covenanted or otherwise dedicated and is
88 necessary to the payment of bonds or other obligations
89 existing as of the effective date of this section: *Provided*,
90 *however*, That nothing contained in this subsection shall
91 be construed to limit the reduction of the levy rate when
92 the terms of the special levy permit a lower reduction:
93 *Provided further*, That this provision shall not restrict
94 the ability of a local levying body to enact excess levies
95 as authorized under existing statutory or constitutional
96 provisions.

97 (e) If any provision of this section is held invalid, such
98 invalidity shall not affect other provisions or applica-
99 tions of this section which can be given effect without
100 the invalid provision or its application and to this end

101 the provisions of this section are declared to be
102 severable.

ARTICLE 12B. MINIMUM SEVERANCE TAX ON COAL.

- §11-12B-1. Short title; arrangement and classification.
- §11-12B-2. Definitions.
- §11-12B-3. Imposition of tax, credit.
- §11-12B-4. Accounting periods and methods of accounting.
- §11-12B-5. Annual return.
- §11-12B-6. Periodic installment payments of estimated tax.
- §11-12B-7. Time and place for paying tax shown on returns.
- §11-12B-8. Extension of time for filing return.
- §11-12B-9. Extension of time for paying tax.
- §11-12B-10. Place for filing returns or other documents.
- §11-12B-11. Signing of returns and other documents.
- §11-12B-12. Bond of taxpayer may be required.
- §11-12B-13. Collection of tax; tax commissioner may require first purchaser to withhold tax of delinquent taxpayer.
- §11-12B-14. Records.
- §11-12B-15. General procedure and administration.
- §11-12B-16. Criminal penalties.
- §11-12B-17. Severability.
- §11-12B-18. Effective date; and compliance.

§11-12B-1. Short title; arrangement and classification.

1 This article may be cited as the "Minimum Severance
2 Tax Act." No inference, implication or presumption of
3 legislative construction shall be drawn or made by
4 reason of the location or grouping of any particular
5 section or provision or portion of this article, and no
6 legal effect shall be given to any descriptive matter of
7 headings relating to any part, section, subsection or
8 paragraph of this article.

§11-12B-2. Definitions.

1 (a) *General.*—When used in this article, or in the
2 administration of this article, the terms defined in
3 subsection (b) shall have the meanings ascribed to them
4 by this section, unless a different meaning is clearly
5 required by either the context in which the term is used,
6 or by specific definition.

7 (b) Terms defined.

8 (1) "Coal" means and includes any material composed

9 predominantly of hydrocarbons and carbon in a solid
10 state and includes, but is not limited to, all materials
11 commonly known as coal, bituminous coal, anthracite
12 coal, lignite, brown coal, peat or jet.

13 (2) "Delegate" in the phrase "or his delegate," when
14 used in reference to the tax commissioner, means any
15 officer or employee of the tax division duly authorized
16 by the tax commissioner directly, or indirectly by one
17 or more delegations of authority, to perform the function
18 mentioned or described in this article or regulations
19 promulgated thereunder.

20 (3) "Economic interest" for the purpose of this article
21 is synonymous with the economic interest ownership
22 required by section 611 of the Internal Revenue Code in
23 effect on the thirty-first day of December, one thousand
24 nine hundred eighty-five, entitling the taxpayer to a
25 depletion deduction for income tax purposes: *Provided,*
26 That a person who only receives an arm's length royalty
27 shall not be considered as having an economic interest.

28 (4) "Extraction of coal from the ground" includes
29 extraction by mine owners or operators of coal from the
30 waste or residue of prior mining.

31 (5) "Fiduciary" means and includes, a guardian,
32 trustee, executor, administrator, receiver, conservator
33 or any person acting in any fiduciary capacity for any
34 person.

35 (6) "Partnership" includes a syndicate, group, pool,
36 joint venture, or other unincorporated organization,
37 through or by means of which coal is severed, extracted,
38 reduced to possession in this state, or is produced or
39 prepared in this state, for sale, profit or commercial use.
40 "Partner" includes a member of such a syndicate, group,
41 pool, joint venture or organization.

42 (7) "Person" or "company" are herein used inter-
43 changeably and include any individual, firm, partner-
44 ship, mining partnership, joint venture, association,
45 corporation, trust or any other group or combination
46 acting as a unit, and the plural as well as the singular

47 number, unless the intention to give a more limited
48 meaning is declared by the context.

49 (8) "Production" for purposes of this article means and
50 includes the initial severance and extraction of coal in
51 place, from a seam within this state, or from the waste
52 or residue of prior mining located within this state.

53 (9) "Related parties" means two or more persons,
54 organizations or businesses owned or controlled directly
55 or indirectly by the same interests. Control exists if a
56 contract or lease, either written or oral, is entered into
57 whereby one party mines or processes coal owned or
58 held by another party and the owner or lessor partic-
59 ipates in the severing, processing or marketing of the
60 coal or receives any value other than an arm's length
61 passive royalty interest.

62 (10) "Sale" includes any transfer of the ownership or
63 title to property, whether for money or in exchange for
64 other property or services, or any combination thereof.

65 (11) "Severing" or "severed" means the physical
66 removal of coal from the earth or waters of this state
67 by any means.

68 (12) "Tax commissioner" means the tax commissioner
69 of the state of West Virginia, or his delegate.

70 (13) "Taxable year" means the calendar year, or the
71 fiscal year ending during such calendar year, upon the
72 basis of which tax liability is computed under this
73 article. "Taxable year" means, in case of a return made
74 for a fractional part of a year under the provisions of
75 this article, or under regulations promulgated by the tax
76 commissioner, the period for which such return is made.

77 (14) "Taxpayer" means and includes any individual,
78 partnership, joint venture, association, corporation,
79 receiver, trustee, guardian, executor, administrator,
80 fiduciary or representative of any kind engaged in the
81 business of producing, severing or extracting coal in this
82 state for sale, profit or commercial use. In instances
83 where contracts (either oral or written) are entered into
84 whereby persons, organizations or businesses are
85 engaged in the business of producing, severing or
86 extracting coal but do not obtain title to or have an

87 economic interest therein, the party who owns the coal
88 or has an economic interest therein is the taxpayer.

89 (15) "This code" means the code of West Virginia, one
90 thousand nine hundred thirty-one, as amended.

91 (16) "This state" means the state of West Virginia.

92 (17) "Ton" means two thousand pounds.

§11-12B-3. Imposition of tax, credit.

1 (a) *Imposition of tax.*—Upon every person exercising
2 the privilege of engaging within this state in severing,
3 extracting, reducing to possession or producing coal for
4 sale, profit or commercial use there is hereby imposed
5 an annual minimum severance tax equal to fifty cents
6 per ton of coal produced by the taxpayer for sale, profit
7 or commercial use during the taxable year.

8 (b) *Credit against article thirteen-a tax.*—A person
9 who pays the minimum severance tax imposed by this
10 article shall be allowed a credit against the severance
11 tax imposed on coal by section three, article thirteen-a
12 of this chapter, but not including the additional
13 severance tax on coal imposed by section six of said
14 article thirteen-a, equal to the liability of the taxpayer
15 for the taxable year for payment of the minimum
16 severance tax on coal imposed by this article: *Provided,*
17 That the amount of credit allowed by this section shall
18 not exceed the severance tax liability of the taxpayer for
19 the taxable year determined under paragraph one,
20 subsection (b), section three of said article thirteen-a
21 exclusive of the additional tax on coal imposed by
22 section six of said article thirteen-a after application of
23 all credits to which the taxpayer may be entitled except
24 any credit for installment payments of estimated tax
25 paid pursuant to section six of this article during the
26 tax year and any credit for overpayment of article
27 thirteen-a tax.

§11-12B-4. Accounting periods and methods of accounting.

1 (a) *General rule.*—For purposes of the tax imposed by
2 this article, a taxpayer's taxable year shall be the same
3 as the taxpayer's taxable year for federal income tax
4 purposes.

5 (b) *Change of taxable year.*—If a taxpayer's taxable
6 year is changed for federal income tax purposes, the
7 taxpayer's taxable year for purposes of this article shall
8 be similarly changed. The taxpayer shall provide a copy
9 of the authorization for such change from the Internal
10 Revenue Service, with its annual return for the taxable
11 year filed under this article.

12 (c) *Methods of accounting.*

13 (1) *Same as federal.*—A taxpayer's method of account-
14 ing under this article shall be the same as the taxpayer's
15 method of accounting for federal income tax purposes.
16 In the absence of any method of accounting for federal
17 income tax purposes, the accrual method of accounting
18 shall be used unless the tax commissioner, in writing,
19 consents to or requires use of another method.

20 (2) *Change of accounting methods.*—If a taxpayer's
21 method of accounting is changed for federal income tax
22 purposes, his method of accounting for purposes of this
23 article shall similarly be changed. The taxpayer shall
24 provide a copy of the authorization for such change from
25 the Internal Revenue Service, with its annual return for
26 the taxable year filed under this article.

§11-12B-5. Annual return.

1 (a) On or before the expiration of one month after the
2 end of the taxable year, every taxpayer subject to the
3 tax imposed by this article shall make and file an annual
4 return for the entire taxable year showing such
5 information as the tax commissioner may require and
6 computing the amount of taxes due under this article
7 for the taxable year.

8 (b) Any taxpayer may elect to file as part of a
9 consolidated, composite or unitary group for purposes of
10 the tax imposed by article thirteen-a of this chapter and
11 if such election is made, the taxpayer shall file a
12 consolidated, composite or unitary return under this
13 article encompassing the same consolidated, composite
14 or unitary group unless the tax commissioner shall
15 specifically require or approve a filing on some other
16 basis.

§11-12B-6. Periodic installment payments of estimated tax.

1 (a) *General rule.*—The annual tax levied under this
2 article shall be due and payable in periodic installments
3 as follows:

4 (1) *Tax of more than \$1,000 per month.*—For taxpayers
5 whose estimated tax liability under this article exceeds
6 one thousand dollars per month, the tax shall be due and
7 payable in monthly installments on or before the last
8 day of the month following the month in which the tax
9 accrued: *Provided,* That the installment payment
10 otherwise due under this subdivision on or before the
11 thirtieth day of June each year shall be remitted to the
12 tax commissioner on or before the fifteenth day of June
13 each year.

14 (A) Each such taxpayer shall, on or before the last day
15 of each month, make out an estimate of the tax for which
16 the taxpayer is liable for the preceding month, sign the
17 same and mail it together with a remittance, in the form
18 prescribed by the tax commissioner, of the amount of
19 tax due to the office of the tax commissioner: *Provided,*
20 That the installment payment otherwise due under this
21 paragraph on or before the thirtieth day of June each
22 year shall be remitted to the tax commissioner on or
23 before the fifteenth day of June.

24 (2) *Tax of \$1,000 per month or less.*—For taxpayers
25 whose estimated tax liability under this article is one
26 thousand dollars per month or less, the tax shall be due
27 and payable in quarterly installments on or before the
28 last day of the month following the quarter in which the
29 tax accrued:

30 (A) Each such taxpayer shall, on or before the last day
31 of the fourth, seventh and tenth months of the taxable
32 year, make out an estimate of the tax for which the
33 taxpayer is liable for the preceding quarter, sign the
34 same and mail it together with a remittance, in the form
35 prescribed by the tax commissioner, of the amount of
36 tax due to the office of the tax commissioner.

37 (b) *Exception.*—Notwithstanding the provisions of
38 subsection (a) of this section, the tax commissioner, if he
39 deems it necessary to ensure payment of the tax, may
40 require the return and payment under this section for
41 periods of shorter duration than those prescribed in
42 subsection (a) of this section.

§11-12B-7. Time and place for paying tax shown on returns.

1 (a) *General rule.*—The person required to make the
2 annual return required by this article shall, without
3 assessment or notice and demand from the tax commis-
4 sioner, pay such tax at the time and place fixed for filing
5 the return (determined without regard to any extension
6 of time for filing the return).

7 (b) *Date fixed for payment of tax.*—The date fixed for
8 payment of the taxes imposed by this article shall be
9 deemed to be a reference to the last day fixed for such
10 payment (determined without regard to any extension
11 of time for paying the tax).

§11-12B-8. Extension of time for filing return.

1 The tax commissioner may, upon written request
2 received on or prior to the due date of the annual return,
3 or any periodic estimate, grant a reasonable extension
4 of time for filing any return or other document required
5 by this article upon such terms as he may by regulation
6 prescribe, or by contract require, if good cause satisfac-
7 tory to the tax commissioner is provided by the
8 taxpayer.

§11-12B-9. Extension of time for paying tax.

1 (a) *Amount determined on return.*—The tax commis-
2 sioner may extend the time for payment of the amount
3 of the tax shown, or required to be shown, on any return
4 required by this article (or any periodic installment
5 payment), for a reasonable period not to exceed six
6 months from the date fixed for payment thereof.

7 (b) *Amount determined as deficiency.*—Under regula-
8 tions prescribed by the tax commissioner, he may
9 extend the time for the payment of the amount deter-

10 mined as a deficiency of the taxes imposed by this
11 article for a period not to exceed eighteen months from
12 the date fixed for payment of the deficiency. In
13 exceptional cases, further period of time not to exceed
14 twelve months may be granted. An extension under this
15 subsection (b) may be granted only where it is shown
16 to the satisfaction of the tax commissioner that payment
17 of a deficiency upon the date fixed for the payment
18 thereof will result in undue hardship to the taxpayer.

19 (c) *No extension for certain deficiencies.*—No extension
20 shall be granted under this section for any deficiency if
21 the deficiency is due to negligence, to intentional
22 disregard of rules and regulations, or to fraud with
23 intent to evade tax.

§11-12B-10. Place for filing returns or other documents.

1 Tax returns, statements, or other documents, or copies
2 thereof, required by this article or by regulations shall
3 be filed with the tax commissioner by delivery, in person
4 or by mail, to his office in Charleston, West Virginia:
5 *Provided,* That the tax commissioner may, by regula-
6 tion, prescribe the place for filing such returns,
7 statements, or other documents, or copies thereof.

§11-12B-11. Signing of returns and other documents.

1 (a) *General.*—Any return, statement or other docu-
2 ment required to be made under the provisions of this
3 article shall be signed in accordance with instructions
4 or regulations prescribed by the tax commissioner.

5 (b) *Signing of corporation returns.*—The return of a
6 corporation shall be signed by the president, vice
7 president, treasurer, assistant treasurer, chief account-
8 ing officer or any other officer duly authorized so to act.
9 In the case of a return made for a corporation by a
10 fiduciary, such fiduciary shall sign the return. The fact
11 that an individual's name is signed on the return shall
12 be prima facie evidence that such individual is author-
13 ized to sign the return on behalf of the corporation.

14 (c) *Signing of partnership returns.*—The return of a
15 partnership shall be signed by any one of the partners.
16 The fact that a partner's name is signed on the return

17 shall be prima facie evidence that such partner is
18 authorized to sign the return on behalf of the
19 partnership.

20 (d) *Signature presumed authentic.*—The fact that an
21 individual's name is signed to a return, statement, or
22 other document shall be prima facie evidence for all
23 purposes that the return, statement or other document
24 was actually signed by him.

25 (e) *Verification of returns.*—Except as otherwise
26 provided by the tax commissioner, any return, declara-
27 tion or other document required to be made under this
28 article shall contain or be verified by a written
29 declaration that it is made under the penalties of
30 perjury.

§11-12B-12. Bond of taxpayer may be required.

1 (a) Whenever it is deemed necessary to ensure
2 compliance with this article, the tax commissioner may
3 require any taxpayer to post a cash or corporate surety
4 bond.

5 (b) The amount of the bond shall be fixed by the tax
6 commissioner but, except as provided in subsection (c)
7 of this section, shall not be greater than three times the
8 average quarterly liability of taxpayers filing returns
9 for quarterly periods, five times the average monthly
10 liability of taxpayers required to file returns for
11 monthly periods, or two times the average periodic
12 liability of taxpayers permitted or required to file
13 returns for other than monthly or quarterly periods.

14 (c) Notwithstanding the provisions of subsection (b) of
15 this section, no bond required under this section shall
16 be less than five hundred dollars.

17 (d) The amount of the bond may be increased or
18 decreased by the tax commissioner at any time subject
19 to the limitations provided in this section. The tax
20 commissioner may bring an action for a restraining
21 order or a temporary or permanent injunction to
22 restrain or enjoin the operation of a taxpayer's business
23 until the bond is posted and any delinquent tax,
24 including applicable interest and additions to tax has

25 been paid. Such action may be brought in the circuit
26 court of Kanawha County or in the circuit court of any
27 county having jurisdiction over the taxpayer.

§11-12B-13. Collection of tax; tax commissioner may require first purchaser to withhold tax of delinquent taxpayer.

1 Whenever the tax commissioner determines that a
2 taxpayer is delinquent in payment of the tax imposed
3 by this article and that collection of the tax imposed by
4 this article will be facilitated or expedited, the tax
5 commissioner may require the first person who pur-
6 chases the coal which is the measure of tax under this
7 article from the taxpayer to withhold the tax due under
8 this article from the purchase price as agent for the
9 state and remit it to the tax commissioner as provided
10 in sections seven and eight of this article.

§11-12B-14. Records.

1 (a) Every taxpayer liable for reporting or paying tax
2 under this article shall keep such records, receipts,
3 invoices and other pertinent papers in such form as the
4 tax commissioner may require.

5 (b) Every taxpayer shall keep such records for not less
6 than three years after the annual return is filed under
7 this article, unless the tax commissioner in writing
8 authorizes their earlier destruction. An extension of
9 time for making an assessment shall automatically
10 extend the time period for keeping the records for all
11 years subject to audit covered in the agreement for
12 extension of time.

§11-12B-15. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter, shall apply to the tax imposed by
4 this article with like effect if said act were applicable
5 only to the tax imposed by this article and were set forth
6 in extenso in this article.

§11-12B-16. Criminal penalties.

1 Each and every provision of the "West Virginia Tax

2 Crimes and Penalties Act" set forth in article nine of
3 this chapter shall apply to the tax imposed by this
4 article with like effect as if said act were applicable only
5 to the tax imposed by this article and were set forth in
6 extenso in this article.

§11-12B-17. Severability.

1 If any provision of this article or the application
2 thereof shall for any reason be adjudged by any court
3 of competent jurisdiction to be invalid, such judgment
4 shall not affect, impair or invalidate the remainder of
5 said article, but shall be confined in its operation to the
6 provision thereof directly involved in the controversy in
7 which such judgment shall have been rendered, and the
8 applicability of such provision to other persons or
9 circumstances shall not be affected thereby.

§11-12B-18. Effective date; compliance.

1 (a) *Effective date.*—The tax imposed by this article
2 shall take effect on the first day of October, one
3 thousand nine hundred ninety, and apply to coal sold or
4 delivered for sale, profit or commercial use on or after
5 that date.

6 (b) *Compliance.*—To facilitate ease of administration
7 and ease of compliance by taxpayers, the tax commis-
8 sioner may require persons subject to the tax imposed
9 by this article and persons subject to the tax imposed
10 by article thirteen-a of this chapter to file combined
11 returns or declarations of estimated tax for both taxes
12 and to make combined payments of such taxes.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2n. Business of generating or producing or selling electric power; exemptions; rates.

1 (a) *Rate of tax.*—Upon every person engaging or
2 continuing within this state in the business of generat-
3 ing or producing electricity for sale, profit or commer-
4 cial use, either directly or indirectly through the activity
5 of others, in whole or in part, or in the business of selling
6 electricity to consumers, or in both businesses, the tax
7 imposed by section two of this article shall be equal to:

8 (1) Twenty-six hundredths of one cent times the
9 kilowatt hours of net generation available for sale that
10 was generated or produced in this state by the taxpayer
11 during the taxable year, except that this rate shall be
12 five hundredths of one cent times the kilowatt hours of
13 net generation available for sale that was generated or
14 produced in this state by the taxpayer and sold to a
15 plant location of a customer engaged in manufacturing
16 activity if the contract demand at such plant location
17 exceeds two hundred thousand kilowatts per hour per
18 year or if the usage at such plant location exceeds two
19 hundred thousand kilowatts per hour in a year:
20 *Provided*, That in order to encourage the development
21 of industry to improve the environment of this state, the
22 tax imposed by this section on any person generating or
23 producing electric power and an alternative form of
24 energy at a facility located within this state substan-
25 tially from gob or other mine refuse shall be equal to
26 five hundredths of one cent times the kilowatt hours of
27 net generation or production available for sale. The
28 measure of tax under this paragraph shall be equal to
29 the total kilowatt hours of net generation available for
30 sale that was generated or produced in this state by the
31 taxpayer during the taxable year, regardless of the
32 place of sale or use, or the fact that transmission may
33 be made to points outside this state.

34 (2) Nineteen hundredths of one cent times the kilowatt
35 hours of electricity sold to consumers in this state that
36 were not generated or produced in this state by the
37 taxpayer, except that the rate shall be five hundredths
38 of one cent times the kilowatt hours of electricity not
39 generated or produced in this state by the taxpayer
40 which is sold to a plant location in this state of a
41 customer engaged in manufacturing activity if the
42 contract demand at such plant location exceeds two
43 hundred thousand kilowatts per hour per year or if the
44 usage at such plant location exceeds two hundred
45 thousand kilowatts per hour in a year. The measure of
46 tax under this paragraph shall be equal to the total
47 kilowatt hours of electricity sold to consumers in this
48 state during the taxable year, that were not generated
49 or produced in this state by the taxpayer, to be

50 determined by subtracting from the total kilowatt hours
51 of electricity sold to consumers in the state the net
52 kilowatt hours of electricity generated or produced in
53 the state by the taxpayer during the taxable year.

54 The West Virginia public service commission shall,
55 upon application of a public utility, allow an immediate
56 pass-through to the utility's customers in this state in the
57 form of a rate surcharge the increase enacted by the
58 Legislature during its third extraordinary session, one
59 thousand nine hundred ninety, in the tax imposed by
60 this article upon electricity generated or produced in
61 this state and sold to consumers in this state and upon
62 electricity not generated or produced in this state that
63 is sold to consumers in this state.

64 (b) *Exemptions.*—The provisions of this section shall
65 not apply to:

66 (1) Kilowatt hours of electricity generated and sold, or
67 purchased and resold, by a municipally owned plant.

68 (2) Kilowatt hours of electric power that are separate-
69 ly metered and consumed in an electrolytic process for
70 the manufacture of chlorine.

71 (3) Kilowatt hours of electric power that are separate-
72 ly metered and consumed in the manufacture of
73 ferroalloy. As used in this paragraph, the term "ferroal-
74 loy" means any of the various alloys of iron and one or
75 more other elements used as a raw material in the
76 production of steel but shall not include electric power
77 used in the production of steel.

78 (4) The full economic benefits provided to the taxpayer
79 by paragraphs (2) and (3) of this subsection shall be
80 passed on to the manufacturer of the chlorine or
81 ferroalloy.

82 (c) *Credit.*—Any person taxable under paragraph (2),
83 subsection (a) of this section shall be allowed a credit
84 against the amount of tax due under that paragraph for
85 any electric power generation taxes paid by the
86 taxpayer with respect to such electric power to the state
87 in which such power was generated or produced. The
88 amount of credit allowed shall not exceed the tax
89 liability arising under paragraph (2), subsection (a) of
90 this section with respect to the sale of such power.

91 (d) *Transition rule.*—Beginning the first day of
 92 March, one thousand nine hundred eighty-nine, electric
 93 light and power companies shall determine their
 94 liability for payment of tax under this section and
 95 sections two-d and two-m of this article. If for taxable
 96 months beginning on or after the first day of March, one
 97 thousand nine hundred eighty-nine, liability for tax
 98 under section two-n of this article is equal to or greater
 99 than the sum of the power company's liability for
 100 payment of tax under paragraph (3), subsection (a),
 101 section two-d and section two-m of this article, then the
 102 company shall pay the tax due under section two-n of
 103 this article and not the tax due under paragraph (3),
 104 subsection (a) of section two-d and section two-m of this
 105 article. If tax liability under section two-n is less, then
 106 tax shall be paid under paragraph (3), subsection (a),
 107 section two-d and section two-m of this article and the
 108 tax due under section two-n shall not be paid. The
 109 provisions of this subsection (d) shall expire and become
 110 null and void for taxable years beginning on or after the
 111 first day of January, one thousand nine hundred ninety-
 112 eight.

113 (e) *Effective date.*—The amendments to this section
 114 made in the year one thousand nine hundred ninety shall
 115 take effect on the first day of October, one thousand nine
 116 hundred ninety: *Provided*, That as to calendar months
 117 ending before such date, the tax rates specified in this
 118 section, as then in effect shall be fully and completely
 119 preserved.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-8c. Transition rules for elimination of exemption for materials and supplies incorporated in real property owned by governmental entities.

§11-15-8d. Limitations on right to assert exemptions.

§11-15-9. Exemptions.

§11-15-16. Tax return and payment; exception.

§11-15-30. Proceeds of tax; dedication of certain revenues.

§11-15-8c. Transition rules for elimination of exemption for materials and supplies incorporated in real property owned by governmental entities.

1 (a) *General rule.*—The expired provisions in subsection

2 (j), section nine of this article, which previously
3 exempted sales of tangible personal property to persons
4 engaging in the activity of contracting, pursuant to a
5 written contract with the United States, this state, or
6 with a political subdivision thereof, or with a public
7 corporation created by the Legislature or by another
8 governmental entity pursuant to an act of the Legisla-
9 ture, for a building or structure, or improvement
10 thereto, or other improvement to real property that is
11 or will be owned and used by the governmental entity
12 for a governmental or proprietary purpose, shall
13 continue in force for:

14 (1) Tangible personal property purchased by a
15 contractor on or after the first day of October, one
16 thousand nine hundred ninety, in fulfillment of a
17 written contract for contracting, as defined in section
18 two of this article, that was executed and legally binding
19 on the parties thereto on or before the fifteenth day of
20 September, one thousand nine hundred ninety; or in
21 fulfillment of a written contract entered into after said
22 fifteenth day of September pursuant to a written bid for
23 contracting that was made on or before said fifteenth
24 day of September that was binding on the contractor,
25 but only to the extent that the bid is subsequently
26 incorporated into a written contract; and

27 (2) Tangible personal property purchased by a
28 contractor on or after the first day of October, one
29 thousand nine hundred ninety, for consumption or use
30 in fulfillment of a written contract for the construction
31 of a new improvement to real property, the construction
32 or operation of which was approved by a federal or state
33 regulatory body prior to the fifteenth day of September,
34 one thousand nine hundred ninety, or pursuant to a
35 federal grant awarded prior to said fifteenth day of
36 September.

37 (b) *Renewals and extensions.*—A renewal of any

38 contract shall constitute a new contract for purposes of
39 this section, and the date of entry into a contract
40 renewal by the parties, the date or dates of tender of
41 consideration and the time of performance of any
42 contractual obligations under a renewed contract shall
43 be treated as the dates for determining application of
44 this section to the renewed contract. Extensions of time
45 granted or agreed upon by the parties to a contract for
46 performance of the contract or for tender of consider-
47 ation under the contract shall not be treated as contract
48 renewals. Contracts to which such extensions apply shall
49 be treated under these transition rules as if the original
50 contractual provisions for performance and tender of
51 consideration remain in effect. For purposes of this
52 section, the terms "contract" or "contracts", and
53 "contract renewal" or "renewal" shall have the same
54 meaning as defined in subsection (d), section eight-a of
55 this article.

§11-15-8d. Limitations on right to assert exemptions.

1 Persons who perform "contracting" as defined in
2 section two of this article, or persons acting in an agency
3 capacity, may not assert any exemption to which the
4 purchaser of such contracting services or the principal
5 is entitled. Any statutory exemption to which a taxpayer
6 may be entitled shall be invalid unless the tangible
7 personal property or taxable service is actually pur-
8 chased by such taxpayer and is directly invoiced to and
9 paid by such taxpayer: *Provided*, That this section shall
10 not apply to purchases by an employee for his or her
11 employer; purchases by a partner for his or her
12 partnership; or purchases by a duly authorized officer
13 of a corporation, or unincorporated organization, for his
14 or her corporation or unincorporated organization, so
15 long as the purchase is invoiced to and paid by such
16 employer, partnership, corporation or unincorporated
17 organization.

18 *Transition rule.*—This section shall not apply to
19 purchases of tangible personal property or taxable
20 services in fulfillment of a purchasing agent or procure-
21 ment agent contract executed and legally binding on the

22 parties thereto prior to the fifteenth day of September,
23 one thousand nine hundred ninety: *Provided*, That this
24 transition rule shall not apply to any purchases of
25 tangible personal property or taxable services made
26 under such a contract after the thirty-first day of
27 August, one thousand nine hundred ninety-one; and this
28 transition rule shall not apply if the primary purpose
29 of the purchasing agent or procurement agent contract
30 was to avoid payment of consumers sales and use taxes.

§11-15-9. Exemptions.

1 The following sales and services are exempt:

2 (a) Sales of gas, steam and water delivered to
3 consumers through mains or pipes, and sales of
4 electricity;

5 (b) Sales of textbooks required to be used in any of
6 the schools of this state or in any institution in this state
7 which qualifies as a nonprofit or educational institution
8 subject to the West Virginia department of education
9 and the arts; board of trustees of the university system
10 of West Virginia, or the board of directors for colleges
11 located in this state;

12 (c) Sales of property or services to the state, its
13 institutions or subdivisions, governmental units, institu-
14 tions or subdivisions of other states: *Provided*, That the
15 law of such other state provides the same exemption to
16 governmental units or subdivisions of this state and to
17 the United States, including agencies of federal, state or
18 local governments for distribution in public welfare or
19 relief work;

20 (d) Sales of vehicles which are titled by the division
21 of motor vehicles and which are subject to the tax
22 imposed by section four, article three, chapter seven-
23 teen-a of this code, or like tax;

24 (e) Sales of property or services to churches and bona
25 fide charitable organizations who make no charge
26 whatsoever for the services they render: *Provided*, That
27 the exemption herein granted shall apply only to
28 services, equipment, supplies, food for meals and
29 materials directly used or consumed by these organiza-
30 tions, and shall not apply to purchases of gasoline or
31 special fuel;

32 (f) Sales of tangible personal property or services to
33 a corporation or organization which has a current
34 registration certificate issued under article twelve of
35 this chapter is exempt from federal income taxes under
36 section 501(c)(3) or (c)(4) of the Internal Revenue Code
37 of 1986, as amended, and is:

38 (1) A church or a convention or association of churches
39 as defined in section 170 of the Internal Revenue Code
40 of 1986, as amended;

41 (2) An elementary or secondary school which main-
42 tains a regular faculty and curriculum and has a
43 regularly enrolled body of pupils or students in attend-
44 ance at the place in this state where its educational
45 activities are regularly carried on;

46 (3) A corporation or organization which annually
47 receives more than one half of its support from any
48 combination of gifts, grants, direct or indirect charita-
49 ble contributions, or membership fees;

50 (4) An organization which has no paid employees and
51 its gross income from fund raisers, less reasonable and
52 necessary expenses incurred to raise such gross income
53 (or the tangible personal property or services purchased
54 with such net income), is donated to an organization
55 which is exempt from income taxes under section
56 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,
57 as amended; or

58 (5) A youth organization, such as the Girl Scouts of
59 the United States of America, the Boy Scouts of
60 America, or the YMCA Indian Guide/Princess Pro-
61 gram, and the local affiliates thereof, which is organized
62 and operated exclusively for charitable purposes and
63 has as its primary purpose the nonsectarian character
64 development and citizenship training of its members.

65 (6) For purposes of this subsection:

66 (A) The term "support" includes, but is not limited to:

67 (i) Gifts, grants, contributions or membership fees;

68 (ii) Gross receipts from fund raisers which include
69 receipts from admissions, sales of merchandise, per-

- 70 formance of services or furnishing of facilities in any
71 activity which is not an unrelated trade or business
72 within the meaning of section 513 of the Internal
73 Revenue Code of 1986, as amended;
- 74 (iii) Net income from unrelated business activities,
75 whether or not such activities are carried on regularly
76 as a trade or business;
- 77 (iv) Gross investment income as defined in section
78 509(e) of the Internal Revenue Code of 1986, as
79 amended;
- 80 (v) Tax revenues levied for the benefit of a corporation
81 or organization either paid to or expended on behalf of
82 such organization; and
- 83 (vi) The value of services or facilities (exclusive of
84 services or facilities generally furnished to the public
85 without charge) furnished by a governmental unit
86 referred to in section 170(c)(1) of the Internal Revenue
87 Code of 1986, as amended, to an organization without
88 charge. This term does not include any gain from the
89 sale or other disposition of property which would be
90 considered as gain from the sale or exchange of a capital
91 asset, or the value of an exemption from any federal,
92 state or local tax or any similar benefit;
- 93 (B) The term "charitable contribution" means a
94 contribution or gift to or for the use of a corporation or
95 organization, described in section 170(c)(2) of the
96 Internal Revenue Code of 1986, as amended;
- 97 (C) The term "membership fee" does not include any
98 amounts paid for tangible personal property or specific
99 services rendered to members by the corporation or
100 organization;
- 101 (7) The exemption allowed by this subsection (f) does
102 not apply to sales of gasoline or special fuel or to sales
103 of tangible personal property or services to be used or
104 consumed in the generation of unrelated business
105 income as defined in section 513 of the Internal Revenue
106 Code of 1986, as amended. The provisions of this
107 subsection as amended by this act shall apply to sales
108 made after the thirtieth day of June, one thousand nine

109 hundred eighty-nine: *Provided*, That the exemption
110 herein granted shall apply only to services, equipment,
111 supplies and materials used or consumed in the activ-
112 ities for which such organizations qualify as tax exempt
113 organizations under the Internal Revenue Code by these
114 organizations and shall not apply to purchases of
115 gasoline or special fuel;

116 (g) Sales of property or services to persons engaged
117 in this state in the business of manufacturing, transpor-
118 tation, transmission, communication or in the produc-
119 tion of natural resources: *Provided*, That the exemption
120 herein granted shall apply only to services, machinery,
121 supplies and materials directly used or consumed in the
122 businesses or organizations named above, and shall not
123 apply to purchases of gasoline or special fuel: *Provided*,
124 *however*, That on and after the first day of July, one
125 thousand nine hundred eighty-seven, the exemption
126 provided in this subsection shall apply only to services,
127 machinery, supplies and materials directly used or
128 consumed in the activities of manufacturing, transpor-
129 tation, transmission, communication or the production of
130 natural resources in the businesses or organizations
131 named above and shall not apply to purchases of
132 gasoline or special fuel;

133 (h) An isolated transaction in which any taxable
134 service or any tangible personal property is sold,
135 transferred, offered for sale or delivered by the owner
136 thereof or by his representative for the owner's account,
137 such sale, transfer, offer for sale or delivery not being
138 made in the ordinary course of repeated and successive
139 transactions of like character by such owner or on his
140 account by such representative: *Provided*, That nothing
141 contained herein may be construed to prevent an owner
142 who sells, transfers or offers for sale tangible personal
143 property in an isolated transaction through an auction-
144 eer from availing himself or herself of the exemption
145 provided herein, regardless where such isolated sale
146 takes place. The tax commissioner may adopt such
147 legislative rule pursuant to chapter twenty-nine-a of this
148 code as he deems necessary for the efficient administra-
149 tion of this exemption;

150 (i) Sales of tangible personal property or of any
151 taxable services rendered for use or consumption in
152 connection with the commercial production of an
153 agricultural product the ultimate sale of which will be
154 subject to the tax imposed by this article or which would
155 have been subject to tax under this article: *Provided*,
156 That sales of tangible personal property and services to
157 be used or consumed in the construction of or permanent
158 improvement to real property and sales of gasoline and
159 special fuel shall not be exempt;

160 (j) Sales of tangible personal property to a person for
161 the purpose of resale in the form of tangible personal
162 property: *Provided*, That sales of gasoline and special
163 fuel by distributors and importers shall be taxable
164 except when the sale is to another distributor for resale:
165 *Provided, however*, That sales of building materials or
166 building supplies or other property to any person
167 engaging in the activity of contracting, as defined in this
168 article, which is to be installed in, affixed to or
169 incorporated by such person or his agent into any real
170 property, building or structure shall not be exempt
171 under this subsection, except that sales of tangible
172 personal property to a person engaging in the activity
173 of contracting pursuant to a written contract with the
174 United States, this state, or with a political subdivision
175 thereof, or with a public corporation created by the
176 Legislature or by another governmental entity pursuant
177 to an act of the Legislature, for a building or structure,
178 or improvement thereto, or other improvement to real
179 property that is or will be owned and used by the
180 governmental entity for a governmental or proprietary
181 purpose, who incorporates such property in such
182 building, structure or improvement shall, with respect
183 to such tangible personal property, nevertheless be
184 deemed to be the vendor of such property to the
185 governmental entity and any person seeking to qualify
186 for and assert this exception must do so pursuant to such
187 legislative rules and regulations as the tax commissioner
188 may promulgate and upon such forms as the tax
189 commissioner may prescribe. A subcontractor who,
190 pursuant to a written subcontract with a prime contrac-
191 tor who qualifies for this exception, provides equipment,

192 or materials, and labor to such a prime contractor shall
193 be treated in the same manner as the prime contractor
194 is treated with respect to the prime contract under this
195 exception and the legislative rules and regulations
196 promulgated by the tax commissioner: *Provided further,*
197 That the exemption for government contractors in the
198 preceding proviso shall expire on the first day of
199 October, one thousand nine hundred ninety, subject to
200 the transition rules set forth in section eight-c of this
201 article;

202 (k) Sales of property or services to nationally char-
203 tered fraternal or social organizations for the sole
204 purpose of free distribution in public welfare or relief
205 work: *Provided,* That sales of gasoline and special fuel
206 shall be taxable;

207 (l) Sales and services, fire fighting or station house
208 equipment, including construction and automotive,
209 made to any volunteer fire department organized and
210 incorporated under the laws of the state of West
211 Virginia: *Provided,* That sales of gasoline and special
212 fuel shall be taxable;

213 (m) Sales of newspapers when delivered to consumers
214 by route carriers;

215 (n) Sales of drugs dispensed upon prescription and
216 sales of insulin to consumers for medical purposes;

217 (o) Sales of radio and television broadcasting time,
218 preprinted advertising circulars and newspaper and
219 outdoor advertising space for the advertisement of goods
220 or services;

221 (p) Sales and services performed by day-care centers;

222 (q) Casual and occasional sales of property or services
223 not conducted in a repeated manner or in the ordinary
224 course of repetitive and successive transactions of like
225 character by a corporation or organization which is
226 exempt from tax under subsection (f) of this section on
227 its purchases of tangible personal property or services:

228 (1) For purposes of this subsection, the term "casual
229 and occasional sales not conducted in repeated manner

230 or in the ordinary course of repetitive and successive
231 transactions of like character” means sales of tangible
232 personal property or services at fund raisers sponsored
233 by a corporation or organization which is exempt, under
234 subsection (f) of this section, from payment of the tax
235 imposed by this article on its purchases, when such fund
236 raisers are of limited duration and are held no more
237 than six times during any twelve-month period and
238 limited duration means no more than eighty-four
239 consecutive hours;

240 (2) The provisions of this subsection (q), as amended
241 by this act, shall apply to sales made after the thirtieth
242 day of June, one thousand nine hundred eighty-nine;

243 (r) Sales of property or services to a school which has
244 approval from the board of trustees of the university
245 system of West Virginia or the board of directors of the
246 state college system to award degrees, which has its
247 principal campus in this state, and which is exempt
248 from federal and state income taxes under section
249 501(c)(3) of the Internal Revenue Code of 1986, as
250 amended: *Provided*, That sales of gasoline and special
251 fuel shall be taxable;

252 (s) Sales of mobile homes to be utilized by purchasers
253 as their principal year-round residence and dwelling:
254 *Provided*, That these mobile homes shall be subject to
255 tax at the three-percent rate;

256 (t) Sales of lottery tickets and materials by licensed
257 lottery sales agents and lottery retailers authorized by
258 the state lottery commission, under the provisions of
259 article twenty-two, chapter twenty-nine of this code;

260 (u) Leases of motor vehicles titled pursuant to the
261 provisions of article three, chapter seventeen-a of this
262 code to lessees for a period of thirty or more consecutive
263 days. This exemption shall apply to leases executed on
264 or after the first day of July, one thousand nine hundred
265 eighty-seven, and to payments under long-term leases
266 executed before such date, for months thereof beginning
267 on or after such date;

268 (v) Notwithstanding the provisions of subsection (g) of

269 this section or any provisions of this article to the
270 contrary, sales of property and services to persons
271 subject to tax under article thirteen, thirteen-a or
272 thirteen-b of this chapter: *Provided*, That the exemption
273 herein granted shall apply both to property or services
274 directly or not directly used or consumed in the conduct
275 of privileges which are subject to tax under such articles
276 but shall not apply to purchases of gasoline or special
277 fuel;

278 (w) Sales of propane to consumers for poultry house
279 heating purposes, with any seller to such consumer who
280 may have prior paid such tax in his price, to not pass
281 on the same to the consumer, but to make application
282 and receive refund of such tax from the tax commis-
283 sioner, pursuant to rules and regulations which shall be
284 promulgated by the tax commissioner; and notwith-
285 standing the provisions of section eighteen of this article
286 or any other provisions of such article to the contrary;

287 (x) Any sales of tangible personal property or services
288 purchased after the thirtieth day of September, one
289 thousand nine hundred eighty-seven, and lawfully paid
290 for with food stamps pursuant to the federal food stamp
291 program codified in 7 United States Code, §2011, et seq.,
292 as amended, or with drafts issued through the West
293 Virginia special supplemental food program for women,
294 infants and children codified in 42 United States Code,
295 §1786;

296 (y) Sales of tickets for activities sponsored by elemen-
297 tary and secondary schools located within this state;

298 (z) Sales of electronic data processing services and
299 related software: *Provided*, That for the purposes of this
300 subsection (z) "electronic data processing services"
301 means (1) the processing of another's data, including all
302 processes incident to processing of data such as key-
303 punching, keystroke verification, rearranging or sorting
304 of previously documented data for the purpose of data
305 entry or automatic processing, and changing the
306 medium on which data is sorted, whether these pro-
307 cesses are done by the same person or several persons;
308 and (2) providing access to computer equipment for the

309 purpose of processing data or examining or acquiring
310 data stored in or accessible to such computer equipment;

311 (aa) Tuition charged for attending educational
312 summer camps;

313 (bb) Sales of building materials or building supplies
314 or other property to an organization qualified under
315 section 501(c)(3) or (c)(4) of the Internal Revenue Code
316 of 1986, as amended, which are to be installed in, affixed
317 to or incorporated by such organization or its agent into
318 real property, or into a building or structure which is
319 or will be used as permanent low-income housing,
320 transitional housing, emergency homeless shelter,
321 domestic violence shelter or emergency children and
322 youth shelter if such shelter is owned, managed,
323 developed or operated by an organization qualified
324 under section 501(c)(3) or (c)(4) of the Internal Revenue
325 Code of 1986, as amended;

326 (cc) Dispensing of services performed by one corpora-
327 tion for another corporation when both corporations are
328 members of the same controlled group. Control means
329 ownership, directly or indirectly, of stock possessing
330 fifty percent or more of the total combined voting power
331 of all classes of the stock of a corporation entitled to vote
332 or ownership, directly or indirectly, of stock possessing
333 fifty percent or more of the value of the corporation;

334 (dd) Food for the following shall be exempt:

335 (1) Food purchased or sold by public or private
336 schools, school sponsored student organizations, or
337 school sponsored parent-teacher associations to students
338 enrolled in such school or to employees of such school
339 during normal school hours; but not those sales of food
340 made to the general public;

341 (2) Food purchased or sold by a public or private
342 college or university or by a student organization
343 officially recognized by such college or university to
344 students enrolled at such college or university when
345 such sales are made on a contract basis so that a fixed
346 price is paid for consumption of food products for a
347 specific period of time without respect to the amount of

348 food product actually consumed by the particular
349 individual contracting for the sale and no money is paid
350 at the time the food product is served or consumed;

351 (3) Food purchased or sold by a charitable or private
352 nonprofit organization, a nonprofit organization or a
353 governmental agency under a program to provide food
354 to low-income persons at or below cost;

355 (4) Food sold in an occasional sale by a charitable or
356 nonprofit organization including volunteer fire depart-
357 ments and rescue squads, if the purpose of the sale is
358 to obtain revenue for the functions and activities of the
359 organization and the revenue so obtained is actually
360 expended for that purpose;

361 (5) Food sold by any religious organization at a social
362 or other gathering conducted by it or under its auspices,
363 if the purpose in selling the food is to obtain revenue
364 for the functions and activities of the organization and
365 the revenue obtained from selling the food is actually
366 used in carrying on such functions and activities:
367 *Provided*, That purchases made by such organizations
368 shall not be exempt as a purchase for resale;

369 (ee) Sales of food by little leagues, midget football
370 leagues, youth football or soccer leagues and similar
371 types of organizations, including scouting groups and
372 church youth groups, if the purpose in selling the food
373 is to obtain revenue for the functions and activities of
374 the organization and the revenues obtained from selling
375 the food is actually used in supporting or carrying on
376 functions and activities of the groups: *Provided*, That
377 such purchases made by such organizations shall not be
378 exempt as a purchase for resale;

379 (ff) Charges for room and meals by fraternities and
380 sororities to their members: *Provided*, That such
381 purchases made by a fraternity or sorority shall not be
382 exempt as a purchase for resale;

383 (gg) Sales of or charges for the transportation of
384 passengers in interstate commerce;

385 (hh) Sales of tangible personal property or services to
386 any person which this state is prohibited from taxing

387 under the laws of the United States or under the
388 constitution of this state;

389 (ii) Sales of tangible personal property or services to
390 any person who claims exemption from the tax imposed
391 by this article or article fifteen-a of this chapter
392 pursuant to the provisions of any other chapter of this
393 code;

394 (jj) Charges for the services of opening and closing a
395 burial lot;

396 (kk) Sales of livestock, poultry or other farm products
397 in their original state by the producer thereof (or a
398 member of the producer's immediate family) who is not
399 otherwise engaged in making retail sales of tangible
400 personal property; and sales of livestock sold at public
401 sales sponsored by breeder's or registry associations or
402 livestock auction markets: *Provided*, That the exemp-
403 tions allowed by this subsection shall apply to sales
404 made on or after the first day of July, one thousand nine
405 hundred ninety, and may be claimed without presenting
406 or obtaining exemption certificates: *Provided, however*,
407 That the farmer shall maintain adequate records;

408 (ll) Sales of motion picture films to motion picture
409 exhibitors for exhibition if the sale of tickets or the
410 charge for admission to the exhibition of the film is
411 subject to the tax imposed by this article and sales of
412 coin-operated video arcade machines, or video arcade
413 games, to a person engaged in the business of providing
414 such machines to the public for a charge upon which the
415 tax imposed by this article is remitted to the tax
416 commissioner: *Provided*, That the exemption provided in
417 this subsection shall apply to sales made on or after the
418 first day of July, one thousand nine hundred ninety, and
419 may be claimed by presenting to the seller a properly
420 executed exemption certificate; and

421 (mm) Sales of aircraft repair, remodeling and main-
422 tenance services when such services are to an aircraft
423 operated by a certificated or licensed carrier of persons
424 or property, or by a governmental entity, or to an engine
425 or other component part of an aircraft operated by a
426 certificated or licensed carrier of persons or property,

427 or by a governmental entity and sales of tangible
428 personal property that is permanently affixed or
429 permanently attached as a component part of an aircraft
430 owned or operated by a certificated or licensed carrier
431 of persons or property, or by a governmental entity, as
432 part of the repair, remodeling or maintenance service
433 and sales of machinery, tools, or equipment, directly
434 used or consumed exclusively in the repair, remodeling,
435 or maintenance of aircraft, aircraft engines, or aircraft
436 component parts, for a certificated or licensed carrier
437 of persons or property, or for a governmental entity.

§11-15-16. Tax return and payment; exception.

1 (a) Subject to the exceptions set forth in subsection (b)
2 of this section, the taxes levied by this article shall be
3 due and payable in monthly installments, on or before
4 the fifteenth day of the month next succeeding the
5 month in which the tax accrued. The taxpayer shall, on
6 or before the fifteenth day of each month, make out and
7 mail to the tax commissioner a return for the preceding
8 month, in the form prescribed by the tax commissioner,
9 showing: (a) The total gross proceeds of his business for
10 that month; (b) the gross proceeds of his business upon
11 which the tax is based; (c) the amount of the tax for
12 which he is liable; and (d) any further information
13 necessary in the computation and collection of the tax
14 which the tax commissioner may require. A remittance
15 for the amount of the tax shall accompany the return:
16 *Provided*, That notwithstanding the provisions of section
17 thirty of this article, any such tax collected by the
18 alcohol beverage control commissioner from persons or
19 organizations licensed under authority of article seven,
20 chapter sixty of this code shall be paid into a revolving
21 fund account in the state treasury, designated the drunk
22 driving prevention fund, to be administered by the
23 commission on drunk driving prevention, subject to
24 appropriations by the Legislature: *Provided, however*,
25 That any balances in the drunk driving prevention fund
26 on the first day of July, one thousand nine hundred
27 eighty-nine, and all moneys received into such fund
28 during the fiscal year commencing the first day of July,
29 one thousand nine hundred eighty-nine, may, up to a

30 maximum of seven hundred fifty thousand dollars, be
31 used by the department of public safety for personal
32 services, employee benefits and unclassified expendi-
33 tures for the time period commencing the first day of
34 July, one thousand nine hundred eighty-nine, and
35 ending the last day of June, one thousand nine hundred
36 ninety, subject to appropriation by the Legislature. A
37 monthly return shall be signed by the taxpayer or his
38 duly authorized agent.

39 (b) *Accelerated payment.*—(1) For calendar years
40 beginning after the thirty-first day of December, one
41 thousand nine hundred ninety, taxpayers whose average
42 monthly installment for the previous calendar year
43 exceeds one hundred thousand dollars, shall remit the
44 tax attributable to the first fifteen days of June each
45 year on or before the twenty-third day of said month of
46 June.

47 (2) For purposes of complying with subdivision (1) of
48 this subsection (b), the taxpayer shall remit an amount
49 equal to the amount of tax imposed by this article on
50 actual taxable sales of tangible personal property and
51 sales of taxable services during the first fifteen days of
52 June or, at the taxpayer's election, taxpayer may remit
53 an amount equal to fifty percent of taxpayer's liability
54 for tax under this article on taxable sales of tangible
55 personal property and sales of taxable services made
56 during the preceding month of May.

57 (3) For a business which has not been in existence for
58 a full calendar year, the total tax due from the business
59 during such prior calendar year shall be divided by the
60 number of months, including fractions of a month, that
61 it was in business during such prior calendar year; and
62 if that amount exceeds one hundred thousand dollars,
63 the tax attributable to the first fifteen days of June each
64 year shall be remitted on or before the twenty-third day
65 of said month of June as provided in subdivision (2) of
66 this subsection (b).

67 (4) When a taxpayer required to make an advanced
68 payment of tax under subdivision (1) of this subsection
69 (b) makes out its return for the month of June, which

70 is due on the fifteenth day of July, such taxpayer may
71 claim as a credit against its liability under this article
72 for tax on taxable transactions during the month of June
73 the amount of the advanced payment of tax made under
74 subdivision (1) of this subsection (b).

§11-15-30. Proceeds of tax; dedication of certain revenues.

1 The proceeds of the tax imposed by this article shall
2 be deposited in the general revenue fund of the state:
3 *Provided*, That beginning the first day of July, one
4 thousand nine hundred eighty-nine, and continuing each
5 month thereafter through the last day of July, one
6 thousand nine hundred ninety-two, the first five million
7 dollars of proceeds of this tax for each month shall be
8 paid into the "Fiscal Responsibility Fund" created by
9 section nineteen, article one, chapter five of this code
10 and used for the purposes specified therein, and that on
11 and after the first day of August, one thousand nine
12 hundred ninety-two, and continuing each month thereaf-
13 ter through the last day of August, one thousand nine
14 hundred ninety-six, the first five million dollars of
15 'proceeds of this tax for each month shall be paid into
16 the "Education Enhancement Fund" created by section
17 nine-d, article six, chapter twelve of this code: *Provided*,
18 *however*, That for the fiscal year one thousand nine
19 hundred eighty-nine, one million dollars of the proceeds
20 of the tax imposed by this article shall be dedicated to
21 the cancer center at West Virginia University and eight
22 million dollars of the proceeds of the tax imposed by this
23 article shall be dedicated to the "Higher Education
24 Salary Fund" which is hereby created in the state
25 treasury. All moneys credited to the higher education
26 salary fund shall be expended by the appropriate higher
27 education governing board for further implementation
28 of the fee schedules established in articles eight and
29 nine, chapter eighteen-b of this code.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8. Credits against tax.

§11-21-74. Employer's return and payment of withheld taxes.

§11-21-8. Credits against tax.

1 (a) *Business and occupation tax credit.*—A credit shall

2 be allowed against the tax imposed by section three of
3 this article equal to the amount of the liability of the
4 taxpayer for the taxable year for any tax imposed under
5 article thirteen, chapter eleven of this code: *Provided*,
6 That the amount of such business and occupation tax
7 credit shall not exceed the portion of the tax imposed
8 by this article which is attributable to the West Virginia
9 taxable income derived by the taxpayer for the taxable
10 year from the business or occupation with respect to
11 which said tax under article thirteen was imposed. In
12 case the West Virginia taxable income of a taxpayer
13 includes income from a partnership, estate, trust or a
14 corporation electing to be taxed under subchapter S of
15 the Internal Revenue Code of 1954, as amended, a part
16 of any tax liability of the partnership, estate, trust or
17 corporation under said article thirteen shall be allowed
18 to the taxpayer, in computing the credit provided for by
19 this section, in an amount proportionate to the income
20 of such partnership, estate, trust or corporation, which
21 is included in the taxpayer's West Virginia taxable
22 income.

23 For purposes of this section, the tax imposed under
24 article thirteen, chapter eleven of this code shall be the
25 amount of the liability of the taxpayer for such tax
26 under said article thirteen computed without reduction
27 for the tax credit for industrial expansion or revitaliza-
28 tion allowed for such year.

29 (b) *Severance tax credit*.—On and after the first day
30 of July, one thousand nine hundred eighty-seven, a
31 credit shall be allowed against the tax imposed by
32 section three of this article equal to the amount of the
33 liability of the taxpayer for the taxable year for any tax
34 imposed under article thirteen-a, chapter eleven of this
35 code: *Provided*, That the amount of such severance tax
36 credit shall not exceed the portion of the tax imposed
37 by this article which is attributable to the West Virginia
38 taxable income derived by the taxpayer for the taxable
39 year from the activities with respect to which said tax
40 under article thirteen-a was imposed. In case the West
41 Virginia taxable income of a taxpayer includes income
42 from a partnership, estate, trust or a corporation

43 electing to be taxed under subchapter S of the Internal
44 Revenue Code of 1954, as amended, a part of any tax
45 liability of the partnership, estate, trust or corporation
46 under said article thirteen-a shall be allowed to the
47 taxpayer, in computing the credit provided for by this
48 section, in an amount proportionate to the income of
49 such partnership, estate, trust or corporation, which is
50 included in the taxpayer's West Virginia taxable
51 income.

52 (c) *Expiration of credit.*—The credit authorized in
53 subsection (b) of this section shall expire and not be
54 authorized or allowed for any taxable year beginning on
55 or after the first day of October, one thousand nine
56 hundred ninety.

§11-21-74. Employer's return and payment of withheld taxes.

1 (a) *General.*—Every employer required to deduct and
2 withhold tax under this article shall, for each calendar
3 quarter, on or before the last day of the month following
4 the close of such calendar quarter, file a withholding
5 return as prescribed by the tax commissioner and pay
6 over to the tax commissioner the taxes so required to
7 be deducted and withheld. Where the aggregate amount
8 so deducted and withheld by any employer is less than
9 twenty-five dollars in a calendar quarter and the
10 aggregate for the calendar year can reasonably be
11 expected to be less than one hundred dollars, the tax
12 commissioner may by regulation permit an employer to
13 file an annual return and pay over to the tax commis-
14 sioner the taxes deducted and withheld on or before the
15 last day of the month following the close of such
16 calendar year. The tax commissioner may, if he believes
17 such action necessary for the protection of the revenues,
18 require any employer to make such return and pay to
19 him the tax deducted and withheld at any time, or from
20 time to time.

21 (b) *Monthly returns and payments of withheld tax on*
22 *and after June 1, 1971.*—Notwithstanding the provisions
23 of subsection (a), on and after June 1, 1971, every
24 employer required to deduct and withhold tax under

25 this article shall, for each of the first eleven months of
26 the calendar year, on or before the twentieth day of the
27 succeeding month and for the last calendar month of the
28 year, on or before the last day of the succeeding month,
29 file a withholding return as prescribed by the tax
30 commissioner and pay over to the tax commissioner the
31 taxes so required to be deducted and withheld, if such
32 withheld taxes aggregate one hundred dollars or more
33 for such month; except any employer with respect to
34 whom the tax commissioner may have by regulation
35 provided otherwise in accordance with the provisions of
36 subsection (a): *Provided*, That in accordance with
37 regulations promulgated by the tax commissioner, a
38 payment of withheld tax may be subject to the credit
39 set forth in section nine-b, article fifteen of this chapter
40 and the credit set forth in section three-b, article fifteen-
41 a of this chapter.

42 (c) *Deposit in trust for tax commissioner.*—Whenever
43 any employer fails to collect, truthfully account for, or
44 pay over the tax, or to make returns of the tax as
45 required in this section, the tax commissioner may serve
46 a notice requiring such employer to collect the taxes
47 which become collectible after service of such notice, to
48 deposit such taxes in a bank approved by the tax
49 commissioner, in a separate account, in trust for and
50 payable to the tax commissioner, and to keep the amount
51 of such tax in such account until payment over to the
52 tax commissioner. Such notice shall remain in effect
53 until a notice of cancellation is served by the tax
54 commissioner.

55 (d) Accelerated payment.

56 (1) Notwithstanding the provisions of subsections (a)
57 and (b) of this section, for calendar years beginning
58 after the thirty-first day of December, one thousand nine
59 hundred ninety, every employer required to deduct and
60 withhold tax whose average payment per calendar
61 month for the preceding calendar year under subsection
62 (b) exceeded one hundred thousand dollars shall remit
63 the tax attributable to the first fifteen days of June each
64 year on or before the twenty-third day of said month of
65 June.

66 (2) For purposes of complying with subdivision (1) of
67 this subsection (d), the employer shall remit an amount
68 equal to the withholding tax due under this article on
69 employee compensation subject to withholding tax
70 payable or paid to employees for the first fifteen days
71 of June or, at the employer's election, the employer may
72 remit an amount equal to fifty percent of the employer's
73 liability for withholding tax under this article on
74 compensation payable or paid to employees for the
75 preceding month of May.

76 (3) For an employer which has not been in business
77 for a full calendar year, the total amount the employer
78 was required to deduct and withhold under subsection
79 (b) for such prior calendar year shall be divided by the
80 number of months, including fractions of a month, that
81 it was in business during such prior calendar year, and
82 if that amount exceeds one hundred thousand dollars,
83 the employer shall remit the tax attributable to the first
84 fifteen days of June each year on or before the twenty-
85 third day of said month of June, as provided in
86 subdivision (2) of this subsection (d).

87 (4) When an employer required to make an advanced
88 payment of withholding tax under subdivision (1) of this
89 subsection (d) makes out its return for the month of
90 June, which is due on the twentieth day of July, such
91 employer may claim as a credit against its liability
92 under this article for tax on employee compensation
93 paid or payable for employee services rendered during
94 the month of June the amount of the advanced payment
95 of tax made under subdivision (1) of this subsection (d).

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-9a. Credits against primary tax; election of taxpayer.

1 *Credit for primary taxes imposed under article*
2 *thirteen-a, chapter eleven of this code.*—A credit shall be
3 allowed against the primary tax imposed by this article
4 equal to the amount of the liability of the taxpayer for
5 the taxable year for the severance tax imposed under
6 article thirteen-a, chapter eleven of this code: *Provided,*

7 That the amount of such severance tax credit shall not
8 exceed fifty percent of the primary tax liability of the
9 taxpayer under this article, which is attributable to the
10 West Virginia taxable income derived by the taxpayer
11 for the taxable year from the activities with respect to
12 which said tax under article thirteen-a was imposed,
13 and shall not in any event exceed fifty percent of the
14 primary tax liability of the taxpayer under this article
15 for such taxable year: *Provided, however,* That the entire
16 amount of the severance tax liability of the taxpayer,
17 which was taken as a deduction in determining its
18 federal taxable income for the taxable year, shall be an
19 adjustment increasing federal taxable income under
20 section six of this article: *Provided further,* That the
21 taxpayer may at its option elect, in lieu of claiming the
22 credit allowable by this subsection, to not increase its
23 federal taxable income under section six of this article
24 and thereby take as a full deduction under this article
25 for the taxable year the amount of its severance tax
26 liability for the taxable year, which was taken as a
27 deduction on its federal return for such taxable year.

28 For purposes of this section, the tax imposed under
29 article thirteen-a, chapter eleven of this code shall be the
30 amount of the liability of the taxpayer for such tax
31 under said article thirteen-a computed without reduc-
32 tion for the tax credit for coal loading facilities or for
33 industrial expansion or revitalization allowed for such
34 year.

35 *Expiration of credit.*—The credit authorized in this
36 section shall expire and not be authorized or allowed for
37 any taxable year beginning on or after the first day of
38 October, one thousand nine hundred ninety.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article

1. State Depositories.
- 1A. Linked Deposit Program.
2. Payment and Deposit of Taxes and Other Amounts Due The State or Any Political Subdivision.
3. Appropriations, Expenditures and Deductions.
4. Accounts, Reports and General Provisions.
5. Public Securities.
6. West Virginia State Board of Investments.

ARTICLE 1. STATE DEPOSITORIES.

- §12-1-1. Legislative findings and purpose.
- §12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by board of investments.
- §12-1-3. Depositories for interest earning deposits; qualifications.
- §12-1-4. Bonds to be given by depositories.
- §12-1-9. Transfer of funds by check or bank wire; requirements.
- §12-1-10. Board of Investments to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.
- §12-1-12. When treasurer shall make funds available to the board of investments; depositories outside the state.
- §12-1-13. Payment of banking services.

§12-1-1. Legislative findings and purpose.

1 The Legislature finds and declares that the efficient
 2 collection, disbursement, management and investment
 3 of public moneys by the state board of investments will
 4 benefit the citizens, teachers and public employees of
 5 this state by reducing the costs of government and
 6 providing sources of increased revenue without the
 7 necessity of increased taxation; and to achieve these
 8 goals, the board of investments, an independent entity
 9 immune to the changing political climate, shall provide
 10 a stable and continuous source of professional financial
 11 management, and shall be given the authority to develop
 12 and maintain modern systems, consistent with sound
 13 financial practices, for the collection, disbursement,
 14 management and investment of such moneys.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by board of investments.

1 The state board of investments shall designate the
 2 state and national banks in this state which shall serve
 3 as depositories for all state funds placed in demand
 4 deposits. Any such state or national bank shall, upon
 5 request to such board, be designated as a state depos-
 6 itory for such deposits, if such bank meets the require-
 7 ments set forth in this chapter.

8 Demand deposit accounts shall consist of receipt,
 9 disbursement and investment accounts. Receipt ac-

10 counts shall be those accounts in which are deposited
11 moneys belonging to or due the state of West Virginia
12 or any official, department, board, commission or
13 agency thereof.

14 Disbursement accounts shall be those accounts from
15 which are paid moneys due from the state of West
16 Virginia or any official, department, board, commission,
17 political subdivision or agency thereof to any political
18 subdivision, person, firm or corporation, except moneys
19 paid from investment accounts.

20 Investment accounts shall be those accounts estab-
21 lished by the board of investments for the buying and
22 selling of securities for investment for the state of West
23 Virginia or any official, department, board, commission
24 or agency thereof or to meet obligations to paying agents
25 or for paying charges incurred for the custody, safekeep-
26 ing and management of such securities pursuant to the
27 provisions of section five, article five of this chapter, or
28 for paying the charges of any bank or trust company
29 acting as paying agent or copaying agent for a bond
30 issue of the state pursuant to the provisions of section
31 seven-a, article one, chapter fifty-seven of this code.

32 The board of investments shall promulgate rules and
33 regulations, in accordance with the provisions of chapter
34 twenty-nine-a of the code of West Virginia, as amended,
35 concerning depositories for receipt accounts and invest-
36 ment accounts prescribing the selection criteria,
37 procedures, compensation and such other contractual
38 terms as it considers to be in the best interests of the
39 state giving due consideration to: (1) The activity of the
40 various accounts maintained therein; (2) the reasonable
41 value of the banking services rendered or to be rendered
42 the state by such depositories; and (3) the value and
43 importance of such deposits to the economy of the
44 communities and the various areas of the state affected
45 thereby.

46 The board of investments shall select depositories for
47 disbursement accounts through competitive bidding by
48 eligible banks in this state. The board shall promulgate
49 rules and regulations, in accordance with the provisions

50 of chapter twenty-nine-a of the code of West Virginia,
51 as amended, prescribing the procedures and criteria for
52 such bidding and selection. It shall, in its invitations for
53 bids, specify the approximate amounts of deposits, the
54 duration of contracts to be awarded and such other
55 contractual terms as it considers to be in the best
56 interests of the state, consistent with obtaining the most
57 efficient service at the lowest cost.

58 The amount of money needed for current operation
59 purposes of the state government, as determined by the
60 board of investments, shall be maintained at all times
61 in the state treasury, in cash or in disbursement
62 accounts with banks designated as depositories in
63 accordance with the provisions of this section. No state
64 officer or employee shall make or cause to be made any
65 deposits of state funds in banks not so designated.

**§12-1-3. Depositories for interest earning deposits;
qualifications.**

1 Any state or national bank or any state or federal
2 savings and loan association in this state shall, upon
3 request made to the board of investments, be designated
4 as an eligible depository for interest earning deposits of
5 state funds if such bank or state or federal savings and
6 loan association meets the requirements set forth in this
7 chapter. For purposes of this article, the term "interest
8 earning deposits" includes certificates of deposit. The
9 board of investments shall make and apportion such
10 interest earning deposits and shall prescribe the interest
11 rates, terms and conditions of such deposits, all in
12 accordance with the provisions of article six of this
13 chapter: *Provided*, That state or federal savings and loan
14 associations insured by an agency of the federal
15 government shall be eligible for such deposits not in
16 excess of one hundred thousand dollars: *Provided*,
17 *however*, That notwithstanding any provision of this
18 article to the contrary, no such interest earning deposits
19 may be deposited in any depository which has been in
20 existence over a period of five years which does not have
21 a loan to deposit ratio of fifty percent or more and which
22 does not have farm, single or multifamily residential
23 unit loans in an amount greater than twenty-five

24 percent of the amount of loans representing a loan-to-
25 deposit ratio of fifty percent. For the purpose of making
26 the foregoing calculation, the balances due the depository
27 on the following loans shall be given effect: (1)
28 Qualifying residential loans held by the depository; (2)
29 qualifying loans made in participation with other
30 financial institutions; (3) qualifying loans made in
31 participation with agencies of the state, federal or local
32 governments; and (4) qualifying loans originated and
33 serviced by the depository but owned by an out-of-state
34 investor. The computation of the criteria for eligibility
35 specified above shall be based on the average daily
36 balances of deposits, the average daily balances of total
37 loans and qualifying residential loans for the period
38 being reported.

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

1 Before allowing any money to be deposited with any
2 eligible depository in excess of the amount insured by
3 an agency of the federal government, the board of
4 investments shall require such depository to give a
5 collaterally secured bond, in the amount of not less than
6 ten thousand dollars, payable to the state of West
7 Virginia, conditioned upon the prompt payment, when-
8 ever lawfully required, of any state money, or part
9 thereof, that may be deposited with such depository, or
10 of any accrued interest on deposits. Such bond shall be
11 a continuous bond but may be increased or decreased
12 in amount or replaced by a new bond with the approval
13 of the board of investments. The collateral security for
14 such bond shall consist of bonds of the United States,
15 of the federal land banks, of the federal home loan
16 banks, or bonds of the state of West Virginia or of any
17 county, district or municipality of this state, or other
18 bonds or securities approved by the board of invest-
19 ments. All bonds so secured are here designated as
20 collaterally secured bonds. Withdrawal or substitution
21 of any collateral pledged as security for the performance
22 of the conditions of such bond may be permitted with
23 the approval in writing of the state board of invest-
24 ments. All depository bonds shall be recorded by the
25 board of investments in a book kept in its office for the

26 purpose, and a copy of such record, certified by the
27 board of investments, shall be prima facie evidence of
28 the execution and contents of such bond in any suit or
29 legal proceeding. All collateral securities shall be
30 delivered to or deposited for the account of the board
31 of investments, and in the event said securities are
32 delivered to the board of investments, it shall furnish a
33 receipt therefor to the owner thereof. The board of
34 investments and its bondsmen shall be liable to any
35 person for any loss by reason of the embezzlement or
36 misapplication of said securities by the board of
37 investments or any of its employees, and for the loss
38 thereof due to the board of investments' negligence or
39 the negligence of its employees; and such securities shall
40 be delivered to the owner thereof when liability under
41 the bond which they are pledged to secure has termi-
42 nated. The board of investments may permit the deposit
43 under proper receipt of such securities with one or more
44 banking institutions within or outside the state of West
45 Virginia and may contract with any such institution for
46 safekeeping and exchange of any such collateral
47 securities, and may prescribe the rules and regulations
48 for handling and protecting the same.

**§12-1-9. Transfer of funds by check or bank wire;
requirements.**

1 Subject to applicable banking regulations or state law,
2 the state board of investments may transfer funds by
3 check or bank wire whenever actually needed to pay the
4 warrants drawn by the auditor upon the treasury, to
5 equalize deposits or to provide funds to purchase
6 investments for the account of the state. All checks
7 drawn for transfer of funds shall have printed or
8 stamped on the face of same "for transfer of funds only",
9 or if the transfer is made by wire, the bank wire and
10 supporting documents shall be marked "for transfer of
11 funds only".

**§12-1-10. Board of investments to keep accounts with
depositories; settlements with depositories;
statements of depository balances; reconcili-
ation of statements and records.**

1 The state board of investments shall keep in its office

2 a record showing the account of each depository. Under
3 the account of each depository, entry shall be made
4 showing the amount and date of each deposit, the
5 amount and date of each withdrawal and the balance on
6 deposit. The board of investments shall cause the state's
7 account with each depository to be settled at the end of
8 every month of the year and the balance in the
9 depository to the credit of the board of investments to
10 be carried forward to the account of the next month.

11 All the statements and records shall be reconciled
12 monthly and the reconciled reports shall be kept in the
13 board of investments' office. The reconciled records for
14 each month shall be kept in the board of investments'
15 office for a period of five years.

**§12-1-12. When treasurer shall make funds available to
the board of investments; depositories out-
side the state.**

1 When the funds in the treasury exceed the amount
2 needed for current operational purposes, as determined
3 by the board of investments, the treasurer shall make
4 all of such excess available for investment by the board
5 of investments, which shall invest the same for the
6 benefit of the general revenue fund.

7 Whenever the funds in the treasury exceed the
8 amount for which depositories within the state have
9 qualified, or the depositories within the state which have
10 qualified are unwilling to receive larger deposits, the
11 board of investments may designate depositories outside
12 the state, disbursement accounts being bid for in the
13 same manner as required by depositories within the
14 state, and when such depositories outside the state have
15 qualified by giving the bond prescribed in section four
16 of this article, the state treasurer shall deposit funds
17 therein in like manner as funds are deposited in
18 depositories within the state under this article.

19 The board of investments may transfer funds to banks
20 outside the state for investment purposes or to meet

- 21 obligations to paying agents outside the state and any
22 such transfer must meet the same bond requirements as
23 set forth in this article.

§12-1-13. Payment of banking services.

1 The board of investments is authorized to pay for
2 banking services, and services ancillary thereto, by
3 either a compensating balance in a noninterest bearing
4 account maintained at the financial institution provid-
5 ing the services or with a state warrant as described in
6 section one, article five of this chapter.

7 If payment is made by a state warrant, the board of
8 investments is authorized to establish within the
9 consolidated fund an investment pool which will
10 generate sufficient income to pay for all banking service
11 provided to the state. All income earned by the invest-
12 ment pool shall be paid into a special account of the state
13 board of investments to be known as the banking
14 services account and shall be used solely for the purpose
15 of paying for all banking services, and services ancillary
16 thereto, provided to the state.

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.

§12-1A-2. Legislative findings.

§12-1A-3. Limitations on investment in linked deposits.

§12-1A-4. Applications for loan priority; loan package.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

§12-1A-6. Rate of loan; certification and monitoring of compliance; report.

§12-1A-7. Liability of state, board of investments and director.

§12-1A-1. Definitions.

1 (a) "Board" means the West Virginia state board of
2 investments.

3 (b) "Director" means the director of the governor's
4 office of community and industrial development.

5 (c) "Eligible small business" means any business
6 which employs two hundred or less employees or has
7 gross annual receipts of four million dollars or less.

8 (d) "Eligible lending institution" means a financial
9 institution that is eligible to make commercial loans, is

10 a public depository of state funds and agrees to
11 participate in the linked deposit program.

12 (e) "Linked deposit" means a certificate of deposit
13 placed by the state board of investments with an eligible
14 lending institution at up to three percent below current
15 market rates, as determined and calculated by the state
16 board of investments, provided the institution agrees to
17 lend the value of such deposit, according to the deposit
18 agreement provided for by this article, to eligible small
19 businesses at three percent below the present borrowing
20 rate applicable to each specific business at the time of
21 the deposit of state funds in the institution.

§12-1A-2. Legislative findings.

1 The Legislature finds that many small businesses
2 throughout the state are experiencing economic stagna-
3 tion or decline, that high interest rates have caused
4 small businesses in this state to suffer disproportionately
5 in profitability and competition and that such high
6 interest rates have fostered a serious increase in
7 unemployment. The linked deposit program provided
8 for by this article is intended to provide a statewide
9 availability of lower cost funds for lending purposes that
10 will materially contribute to the economic revitalization
11 of this state. Accordingly, it is declared to be the public
12 policy of the state through the linked deposit program
13 to create an availability of lower-cost funds to inject
14 needed capital into the business community, sustain or
15 improve business profitability, protect the jobs of
16 citizens of this state and assist businesses located in any
17 county declared to be a federal disaster area by the
18 federal emergency management agency. The Legisla-
19 ture further finds that the involvement of both the state
20 board of investments and the director in determining
21 which businesses will receive the benefits of the linked
22 deposit program is necessary in order for state funds to
23 be used in the most effective manner possible in
24 assisting small businesses throughout the state and
25 thereby maximizing the impact of the program.

§12-1A-3. Limitations on investment in linked deposits.

1 (a) The state board of investments may invest in

2 linked deposits: *Provided*, That at the time of the
3 placement of the linked deposit not more than ten
4 percent of the state's total investment portfolio is so
5 invested. The total amount so deposited at any one time
6 shall not exceed, in the aggregate, two hundred twenty-
7 five million dollars, of which fifty million dollars shall
8 be provided for linked deposits to West Virginia flood
9 victims from the twenty-nine counties eligible for
10 federal disaster aid as listed by the federal emergency
11 management agency: *Provided, however*, That after the
12 first day of April, one thousand nine hundred eighty-
13 seven, the state board of investments shall reserve ten
14 million dollars of the unallocated aggregate for linked
15 deposits to such West Virginia flood victims and may
16 use the remaining balance of such unallocated moneys
17 in the regular linked deposit program: *Provided further*,
18 That after the first day of January, one thousand nine
19 hundred eighty-eight, the remaining balance of unallo-
20 cated moneys may be used in the regular linked deposit
21 program: *And provided further*, That effective the first
22 day of July, one thousand nine hundred ninety-one, the
23 board of investments may not invest in linked deposits
24 until such time as the board of investments has
25 determined that there are adequate funds available to
26 meet the needs of the education enhancement fund, as
27 set forth in section nine-d, article six of this chapter.

28 (b) Small business linked deposit funds shall not be
29 used to provide each applicant with more than fifty
30 thousand dollars for a reduced rate loan for each
31 nonmanufacturing job created or preserved or provide
32 more than one hundred twenty-five thousand dollars for
33 a reduced rate loan for each manufacturing job created
34 or preserved. This subsection shall not preclude any
35 flood victim from applying for a linked deposit under
36 the flood program.

§12-1A-4. Applications for loan priority; loan package.

1 (a) An eligible lending institution that desires to
2 receive a linked deposit shall accept and review
3 applications for loans from eligible small businesses.
4 The lending institution shall apply all usual lending

5 standards to determine the credit worthiness of each
6 eligible small business.

7 (b) An eligible small business shall certify on its loan
8 application that the reduced rate loan will be used
9 exclusively to create new jobs or preserve existing jobs
10 and employment opportunities. An eligible small
11 business shall make a sworn affidavit stating that the
12 reduced rate loan will not be used to refinance an
13 existing debt, unless it can be demonstrated to show the
14 business will fail if not granted such loan. Whoever
15 knowingly makes a false statement concerning such
16 application shall be prohibited from entering into the
17 linked deposit loan program.

18 (c) In considering which eligible small businesses
19 should receive reduced rate loans, the eligible lending
20 institution shall give priority to the economic needs of
21 the area in which the business is located, including
22 whether the business is located in a county declared to
23 be a federal disaster area by the federal emergency
24 management agency, and the number of jobs to be
25 created. If jobs are to be preserved by the receipt of such
26 loan, the eligible lending institution shall decide
27 between small businesses that had no profit in the last
28 tax year verified by independent audit filed for relief
29 under the federal bankruptcy laws in the past year or
30 has been adversely affected by a nonreimbursed
31 casualty loss due to a natural disaster. An eligible small
32 business shall make a sworn affidavit stating that one
33 of the above mentioned circumstances applies to their
34 business. There shall also be a continuous internal audit
35 conducted by the state board of investments which shall
36 be made available to the Legislature annually.

37 (d) The eligible financial institution shall forward to
38 the state board of investments a linked deposit loan
39 package, in the form and manner as prescribed by the
40 board. The package shall include such information as
41 required by the board, including the amount of the loan
42 requested and the number of jobs to be created or
43 sustained by each eligible small business. The institution
44 shall certify that each applicant is an eligible small
45 business, and shall, for each business, certify the present

46 borrowing rate applicable to each specific eligible
47 business.

**§12-1A-5. Acceptance or rejection of loan package;
deposit agreement.**

1 (a) The board of investments may accept or reject a
2 linked deposit loan package or any portion thereof,
3 based on the ratio of state funds to be deposited to jobs
4 sustained or created: *Provided*, That notwithstanding
5 any provision of this article to the contrary, the board
6 of investments may not accept any linked deposit loan
7 package or any portion thereof unless the same has been
8 reviewed and approved by the director in his sole
9 discretion.

10 (b) The board of investments shall reject any linked
11 deposit loan package if the small business requesting
12 such loan is not in good standing with the state tax
13 department, department of employment security and
14 the workers' compensation fund, and these agencies
15 shall provide the board of investments with such
16 information as to the standing of each small business
17 loan applicant, notwithstanding any provision of this
18 code to the contrary.

19 (c) Any linked deposit loan package that is being made
20 to refinance an existing debt, or any portion thereof,
21 must meet one of the following criteria:

22 (1) The small business can demonstrate in good faith
23 that it is experiencing a substantial loss in its current
24 (fiscal or calendar) tax year period;

25 (2) The small business recently experienced a natural
26 disaster and suffered unreimbursable casualty losses;

27 (3) The small business has filed to recover under the
28 Federal Bankruptcy Act and meets the criteria in (1)
29 above; or

30 (4) The small business can provide compelling infor-
31 mation to the board of investments that jobs will be
32 saved and/or created as a result of loan refinancing.

33 (d) Upon acceptance of the linked deposit loan
34 package or any portion thereof by the board of invest-
35 ments and the director, the board of investments may

36 place certificates of deposit with the eligible lending
37 institution at three percent below current market rates,
38 as determined and calculated by the board of invest-
39 ments. Upon acceptance of the linked deposit loan
40 package for flood victims or any portion thereof, the
41 board of investments may place certificates of deposit
42 with the eligible lending institution at five percent
43 below current market rates, as determined and calcu-
44 lated by the board of investments. When necessary, the
45 board may place certificates of deposit prior to accep-
46 tance of a linked deposit loan package.

47 (e) The eligible lending institution shall enter into a
48 deposit agreement with the board, which shall include
49 requirements necessary to carry out the purposes of this
50 article. Such requirements shall reflect the market
51 conditions prevailing in the eligible lending institution's
52 lending area. The agreement may include a specification
53 of the period of time in which the lending institution is
54 to lend funds upon the placement of a linked deposit and
55 shall include provisions for the certificates of deposit to
56 be placed for up to two-year maturities that may be
57 renewed for up to an additional two years. Interest shall
58 be paid at the times determined by the board.

**§12-1A-6. Rate of loan; certification and monitoring of
compliance; report.**

1 (a) Upon the placement of a linked deposit with an
2 eligible lending institution, such institution is required
3 to lend such funds to each approved eligible small
4 business listed in the linked deposit loan package
5 required in subsection (d), section four of this article,
6 and in accordance with the deposit agreement required
7 by subsection (c), section five of this article. The loan
8 shall be at three percent below the present borrowing
9 rate applicable to each business. The loan shall be at five
10 percent below the present borrowing rate applicable to
11 each flood victim. A certification of compliance with this
12 section in the form and manner as prescribed by the
13 board shall be required of the eligible lending
14 institution.

15 (b) The board shall take any and all steps necessary

16 to implement the linked deposit program and monitor
 17 compliance of eligible lending institutions and eligible
 18 small businesses. The board and the industrial develop-
 19 ment authority shall notify each other at least quarterly
 20 of the names of the businesses receiving financial
 21 assistance from their respective programs.

22 By the first day of January, April, July and October
 23 of each year, the board shall report on the linked deposit
 24 program for the preceding calendar quarter to the
 25 governor and to the joint committee on government and
 26 finance. The reports shall set forth the linked deposits
 27 made by the board under the program during the
 28 quarter and shall include information regarding the
 29 nature, terms and amounts of the loans upon which the
 30 linked deposits were based and the eligible small
 31 business to which the loans were made.

**§12-1A-7. Liability of state, board of investments and
 director.**

1 The state, the board and the director are not liable to
 2 any eligible lending institution in any manner for
 3 payment of the principal or interest on the loan to an
 4 eligible small business. Any delay in payment or default
 5 on the part of an eligible small business does not in any
 6 manner affect the deposit agreement between the
 7 eligible lending institution and the board.

**ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER
 AMOUNTS DUE THE STATE OR ANY POLITICAL
 SUBDIVISION.**

§12-2-2. Itemized record of moneys received for deposit; regulations
 governing deposits; credit to state fund; exceptions.

§12-2-3. Deposit of moneys by state officials and employees.

§12-2-4. Duty of depositories.

§12-2-5. Deposits in correspondent banks of state depositories.

**§12-2-2. Itemized record of moneys received for deposit;
 regulations governing deposits; credit to state
 fund; exceptions.**

1 All officials and employees of the state authorized by
 2 statute to accept moneys due the state of West Virginia
 3 shall keep a daily itemized record of such moneys so
 4 received for deposit in the state treasury and shall

5 deposit within twenty-four hours with the state board of
6 investments all moneys received or collected by them for
7 or on behalf of the state for any purpose whatsoever. The
8 treasurer and the board of investments shall promulgate
9 rules and regulations, in accordance with the provisions
10 of chapter twenty-nine-a of this code governing the
11 procedure for such deposits.

12 The official or employee making such deposits with
13 the state board of investments shall prepare such deposit
14 lists in such manner and upon such report forms as may
15 be prescribed by the board of investments. Once the
16 board has satisfied itself that all deposits have been
17 promptly prepared and deposited, it shall transfer all
18 such funds to a special bank account of the state
19 treasurer and provide him with such deposit report. The
20 original of this report shall accompany the deposit to the
21 treasurer. Certified or receipted copies shall be imme-
22 diately forwarded by the state treasurer to the state
23 auditor and to the secretary of administration, and a
24 copy shall be provided to the board of investments. The
25 original of the deposit report shall become a part of the
26 treasurer's permanent record.

27 When so paid, such moneys shall be credited to the
28 state fund and treated by the auditor and treasurer as
29 part of the general revenue of the state: *Provided*, That
30 all moneys received out of appropriations made by the
31 Congress of the United States shall be recorded in
32 special fund accounts, apart from the general revenues
33 of the state, in the state treasury and all such moneys
34 shall not be used for any purpose whatsoever unless and
35 until authorized and directed by the Legislature,
36 excepting the following funds which shall be recorded
37 in separate accounts:

38 (a) All funds excluded by the provisions of section six,
39 article eleven, chapter four of this code;

40 (b) All funds derived from the sale of farm and dairy
41 products from farms operated by any agency of the state
42 government other than the farm management commis-
43 sion;

44 (c) All endowment funds, bequests, donations, execu-
45 tive emergency funds, and death and disability funds;

46 (d) All fees and funds collected at state educational
47 institutions for student activities;

48 (e) All funds derived from collections from dormito-
49 ries, boardinghouses, cafeterias and road camps;

50 (f) All moneys received from counties by institutions
51 for the deaf and blind on account of clothing for indigent
52 pupils;

53 (g) All insurance collected on account of losses by fire
54 and refunds;

55 (h) All funds derived from bookstores and sales of
56 blank paper and stationery, and collections by the chief
57 inspector of public offices;

58 (i) All moneys collected and belonging to the capitol
59 building fund, state road fund, state road sinking funds,
60 general school fund, school fund, state fund (moneys
61 belonging to counties, districts and municipalities), state
62 interest and sinking funds, state compensation funds,
63 the fund maintained by the public service commission
64 for the investigation and supervision of applications and
65 all funds and moneys payable to or received by the
66 natural resources commission of West Virginia;

67 (j) All moneys collected or received under any act of
68 the Legislature providing that funds collected or
69 received thereunder shall be used for specific purposes.

70 All moneys, excepted as aforesaid, shall be paid into
71 the state treasury in the same manner as collections not
72 so excepted, and shall be recorded in separate accounts
73 to be used and expended only for the purposes for which
74 the same are authorized to be collected by law. The
75 gross amount collected in all cases shall be paid into the
76 state treasury, and commissions, costs and expenses of
77 collection authorized by general law to be paid out of
78 the gross collection are hereby authorized to be paid out
79 of the moneys collected and paid into the state treasury
80 in the same manner as other payments are made from
81 the state treasury.

82 The state board of investments shall have authority to

83 establish an imprest fund or funds in the office of any
84 state agency or institution making proper application to
85 the board. To implement this authority the board shall
86 promulgate rules and regulations, in accordance with
87 the provisions of chapter twenty-nine-a of this code. The
88 board or its designee shall annually audit all such funds
89 and prepare a list of all such funds showing the location
90 and amount as of fiscal year end, retaining such list as
91 a permanent record of the board until such time as the
92 legislative auditor shall have completed an audit of the
93 imprest funds of all agencies and institutions involved.

§12-2-3. Deposit of moneys by state officials and employees.

1 All officials and employees of the state authorized by
2 statute to accept moneys due the state of West Virginia
3 shall deposit such moneys in such manner as the board
4 of investments shall direct and shall promptly transmit
5 or cause to be transmitted such deposits, together with
6 a certificate of deposit, as soon as practicable to the
7 depository in which they desire to make the deposit, and
8 shall retain and record the deposit lists.

§12-2-4. Duty of depositories.

1 Immediately upon the receipt of such deposit, it shall
2 be the duty of the depository to credit the state board
3 of investments with the amount of the deposit, to date
4 and sign the certificate of deposit by some legally
5 constituted official of the depository and promptly
6 transmit such certificate to the state board of invest-
7 ments.

§12-2-5. Deposits in correspondent banks of state depositories.

1 When any payment of money has been made to the
2 state for road bonds or other purposes outside of the
3 state, the board of investments shall have authority to
4 place the same to the credit of one or more state
5 depositories in one or more of its correspondent banks
6 located within or without the state. The board of
7 investments shall, upon making such a deposit in such
8 correspondent bank, secure from it a proper certificate

9 of deposit certifying the amount and the name of the
10 state depository to whose credit the deposit was made
11 by the board of investments. The board of investments
12 shall forward a copy of such certificate to the state
13 depository receiving such deposit through its corre-
14 spondent bank, and it shall be the duty of such
15 depository immediately to issue to the state of West
16 Virginia a proper certificate of deposit for the amount
17 so deposited, dated the same day the deposit was made
18 in such correspondent bank. Before making such deposit
19 however, the board of investments shall secure written
20 authority from such depository, designating the name
21 and address of its correspondent bank or banks in which
22 deposits are to be made and the maximum amount to
23 be deposited in each. The depository bonds of all state
24 depositories so authorizing and receiving such deposits
25 in their correspondent banks shall be liable for such
26 deposits the same as if the deposits had been made with
27 them directly, whether such bonds are so conditioned or
28 not, and all depository bonds hereafter issued shall so
29 provide.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-1. Manner of payment from treasury; form of checks.

§12-3-11. Travel expenses; rules to be promulgated concerning same; dues to voluntary organizations; recruitment expenses for West Virginia higher education governing boards; moving expenses of employees of West Virginia higher education governing boards.

§12-3-1. Manner of payment from treasury; form of checks.

1 Every person claiming to receive money from the
2 treasury of the state shall apply to the auditor for a
3 warrant for same. The auditor shall thereupon examine
4 the claim, and the vouchers, certificates and evidence,
5 if any, offered in support thereof, and for so much
6 thereof as he shall find to be justly due from the state,
7 if payment thereof be authorized by law, and if there
8 be an appropriation not exhausted or expired out of
9 which it is properly payable, he shall issue his warrant
10 on the treasurer, specifying to whom and on what
11 account the money mentioned therein is to be paid, and

12 to what appropriation the same is to be charged. On the
13 presentation of such warrant to the treasurer, he shall
14 ascertain whether the same has been drawn in pursu-
15 ance of an appropriation made by law, and if he finds
16 it to be so, he shall in that case, but not otherwise,
17 endorse his check upon such warrant, directed to some
18 depository, which check shall be payable to the order of
19 the person who is to receive the money therein specified;
20 or he may issue a bank wire in payment of such
21 warrant. If such check shall not be presented for
22 payment within six months after it is drawn, it shall
23 then be the duty of the treasurer to credit it to the
24 depository on which it was drawn, to credit the state
25 fund with the amount, and immediately notify the
26 auditor to make corresponding entries on his books. No
27 state depository shall pay a check unless it is presented
28 within six months after it is drawn and every check
29 shall bear upon its face the words, "Void, unless
30 presented for payment within six months". All claims
31 required by law to be allowed by any court, and payable
32 out of the state treasury, shall have the seal of the court
33 allowing or authorizing the payment of the same affixed
34 by the clerk of such court to his certificate of its
35 allowance; and no such claim shall be audited and paid
36 by the auditor unless the seal of such court be thereto
37 attached as aforesaid. No tax or fee shall be charged by
38 the clerk for affixing his seal to the certificate, referred
39 to in this section. The treasurer and the board of
40 investments shall jointly promulgate rules and regula-
41 tions, in accordance with the provisions of chapter
42 twenty-nine-a of this code governing the procedure for
43 such payments from the treasury.

§12-3-11. Travel expenses; rules to be promulgated concerning same; dues to voluntary organizations; recruitment expenses for West Virginia higher education governing boards; moving expenses of employees of West Virginia higher education governing boards.

1 The governor shall promulgate rules and regulations
2 concerning out-of-state travel by state officials and

3 employees, except those in the legislative and judicial
4 branches of the state government and except for the
5 attorney general, auditor, secretary of state, treasurer,
6 board of investments and commissioner of agriculture
7 and their employees. The Legislature, the supreme court
8 of appeals and the attorney general, auditor, secretary
9 of state, treasurer, board of investments and commis-
10 sioner of agriculture shall promulgate rules and
11 regulations concerning out-of-state travel for their
12 respective branches and departments of state govern-
13 ment. Copies of such rules and regulations shall be filed
14 with the auditor, and the secretary of state. It shall be
15 unlawful for the auditor to issue a warrant in payment
16 of any claim for out-of-state travel expenses incurred by
17 a state officer or employee unless such claim meets all
18 the requirements of the rules and regulations so filed.

19 Payment for dues or membership in annual or other
20 voluntary organizations shall be made from the proper
21 item or appropriation after an itemized schedule of such
22 organizations, together with the amount of such dues or
23 membership, has been submitted to the budget director
24 and approved by the governor.

25 It shall be lawful for a higher education governing
26 board to authorize the payment of traveling expenses
27 incurred by any person invited to visit the campus of
28 any state institution of higher education or any other
29 facility under control of the board to be interviewed
30 concerning his possible employment by the board or
31 agent thereof.

32 It shall be lawful for a higher education governing
33 board to authorize payment of: (1) All or part of the
34 reasonable expense incurred by a person newly em-
35 ployed by the board in moving his household furniture,
36 effects and immediate family to his place of employ-
37 ment; and (2) all or part of the reasonable expense
38 incurred by an employee of the board in moving his
39 household furniture, effects and immediate family as a
40 result of a reassignment of the employee which is
41 considered desirable, advantageous to and in the best
42 interest of the state: *Provided*, That no part of the

43 moving expenses of any one such employee shall be paid
44 more frequently than once in twelve months.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-13. Bank reconciliations; balancing state accounts.

1 The Legislature finds that the bank accounts of the
2 treasury contain numerous unreconciled items and that
3 the single audit report for the period ending on the
4 thirtieth day of June, one thousand nine hundred eighty-
5 nine, states that as of the end of the audit period there
6 were forty million ninety-three thousand six hundred
7 eighty-one dollars and forty-seven cents more in the
8 bank accounts maintained by the state treasurer than
9 recorded on the accounting records of the state.
10 Therefore, the Legislature directs that:

11 (a) The state treasurer shall take all necessary actions
12 to identify all unreconciled items on the bank accounts
13 maintained by the state treasurer. All items identified
14 on or before the thirtieth day of June, one thousand nine
15 hundred ninety, shall be recorded in the state account(s)
16 to which they have been identified. Any unreconciled
17 items not identified on or before the thirtieth day of
18 June, one thousand nine hundred ninety, shall be
19 recorded in a special revenue account known as the
20 "single audit account".

21 (b) All moneys identified in the single audit report as
22 not having been recorded on the accounting records of
23 the state treasurer shall be recorded in the single audit
24 account. If after the recording of said moneys in the
25 single audit account, the treasurer is able to identify the
26 appropriate state accounts the moneys should be
27 credited to, he is hereby authorized to transfer such
28 moneys from the single audit account to the appropriate
29 account.

30 (c) Effective on the first day of July, one thousand nine
31 hundred ninety, the state treasurer shall file a report
32 with the governor reflecting all actions taken concern-
33 ing unreconciled items in bank accounts maintained by
34 the state treasurer through the period ending on the
35 thirtieth day of June, one thousand nine hundred ninety.
36 After the governor has reviewed the report and deter-
37 mined that the state treasurer has complied with all
38 previous provisions of this code section, the governor

39 shall certify the report to the board of investments. The
40 board of investments is then authorized to use, in such
41 manner as it determines, the balance in the single audit
42 account to eliminate any imbalance in the state accounts
43 caused by the investment losses incurred during the
44 period beginning on the first day of August, one
45 thousand nine hundred eighty-four, and ending on the
46 thirty-first day of January, one thousand nine hundred
47 eighty-nine.

48 (d) Effective on the first day of July, one thousand
49 nine hundred ninety, the state treasurer shall take
50 action to ensure that all bank accounts of the state
51 treasurer are reconciled each month. If after six months
52 from receipt of a bank statement any items remain as
53 unreconcilable, the state treasurer shall record such
54 amounts as a debit or credit to the state's general
55 revenue fund. The board of investments shall keep in its
56 office separate accounts with each depository and shall
57 take action to ensure that all bank accounts of the board
58 are reconciled each month. If after six months from
59 receipt of a bank statement any items remain as
60 unreconcilable, the board shall record such amounts as
61 a debit or credit to the state's general fund.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-2. Treasurer custodian of securities; charges to companies for care, exchange and substitution of securities.

§12-5-4. Treasurer and board of investments to keep accounts and make collections.

§12-5-6. When notes deemed securities; appraisal.

§12-5-2. Treasurer custodian of securities; charges to companies for care, exchange and substitution of securities.

1 The treasurer of this state, unless otherwise expressly
2 provided by law, shall be custodian of all securities
3 required by law to be deposited with the state or held
4 in legal custody by the state, and all departments of this
5 state, commissioners or agents of the state, who hold any
6 such securities, shall transfer and deliver the same to
7 the state treasurer to be kept and held by him as legal
8 custodian thereof until released in the manner provided
9 by law.

10 The board of investments may by formal order of
11 record fix fair and reasonable charges for the care,
12 custody, exchange and substitution of securities depos-
13 ited by insurance companies and companies issuing
14 annuity contracts and such charges shall be collected
15 from such companies by the state treasurer and
16 deposited by him in the general revenue fund: *Provided,*
17 That no such charge shall be made against any such
18 company having securities of the par value of less than
19 three hundred thousand dollars deposited hereunder.

§12-5-4. Treasurer and board of investments to keep accounts and make collections.

1 It shall be the duty of the treasurer and the board of
2 investments to keep an accurate account of all securities
3 received by them respectively and collect and account
4 for the interest as the same becomes due and payable
5 and the principal whenever same is due.

§12-5-6. When notes deemed securities; appraisal.

1 (a) Whenever, by statute of this state, any public
2 official, board, commission or department of this state
3 is charged with the approval of securities required as
4 collateral for the deposit of public or other funds, or
5 required to be deposited with the state treasurer, or
6 board of investments or an investment of capital or
7 surplus or a reserve or other fund, is required to be
8 maintained consisting of designated securities deposited
9 with the board of investments, such securities shall, at
10 the discretion of such public official, board, commission
11 or department, be deemed to include and mean notes
12 executed by the person or corporation required to make
13 such deposit and made payable to the state of West
14 Virginia upon demand, in the event of insolvency or
15 default by such person or corporation, for the benefit of
16 those for whom such securities are deposited, when such
17 notes are secured by duly executed deeds of trust on
18 improved, unencumbered real property located in the
19 state and owned by the person or corporation executing
20 such notes, said deeds of trust to be approved by the
21 attorney general of the state as to sufficiency of form
22 and manner of execution and accompanied by proper

23 abstracts of title and fire insurance policies equal to the
24 amounts of such notes and recorded among the land
25 records of the county in which the real property is
26 located: *Provided*, That whenever any such note so
27 secured by a deed of trust on real property owned by
28 any such person or corporation is approved by any
29 public official, board, commission or department of this
30 state, the real property shall have an appraised value
31 of at least thirty per centum more than the amount of
32 such note, said value to be determined by an appraisal
33 of two landowners, who are citizens of this state and
34 generally recognized as experienced real estate apprais-
35 ers, appointed by the public official, board, commission
36 or department, charged with the approval of such
37 securities, the expenses of such appraisal to be borne by
38 the person or corporation required to make such deposit,
39 and each unit of such real property shall have an
40 appraised value of at least fifty thousand dollars.

41 By improved real property as used herein is meant all
42 real property within the limits of an incorporated city
43 or town on which permanent buildings suitable for
44 residential, industrial or commercial use are located.

45 Real property, for purposes hereof, shall not be
46 deemed to be encumbered by reason of the existence of
47 instruments reserving rights-of-way, sewer rights and
48 rights in walls, nor by reason of building restrictions or
49 other restrictive covenants, nor by reason of the fact that
50 it, or any part thereof, is subject to lease under which
51 rents or profits are reserved to the owner: *Provided*,
52 That the deed of trust for such investment is a full and
53 unrestricted first lien upon such property.

54 (b) Any such public official, board, commission or
55 department of this state charged with the approval of
56 securities required to be deposited as aforesaid, shall, at
57 least annually and oftener if deemed proper, appoint a
58 disinterested person or persons, not exceeding three, to
59 make an examination and appraisal of the securities so
60 deposited to determine if such securities meet the
61 requirements of the law of this state, and the cost of such
62 examination and appraisal not less than ten dollars nor
63 more than twenty-five dollars per diem for each person,

64 and expenses, shall be borne by the person or corpora-
65 tion required to make such deposits as security.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-1a. Legislative findings.

§12-6-4. Officers; executive secretary; term; organization; board staff;
surety bonds for members and employees.

§12-6-5. Powers of the board.

§12-6-6. Costs and expenses; fees for services; special revenue account; costs
of determining third parties' liability; recoupment of investment
losses.

§12-6-9d. Legislative findings; loans to the state; purpose for which moneys
transferred may be disbursed and expended; terms and
conditions for repayment; creation of special account in state
treasury.

§12-6-1a. Legislative findings.

1 The Legislature finds and declares that teachers and
2 other public employees throughout the state are expe-
3 riencing economic difficulty and that in order to reduce
4 this economic hardship on these dedicated public
5 employees, and to help foster sound financial practices,
6 the state board of investments is given the authority to
7 develop, implement and maintain an efficient and
8 modern system for the collection, disbursement, invest-
9 ment and management of the state's money. The
10 Legislature further finds that in order to implement
11 these sound fiscal policies, the board of investments shall
12 operate as an independent board with its own full-time
13 staff of financial professionals immune to changing
14 political climates, in order to provide a stable and
15 continuous source of professional financial management.

**§12-6-4. Officers; executive secretary; term; organization;
board staff; surety bonds for members and
employees.**

1 (a) The governor shall be the chairman and the
2 custodian of all funds, securities and assets held by the
3 board. The board shall elect an executive secretary to
4 serve for a term of six years, such election to be held
5 at the board's first meeting after the first effective date
6 of this article. Effective with any vacancy in the position
7 of executive secretary, the board shall appoint an
8 executive secretary to serve at the will and pleasure of

9 the board, which executive secretary may not be a
10 member of the board: *Provided*, That the executive
11 secretary shall have at least a bachelor's degree in either
12 business administration or accounting in an accredited
13 program and/or have at least five years' experience in
14 investment management or securities markets, said
15 experience to have occurred within the ten years next
16 preceding the date of appointment of the secretary:
17 *Provided, however*, That the executive secretary may be
18 paid a salary as determined by the board out of
19 appropriations by the Legislature: *Provided further*,
20 That the board shall appoint a staff to act for the board.

21 (b) The board shall meet quarterly and may include
22 in its bylaws procedures for the calling and holding of
23 additional meetings.

24 (c) Each member of the board shall give a separate
25 and additional fidelity bond from a surety company
26 qualified to do business within this state in a penalty
27 amount of two hundred fifty thousand dollars for the
28 faithful performance of his duties as a member of the
29 board. In addition, the board will purchase a blanket
30 bond for the faithful performance of its duties in the
31 amount of five million dollars in excess of the two
32 hundred fifty thousand dollar individual bond required
33 of each member by the provisions of this section. The
34 board may require a fidelity bond from a surety
35 company qualified to do business in this state for any
36 person who has charge of, or access to, any securities,
37 funds or other moneys held by the board, and the
38 amount of such fidelity bond shall be fixed by the board.
39 The premiums payable on all fidelity bonds shall be an
40 expense of the board.

§12-6-5. Powers of the board.

1 The board may exercise all powers necessary or
2 appropriate to carry out and effectuate its corporate
3 purposes. The board may:

4 (1) Adopt and use a common seal and alter the same
5 at pleasure;

6 (2) Sue and be sued;

- 7 (3) Enter into contracts and execute and deliver
8 instruments;
- 9 (4) Acquire (by purchase, gift or otherwise), hold, use
10 and dispose of real and personal property, deeds,
11 mortgages and other instruments;
- 12 (5) Promulgate and enforce bylaws and rules for the
13 management and conduct of its affairs;
- 14 (6) Retain and employ legal, accounting, financial and
15 investment advisors and consultants;
- 16 (7) Acquire (by purchase, gift or otherwise), hold,
17 exchange, pledge, lend and sell or otherwise dispose of
18 securities and invest funds in interest earning deposits;
- 19 (8) Maintain accounts with banks, securities dealers
20 and financial institutions both within and outside this
21 state;
- 22 (9) Engage in financial transactions whereby securi-
23 ties are purchased by the board under an agreement
24 providing for the resale of such securities to the original
25 seller at a stated price;
- 26 (10) Engage in financial transactions whereby secur-
27 ities held by the board are sold under an agreement
28 providing for the repurchase of such securities by the
29 board at a stated price;
- 30 (11) Consolidate and manage moneys, securities and
31 other assets of the pension funds and other funds and
32 accounts of the state and the moneys of political
33 subdivisions which may be made available to it under
34 the provisions of this article;
- 35 (12) Enter into agreements with political subdivisions
36 of the state whereby moneys of such political subdivi-
37 sions are invested on their behalf by the board;
- 38 (13) Charge and collect administrative fees from
39 political subdivisions for its services;
- 40 * Exercise all powers generally granted to and
41 exercised by the holders of investment securities with
42 respect to management thereof;

43 (15) Contract with one or more banking institutions in
44 or outside the state for the custody, safekeeping and
45 management of securities held by the board; and

46 (16) Develop and implement a centralized receipts
47 processing center.

**§12-6-6. Costs and expenses; fees for services; special
revenue account; costs of determining third
parties' liability; recoupment of investment
losses.**

1 (a) The board shall make a charge against the
2 earnings of the various funds managed by the board for
3 all necessary expenses of the board. The charge shall be
4 on a pro rata basis of actual earnings of the various
5 funds managed by the board. The charge shall be
6 deposited to the credit of the general revenue fund.

7 (b) There is hereby created in the state treasury a
8 special revenue account to be known as the "loss
9 expenses account." The purpose of this account is to
10 provide funds to the board of investments to pay costs,
11 fees and expenses incurred, or to be incurred, for the
12 following: (1) Investigation and pursuit of claims against
13 third parties for the investment losses incurred during
14 the period beginning the first day of August, one
15 thousand nine hundred eighty-four, and ending on the
16 thirty-first day of January, one thousand nine hundred
17 eighty-nine; (2) for consulting services regarding the
18 restructuring of the office of the treasurer following said
19 losses; and (3) for implementation of the recommenda-
20 tions made as a result of the consultations regarding
21 restructuring. That special revenue account shall be
22 funded by depositing income derived by the board from
23 securities lending and recoveries from third parties. The
24 board is authorized to deposit into the special revenue
25 account, and to expend in accordance with the provi-
26 sions of this section, those funds received from such
27 recoveries and not more than two million dollars
28 annually from income derived by the board from
29 securities lending. Funds in the loss expense account in
30 excess of reasonably estimated costs, fees and expenses
31 for any fiscal year and any funds remaining in such

32 special revenue account at the end of each fiscal year
33 after expenditures, for the purposes specified above,
34 may be transferred by the board to its "liquidity
35 investment pool," to be used, in such manner as the
36 board determines, to eliminate the present imbalance in
37 the state accounts caused by the investment losses
38 described above in this subsection. The authority for this
39 special revenue account expires on the thirtieth day of
40 June, one thousand nine hundred ninety-five.

**§12-6-9d. Legislative findings; loans to the state; purpose
for which moneys transferred may be dis-
bursed and expended; terms and conditions
for repayment; creation of special account in
state treasury.**

1 (a) The Legislature hereby finds and declares that the
2 West Virginia supreme court of appeals has determined
3 that public education has a constitutionally preferred
4 status; that there is a large amount of investable funds
5 in the consolidated pension fund; that loans made under
6 commercially reasonable terms to finance needed public
7 education improvements are necessary investments in
8 the future of West Virginia; and that loans from the
9 consolidated pension fund will assist in financing the
10 needs of primary and secondary education, without in
11 any way impairing the solvency or financial soundness
12 of the consolidated pension fund. This section is enacted
13 in view of these findings.

14 (b) Whenever the governor determines that there are
15 insufficient general revenue funds available for the
16 timely payment for necessary improvements in public
17 education as appropriated by the Legislature in the
18 budget bills for the fiscal years one thousand nine
19 hundred ninety-one and one thousand nine hundred
20 ninety-two, the governor may request the state board of
21 investments to lend those moneys necessary to meet such
22 payment and the state board of investments shall
23 transfer moneys from the consolidated pension fund to
24 the special sinking fund account created in the state
25 treasury by subsection (d) of this section, in the amount
26 determined by the governor to be sufficient and
27 necessary to meet such payments, within the amount

28 determined by the board of investments to be prudently
29 available. The manner and timing of such transfers
30 shall be in the discretion of the board of investments.
31 The total of the amounts transferred may not exceed a
32 total of one hundred million dollars during the fiscal
33 years one thousand nine hundred ninety-one and one
34 thousand nine hundred ninety-two. On the date the loan
35 is transferred to the special sinking fund created in
36 subsection (d) of this section, interest shall accrue at the
37 current interest rate of the fund from which the loan
38 originated, plus one-fourth of one percent, and the
39 current interest rate shall be recalculated every six
40 months.

41 (c) Full repayment of all moneys transferred, with
42 interest, shall be made to the board of investments by
43 payment into such pension fund from amounts appro-
44 priated by the Legislature or in the absence of appro-
45 priations from the amounts specified in section thirty,
46 article fifteen, chapter eleven of this code, by budget
47 action as first priority from the moneys available for
48 each fiscal year. Repayment of the loans shall begin six
49 months from the date the funds were transferred and
50 payments shall be made every six months thereafter, or
51 sooner if agreed to in writing by the board of invest-
52 ments and the governor: *Provided*, That all loans shall
53 be repaid in full by the last day of August, one thousand
54 nine hundred ninety-six.

55 (d) There is hereby created in the state treasury a
56 special account, designated the "Education Enhance-
57 ment Fund," which is a sinking fund for the deposit,
58 withdrawal and repayment of moneys transferred
59 pursuant to this section and section thirty, article
60 fifteen, chapter eleven of this code, in accordance with
61 the special fund doctrine for budgetary transfer
62 activities involving more than one fiscal year.
63 Management of such fund shall be a responsibility of the
64 board of investments. If any moneys remain in said fund
65 after repayment in full to the appropriate pension fund
66 or funds, such moneys shall be transferred to the
67 general revenue fund within thirty days of the last
68 repayment.

69 (e) Upon the written request of the governor, the
70 board of investments shall transfer to the general
71 revenue fund, from the funds available in the educa-
72 tional enhancement fund, those funds necessary for the
73 timely payment for necessary improvements in public
74 education as appropriated by the Legislature.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-14. Resolution authorizing issuance and fixing terms of bonds.

§13-1-17. Bonds may be registered; coupon bonds may be registered as to principal.

§13-1-18. Registration of coupon bonds as to interest; exchange of registered bond for coupon bond.

§13-1-14. Resolution authorizing issuance and fixing terms of bonds.

1 If three fifths of all the votes cast for and against the
2 proposition to incur debt and issue negotiable bonds
3 shall be in favor of the same, the governing body of the
4 political division shall, by resolution, authorize the
5 issuance of such bonds in an amount not exceeding the
6 amount stated in the proposition; fix the date thereof;
7 set forth the denominations in which they shall be
8 issued, which denominations shall be one hundred
9 dollars or multiples thereof; determine the rate or rates
10 of interest which the bonds shall bear, which rate or
11 rates of interest shall be within the maximum rate
12 stated in the proposition submitted to vote and payable
13 semiannually, prescribe the medium with which the
14 bonds shall be payable; require that the bonds shall be
15 made payable at the office of the state board of
16 investments and at such other place or places as the
17 body issuing the same may designate; provide for a
18 sufficient levy to pay the annual interest on the bonds
19 and the principal at maturity; fix the times within the
20 maximum period, as contained in the proposition
21 submitted to vote, when the bonds shall become payable,
22 which shall not exceed thirty-four years from the date
23 thereof; and prescribe a form for executing the bonds
24 authorized.

§13-1-17. Bonds may be registered; coupon bonds may be registered as to principal.

1 The bonds issued hereunder may be registered or
2 coupon bonds. Coupon bonds may be registered as to the
3 principal in the owner's name by the state board of
4 investments on books which shall be kept at its office
5 for the purpose and the registration shall also be noted
6 on the bonds, after which no transfer shall be valid
7 unless made by the state board of investments on the
8 books of registration and similarly noted on the bonds.
9 Bonds registered as to principal may be discharged
10 from registration by being transferred to bearer, after
11 which they shall be transferable by delivery; but may
12 again, and from time to time, be registered as to the
13 principal amount as before. The registration of coupon
14 bonds as to the principal sum shall not affect the
15 negotiability of the interest coupons, but title to the
16 same shall pass by delivery.

**§13-1-18. Registration of coupon bonds as to interest;
exchange of registered bond for coupon
bond.**

1 Coupon bonds may also be registered as to the interest
2 by the holder surrendering the bonds with the unpaid
3 coupons attached, which bonds and coupons shall be
4 canceled by the state board of investments. New bonds
5 of the same date and tenor and for the same amounts
6 as the bonds surrendered, or, at the option of the holder,
7 a single bond for the aggregate amount of the bonds
8 surrendered, but without interest coupons attached,
9 shall be issued in the place of the coupon bonds and
10 registered in the manner required in the preceding
11 section. A registered bond may at any time be surren-
12 dered and be exchanged by the holder for a coupon bond
13 by the holder delivering the registered bond to the state
14 board of investments who shall cancel the same and who
15 shall cause a new bond of the same date and tenor and
16 for the same amount to be issued, and with interest
17 coupons for the interest thereafter to accrue thereon
18 attached, and deliver the same to the holder of the
19 surrendered bond. The governing body of the county,
20 municipal corporation or school district which issued

21 the original bond shall issue and execute the new bond
 22 required by this section and shall pass the resolutions
 23 and ordinances necessary to authorize the same. The
 24 expense of such registration shall in all cases be paid
 25 by the holder of the bonds.

CHAPTER 18. EDUCATION.

Article

9A. Public School Support.

22D. Higher Education Student Assistance Loan Program.

30. West Virginia Higher Education Tuition Trust Act.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-1. Legislative findings; public school support plan.

§18-9A-4. Foundation allowance for professional educators.

§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

§18-9A-8. Foundation allowance for administrative cost.

§18-9A-8a. Foundation allowance for regional educational service agencies.

§18-9A-9. Foundation allowance for other current expense and substitute employees.

§18-9A-13b. Allowances for remedial and accelerated education programs and salary equity.

§18-9A-15. Allowance for increased enrollment.

§18-9A-1. Legislative findings; public school support plan.

1 The Legislature finds and declares that the future of
 2 education in this state is dependent upon a plan of
 3 financial support for the public schools which provides
 4 for a fair and adequate pay scale for teachers sufficient
 5 to ensure teacher excellence, as well as adequate
 6 financial support for the public schools generally; upon
 7 an economic base which ensures levels of revenue
 8 sufficient to fund the public schools; and upon independ-
 9 ent professional management of public funds in order
 10 to assure a climate of financial stability and responsi-
 11 bility in which construction and maintenance of school
 12 facilities becomes possible.

13 The plan of support for the public schools, which will
 14 be known as the West Virginia public school support
 15 plan, will fix statutorily both state and county respon-
 16 sibility for the financing of the same. In enacting this
 17 plan, the Legislature has in mind the following purpose:
 18 To effect a basic foundation support plan that shall

19 provide for program growth which will assure more
20 equitable educational opportunity for all children and
21 youth irrespective of where they may live.

§18-9A-4. Foundation allowance for professional educators.

1 The basic foundation allowance to the county for
2 professional educators shall be the amount of money
3 required to pay the state minimum salaries, in accor-
4 dance with provisions of article four, chapter eighteen-
5 a of the code, to such personnel employed: *Provided,*
6 That in making this computation no county shall receive
7 an allowance for such personnel which number is in
8 excess of fifty-four and thirty-three one-hundredths
9 professional educators to each one thousand students in
10 adjusted enrollment: *Provided, however,* That for the
11 school year commencing on the first day of July, one
12 thousand nine hundred ninety-one, and thereafter, no
13 county shall receive an allowance for such personnel
14 which number is in excess of fifty-three and one-half
15 professional educators to each one thousand students in
16 adjusted enrollment: *Provided further,* That any county
17 not qualifying under the provision of section fourteen of
18 this article shall be eligible for a growth rate in
19 professional personnel in any one year not to exceed
20 twenty percent of its total potential increase under this
21 provision, except that in no case shall such limit be
22 fewer than five professionals: *And provided further,*
23 That the number of and the allowance for personnel
24 paid in part by state and county funds shall be prorated:
25 *And provided further,* That where two or more counties
26 join together in support of a vocational or comprehensive
27 high school or any other program or service, the
28 professional educators for such school or program may
29 be prorated among the participating counties on the
30 basis of each one's enrollment therein and that such
31 personnel shall be considered within the above-stated
32 limit: *And provided further,* That in the school year
33 beginning the first day of July, one thousand nine
34 hundred eighty-eight, and in each school year thereaf-
35 ter, each county board shall establish and maintain a
36 minimum ratio of fifty professional instructional

37 personnel per one thousand students in adjusted
38 enrollment: *And provided further*, That no county shall
39 have less than a total of five principals and central office
40 administrators. Any county board which does not
41 establish and maintain this minimum ratio shall suffer
42 a pro rata reduction in the allowance for professional
43 educators under this section, and, further, any county
44 board which does not establish and maintain this
45 minimum ratio shall utilize any and all allocations to it
46 by provision of section fourteen of this article solely to
47 employ professional instructional personnel until the
48 minimum ratio is attained. Every county shall utilize
49 methods other than reductions in force, such as attrition
50 and early retirement, before implementing their
51 reductions in force policy to comply with the limitations
52 of this section. It is the intent of the Legislature that in
53 planning reductions in force to comply with reduced
54 ratios of professional educators to students in adjusted
55 enrollment, county boards shall consider positions for
56 elimination in the following order: (1) Central office
57 administrators, (2) assistant principals, and (3)
58 principals.

59 No county shall increase the number of administrative
60 personnel employed as either professional educators or
61 pay grade "H" service personnel above the number
62 which were employed, or for which positions were
63 posted, on the thirtieth day of June, one thousand nine
64 hundred ninety, and, therefore, county boards shall
65 whenever possible utilize classroom teachers for curric-
66 ulum administrative positions through the use of
67 modified or extended contracts: *Provided*, That the
68 governor shall submit a recommendation to the Legis-
69 lature at the beginning of the regular session thereof in
70 the year one thousand nine hundred ninety-one, which
71 proposes a method for establishing a responsible level
72 of administrative support for each county school system
73 and a pay scale differentiation on a daily rate between
74 classroom positions and administrative positions when
75 all other factors are equal.

76 Every county board of education shall annually
77 determine the number of professional educators em-

78 ployed that exceeds the number allowed by the public
 79 school support plan and determine the amount of salary
 80 supplement that would be available per state authorized
 81 employee if all expenditures for such excess employees
 82 were converted to annual salaries for state authorized
 83 professional educators within their county. Such infor-
 84 mation shall be published annually in each school report
 85 card of each such county.

**§18-9A-5a. Ratio of foundation allowances for profes-
 sional educators and service personnel to
 net enrollment.**

1 (a) The purpose of this section is to establish maxi-
 2 mum ratios between the numbers of professional
 3 educators and service personnel in the counties which
 4 are funded through the public school support plan and
 5 the net enrollment in the counties, such ratios are in
 6 addition to the ratios provided for in sections four and
 7 five of this article. It is the intent of the Legislature to
 8 adjust these ratios pursuant to legislative act as may be
 9 appropriate when additional personnel are needed to
 10 perform additional duties.

11 (b) Commencing with the school year one thousand
 12 nine hundred eighty-nine—ninety, and each year
 13 thereafter, in computing the basic foundation allowance
 14 to a county for professional educators and the basic
 15 foundation allowance to a county for service personnel
 16 under sections four and five of this article, a county shall
 17 not receive an allowance for such personnel which
 18 number per one thousand students in net enrollment is
 19 in excess of the number of professional educators and
 20 the number of service personnel in the county computed
 21 as follows:

22		Maximum	
23		professional	Maximum service
24		educators per 1000	personnel per 1000
25	For the	net enrollment the	net enrollment the
26	school year	preceding year	preceding year
27	1989-90	76.5	45.5
28	1990-91	76.0	45.0
29	1991-92	75.5	44.5

30	1992-93	75.0	44.0
31	1993-94	74.5	43.75
32	1994-95 and	74.0	43.5
33	thereafter		

34 (c) Every county shall utilize methods other than
 35 reductions in force, such as attrition and early retire-
 36 ment, before implementing their reductions in force
 37 policy to comply with the limitations of this section.

38 (d) For the school years one thousand nine hundred
 39 eighty-nine--ninety and one thousand nine hundred
 40 ninety--ninety-one only, if a school district loses more
 41 than six percent of the number chargeable for the
 42 previous school year for professional educator positions
 43 or service personnel positions, due to the maximum
 44 ratios established in subsection (b) of this section, it may
 45 apply to the state board for a waiver of said ratios to
 46 the extent that the loss exceeds either six percent of its
 47 professional educators or service personnel: *Provided,*
 48 That the county board of education establishes and
 49 maintains the minimum ratio of professional instruc-
 50 tional personnel per one thousand students in adjusted
 51 enrollment as required in section four of this article.
 52 Waivers shall be determined on a case by case basis
 53 according to rules adopted by the state board and
 54 granted to the extent funds are appropriated by the
 55 Legislature for this purpose. Prior to the adoption of
 56 such rules, the state board shall conduct a thorough
 57 review of the staffing patterns in each county. Any
 58 personnel positions funded as a result of a waiver
 59 granted under the provisions of this subsection shall not
 60 be included in the computations set forth in sections four
 61 and five of this article.

§18-9A-8. Foundation allowance for administrative cost.

1 For the fiscal year beginning on the first day of July,
 2 one thousand nine hundred ninety, the allowance for
 3 administrative cost shall be equal to one and twenty-five
 4 one-hundredths percent of the allocation for professional
 5 educators, as determined in section four of this article
 6 as of the first day of July, one thousand nine hundred
 7 ninety.

8 Distribution of the computed allowance for the fiscal
9 year beginning on the first day of July, one thousand
10 nine hundred ninety, shall be made as follows:

11 (1) Fifty-six percent of the allowance shall be distrib-
12 uted to the counties in equal amounts; and

13 (2) Forty-four percent of the allowance shall be
14 distributed to the regional educational service agencies
15 in accordance with rules adopted by the state board. The
16 allowance for regional educational service agencies shall
17 be excluded from the computation of total basic state aid
18 as provided for in section twelve of this article.

19 For the fiscal year beginning on the first day of July,
20 one thousand nine hundred ninety-one, and for each
21 fiscal year thereafter, the allowance for administrative
22 cost shall be equal to one hundred fifty dollars multi-
23 plied by the number of professional educators autho-
24 rized in compliance with sections four and five-a of this
25 article. The allowance shall be distributed to the
26 counties in equal amounts.

**§18-9A-8a. Foundation allowance for regional educa-
tional service agencies.**

1 For the fiscal year beginning on the first day of July,
2 one thousand nine hundred ninety-one, and for each
3 fiscal year thereafter, the foundation allowance for
4 regional educational service agencies shall be equal to
5 sixty-three one-hundredths percent of the allocation for
6 professional educators as determined in section four of
7 this article. The allowance shall be distributed to the
8 regional educational service agencies in accordance with
9 rules adopted by the state board. The allowance for
10 regional educational service agencies shall be excluded
11 from the computation of total basic state aid as provided
12 for in section twelve of this article.

**§18-9A-9. Foundation allowance for other current ex-
pense and substitute employees.**

1 The total allowance for other current expense and
2 substitute employees shall be the sum of the following:
3 *Provided*, That each of the three amounts set forth in
4 subparagraphs (1), (2) and (3) of this section shall not

5 exceed the preceding year's allowance by more than four
6 percent:

7 (1) For current expense, for the year one thousand
8 nine hundred ninety—ninety-one and thereafter, ten
9 percent of the sum of the computed state allocation for
10 professional educators and service personnel as deter-
11 mined in sections four and five of this article. Distribu-
12 tion to the counties shall be made proportional to the
13 average of each county's average daily attendance for
14 the preceding year and the county's second month net
15 enrollment; plus

16 (2) For professional educator substitutes or current
17 expense, two and five-tenths percent of the computed
18 state allocation for professional educators as determined
19 in section four of this article. Distribution to the counties
20 shall be made proportional to the number of professional
21 educators authorized for the county in compliance with
22 sections four and five-a of this article; plus

23 (3) For service personnel substitutes or current
24 expense, two and five-tenths percent of the computed
25 state allocation for service personnel as determined in
26 section five of this article. Distribution to the counties
27 shall be made proportional to the number of service
28 personnel authorized for the county in compliance with
29 sections five and five-a of this article; plus

30 (4) For academic materials, supplies and equipment
31 for use in instructional programs, two hundred dollars
32 multiplied by the number of professional instructional
33 personnel employed in the schools of the county.
34 Distribution shall be made to each county for allocation
35 to the faculty senate of each school in the county on the
36 basis of two hundred dollars per professional instruc-
37 tional personnel employed at the school. Faculty senate
38 means a faculty senate created pursuant to section five,
39 article five-a of this chapter. Decisions for the expendi-
40 ture of such funds shall be made at the school level by
41 the faculty senate in accordance with the provisions of
42 said section five, article five-a, and shall not be used to
43 supplant the current expense expenditures of the
44 county.

45 (5) For the school year one thousand nine hundred
46 ninety—ninety-one only, there shall be a one-time
47 additional appropriation of five hundred thousand
48 dollars to be distributed to the counties on a needs basis.
49 Funds shall be distributed to those very few counties in
50 which costs for the delivery of educational services are
51 extraordinarily greater than in the vast majority of
52 counties, thus impairing the quality of education in
53 those few counties. The factors used to determine
54 eligibility for funds shall be sparsity of student popu-
55 lation, combined with geographical barriers to the
56 efficient transportation of students; or extraordinary
57 growth in net enrollment for school year one thousand
58 nine hundred ninety—ninety-one which exceed the
59 allowance for increased enrollment appropriated in the
60 budget for that year. Prior to the distribution of funds,
61 the state superintendent shall establish that the apply-
62 ing county has demonstrated efficiency and fiscal
63 responsibility in staffing, and in maximum sharing of
64 services with adjoining counties and the regional
65 educational service agency for that county in the use of
66 the total local county budget.

**§18-9A-13b. Allowances for remedial and accelerated
education programs and salary equity.**

1 Commencing with the school year beginning on the
2 first day of July, one thousand nine hundred ninety-one
3 and thereafter, funds which accrue from allocations due
4 to changes in adjusted enrollment above that computed
5 for each preceding school year shall be allocated in the
6 following manner:

7 (1) Up to eighty percent of these funds shall be
8 allocated for the purpose of attaining salary equity
9 among the counties pursuant to section five, article four,
10 chapter eighteen-a, except that for the school year
11 commencing on the first day of July, one thousand nine
12 hundred ninety, only, the allocation to salary equity
13 shall be made in accordance with the provisions of
14 section five-d, article four, chapter eighteen-a of this
15 code;

16 (2) Twenty percent of these funds shall be allocated

17 to implement remedial and accelerated programs as
18 developed under guidelines of the state board, except
19 that for the school year commencing on the first day of
20 July, one thousand nine hundred ninety, only, the
21 allocation to implement remedial and accelerated
22 programs shall be made only to the extent funds are
23 appropriated for such programs; and

24 (3) The balance shall be distributed for the support of
25 professional educator salaries in accordance with
26 legislative appropriation.

§18-9A-15. Allowance for increased enrollment.

1 To provide for the support of increased net enroll-
2 ments in the counties in a school year over the net
3 enrollments used in the computation of total state aid
4 for that year, there shall be appropriated for that
5 purpose from the general revenue fund an amount equal
6 to the average total state aid per net pupil multiplied
7 by the total of all of the increases in the net enrollments
8 of the counties made by comparing the most recent
9 reports of net enrollment for the second school month
10 to the immediately previous year's reports for the same
11 school month.

12 Upon determination of the several increases in the
13 respective counties' net enrollments, as of the close of the
14 second school month, each county showing such increase
15 shall be allocated an amount equal to that county's
16 average per net pupil total state aid multiplied by the
17 increase in that county's net enrollment determined as
18 provided heretofore. Such allocations shall be distrib-
19 uted not later than the thirty-first day of December of
20 each year to the counties having increases in net
21 enrollment as heretofore provided. If the amount
22 appropriated for this purpose shall not be sufficient to
23 provide payment in full for the total of these several
24 allocations, each county allocation shall be reduced to an
25 amount which is proportionate to the appropriation
26 compared to the total of the several allocations, and the
27 allocations as thus adjusted shall be distributed to the
28 counties as provided in this section: *Provided*, That the
29 governor shall request a supplemental appropriation at
30 the next legislative session for the reduced amount.

31 No provision of this section shall be construed to in
32 any way affect the allocation of moneys for educational
33 purposes to a county under other provisions of law.

**ARTICLE 22D. HIGHER EDUCATION STUDENT ASSISTANCE
LOAN PROGRAM.**

§18-22D-2. Definitions.

§18-22D-4. Limitations on investment in linked deposits.

§18-22D-5. Applications for loans; loan package.

§18-22D-6. Acceptance or rejection of loan package; deposit agreement.

§18-22D-8. Certification and monitoring of compliance; reports.

§18-22D-9. Liability.

§18-22D-2. Definitions.

1 The following words when used in this article have the
2 meaning hereinafter ascribed to them, unless the
3 context clearly indicates a different meaning:

4 (a) "Board" or "governing board" means the university
5 of West Virginia board of trustees or the board of
6 directors of the state college system, whichever is
7 applicable within the context referred to in this article,
8 unless the context clearly indicates a different meaning.

9 (b) "Eligible lending institution" or "institution"
10 means a financial institution that is eligible to make
11 commercial loans, is a public depository of state funds
12 and agrees to participate in the West Virginia higher
13 education student assistance loan program.

14 (c) "Eligible student" means any individual who:

15 (1) Is a citizen or eligible noncitizen of the United
16 States;

17 (2) Has been a resident of the state for at least one
18 year immediately preceding the date of application for
19 a West Virginia higher education student assistance
20 loan;

21 (3) Is currently enrolled in good standing or accepted
22 for enrollment at the approved institution of higher
23 education in this state of the student's choice; and

24 (4) Is certified by such institution in accordance with
25 section three of this article.

26 (d) "Linked deposit" means a certificate of deposit
27 placed by the state board of investments with an eligible
28 lending institution at three percent below current
29 market rates, as determined and calculated by the state
30 board of investments, provided the institution agrees to
31 lend the value of such deposit, according to the deposit
32 agreement provided for by this article, to eligible
33 students at three percent below the present borrowing
34 rate applicable to each such student at the time of the
35 deposit of state funds in the institution.

36 (e) "Approved institution of higher education in this
37 state" means nonprofit, degree-granting two-year and
38 four-year colleges and universities located in West
39 Virginia.

§18-22D-4. Limitations on investment in linked deposits.

1 The state board of investments shall invest in linked
2 deposits as identified by the board through an approved
3 application, provided that at the time of placement of
4 the linked deposit, exclusive of the linked deposit
5 program provided for in article one-a, chapter twelve of
6 this code, not more than two percent of the state's total
7 investment portfolio is so invested. The total amount
8 initially deposited in any one year shall not exceed two
9 million dollars, and the total amount so deposited at any
10 one time shall not exceed, in the aggregate, twenty
11 million dollars.

§18-22D-5. Applications for loans; loan package.

1 (a) An eligible lending institution that desires to
2 receive a linked deposit shall accept and review
3 applications for loans from applicants certified as
4 eligible students. The lending institution shall apply all
5 usual lending standards to determine the credit worth-
6 iness of each eligible student. In no case shall the
7 applicant request, nor the eligible lending institution
8 approve, an annual loan amount in excess of the
9 maximum amount indicated on the form certifying such
10 applicant as an eligible student.

11 (b) An eligible student shall certify on the loan

§18-22D-9. Liability.

1 The state, the governing boards and the state board
2 of investments are not liable to any eligible lending
3 institution in any manner for payment of the principal
4 or interest on the loan to an eligible student. Any delay
5 in payment or default on the part of an eligible student
6 does not in any manner affect the deposit agreement
7 between the eligible lending institution and the state
8 board of investments.

ARTICLE 30. WEST VIRGINIA HIGHER EDUCATION TUITION TRUST ACT.**§18-30-5. Appointment of board of directors; terms; compensation; proceedings generally.**

1 (a) The board of directors shall consist of the secretary
2 of education and the arts, who shall be the chairman of
3 the board, the executive secretary of the state board of
4 investments, and the state superintendent of schools,
5 who shall serve as ex officio voting members of the
6 board, and six other members with knowledge, skill and
7 experience in an academic, business or financial field,
8 who shall be residents of the state appointed by the
9 governor, by and with the advice and consent of the
10 Senate. Of the six appointed members, four shall be
11 appointed from nominations as follows: One shall be a
12 private citizen not employed by or an officer of the state
13 or any political subdivision thereof appointed from one
14 or more nominees of the speaker of the House of
15 Delegates; one shall be a private citizen not employed
16 by or an officer of the state or any political subdivision
17 thereof appointed from one or more nominees of the
18 president of the Senate; one shall be a president of a
19 state institution of higher education who shall be
20 appointed from one or more nominees of the council of
21 presidents of state colleges and universities; and one
22 shall represent the interests of private institutions of
23 higher education located in this state who shall be
24 appointed from one or more nominees of the West
25 Virginia association of private colleges. Of these six
26 members first appointed, two shall be appointed for
27 terms that expire on the thirty-first day of December,
28 one thousand nine hundred eighty-nine, two shall be

29 appointed for terms that expire on the thirty-first day
30 of December, one thousand nine hundred ninety, and
31 two shall be appointed for a term that expires on the
32 thirty-first day of December, one thousand nine hundred
33 ninety-one. Following the expiration of these fixed
34 terms, a member shall be appointed for a term of three
35 years. A member shall serve until a successor is
36 appointed, and a vacancy shall be filled for the balance
37 of the unexpired term in the same manner as the
38 original appointment. The secretary of education and
39 the arts, executive secretary of the state board of
40 investments, state superintendent or president of a state
41 institution of higher education may appoint a designee
42 to serve as a voting member of the board in such
43 person's absence.

44 (b) Members of the board shall serve without compen-
45 sation, but shall receive reimbursement for reasonable
46 and necessary expenses actually incurred in the per-
47 formance of their duties as board members unless such
48 member is otherwise reimbursed as an employee of the
49 state.

50 (c) A majority of the voting members appointed to the
51 board shall constitute a quorum for the transaction of
52 business at a meeting of the board, or the exercise of
53 a power or function of the trust, notwithstanding the
54 existence of one or more vacancies. Voting upon action
55 taken by the board shall be conducted by majority vote
56 of the members present in person at a meeting of the
57 board, and, if authorized by the bylaws of the board and
58 when a quorum is present in person at the meeting, by
59 use of amplified telephonic equipment. The board shall
60 meet at the call of the chairman and as may be provided
61 in its bylaws. Meetings of the board may be held
62 anywhere within the state.

63 (d) The board is subject to the open governmental
64 proceedings and freedom of information provisions of
65 article nine-a, chapter six, and chapter twenty-nine-b,
66 respectively, of this code.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-1. Definitions.

§18-22D-9. Liability.

1 The state, the governing boards and the state board
2 of investments are not liable to any eligible lending
3 institution in any manner for payment of the principal
4 or interest on the loan to an eligible student. Any delay
5 in payment or default on the part of an eligible student
6 does not in any manner affect the deposit agreement
7 between the eligible lending institution and the state
8 board of investments.

ARTICLE 30. WEST VIRGINIA HIGHER EDUCATION TUITION TRUST ACT.**§18-30-5. Appointment of board of directors; terms; compensation; proceedings generally.**

1 (a) The board of directors shall consist of the secretary
2 of education and the arts, who shall be the chairman of
3 the board, the executive secretary of the state board of
4 investments, and the state superintendent of schools,
5 who shall serve as ex officio voting members of the
6 board, and six other members with knowledge, skill and
7 experience in an academic, business or financial field,
8 who shall be residents of the state appointed by the
9 governor, by and with the advice and consent of the
10 Senate. Of the six appointed members, four shall be
11 appointed from nominations as follows: One shall be a
12 private citizen not employed by or an officer of the state
13 or any political subdivision thereof appointed from one
14 or more nominees of the speaker of the House of
15 Delegates; one shall be a private citizen not employed
16 by or an officer of the state or any political subdivision
17 thereof appointed from one or more nominees of the
18 president of the Senate; one shall be a president of a
19 state institution of higher education who shall be
20 appointed from one or more nominees of the council of
21 presidents of state colleges and universities; and one
22 shall represent the interests of private institutions of
23 higher education located in this state who shall be
24 appointed from one or more nominees of the West
25 Virginia association of private colleges. Of these six
26 members first appointed, two shall be appointed for
27 terms that expire on the thirty-first day of December,
28 one thousand nine hundred eighty-nine, two shall be

29 appointed for terms that expire on the thirty-first day
30 of December, one thousand nine hundred ninety, and
31 two shall be appointed for a term that expires on the
32 thirty-first day of December, one thousand nine hundred
33 ninety-one. Following the expiration of these fixed
34 terms, a member shall be appointed for a term of three
35 years. A member shall serve until a successor is
36 appointed, and a vacancy shall be filled for the balance
37 of the unexpired term in the same manner as the
38 original appointment. The secretary of education and
39 the arts, executive secretary of the state board of
40 investments, state superintendent or president of a state
41 institution of higher education may appoint a designee
42 to serve as a voting member of the board in such
43 person's absence.

44 (b) Members of the board shall serve without compen-
45 sation, but shall receive reimbursement for reasonable
46 and necessary expenses actually incurred in the per-
47 formance of their duties as board members unless such
48 member is otherwise reimbursed as an employee of the
49 state.

50 (c) A majority of the voting members appointed to the
51 board shall constitute a quorum for the transaction of
52 business at a meeting of the board, or the exercise of
53 a power or function of the trust, notwithstanding the
54 existence of one or more vacancies. Voting upon action
55 taken by the board shall be conducted by majority vote
56 of the members present in person at a meeting of the
57 board, and, if authorized by the bylaws of the board and
58 when a quorum is present in person at the meeting, by
59 use of amplified telephonic equipment. The board shall
60 meet at the call of the chairman and as may be provided
61 in its bylaws. Meetings of the board may be held
62 anywhere within the state.

63 (d) The board is subject to the open governmental
64 proceedings and freedom of information provisions of
65 article nine-a, chapter six, and chapter twenty-nine-b,
66 respectively, of this code.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-1. Definitions.

§18A-4-2. State minimum salaries for teachers.

§18A-4-5. Salary equity among the counties; state salary supplement.

§18A-4-5a. County salary supplements for teachers.

§18A-4-5b. County salary supplements for school service personnel.

§18A-4-5d. 1990 appropriation for salary equity.

§18A-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-9. Payment of teachers and other employees; withholdings.

§18A-4-1. Definitions.

1 For the purpose of this article, salaries shall be
2 defined as: (a) "Basic salaries" which shall mean the
3 salaries paid to teachers with zero years of experience
4 and in accordance with the classification of certification
5 and of training of said teachers; and (b) "advanced
6 salaries" which shall mean the basic salary plus an
7 experience increment based on the allowable years of
8 experience of the respective teachers in accordance with
9 the schedule established herein for the applicable
10 classification of certification and of training of said
11 teachers.

12 "Classification of certification" means the class or type
13 of certificate issued by the state superintendent of
14 schools under the statutory provisions of this chapter.
15 "Classification of training" means the number of
16 collegiate or graduate hours necessary to meet the
17 requirements stipulated in the definitions set forth in
18 the next paragraph in items (2) to (13), inclusive.

19 The column heads of the state minimum salary
20 schedule set forth in section two of this article are
21 defined as follows:

22 (1) "Years of experience" means the number of years
23 the teacher has been employed in the teaching profes-
24 sion, including active work in educational positions
25 other than the public schools, and service in the armed
26 forces of the United States if the teacher was under
27 contract to teach at the time of induction. For a
28 registered professional nurse employed by a county
29 board of education, "years of experience" means the
30 number of years the nurse has been employed as a
31 public school health nurse, including active work in a
32 nursing position related to education, and service in the

33 armed forces if the nurse was under contract with the
34 county board at the time of induction. For the purpose
35 of section two of this article, the experience of a teacher
36 or a nurse shall be limited to that allowed under their
37 training classification as found in the minimum salary
38 schedule.

39 (2) "Fourth class" means all certificates previously
40 identified as (a) "certificates secured by examination",
41 and (b) "other first grade certificates".

42 (3) "Third class" means all certificates previously
43 identified as (a) "standard normal certificates" and (b)
44 "third class temporary (sixty-four semester hours)
45 certificates".

46 (4) "Second class" means all certificates previously
47 identified as "second class temporary certificates based
48 upon the required ninety-six hours of college work".

49 (5) "A.B." means a bachelor's degree, from an
50 accredited institution of higher education, which has
51 been issued to, or for which the requirements for such
52 have been met by, a person who qualifies for or holds
53 a professional certificate or its equivalent. A registered
54 professional nurse with a bachelor's degree, who is
55 licensed by the West Virginia board of examiners for
56 registered professional nurses and employed by a county
57 board of education, shall be within this classification for
58 payment in accordance with sections two and two-a of
59 this article.

60 (6) "A.B. plus 15" means a bachelor's degree as
61 defined above plus fifteen hours of graduate work, from
62 an accredited institution of higher education certified to
63 do graduate work, in an approved planned program at
64 the graduate level which requirements have been met
65 by a person who qualifies for or holds a professional
66 certificate or its equivalent.

67 (7) "M.A." means a master's degree, earned in an
68 institution of higher education approved to do graduate
69 work, which has been issued to, or the requirements for
70 such have been met by, a person who qualifies for or
71 holds a professional certificate or its equivalent.

72 (8) "M.A. plus 15" means the above-defined master's
73 degree plus fifteen hours of graduate work, earned in
74 an institution of higher education approved to do
75 graduate work, if the person is qualified for or holds a
76 professional certificate or its equivalent.

77 (9) "M.A. plus 30" means the above-defined master's
78 degree plus thirty graduate hours, earned in an
79 institution approved to do graduate work, if the person
80 is qualified for or holds a professional certificate or its
81 equivalent.

82 (10) "Doctorate" means a doctor's degree, earned from
83 a university qualified and approved to confer such a
84 degree, which has been issued to or the requirements for
85 such have been met by a person who qualifies for or
86 holds a professional certificate or its equivalent.

87 Notwithstanding the requirements set forth in subdivi-
88 sions (6), (8) and (9) of this section relating to hours
89 of graduate work at an institution certified to do such
90 work, fifteen undergraduate credit hours from a
91 regionally accredited institution of higher education,
92 earned after the effective date of this section, may be
93 utilized for advanced salary classification if such hours
94 are in accordance with (a) the teacher's current
95 classification of certification and of training, (b) a
96 designated instructional shortage area documented by
97 the employing county superintendent, or (c) an identi-
98 fied teaching deficiency documented through the state
99 approved county personnel evaluation system.

100 In-field master's compensation is contingent upon
101 recognition of the in-field master's classification and the
102 educator's assignment. The West Virginia board of
103 education shall establish regulations for the administra-
104 tion and implementation of the in-field master's salary
105 schedule.

106 Only those professional educators who are assigned to
107 teach, for a minimum of fifty (50) percent of the
108 instructional day, subjects which are consistent with the
109 endorsement(s) recognized as meeting the in-field
110 master's classification shall be eligible for compensation

111 based on the in-field master's schedule. If scheduling
112 constraints prevent the educator from being assigned to
113 endorsements recognized for the in-field master's
114 classification for a minimum of fifty (50) percent of the
115 instructional day, the educator may petition the county
116 board of education for such compensation. After review,
117 the county board of education shall submit the petition
118 to the state department of education on behalf of the
119 educator for determination of in-field master's compen-
120 sation. Such petitions must be filed on an annual basis.

121 If a professional educator, who was previously
122 employed in an area recognized for in-field master's
123 classification, is reassigned to work full time in an area
124 not recognized on said educator's certificate for in-field
125 master's classification as a result of (1) voluntary
126 reassignment to assist the county in meeting a critical
127 staffing need or (2) a reduction in force, the educator
128 may petition the county board of education for continued
129 payment under the in-field master's salary schedule.
130 After review, the county board of education shall
131 petition the state department of education on an annual
132 basis to continue such payment. In no case shall
133 approval be granted for more than three years. The
134 county board of education must provide documentation
135 to justify each request.

136 Upon request for a specific master's degree program,
137 the appropriate governing board of higher education
138 shall provide all of the course work for a master's degree
139 program that is designated as in-field for the certifica-
140 tion area of the professional educator who makes the
141 request. The course work for such program shall be
142 initiated no later than two years from the date requested
143 and shall be provided to the greatest extent feasible
144 within each regional educational service agency area in
145 which the request has been made as follows: (1) Via
146 satellite instruction; (2) via public television home
147 instruction; or (3) in a manner prescribed by such
148 governing board. If the governing board fails to initiate
149 the course work within the above time period, an
150 individual shall be compensated at the appropriate level
151 of years of experience on the in-field master's salary

152 schedule whenever the individual has obtained any
153 master's degree related to the public school program.

154 The appropriate governing board of higher education
155 shall develop a plan to provide "M.A." classification
156 programs to professional educators throughout this state
157 by the first day of January, one thousand nine hundred
158 ninety-one, with the objective being to provide course
159 work enabling professional educators to achieve an
160 "M.A." degree classification in their teaching field.

161 Effective the first day of July, one thousand nine
162 hundred ninety-two, the following definitions shall be
163 applicable and the preceding definitions numbered (8)
164 and (9) shall be renumbered (9) and (11), respectively,
165 and the preceding definition (10) shall be reconstituted
166 in definition (12).

167 (11) "In-field master's" means the above-defined
168 master's degree and one of the following:

169 (a) Twenty-four (24) semester hours of post baccalau-
170 reate graduate credit, within or external to the ad-
171 vanced degree, confined to one specialization completed
172 at the undergraduate level on the educator's professional
173 certificate or its equivalent, or

174 (b) A master's degree earned prior to the first day of
175 July, one thousand nine hundred ninety-two, in (i) a
176 program specialization completed at the undergraduate
177 level, or (ii) a state approved sub-area of the speciali-
178 zation which is consistent with a specialization, com-
179 pleted at the undergraduate level, on the educator's
180 professional certificate or its equivalent, or

181 (c) Twelve (12) semester hours of graduate credit
182 above and beyond the course work completed for the
183 endorsement recognized for in-field master's classifica-
184 tion only if the course work for the endorsement was also
185 completed at the graduate level: *Provided*, That in
186 certification areas where the total course work require-
187 ments for initial certification exceed the minimum
188 required for in-field classification, the state department
189 of education may by rule establish exceptions.

190 (12) "In-field M.A. plus 15" means the above-defined
 191 M.A. plus 15 including recognition of an above-defined
 192 in-field master's, earned in an institution of higher
 193 education approved to do graduate work, if the person
 194 is qualified for or holds a professional certificate or its
 195 equivalent.

196 (13) "In-field M.A. plus 30" means the above-defined
 197 M.A. plus 30 including recognition of an above-defined
 198 in-field master's, earned in an institution of higher
 199 education approved to do graduate work, if the person
 200 is qualified for or holds a professional certificate or its
 201 equivalent, or "Doctorate" means a doctor's degree,
 202 earned from a university qualified and approved to
 203 confer such a degree, which has been issued to or the
 204 requirements for such have been met by a person who
 205 qualifies for or holds a professional certificate or its
 206 equivalent.

§18A-4-2. State minimum salaries for teachers.

1 Effective the first day of July, one thousand nine
 2 hundred ninety through the thirtieth day of June, one
 3 thousand nine hundred ninety-one, each teacher shall
 4 receive the amount prescribed in the "1990-91 state
 5 minimum salary schedule" as set forth in this section,
 6 specific additional amounts prescribed in this section or
 7 article, and any county supplement in effect in a county
 8 pursuant to section five-a of this article during the
 9 contract year.

10 1990-91 STATE MINIMUM SALARY SCHEDULE

11	(1)	(2)	(3)	(4)	(5)	(6)	(7)
12	Years	4th	3rd	2nd	A.B.	A.B.	M.A.
13	Exp.	Class	Class	Class	A.B.	+15	M.A.
14	0	13,816	14,453	14,708	15,918	16,653	17,388
15	1	14,032	14,669	14,924	16,318	17,053	17,788
16	2	14,248	14,886	15,141	16,718	17,453	18,188
17	3	14,465	15,102	15,357	17,118	17,853	18,588
18	4	14,917	15,554	15,810	17,754	18,489	19,224
19	5	15,133	15,771	16,026	18,154	18,889	19,624
20	6	15,350	15,987	16,242	18,554	19,289	20,024
21	7		16,203	16,459	18,954	19,689	20,424

22	8	16,420	16,675	19,354	20,089	20,824
23	9		16,891	19,754	20,489	21,224
24	10		17,107	20,155	20,890	21,625
25	11			20,555	21,290	22,025
26	12			20,955	21,690	22,425
27	13			21,355	22,090	22,825
28	14					23,225
29	15					23,625
30	16					24,025
31	17					
32	18					
33	19					

34			(8)	(9)	(10)
35	Years		M.A.	M.A.	Doc-
36	Exp.		+15	+30	torate
37	0		18,123	18,858	19,593
38	1		18,523	19,258	19,993
39	2		18,923	19,658	20,393
40	3		19,323	20,058	20,793
41	4		19,959	20,694	21,429
42	5		20,359	21,094	21,829
43	6		20,759	21,494	22,229
44	7		21,159	21,894	22,629
45	8		21,559	22,294	23,029
46	9		21,959	22,694	23,429
47	10		22,360	23,095	23,830
48	11		22,760	23,495	24,230
49	12		23,160	23,895	24,630
50	13		23,560	24,295	25,030
51	14		23,960	24,695	25,430
52	15		24,360	25,095	25,830
53	16		24,760	25,495	26,230
54	17			25,895	26,630
55	18			26,295	27,030
56	19			26,695	27,430

57 Six hundred dollars shall be paid annually to each
 58 classroom teacher who has at least twenty years of
 59 teaching experience. Such payments shall be in addition
 60 to any amounts prescribed in the "1990-91 state
 61 minimum salary schedule", shall be paid in equal

62 monthly installments, and shall be deemed a part of the
63 state minimum salaries for teachers.

64 Effective the first day of July, one thousand nine
65 hundred ninety-one through the thirtieth day of June,
66 one thousand nine hundred ninety-two, each teacher
67 shall receive the amount prescribed in the "1991-92 state
68 minimum salary schedule" as set forth in this section,
69 specific additional amounts prescribed in this section or
70 article, and any county supplement in effect in a county
71 pursuant to section five-a of this article during the
72 contract year.

73 1991-92 STATE MINIMUM SALARY SCHEDULE

74	(1)	(2)	(3)	(4)	(5)	(6)	(7)
75	Years	4th	3rd	2nd		A.B.	
76	Exp.	Class	Class	Class	A.B.	+15	M.A.
77	0	14,816	15,453	15,708	16,918	17,653	18,388
78	1	15,032	15,669	15,924	17,318	18,053	18,788
79	2	15,248	15,886	16,141	17,718	18,453	19,188
80	3	15,465	16,102	16,357	18,118	18,853	19,588
81	4	15,917	16,554	16,810	18,754	19,489	20,224
82	5	16,133	16,771	17,026	19,154	19,889	20,624
83	6	16,350	16,987	17,242	19,554	20,289	21,024
84	7		17,203	17,459	19,954	20,689	21,424
85	8		17,420	17,675	20,354	21,089	21,824
86	9			17,891	20,754	21,489	22,224
87	10			18,107	21,155	21,890	22,625
88	11				21,555	22,290	23,025
89	12				21,955	22,690	23,425
90	13				22,355	23,090	23,825
91	14						24,225
92	15						24,625
93	16						25,025
94	17						
95	18						
96	19						
97					(8)	(9)	(10)
98	Years				M.A.	M.A.	Doc-
99	Exp.				+15	+30	torate
100	0				19,123	19,858	20,593

101	1	19,523	20,258	20,993
102	2	19,923	20,658	21,393
103	3	20,323	21,058	21,793
104	4	20,959	21,694	22,429
105	5	21,359	22,094	22,829
106	6	21,759	22,494	23,229
107	7	22,159	22,894	23,629
108	8	22,559	23,294	24,029
109	9	22,959	23,694	24,429
110	10	23,360	24,095	24,830
111	11	23,760	24,495	25,230
112	12	24,160	24,895	25,630
113	13	24,560	25,295	26,030
114	14	24,960	25,695	26,430
115	15	25,360	26,095	26,830
116	16	25,760	26,495	27,230
117	17		26,895	27,630
118	18		27,295	28,030
119	19		27,695	28,430

120 Six hundred dollars shall be paid annually to each
 121 classroom teacher who has at least twenty years of
 122 teaching experience. Such payments shall be in addition
 123 to any amounts prescribed in the "1991-92 state
 124 minimum salary schedule", shall be paid in equal
 125 monthly installments, and shall be deemed a part of the
 126 state minimum salaries for teachers.

127 On and after the first day of July, one thousand nine
 128 hundred ninety-two, each teacher who has met the in-
 129 field master's requirements set forth in section one of
 130 this article shall receive the amount prescribed in either
 131 column (8), (10), or (12) to which they are entitled in lieu
 132 of column (7), (9), or (11).

133 Effective the first day of July, one thousand nine
 134 hundred ninety-two and thereafter, each teacher shall
 135 receive the amount prescribed in the "1992-93 state
 136 minimum salary schedule" as set forth in this section,
 137 specific additional amounts prescribed in this section or
 138 article, and any county supplement in effect in a county
 139 pursuant to section five-a of this article during the
 140 contract year.

1992-93 STATE MINIMUM SALARY SCHEDULE							
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Years	4th	3rd	2nd		A.B.	
	Exp.	Class	Class	Class	A.B.	+15	M.A.
145	0	16,816	17,453	17,708	18,918	19,653	20,388
146	1	17,032	17,669	17,924	19,318	20,053	20,788
147	2	17,248	17,886	18,141	19,718	20,453	21,188
148	3	17,465	18,102	18,357	20,118	20,853	21,588
149	4	17,917	18,554	18,810	20,754	21,489	22,224
150	5	18,133	18,771	19,026	21,154	21,889	22,624
151	6	18,350	18,987	19,242	21,554	22,289	23,024
152	7		19,203	19,459	21,954	22,689	23,424
153	8		19,420	19,675	22,354	23,089	23,824
154	9			19,891	22,754	23,489	24,224
155	10			20,107	23,155	23,890	24,625
156	11				23,555	24,290	25,025
157	12				23,955	24,690	25,425
158	13				24,355	25,090	25,825
159	14						26,225
160	15						26,625
161	16						27,025
162	17						
163	18						
164	19						
165							(12)
166							In-
167					(10)		field
168			(8)		In-		M.A.
169			In-	(9)	field	(11)	+30 or
170	Years		field	M.A.	M.A.	M.A.	Doc-
171	Exp.		M.A.	+15	+15	+30	torate
172	0		21,388	21,123	22,123	21,858	22,858
173	1		21,788	21,523	22,523	22,258	23,258
174	2		22,188	21,923	22,923	22,658	23,658
175	3		22,588	22,323	23,323	23,058	24,058
176	4		23,224	22,959	23,959	23,694	24,694
177	5		23,624	23,359	24,359	24,094	25,094
178	6		24,024	23,759	24,759	24,494	25,494
179	7		24,424	24,159	25,159	24,894	25,894
180	8		24,824	24,559	25,559	25,294	26,294

181	9	25,224	24,959	25,959	25,694	26,694
182	10	25,625	25,360	26,360	26,095	27,095
183	11	26,025	25,760	26,760	26,495	27,495
184	12	26,425	26,160	27,160	26,895	27,895
185	13	26,825	26,560	27,560	27,295	28,295
186	14	27,225	26,960	27,960	27,695	28,695
187	15	27,625	27,360	28,360	28,095	29,095
188	16	28,025	27,760	28,760	28,495	29,495
189	17				28,895	29,895
190	18				29,295	30,295
191	19				29,695	30,695

192 Six hundred dollars shall be paid annually to each
 193 classroom teacher who has at least twenty years of
 194 teaching experience. Such payments shall be in addition
 195 to any amounts prescribed in the "1992-93 state
 196 minimum salary schedule", shall be paid in equal
 197 monthly installments, and shall be deemed a part of the
 198 state minimum salaries for teachers.

§18A-4-5. Salary equity among the counties; state salary supplement.

1 (a) For the purposes of this section, salary equity
 2 among the counties means that the salary potential of
 3 school employees employed by the various districts
 4 throughout the state does not differ by greater than ten
 5 percent between those offering the highest salaries and
 6 those offering the lowest salaries. In the case of
 7 professional educators, such difference shall be calcu-
 8 lated utilizing the average of the professional educator
 9 salary schedules, degree classifications B.A. through
 10 Doctorate and years of experience zero through twenty,
 11 in effect in the five counties offering the highest salary
 12 schedules compared to the lowest such salary schedule
 13 in effect among the fifty-five counties. In the case of
 14 school service personnel, such difference shall be
 15 calculated utilizing the average of the school service
 16 personnel salary schedules, pay grades "A" through "H"
 17 and years of experience zero through thirty, in effect in
 18 the five counties offering the highest such salary
 19 schedules compared to the lowest such salary schedule
 20 in effect among the fifty-five counties.

21 (b) To assist the state in meeting its objective of salary
22 equity among the counties, as defined in subsection (a)
23 of this section, on and after the first day of July, one
24 thousand nine hundred eighty-four, subject to available
25 state appropriations and the conditions set forth herein,
26 each teacher and school service personnel shall receive
27 a supplemental amount in addition to the amount from
28 the state minimum salary schedules provided for in this
29 article.

30 State funds for this purpose shall be paid within the
31 West Virginia public school support plan in accordance
32 with article nine-a, chapter eighteen of this code. The
33 amount allocated for salary equity shall be apportioned
34 between teachers and school service personnel in direct
35 proportion to that amount necessary to support the
36 professional salaries and service personnel salaries
37 statewide under sections four and five, article nine-a,
38 chapter eighteen of this code: *Provided*, That in making
39 such division an adequate amount of state equity funds
40 shall be reserved to finance the appropriate foundation
41 allowances and staffing incentives provided for in said
42 article nine-a.

43 Pursuant to this section, each teacher and school
44 service personnel shall receive the amount that is the
45 difference between their authorized state minimum
46 salary and ninety-five percent of the maximum salary
47 schedules prescribed in sections five-a and five-b of this
48 article, reduced by any amount provided by the county
49 as a salary supplement for teachers and school service
50 personnel on the first day of January of the fiscal year
51 immediately preceding that in which the salary equity
52 appropriation is distributed: *Provided*, That no amount
53 received pursuant to this section shall be decreased as
54 a result of any county supplement increase instituted
55 after the first day of January, one thousand nine
56 hundred eighty-four, unless and until the objective of
57 salary equity is reached: *Provided, however*, That any
58 amount received pursuant to this section may be
59 reduced proportionately based upon the amount of funds
60 appropriated for this purpose.

61 No county may reduce any salary supplement that

62 was in effect on the first day of January, one thousand
63 nine hundred eighty-four, except as permitted by
64 sections five-a and five-b of this article.

§18A-4-5a. County salary supplements for teachers.

1 County boards of education in fixing the salaries of
2 teachers shall use at least the state minimum salaries
3 established under the provisions of this article. The
4 board may establish salary schedules which shall be in
5 excess of the state minimums fixed by this article, such
6 county schedules to be uniform throughout the county
7 as to the classification of training, experience, respon-
8 sibility and other requirements.

9 Counties may fix higher salaries for teachers placed
10 in special instructional assignments, for those assigned
11 to or employed for duties other than regular instruc-
12 tional duties, and for teachers of one-teacher schools,
13 and they may provide additional compensation for any
14 teacher assigned duties in addition to the teacher's
15 regular instructional duties wherein such noninstruc-
16 tional duties are not a part of the scheduled hours of the
17 regular school day. Uniformity also shall apply to such
18 additional salary increments or compensation for all
19 persons performing like assignments and duties within
20 the county: *Provided*, That in establishing such local
21 salary schedules, no county shall reduce local funds
22 allocated for salaries in effect on the first day of
23 January, one thousand nine hundred ninety, and used in
24 supplementing the state minimum salaries as provided
25 for in this article, unless forced to do so by defeat of a
26 special levy, or a loss in assessed values or events over
27 which it has no control and for which the county board
28 has received approval from the state board prior to
29 making such reduction.

30 Counties may provide, in a uniform manner, benefits
31 for teachers which require an appropriation from local
32 funds including, but not limited to, dental, optical,
33 health and income protection insurance, vacation time
34 and retirement plans excluding the state teachers
35 retirement system. Nothing herein shall prohibit the
36 maintenance nor result in the reduction of any benefits

37 in effect on the first day of January, one thousand nine
38 hundred eighty-four, by any county board of education.

§18A-4-5b. County salary supplements for school service personnel.

1 The county board of education may establish salary
2 schedules which shall be in excess of the state min-
3 imums fixed by this article.

4 These county schedules shall be uniform throughout
5 the county with regard to any training classification,
6 experience, years of employment, responsibility, duties,
7 pupil participation, pupil enrollment, size of buildings,
8 operation of equipment or other requirements. Further,
9 uniformity shall apply to all salaries, rates of pay,
10 benefits, increments or compensation for all persons
11 regularly employed and performing like assignments
12 and duties within the county: *Provided*, That in estab-
13 lishing such local salary schedules, no county shall
14 reduce local funds allocated for salaries in effect on the
15 first day of January, one thousand nine hundred ninety,
16 and used in supplementing the state minimum salaries
17 as provided for in this article, unless forced to do so by
18 defeat of a special levy, or a loss in assessed values or
19 events over which it has no control and for which the
20 county board has received approval from the state board
21 prior to making such reduction.

22 Counties may provide, in a uniform manner, benefits
23 for service personnel which require an appropriation
24 from local funds including, but not limited to, dental,
25 optical, health and income protection insurance, vaca-
26 tion time and retirement plans excluding the state
27 teachers retirement system. Nothing herein shall
28 prohibit the maintenance nor result in the reduction of
29 any benefits in effect on the first day of January, one
30 thousand nine hundred eighty-four, by any county board
31 of education.

§18A-4-5d. 1990 appropriation for salary equity.

1 Notwithstanding any other provisions of this code to
2 the contrary, for the fiscal year beginning on the first
3 day of July, one thousand nine hundred ninety only, not

4 less than twenty-seven million four hundred thousand
5 dollars shall be appropriated and expended for salary
6 equity among the counties in addition to such amounts
7 as were expended for such purpose prior to the effective
8 date of this section: *Provided*, That for professional
9 educators each person shall receive a minimum salary
10 equity adjustment of five hundred thirty-five dollars per
11 year and that for service personnel each person shall
12 receive a minimum salary equity adjustment of twenty
13 dollars per month: *Provided, however*, That beginning on
14 the first day of July, one thousand nine hundred ninety,
15 such minimum salary equity adjustments shall be paid
16 through the appropriate salary schedules pursuant to
17 sections two and eight-a of this article: *Provided further*,
18 That the remainder of the equity money shall be
19 distributed as directed in section five of this article: *And*
20 *provided further*, That an adequate amount of such
21 funds shall be reserved to finance the appropriate
22 foundation allowances for fixed charges as provided for
23 in section six, article nine-a, chapter eighteen of this
24 code: *And provided further*, That notwithstanding the
25 provisions of said sections five and five-c of this article,
26 foundation allowances other than for fixed charges shall
27 not be financed from such funds.

§18A-4-8. Employment term and class titles of service personnel; definitions.

1 The purpose of this section is to establish an employ-
2 ment term and class titles for service personnel. The
3 employment term for service personnel shall be no less
4 than ten months, a month being defined as twenty
5 employment days: *Provided*, That the county board of
6 education may contract with all or part of these
7 personnel for a longer term. The beginning and closing
8 dates of the ten-month employment term shall not
9 exceed forty-three weeks. Service personnel employed
10 on a yearly or twelve-month basis may be employed by
11 calendar months. Whenever there is a change in job
12 assignment during the school year, the minimum pay
13 scale and any county supplement shall be applicable.

14 Service personnel employed in the same classification
15 for more than the two hundred day minimum employ-

16 ment term shall be paid for additional employment at
17 a daily rate of not less than the daily rate paid for the
18 two hundred day minimum employment term.

19 No service employee, without his agreement, shall be
20 required to report for work more than five days per
21 week and no part of any working day may be accum-
22 ulated by the employer for future work assignments,
23 unless the employee agrees thereto.

24 Should an employee whose regular work week is
25 scheduled from Monday through Friday agree to
26 perform any work assignments on a Saturday or
27 Sunday, the employee shall be paid for at least one-half
28 day of work for each such day he reports for work, and
29 if the employee works more than three and one-half
30 hours on any Saturday or Sunday, he shall be paid for
31 a least a full day of work for each such day.

32 Custodians required to work a daily work schedule
33 that is interrupted, that is, who do not work a continuous
34 period in one day, shall be paid additional compensation
35 which shall be equal to at least one eighth of their total
36 salary as provided by their state minimum salary and
37 any county pay supplement, and payable entirely from
38 county funds.

39 Upon the change in classification or upon meeting the
40 requirements of an advanced classification of or by any
41 employee, his salary shall be made to comply with the
42 requirements of this article, and to any county salary
43 schedule in excess of the minimum requirements of this
44 article, based upon his advanced classification and
45 allowable years of employment.

46 An employee's contract as provided in section five,
47 article two of this chapter shall state the appropriate
48 monthly salary the employee is to be paid, based on the
49 class title as provided in this article and any county
50 salary schedule in excess of the minimum requirements
51 of this article.

52 The column heads of the state minimum pay scale and
53 class titles, set forth in section eight-a of this article, are
54 defined as follows:

55 "Pay grade" means the monthly salary applicable to
56 class titles of service personnel.

57 "Years of employment" means the number of years
58 which an employee classified as service personnel has
59 been employed by a board of education in any position
60 prior to or subsequent to the effective date of this section
61 and including service in the armed forces of the United
62 States if the employee were employed at the time of his
63 induction. For the purpose of section eight-a of this
64 article, years of employment shall be limited to the
65 number of years shown and allowed under the state
66 minimum pay scale as set forth in section eight-a of this
67 article.

68 "Class title" means the name of the position or job held
69 by service personnel.

70 "Accountant I" means personnel employed to maintain
71 payroll records and reports and perform one or more
72 operations relating to a phase of the total payroll.

73 "Accountant II" means personnel employed to main-
74 tain accounting records and to be responsible for the
75 accounting process associated with billing, budgets,
76 purchasing and related operations.

77 "Accountant III" means personnel who are employed
78 in the county board of education office to manage and
79 supervise accounts payable and/or payroll procedures.

80 "Aide I" means those personnel selected and trained
81 for teacher-aide classifications such as monitor aide,
82 clerical aide, classroom aide or general aide.

83 "Aide II" means those personnel referred to in the
84 "Aide I" classification who have completed a training
85 program approved by the state board of education, or
86 who hold a high school diploma or have received a
87 general educational development certificate. Only
88 personnel classified in an Aide II class title shall be
89 employed as an aide in any special education program.

90 "Aide III" means those personnel referred to in the
91 "Aide I" classification who hold a high school diploma
92 or a general educational development certificate, and

93 have completed six semester hours of college credit at
94 an institution of higher education or are employed as an
95 aide in a special education program and have one year's
96 experience as an aide in special education.

97 "Aide IV" means personnel referred to in the "Aide
98 I" classification who hold a high school diploma or a
99 general educational development certificate and who
100 have completed eighteen hours of state board-approved
101 college credit at a regionally accredited institution of
102 higher education, or who have completed fifteen hours
103 of state board-approved college credit at a regionally
104 accredited institution of higher education and success-
105 fully completed an in-service training program deter-
106 mined by the state board to be the equivalent of three
107 hours of college credit.

108 "Audiovisual technician" means personnel employed
109 to perform minor maintenance on audiovisual equip-
110 ment, films, supplies and the filling of requests for
111 equipment.

112 "Auditor" means personnel employed to examine and
113 verify accounts of individual schools and to assist schools
114 and school personnel in maintaining complete and
115 accurate records of their accounts.

116 "Braille or sign language specialist" means personnel
117 employed to provide braille and/or sign language
118 assistance to students.

119 "Bus operator" means personnel employed to operate
120 school buses and other school transportation vehicles as
121 provided by the state board of education.

122 "Buyer" means personnel employed to review and
123 write specifications, negotiate purchase bids and
124 recommend purchase agreements for materials and
125 services that meet predetermined specifications at the
126 lowest available costs.

127 "Cabinetmaker" means personnel employed to con-
128 struct cabinets, tables, bookcases and other furniture.

129 "Cafeteria manager" means personnel employed to
130 direct the operation of a food services program in a

131 school, including assigning duties to employees, approv-
132 ing requisitions for supplies and repairs, keeping
133 inventories, inspecting areas to maintain high standards
134 of sanitation, preparing financial reports and keeping
135 records pertinent to food services of a school.

136 "Carpenter I" means personnel classified as a carpen-
137 ter's helper.

138 "Carpenter II" means personnel classified as a
139 journeyman carpenter.

140 "Chief mechanic" means personnel employed to be
141 responsible for directing activities which ensure that
142 student transportation or other board-owned vehicles
143 are properly and safely maintained.

144 "Clerk I" means personnel employed to perform
145 clerical tasks.

146 "Clerk II" means personnel employed to perform
147 general clerical tasks, prepare reports and tabulations
148 and operate office machines.

149 "Computer operator" means qualified personnel
150 employed to operate computers.

151 "Cook I" means personnel employed as a cook's helper.

152 "Cook II" means personnel employed to interpret
153 menus, to prepare and serve meals in a food service
154 program of a school and shall include personnel who
155 have been employed as a "Cook I" for a period of four
156 years, if such personnel have not been elevated to this
157 classification within that period of time.

158 "Cook III" means personnel employed to prepare and
159 serve meals, make reports, prepare requisitions for
160 supplies, order equipment and repairs for a food service
161 program of a school system.

162 "Crew leader" means personnel employed to organize
163 the work for a crew of maintenance employees to carry
164 out assigned projects.

165 "Custodian I" means personnel employed to keep
166 buildings clean and free of refuse.

167 "Custodian II" means personnel employed as a
168 watchman or groundsman.

169 "Custodian III" means personnel employed to keep
170 buildings clean and free of refuse, to operate the heating
171 or cooling systems and to make minor repairs.

172 "Custodian IV" means personnel employed as head
173 custodians. In addition to providing services as defined
174 in "Custodian III," their duties may include supervising
175 other custodian personnel.

176 "Director or coordinator of services" means personnel
177 not defined as professional personnel or professional
178 educators in section one, article one of this chapter, who
179 are assigned to direct a department or division.

180 "Draftsman" means personnel employed to plan,
181 design and produce detailed architectural/engineering
182 drawings.

183 "Electrician I" means personnel employed as an
184 apprentice electrician helper or who holds an electrician
185 helper license issued by the state fire marshal.

186 "Electrician II" means personnel employed as an
187 electrician journeyman or who holds a journeyman
188 electrician license issued by the state fire marshal.

189 "Electronic technician I" means personnel employed
190 at the apprentice level to repair and maintain electronic
191 equipment.

192 "Electronic technician II" means personnel employed
193 at the journeyman level to repair and maintain elec-
194 tronic equipment.

195 "Executive secretary" means personnel employed as
196 the county school superintendent's secretary or as a
197 secretary who is assigned to a position characterized by
198 significant administrative duties.

199 "Food services supervisor" means qualified personnel
200 not defined as professional personnel or professional
201 educators in section one, article one of this chapter,
202 employed to manage and supervise a county school
203 system's food service program. The duties would include

204 preparing in-service training programs for cooks and
205 food service employees, instructing personnel in the
206 areas of quantity cooking with economy and efficiency,
207 and keeping aggregate records and reports.

208 "Foremen" means skilled persons employed for
209 supervision of personnel who work in the areas of repair
210 and maintenance of school property and equipment.

211 "General maintenance" means personnel employed as
212 helpers to skilled maintenance employees and to
213 perform minor repairs to equipment and buildings of a
214 county school system.

215 "Glazier" means personnel employed to replace glass
216 or other materials in windows and doors and to do minor
217 carpentry tasks.

218 "Graphic artist" means personnel employed to prepare
219 graphic illustrations.

220 "Groundsmen" means personnel employed to perform
221 duties that relate to the appearance, repair and general
222 care of school grounds in a county school system.
223 Additional assignments may include the operation of a
224 small heating plant and routine cleaning duties in
225 buildings.

226 "Handyman" means personnel employed to perform
227 routine manual tasks in any operation of the county
228 school system.

229 "Heating and air conditioning mechanic I" means
230 personnel employed at the apprentice level to install,
231 repair and maintain heating and air conditioning plants
232 and related electrical equipment.

233 "Heating and air conditioning mechanic II" means
234 personnel employed at the journeyman level to install,
235 repair and maintain heating and air conditioning plants
236 and related electrical equipment.

237 "Heavy equipment operator" means personnel em-
238 ployed to operate heavy equipment.

239 "Inventory supervisor" means personnel who are
240 employed to supervise or maintain operations in the

- 241 receipt, storage, inventory and issuance of materials and
242 supplies.
- 243 "Key punch operator" means qualified personnel
244 employed to operate key punch machines or verifying
245 machines.
- 246 "Locksmith" means personnel employed to repair and
247 maintain locks and safes.
- 248 "Lubrication man" means personnel employed to
249 lubricate and service gasoline or diesel-powered equip-
250 ment of a county school system.
- 251 "Machinist" means personnel employed to perform
252 machinist tasks which include the ability to operate a
253 lathe, planer, shaper, threading machine and wheel
254 press. Such personnel should also have ability to work
255 from blueprints and drawings.
- 256 "Mail clerk" means personnel employed to receive,
257 sort, dispatch, deliver or otherwise handle letters,
258 parcels and other mail.
- 259 "Maintenance clerk" means personnel employed to
260 maintain and control a stocking facility to keep ade-
261 quate tools and supplies on hand for daily withdrawal
262 for all school maintenance crafts.
- 263 "Mason" means personnel employed to perform tasks
264 connected with brick and block laying and carpentry
265 tasks related to such laying.
- 266 "Mechanic" means personnel employed who can
267 independently perform skilled duties in the maintenance
268 and repair of automobiles, school buses and other
269 mechanical and mobile equipment to use in a county
270 school system.
- 271 "Mechanic assistant" means personnel employed as a
272 mechanic apprentice and helper.
- 273 "Multi-classification" means personnel employed to
274 perform tasks that involve the combination of two or
275 more class titles in this section or as created by the West
276 Virginia board of education. In such instances the
277 minimum salary scale shall be the higher pay grade of
278 the class titles involved.

279 "Office equipment repairman I" means personnel
280 employed as an office equipment repairman apprentice
281 or helper.

282 "Office equipment repairman II" means personnel
283 responsible for servicing and repairing all office
284 machines and equipment. Personnel shall be responsible
285 for parts being purchased necessary for the proper
286 operation of a program of continuous maintenance and
287 repair.

288 "Painter" means personnel employed to perform
289 duties of painting, finishing and decorating of wood,
290 metal and concrete surfaces of buildings, other struc-
291 tures, equipment, machinery and furnishings of a
292 county school system.

293 "Paraprofessional" means a person certified pursuant
294 to section two-a, article three of this chapter to perform
295 duties in a support capacity including, but not limited
296 to, facilitating in the instruction and direct or indirect
297 supervision of pupils under the direction of a principal,
298 a teacher, or another designated professional educator:
299 *Provided*, That no person employed on the effective date
300 of this section in the position of an aide may be reduced
301 in force or transferred to create a vacancy for the
302 employment of a paraprofessional.

303 "Plumber I" means personnel employed as an appren-
304 tice plumber and helper.

305 "Plumber II" means personnel employed as a journey-
306 man plumber.

307 "Printing operator" means personnel employed to
308 operate duplication equipment, and as required, to cut,
309 collate, staple, bind and shelve materials.

310 "Printing supervisor" means personnel employed to
311 supervise the operation of a print shop.

312 "Programmer" means personnel employed to design
313 and prepare programs for computer operation.

314 "Roofing/sheet metal mechanic" means personnel
315 employed to install, repair, fabricate and maintain roofs,

316 gutters, flashing and duct work for heating and
317 ventilation.

318 "Sanitation plant operator" means personnel employed
319 to operate and maintain a water or sewage treatment
320 plant to ensure the safety of the plant's effluent for
321 human consumption or environmental protection.

322 "School bus supervisor" means qualified personnel
323 employed to assist in selecting school bus operators and
324 routing and scheduling of school buses, operate a bus
325 when needed, relay instructions to bus operators, plan
326 emergency routing of buses and promoting good
327 relationships with parents, pupils, bus operators and
328 other employees.

329 "Secretary I" means personnel employed to transcribe
330 from notes or mechanical equipment, receive callers,
331 perform clerical tasks, prepare reports and operate
332 office machines.

333 "Secretary II" means personnel employed in any
334 elementary, secondary, kindergarten, nursery, special
335 education, vocational or any other school as a secretary.
336 The duties may include performing general clerical
337 tasks, transcribing from notes or stenotype or mechan-
338 ical equipment or a sound-producing machine, prepar-
339 ing reports, receiving callers and referring them to
340 proper persons, operating office machines, keeping
341 records and handling routine correspondence. There is
342 nothing implied herein that would prevent such em-
343 ployees from holding or being elevated to a higher
344 classification.

345 "Secretary III" means personnel assigned to the
346 county board of education office administrators in
347 charge of various instructional, maintenance, transpor-
348 tation, food services, operations and health departments,
349 federal programs or departments with particular
350 responsibilities of purchasing and financial control or
351 any personnel who have served in a position which meets
352 the definition of "Secretary II" or "Secretary III" herein
353 for twelve years.

354 "Supervisor of maintenance" means skilled personnel
355 not defined as professional personnel or professional

356 educators as in section one, article one of this chapter.
357 The responsibilities would include directing the upkeep
358 of buildings and shops, issuing instructions to subordi-
359 nates relating to cleaning, repairs and maintenance of
360 all structures and mechanical and electrical equipment
361 of a board of education.

362 "Supervisor of transportation" means qualified
363 personnel employed to direct school transportation
364 activities, properly and safely, and to supervise the
365 maintenance and repair of vehicles, buses, and other
366 mechanical and mobile equipment used by the county
367 school system.

368 "Switchboard operator-receptionist" means personnel
369 employed to refer incoming calls, to assume contact with
370 the public, to direct and to give instructions as neces-
371 sary, to operate switchboard equipment and to provide
372 clerical assistance.

373 "Truck driver" means personnel employed to operate
374 light or heavy duty gasoline and diesel-powered vehicles.

375 "Warehouse clerk" means personnel employed to be
376 responsible for receiving, storing, packing and shipping
377 goods.

378 "Watchman" means personnel employed to protect
379 school property against damage or theft. Additional
380 assignments may include operation of a small heating
381 plant and routine cleaning duties.

382 "Welder" means personnel employed to provide
383 acetylene or electric welding services for a school
384 system.

385 In addition to the compensation provided for in section
386 eight-a of this article, for service personnel, each service
387 employee shall, notwithstanding any provisions in this
388 code to the contrary, be entitled to all service personnel
389 employee rights, privileges and benefits provided under
390 this or any other chapter of this code without regard to
391 such employee's hours of employment or the methods or
392 sources of compensation.

393 Service personnel whose years of employment exceed
394 the number of years shown and provided for under the
395 state minimum pay scale set forth in section eight-a of
396 this article, may not be paid less than the amount shown
397 for the maximum years of employment shown and
398 provided for in the classification in which he is
399 employed.

400 The county boards shall review each service personnel
401 employee job classification annually and shall reclassify
402 all service employees as required by such job classifi-
403 cations. The state superintendent of schools is hereby
404 authorized to withhold state funds appropriated pursu-
405 ant to this article for salaries for service personnel who
406 are improperly classified by such county boards.
407 Further, he shall order county boards to correct
408 immediately any improper classification matter and
409 with the assistance of the attorney general shall take any
410 legal action necessary against any county board to
411 enforce such order.

412 The state board of education is authorized to establish
413 other class titles of service personnel positions and jobs
414 not listed in this section. The state board of education
415 is further authorized to provide appropriate pay grades
416 for such positions and jobs but pay shall be established
417 within the minimum salary scale in section eight-a of
418 this article.

419 No service employee, without his written consent, may
420 be reclassified by class title, nor may a service employee,
421 without his written consent, be relegated to any
422 condition of employment which would result in a
423 reduction of his salary, rate of pay, compensation or
424 benefits earned during the current fiscal year or which
425 would result in a reduction of his salary, rate of pay,
426 compensation or benefits for which he would qualify by
427 continuing in the same job position and classification
428 held during said fiscal year and subsequent years.

429 Any board failing to comply with the provisions of this
430 article may be compelled to do so by mandamus, and
431 shall be liable to any party prevailing against the board
432 for court costs and his reasonable attorney fee, as
433 determined and established by the court.

§18A-4-8a. Service personnel minimum monthly salaries.

1 STATE MINIMUM PAY SCALE PAY GRADE									
2	3								
4	5								
6	7	A	B	C	D	E	F	G	H
7	0	933	953	993	1,043	1,093	1,153	1,183	1,253
8	1	955	975	1,015	1,065	1,115	1,175	1,205	1,275
9	2	977	997	1,037	1,087	1,137	1,197	1,227	1,297
10	3	999	1,019	1,059	1,109	1,159	1,219	1,249	1,319
11	4	1,021	1,041	1,081	1,131	1,181	1,241	1,271	1,341
12	5	1,043	1,063	1,103	1,153	1,203	1,263	1,293	1,363
13	6	1,065	1,085	1,125	1,175	1,225	1,285	1,315	1,385
14	7	1,087	1,107	1,147	1,197	1,247	1,307	1,337	1,407
15	8	1,109	1,129	1,169	1,219	1,269	1,329	1,359	1,429
16	9	1,131	1,151	1,191	1,241	1,291	1,351	1,381	1,451
17	10	1,153	1,173	1,213	1,263	1,313	1,373	1,403	1,473
18	11	1,175	1,195	1,235	1,285	1,335	1,395	1,425	1,495
19	12	1,197	1,217	1,257	1,307	1,357	1,417	1,447	1,517
20	13	1,219	1,239	1,279	1,329	1,379	1,439	1,469	1,539
21	14	1,241	1,261	1,301	1,351	1,401	1,461	1,491	1,561
22	15	1,263	1,283	1,323	1,373	1,423	1,483	1,513	1,583
23	16	1,285	1,305	1,345	1,395	1,445	1,505	1,535	1,605
24	17	1,307	1,327	1,367	1,417	1,467	1,527	1,557	1,627
25	18	1,329	1,349	1,389	1,439	1,489	1,549	1,579	1,649
26	19	1,351	1,371	1,411	1,461	1,511	1,571	1,601	1,671
27	20	1,373	1,393	1,433	1,483	1,533	1,593	1,623	1,693
28	21	1,395	1,415	1,455	1,505	1,555	1,615	1,645	1,715
29	22	1,417	1,437	1,477	1,527	1,577	1,637	1,667	1,737
30	23	1,439	1,459	1,499	1,549	1,599	1,659	1,689	1,759
31	24	1,461	1,481	1,521	1,571	1,621	1,681	1,711	1,781
32	25	1,483	1,503	1,543	1,593	1,643	1,703	1,733	1,803
33	26	1,505	1,525	1,565	1,615	1,665	1,725	1,755	1,825
34	27	1,527	1,547	1,587	1,637	1,687	1,747	1,777	1,847
35	28	1,549	1,569	1,609	1,659	1,709	1,769	1,799	1,869
36	29	1,571	1,591	1,631	1,681	1,731	1,791	1,821	1,891
37	30	1,593	1,613	1,653	1,703	1,753	1,813	1,843	1,913

38	CLASS TITLE	PAY GRADE
39	Accountant I	D
40	Accountant II.....	E
41	Accountant III.....	F
42	Aide I	A
43	Aide II	B
44	Aide III	C
45	Aide IV	D
46	Audiovisual Technician.....	C
47	Auditor	G
48	Braille or Sign Language Specialist.....	E
49	Bus Operator	D
50	Buyer	F
51	Cabinetmaker	G
52	Cafeteria Manager.....	D
53	Carpenter I.....	E
54	Carpenter II.....	F
55	Chief Mechanic	G
56	Clerk I	B
57	Clerk II	C
58	Computer Operator	E
59	Cook I.....	A
60	Cook II.....	B
61	Cook III	C
62	Crew Leader.....	F
63	Custodian I.....	A
64	Custodian II	B
65	Custodian III	C
66	Custodian IV	D
67	Director or Coordinator of Services.....	H
68	Draftsman	D
69	Electrician I.....	F
70	Electrician II.....	G
71	Electronic Technician I	F
72	Electronic Technician II.....	G
73	Executive Secretary	G
74	Food Services Supervisor.....	G
75	Foreman	G
76	General Maintenance.....	C
77	Glazier	D
78	Graphic Artist.....	D
79	Groundsman.....	B

80	Handyman	B
81	Heating and Air Conditioning Mechanic I	E
82	Heating and Air Conditioning Mechanic II	G
83	Heavy Equipment Operator	E
84	Inventory Supervisor	D
85	Key Punch Operator	B
86	Locksmith	G
87	Lubrication Man	C
88	Machinist	F
89	Mail Clerk	D
90	Maintenance Clerk	C
91	Mason	G
92	Mechanic	F
93	Mechanic Assistant	E
94	Office Equipment Repairman I	F
95	Office Equipment Repairman II	G
96	Painter	E
97	Paraprofessional	F
98	Plumber I	E
99	Plumber II	G
100	Printing Operator	B
101	Printing Supervisor	D
102	Programmer	H
103	Roofing/Sheet Metal Mechanic	F
104	Sanitation Plant Operator	F
105	School Bus Supervisor	E
106	Secretary I	D
107	Secretary II	E
108	Secretary III	F
109	Supervisor of Maintenance	H
110	Supervisor of Transportation	H
111	Switchboard Operator-Receptionist	D
112	Truck Driver	D
113	Warehouse Clerk	C
114	Watchman	B
115	Welder	F

116 On and after the first day of July, one thousand nine
117 hundred ninety, the minimum monthly pay for each
118 service employee whose employment is for a period of
119 more than three and one-half hours day shall be at least
120 the amounts indicated in the "state minimum pay scale
121 pay grade" as set forth in this section, and the minimum

122 monthly pay for each service employee whose employ-
123 ment is for a period of three and one-half hours or less
124 a day shall be at least one half the amount indicated in
125 the "state minimum pay scale pay grade" set forth in
126 this section, and an additional ten dollars per month
127 shall be added to the minimum monthly pay if the
128 service employee holds a high school diploma or its
129 equivalent.

130 Any service employee required to work on any legal
131 school holiday shall be paid at a rate one and one-half
132 times such employee's usual hourly rate.

133 Any full-time service personnel required to work in
134 excess of their normal working day during any week
135 which contains a school holiday for which they are paid
136 shall be paid for such additional hours or fraction
137 thereof at a rate of one and one-half times their usual
138 hourly rate and paid entirely from county board of
139 education funds.

140 No service employee shall have his or her daily work
141 schedule changed during the school year without such
142 employee's written consent, and such employee's re-
143 quired daily work hours shall not be changed to prevent
144 the payment of time and one-half wages or the employ-
145 ment of another employee.

146 The minimum pay for extra-duty assignments as
147 defined in section eight-b of this article, that are beyond
148 the normal working day, shall be no less than one-
149 seventh of the employee's daily total salary for each hour
150 the employee is involved in performing the assignment
151 and paid entirely from local funds. The salary for any
152 fraction of an hour the employee is involved in perform-
153 ing the assignment shall be pro-rated accordingly. When
154 performing extra-duty assignments, employees who are
155 regularly employed on a one-half day salary basis shall
156 receive the same hourly extra-duty assignment pay
157 computed as though such an employee were employed
158 on a full-day salary basis.

**§18A-4-9. Payment of teachers and other employees;
withholdings.**

1 Teachers and all other employees whose salaries or

2 wages are payable out of the school current fund shall
 3 be paid for their services by orders duly signed by the
 4 president and secretary of the board in accordance with
 5 the following provisions: Notwithstanding any other
 6 provisions of this chapter and chapter eighteen, the
 7 number of pays to be made during the school year to
 8 the various classes of employees shall be determined by
 9 the board: *Provided*, That the sum of such pays for any
 10 employee does not exceed the equivalent of an annual
 11 salary based upon twelve calendar months. In the event
 12 a teacher or other employee is not paid the full salary
 13 or wage earned in the fiscal year in which the work is
 14 performed, the unpaid amount may be paid during July
 15 and August of the following fiscal year. Adjustments for
 16 time loss due to absence may be made in the next pay-
 17 check following such time loss.

18 The county board may withhold the pay of any teacher
 19 or employee until he has made the reports required by
 20 the board or the state superintendent.

21 Accompanying the pay of each employee shall be an
 22 accounting of gross earnings, all withholdings and the
 23 dollar value of all benefits provided by the state on
 24 behalf of the employee.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1g. Rate incentives for utility investment in qualified clean coal and clean air control technology facilities.

§24-2-11b. Continuing prudence reviews.

§24-2-1g. Rate incentives for utility investment in qualified clean coal and clean air control technology facilities.

1 (a) The Legislature hereby finds and declares that the
 2 state of West Virginia has been a major supplier of coal
 3 to the electric power industry both within and outside
 4 of the state of West Virginia; the congress of the United
 5 States is currently considering legislation to limit the
 6 emissions of oxides of sulfur and nitrogen from coal

7 fired electric generating plants; the continued use of
8 coal for generating electrical energy can be accom-
9 plished in an environmentally acceptable manner
10 through the use of current state of the art and emerging
11 clean coal and clean air technology; it is in the interest
12 of the economy of West Virginia to encourage the use
13 of such technologies for the production of electricity and
14 steam; revenues from the continued production of coal
15 are important to the State of West Virginia and are
16 necessary for the funding of education and other vital
17 state services; the construction of electric utility
18 generation and transmission facilities may continue for
19 many years following the finalization of plans for such
20 facilities; and the prudence of the construction of such
21 facilities may be affected by changing conditions during
22 the extended interval between finalization of plans and
23 completion of construction.

24 (b) Upon a finding that it is in the public interest of
25 this state, as provided in section one, article one of this
26 chapter, the public service commission shall authorize
27 rate-making allowances for electric utility investment in
28 clean coal and clean air technology facilities or electric
29 utility purchases of power from clean coal technology
30 facilities located in West Virginia which shall provide
31 an incentive to encourage investments in such
32 technology.

33 (c) For purposes of this section a qualified clean coal
34 or clean air technology facility must use coal produced
35 in West Virginia for no less than seventy-five percent
36 of its fuel requirements.

37 (d) The public service commission shall determine, at
38 such time and in such proceeding, form and manner as
39 is considered appropriate by the commission, the extent
40 to which any electric utility investment or purchases of
41 power qualify for incentive rate-making pursuant to this
42 section.

§24-2-11b. Continuing prudence reviews.

1 (a) If, in granting a certificate of convenience and
2 necessity for the construction of an electric utility
3 generating plant, a facility to comply with the federal

4 Clean Air Act, as amended, or transmission line, the
5 commission determines that the completion date for
6 such plant or line is more than one year from the date
7 of the order granting the certificate, the commission
8 may require that such construction project or projects
9 be subject to a continuing prudence review pursuant to
10 this section.

11 (b) If the commission determines that continuation of
12 a certificate subject to a continuing prudence review is
13 not warranted or that the certificate should be amended,
14 it may rescind or modify its authorization for
15 construction.

16 (c) The commission shall promulgate such rules and
17 regulations as it determines are necessary for the
18 administration of this section. The commission shall
19 specify, either by rule or for a specific certificated
20 project, the frequency of each prudence review, the rate-
21 making treatment to be afforded partially completed
22 projects, and such other terms and conditions as it
23 determines are reasonable.

CHAPTER 6

(H. B. 309—By Delegate Berry)

[Passed August 25, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers, duties and responsibilities of the farm management commission generally; and authorizing the commission to convey certain real property to or from any other entity in order to facilitate the construction of a regional jail or correctional facility by the regional jail and correctional facilities authority or the state building commission.

Be it enacted by the Legislature of West Virginia:

That section five, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12A. FARM MANAGEMENT COMMISSION.

§19-12A-5. Powers, duties and responsibilities of commission.

1 (a) On or before the first day of July, one thousand
2 nine hundred ninety, the commission shall meet and
3 confer with respect to the development of a management
4 plan to determine the optimum use or disposition of all
5 institutional farms, at which time the farm management
6 director shall provide the commission with a complete
7 inventory of all institutional farms, and such informa-
8 tion relating to easements, mineral rights, appurte-
9 nances, farm equipment, agricultural products, live-
10 stock, inventories and farm facilities as may be neces-
11 sary to develop such management plan. The commission
12 shall complete and provide to the governor a manage-
13 ment plan, which plan shall set forth the objectives of
14 the commission with respect to institutional farms, the
15 criteria by which the commission shall determine the
16 optimum use or disposition of such property, and
17 determinations as to whether each institutional farm
18 shall be used in production, sold, or leased, in whole or
19 in part. Prior to the adoption of any plan, the commis-
20 sion shall consult with the secretaries of the various
21 departments of state government and shall request from
22 such secretaries suggestions for land use and resource
23 development on farm commission lands. On or before
24 the first day of December, one thousand nine hundred
25 ninety, such management plan shall be presented to the
26 Legislature, by providing a copy to the president of the
27 Senate and the speaker of the House of Delegates. The
28 commission may confer with any other agency or
29 individual in implementing and adjusting its manage-
30 ment plan. The management plan established pursuant
31 to this subsection may be amended, from time to time,
32 as may be necessary.

33 (b) The commission shall manage its institutional
34 farms, equipment and other property in order to most
35 efficiently produce food products for state institutions
36 and shall implement the intent of the Legislature as set

37 forth by this article. From the total amount of food, milk
38 and other commodities produced on institutional farms,
39 the commission shall sell, at prevailing wholesale prices,
40 and each of the institutions under the control of the
41 division of health and the division of corrections shall
42 purchase, a proportionate amount of these products
43 based on the dietary needs of each institution.

44 (c) If requested by the commissioner of corrections,
45 the commission may authorize the division of corrections
46 to operate a farm or other enterprise using inmates as
47 labor on such lands. The commissioner of corrections
48 shall be responsible for the selection, direction and
49 supervision of the inmates and shall assign the work to
50 be performed by inmates.

51 (d) The commission is hereby authorized and empow-
52 ered to:

53 (1) Lease to public or private parties, for purposes
54 including agricultural production or experimentation,
55 public necessity, or other purposes permitted by the
56 management plan, any land, easements, equipment, or
57 other property, except that property may not be leased
58 for any use in any manner that would render the land
59 toxic for agricultural use, nor may toxic or hazardous
60 materials as identified by the commissioner of agricul-
61 ture be used or stored upon such property unless all
62 applicable state and federal permits necessary are
63 obtained. Any lease for an annual consideration of one
64 thousand dollars or more shall be by sealed bid auction
65 and the commission shall give notice of such auction by
66 publication thereof as a Class II-0 legal advertisement
67 in compliance with the provisions of article three,
68 chapter fifty-nine of this code, and the publication area
69 for such publication shall be the county in which the
70 property to be leased is located;

71 (2) Transfer to the public land corporation land
72 designated in its management plan as land to be
73 disposed of, which land shall be sold, exchanged or
74 otherwise transferred pursuant to sections four and five,
75 article one-a, chapter twenty of this code: *Provided*, That
76 the net proceeds of the sale of farm commission lands

77 shall be deposited in the general revenue fund of the
78 state: *Provided, however,* That no sale may be concluded
79 until on or after the fifteenth day of March, one
80 thousand nine hundred ninety-one, except with respect
81 to: (A) Properties located at institutions closed on or
82 before the effective date of this section, the tenth day
83 of March, one thousand nine hundred ninety; or (B)
84 properties conveyed to or from the farm management
85 commission to or from any other entity in order to
86 facilitate the construction of a regional jail or correc-
87 tional facility by the regional jail and correctional
88 facilities authority or the state building commission,
89 with the decision to execute any such conveyance being
90 solely within the discretion of, and at the direction of,
91 the regional jail and correctional facilities authority;

92 (3) Develop lands to which it has title for the public
93 use including forestation, recreation, wildlife, stock
94 grazing, agricultural production, rehabilitation and/or
95 other conservation activities and may contract or lease
96 for the proper development of timber, oil, gas or mineral
97 resources, including coal by underground mining or by
98 surface mining where reclamation as required by
99 specifications of the division of energy will increase the
100 beneficial use of such property. Any such contract or
101 lease shall be by sealed bid auction as provided for in
102 subdivision (1) above;

103 (4) Exercise all other powers and duties necessary to
104 effectuate the purposes of this article.

105 (e) Notwithstanding the provisions of subsection (d)
106 herein, no timberland may be leased, sold, exchanged or
107 otherwise disposed of unless the division of forestry of
108 the department of commerce, labor and environmental
109 resources certifies that there is no commercially salable
110 timber on the timberland, an inventory is provided, an
111 appraisal of the timber is provided, and the sale, lease,
112 exchange or other disposition is accomplished by the
113 sealed bid auction procedure provided above in subdi-
114 visions (1) or (2), as applicable.

115 (f) The commission shall promulgate, pursuant to
116 chapter twenty-nine-a of this code, rules and regulations
117 relating to the powers and duties of the commission as
118 enumerated in this section.

CHAPTER 7

(Com. Sub. for S. B. 5—By Senators Burdette, Mr. President, and Harman,
By Request of the Executive)

[Passed August 26, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the "West Virginia Public Employees Insurance Act"; setting forth a short title and legislative intent; providing definitions; continuing public employees insurance agency; composition of agency; creating the position of director; appointment, qualifications, duties, and responsibilities of director; employees of agency to be included in classified service; establishing expiration date of agency; creating public employees insurance agency finance board; providing for appointment, qualifications, terms and removal of members, compensation and expenses, and expiration date of finance board; director to establish premiums with legislative approval upon termination of the board; establishing powers and duties of finance board; development of initial and future annual financial plans; approval of plans required by actuary; board required to amend plan if in actuary's opinion plan will generate insufficient revenues; exempting financial plans from rule-making requirements; employees to be notified of changes in types and levels of costs and benefits; quarterly review of plans and modifications to plan; creating public employees insurance agency advisory board; composition, qualifications, appointment and terms of members; powers and duties of advisory board; reimbursement of expenses of advisory board members; authorizing and requiring director to establish group hospital and surgical insurance, group major medical insurance, group

prescription drug insurance, and group life and accidental death insurance plans; requiring the director to make optional group life and accidental death insurance available; rating of employees for claims experience purposes; establishing conditions of insurance program, including reasonable and customary expenses, coordination of benefits, encouraging "wellness" programs and activities; authorizing contracting authority for various group insurance plans; authorizing contracting authority for various group insurance plans for retired employees, their spouses and dependents; statement of benefits to employees; prohibition with respect to fraud or misrepresentations; civil penalties; withholding of benefits; extended insurance coverage after termination or retirement; requiring director to establish program for favorable federal income tax treatment; optional dental, optical, disability and prepaid retirement plan to be made available by director to employees, with employee to bear full premium cost thereof with separate funds established and required; preferred provider plan or system to be established for reduction of costs, with director authorized to renegotiate contracts in respect thereof; noncoverage of preexisting conditions of injury, sickness, pregnancy or other health condition within specified period prior to effective coverage with exceptions; payment of costs by employer; agency to deposit moneys in a special fund; authorization to accept gifts, grants and matching funds; payment by employers of proportionate share of administrative costs; prohibition against direct or indirect benefitting from contracts by specified officials, members, or employees, with criminal penalties and exception for certain contracts; participation in insurance program not mandatory, with exceptions; members of Legislature eligible for coverage upon payment of full coverage costs; director to promulgate rules and regulations for administration of article; entitlement of certain retirees and employees to continue coverage; reserve fund for budget excess; required quarterly report by finance board and director to joint committee on government and finance; and severability section.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

- §5-16-1. Short title; legislative intent.
- §5-16-2. Definitions.
- §5-16-3. Public employees insurance agency continued; appointment, qualification, compensation, and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.
- §5-16-4. Public employees insurance agency finance board created; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.
- §5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.
- §5-16-6. Creation and composition of advisory board; powers and duties of board generally; expenses.
- §5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules and regulations for administration of plans; what plans may provide; optional plan; separate rating for claims experience purposes.
- §5-16-8. Conditions of insurance program.
- §5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; limitation; awarding of contract; reinsurance; certificates for covered employees; discontinuance of contracts.
- §5-16-10. Contract provisions for group hospital and surgical, group major medical, group prescription drug and group life and accidental death insurance for retired employees, their spouses and dependents.
- §5-16-11. To whom benefits paid.
- §5-16-12. Misrepresentation by employee or provider; penalty.
- §5-16-13. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; increased retirement benefits for retired employees with accrued annual and sick leave; additional eligible retired employees; option for health insurance coverage without life insurance coverage made available to retirees; health insurance for surviving dependents of deceased employees.

- §5-16-14. Program qualifying for favorable federal income tax treatment.
- §5-16-15. Optional dental, optical, disability and prepaid retirement plan.
- §5-16-16. Preferred provider plan.
- §5-16-17. Preexisting conditions not covered; defined.
- §5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of treasurer with respect thereto.
- §5-16-19. Authorization to take advantage of acts of congress, accept gifts, grants and matching funds.
- §5-16-20. Expense fund.
- §5-16-21. No member or employee of public employees insurance agency shall gain directly or indirectly from any contract or contracts provided for hereunder; criminal penalties.
- §5-16-22. Permissive participation; exemptions.
- §5-16-23. Members of Legislature may be covered, if cost of the entire coverage is paid by such members.
- §5-16-24. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.
- §5-16-25. Reserve fund.
- §5-16-26. Quarterly report.
- §5-16-27. Severability.

§5-16-1. Short title; legislative intent.

1 The short title by which this article may be referred
2 to is "West Virginia Public Employees Insurance Act"
3 and it is the express intent of the Legislature to
4 encourage and promote a uniform partnership relation
5 between all employers and employees participating in
6 the insurance plan or plans formulated under the
7 provisions of this article and constituting the insurance
8 program, and to hereby declare such insurance program
9 to be for a public purpose.

§5-16-2. Definitions.

1 The following words and phrases as used in this
2 article, unless a different meaning is clearly indicated
3 by the context, shall have the following meanings:

4 (1) "Advisory board" means the public employees
5 insurance agency advisory board created by this article.

6 (2) "Agency" means the public employees insurance
7 agency created by this article.

8 (3) "Director" means the director of the public
9 employees insurance agency created by this article.

10 (4) "Employee" means any person, including elected
11 officers, who works regularly full time in the service of
12 the state of West Virginia and, for the purpose of this
13 article only, the term "employee" also means any person,
14 including elected officers, who works regularly full time
15 in the service of a county board of education; a county,
16 city or town in the state; any separate corporation or
17 instrumentality established by one or more counties,
18 cities or towns, as permitted by law; any corporation or
19 instrumentality supported in most part by counties,
20 cities or towns; any public corporation charged by law
21 with the performance of a governmental function and
22 whose jurisdiction is coextensive with one or more
23 counties, cities or towns; any comprehensive community
24 mental health center or comprehensive mental retarda-
25 tion facility established, operated or licensed by the
26 secretary of health and human resources pursuant to
27 section one, article two-a, chapter twenty-seven of this
28 code, and which is supported in part by state, county or
29 municipal funds; any person who works regularly full
30 time in the service of the university of West Virginia
31 board of trustees or the board of directors of the state
32 college system; and any person who works regularly full
33 time in the service of a combined city-county health
34 department created pursuant to article two, chapter
35 sixteen of this code. Any matters of doubt as to who is
36 an employee within the meaning of this article shall be
37 decided by the director.

38 (5) "Employer" means the state of West Virginia, its
39 boards, agencies, commissions, departments, institutions
40 or spending units; a county board of education; a county,
41 city or town in the state; any separate corporation or
42 instrumentality established by one or more counties,
43 cities or towns, as permitted by law; any corporation or
44 instrumentality supported in most part by counties,
45 cities or towns; any public corporation charged by law
46 with the performance of a governmental function and
47 whose jurisdiction is coextensive with one or more
48 counties, cities or towns; any comprehensive community
49 mental health center or comprehensive mental retarda-
50 tion facility established, operated or licensed by the
51 secretary of health and human resources pursuant to

52 section one, article two-a, chapter twenty-seven of this
53 code, and which is supported in part by state, county or
54 municipal funds; and a combined city-county health
55 department created pursuant to article two, chapter
56 sixteen of this code. Any matters of doubt as to who is
57 an "employer" within the meaning of this article shall
58 be decided by the director. The term "employer" shall
59 not include within its meaning the national guard.

60 (6) "Finance board" means the public employees
61 insurance agency finance board created by this article.

62 (7) "Retired employee" shall mean an employee of the
63 state who retired after the twenty-ninth day of April,
64 one thousand nine hundred seventy-one, and an em-
65 ployee of the university of West Virginia board of
66 trustees or the board of directors of the state college
67 system or a county board of education who retires on or
68 after the twenty-first day of April, one thousand nine
69 hundred seventy-two, and all additional eligible em-
70 ployees who retire on or after the effective date of this
71 article and meet the minimum eligibility requirements
72 for their respective state retirement system: *Provided,*
73 That for the purposes of this article such employees who
74 are not covered by a state retirement system shall, in
75 the case of education employees, meet the minimum
76 eligibility requirements of the state teachers retirement
77 system, and in all other cases, meet the minimum
78 eligibility requirements of the public employees retire-
79 ment system.

§5-16-3. Public employees insurance agency continued; appointment, qualification, compensation, and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.

1 (a) The public employees insurance agency, heretofore
2 created, is continued, and shall consist of the director,
3 the finance board, the advisory board and such em-
4 ployees as may be authorized by law. The director shall
5 be appointed by the governor, with the advice and
6 consent of the Senate. He or she shall serve at the will

7 and pleasure of the governor, unless earlier removed
8 from office for cause as provided by law. The director
9 shall have at least three years experience in health
10 insurance administration prior to appointment as
11 director. The director shall receive an annual salary
12 established by the governor not to exceed fifty-five
13 thousand dollars and actual expenses incurred in the
14 performance of official business. The director shall
15 employ such administrative, technical and clerical
16 employees as shall be required for the proper adminis-
17 tration of the insurance programs herein provided. The
18 director shall perform such duties as are required of
19 him or her under the provisions of this article and shall
20 be the chief administrative officer of the public
21 employees insurance agency.

22 (b) All positions in the agency, except for the director
23 and his or her personal secretary, shall be included in
24 the classified service of the civil service system pursuant
25 to article six, chapter twenty-nine of this code. Any
26 person required to be included in the classified service
27 by the provisions of this subsection who was employed
28 in any of the positions included herein on or after the
29 effective date of this article shall not be required to take
30 and pass qualifying or competitive examinations upon
31 or as a condition to being added to the classified service:
32 *Provided*, That no person required to be included in the
33 classified service by the provisions of this subsection
34 who was employed in any of the positions included
35 herein as of the effective date of this section shall be
36 thereafter severed, removed or terminated in his or her
37 employment prior to his or her entry into the classified
38 service except for cause as if such person had been in
39 the classified service when severed, removed or
40 terminated.

41 (c) The director shall be responsible for the adminis-
42 tration and management of the public employees
43 insurance agency as provided for in this article and in
44 connection therewith shall have the power and authority
45 to make all rules and regulations necessary to effectuate
46 the provisions of this article. Nothing in sections four or
47 five of this article shall limit the director's ability to

48 manage on a day-to-day basis the group insurance plans
49 required or authorized by this article, including, but not
50 limited to, administrative contracting, studies, analyses
51 and audits, eligibility determinations, utilization
52 management provisions and incentives, provider nego-
53 tiations, provider contracting and payment, designation
54 of covered and noncovered services, offering of addi-
55 tional coverage options or cost containment incentives,
56 pursuit of coordination of benefits and subrogation, or
57 any other actions which would serve to implement the
58 plan or plans designed by the finance board.

59 (d) The public employees insurance agency shall
60 terminate in the manner provided in section four, article
61 ten, chapter four of this code, on the first day of July,
62 one thousand nine hundred ninety-three, unless ex-
63 tended by legislation enacted before the termination
64 date.

**§5-16-4. Public employees insurance agency finance
board created; qualifications, terms and
removal of members; quorum; compensation
and expenses; termination date.**

1 (a) There is hereby created the public employees
2 insurance agency finance board, which shall consist of
3 the director and four members appointed by the
4 governor with the advice and consent of the Senate for
5 terms of four years and until the appointment of their
6 successors: *Provided*, That the members initially
7 appointed by the governor shall be appointed not later
8 than the tenth day of September, one thousand nine
9 hundred ninety, and may serve and may perform the
10 duties required by this article until such time as the
11 Senate may convene to give its advice and consent. Of
12 the members first appointed, one shall be appointed for
13 a term of one year, one for two years, one for three years,
14 and one for four years. Members may be reappointed for
15 successive terms. No more than three members (includ-
16 ing the director) may be of the same political party.

17 (b) Of the four members appointed by the governor,
18 one member shall represent the interests of education
19 employees, one shall represent the interests of public

20 employees and two shall be selected from the public at
21 large. The two members appointed from the public shall
22 each have experience in the financing, development or
23 management of employee benefit programs. No member
24 may be removed from office by the governor except for
25 official misconduct, incompetence, neglect of duty,
26 neglect of fiduciary duty or other specific responsibility
27 imposed by this article, or gross immorality.

28 (c) The director shall serve as chairperson of the
29 finance board, which shall meet at such time and place
30 as shall be specified by the call of the director or upon
31 the written request to the director of at least two
32 members. Notice of each meeting shall be given in
33 writing to each member by the director at least three
34 days in advance of the meeting. Three members shall
35 constitute a quorum. Members may be compensated
36 fifty dollars for each day or portion of a day actually
37 spent in the performance of their duties and may be
38 reimbursed for reasonable and necessary expenses
39 actually incurred in the performance of their duties.

40 (d) The finance board shall terminate on the thirtieth
41 day of June, one thousand nine hundred ninety-three,
42 unless extended by legislation enacted before the
43 termination date.

44 (e) Upon termination of the board and notwithstand-
45 ing any provisions in this article to the contrary, the
46 director is authorized to assess monthly employee
47 premium contributions and to change the types and
48 levels of costs to employees only in accordance with this
49 subsection. Any assessments or changes in costs imposed
50 pursuant to this subsection shall be implemented by
51 rules and regulations of the director promulgated
52 pursuant to the provisions of chapter twenty-nine-a of
53 this code. Any employee assessments or costs authorized
54 by the finance board shall remain in effect until
55 amended by rule or regulation of the director promul-
56 gated pursuant to this subsection.

**§5-16-5. Purpose, powers and duties of the finance board;
initial financial plan; financial plan for fol-
lowing year; and annual financial plans.**

1 (a) The purpose of the finance board created by this

2 article is to bring fiscal stability to the public employees
3 insurance agency through development of an annual
4 financial plan designed to meet the agency's estimated
5 total financial requirements, taking into account all
6 revenues projected to be made available to the agency,
7 and apportioning necessary costs equitably among
8 participating employers, employees and retired em-
9 ployees and providers of health care services.

10 (b) The finance board shall retain the services of an
11 impartial, professional actuary, with demonstrated
12 experience in analysis of large group health insurance
13 plans, to estimate the total financial requirements of the
14 public employees insurance agency for each fiscal year
15 and to review and render written professional opinions
16 as to financial plans proposed by the finance board. The
17 finance board shall also employ the actuary to develop
18 alternative financing options and to perform such other
19 services as may be requested by the finance board. All
20 reasonable fees and expenses for actuarial services shall
21 be paid by the public employees insurance agency. Any
22 financial plan or modifications to a financial plan
23 approved or proposed by the finance board pursuant to
24 this section shall be submitted to and reviewed by the
25 actuary, and may not be finally approved and submitted
26 to the governor and to the Legislature without the
27 actuary's written professional opinion that the plan may
28 be reasonably expected to generate sufficient revenues
29 to meet all estimated program and administrative costs
30 of the agency, excluding incurred but unreported
31 claims, for the fiscal year for which the plan is proposed.
32 The actuary's opinion on the initial plan required by
33 subsection (d) of this section shall allow for a target of
34 forty-five days of accounts payable to be carried over
35 into the next fiscal year. The actuary's opinion on the
36 financial plan for fiscal year one thousand nine hundred
37 ninety-two shall allow for between thirty and forty-five
38 days of accounts payable to be carried over into the next
39 fiscal year. The actuary's opinion on the financial plan
40 for any succeeding fiscal year shall allow for no more
41 than thirty days of accounts payable to be carried over
42 into the next fiscal year. The actuary's opinion for any

43 fiscal year shall not include a requirement for establish-
44 ment of a reserve fund.

45 (c) All financial plans required by this section shall
46 include the design of a benefit plan or plans. All
47 financial plans shall establish:

48 (1) Maximum levels of reimbursement which the
49 public employees insurance agency makes to categories
50 of health care providers;

51 (2) Any necessary cost containment measures for
52 implementation by the director;

53 (3) The levels of premium costs to participating
54 employers; and

55 (4) The types and levels of cost to participating
56 employees and retired employees.

57 The financial plans may provide for different levels
58 of costs based on the insureds' ability to pay. The
59 financial plans may also include optional alternative
60 benefit plans with alternative types and levels of cost.
61 The finance board may develop policies which encour-
62 age the use of West Virginia health care providers.

63 (d) *Initial plan.*—The director shall convene the first
64 meeting of the finance board no later than the fifteenth
65 day of September, one thousand nine hundred ninety.
66 For presentation by the director at the first meeting, the
67 governor shall prepare an estimate of the total amount
68 of general and special revenues which the state has or
69 will have available to fund the public employees
70 insurance agency and its programs for the fiscal year
71 ending on the thirtieth day of June, one thousand nine
72 hundred ninety-one.

73 The finance board shall prepare, no later than the
74 tenth day of November, one thousand nine hundred
75 ninety, a proposed financial plan designed to generate
76 revenues sufficient to meet all program and administra-
77 tive costs of the public employees insurance agency
78 which have already been incurred but are unpaid, or
79 which the actuary estimates will be incurred and paid
80 during the remainder of fiscal year one thousand nine

81 hundred ninety-one, excluding incurred but unreported
82 claims. The finance board shall establish in the proposed
83 financial plan a target of forty-five days of accounts
84 payable which may be carried over into the next fiscal
85 year.

86 The finance board shall request its actuary to review
87 the proposed financial plan and to render a written
88 professional opinion stating whether the plan may be
89 reasonably expected to generate sufficient revenues to
90 meet all estimated program and administrative costs of
91 the public employees insurance agency for the fiscal
92 year. The actuary's report shall explain the basis of his
93 or her opinion. If the actuary concludes that the
94 proposed financial plan will not generate sufficient
95 revenues to meet all anticipated costs, then the finance
96 board shall make necessary modifications to the pro-
97 posed plan to ensure that all actuarially-determined
98 financial requirements of the agency will be met.

99 Upon obtaining the actuary's opinion and making all
100 necessary modifications to the proposed plan, the
101 finance board shall conduct two or more public hearings
102 to receive public comment on the proposed financial
103 plan, shall review such comments, and shall finalize and
104 approve the financial plan no later than the twentieth
105 day of November, one thousand nine hundred ninety.
106 Employees shall be notified of any changes in the types
107 and levels of employee costs or benefits contained in the
108 financial plan at least thirty days prior to the date of
109 implementation of the financial plan.

110 The finance board shall submit to the governor and
111 to the Legislature the final, approved financial plan no
112 later than the first day of December, one thousand nine
113 hundred ninety. The financial plan shall become
114 effective and shall be implemented by the director on
115 the first day of January, one thousand nine hundred
116 ninety-one.

117 (e) *Plan for fiscal year one thousand nine hundred*
118 *ninety-two.*—No later than the first day of December,
119 one thousand nine hundred ninety, the governor shall
120 prepare and provide to the finance board an estimate
121 of the total amount of general and special revenues

122 which the state will have available to fund the public
123 employees insurance agency and its programs for the
124 fiscal year beginning the first day of July, one thousand
125 nine hundred ninety-one. The finance board shall
126 request its actuary to estimate the total financial
127 requirements of the public employees insurance agency
128 for the fiscal year.

129 The finance board shall prepare a proposed financial
130 plan designed to generate revenues sufficient to meet all
131 estimated program and administrative costs of the
132 public employees insurance agency for the fiscal year.
133 The proposed financial plan shall allow for between
134 thirty and forty-five days of accounts payable to be
135 carried over into the next fiscal year. Before final
136 adoption of the proposed financial plan, the finance
137 board shall request its actuary to review the plan and
138 to render a written professional opinion stating whether
139 the plan will generate sufficient revenues to meet all
140 estimated program and administrative costs of the
141 public employees insurance agency for the fiscal year.
142 The actuary's report shall explain the basis of its
143 opinion. If the actuary concludes that the proposed
144 financial plan will not generate sufficient revenues to
145 meet all anticipated costs, then the finance board shall
146 make necessary modifications to the proposed plan to
147 ensure that all actuarially-determined financial require-
148 ments of the agency will be met.

149 Upon obtaining the actuary's opinion, the finance
150 board shall conduct one or more public hearings in each
151 congressional district to receive public comment on the
152 proposed financial plan, shall review such comments,
153 and shall finalize and approve the financial plan.

154 The finance board shall submit to the governor and
155 to the Legislature its final, approved financial plan for
156 fiscal year one thousand nine hundred ninety-two,
157 together with the actuary's final written opinion, no
158 later than the first day of May, one thousand nine
159 hundred ninety-one. The financial plan shall become
160 effective and shall be implemented by the director on
161 the first day of July, one thousand nine hundred ninety-
162 one.

163 (f) *Annual plans.*—The finance board shall prepare, in
164 the manner provided in subsection (e) of this section, an
165 annual financial plan for fiscal year one thousand nine
166 hundred ninety-three and each fiscal year thereafter
167 during which the finance board remains in existence.
168 Any such financial plan shall be designed to allow thirty
169 days or less of accounts payable to be carried over into
170 the next fiscal year. For each such fiscal year, the
171 governor shall provide his estimate of total revenues to
172 the finance board no later than the first day of July of
173 the preceding fiscal year. The finance board shall
174 submit its final, approved financial plan, after obtaining
175 the necessary actuary's opinion and conducting one or
176 more public hearings in each congressional district, to
177 the governor and to the Legislature no later than the
178 first day of January preceding the fiscal year. The
179 financial plan for a fiscal year shall become effective
180 and shall be implemented by the director on the first
181 day of July of such fiscal year.

182 (g) The provisions of chapter twenty-nine-a of this
183 code shall not apply to the preparation, approval and
184 implementation of the financial plans required by this
185 section.

186 (h) The finance board shall meet on at least a
187 quarterly basis to review implementation of its current
188 financial plan in light of the actual experience of the
189 public employees insurance agency. The board shall
190 review actual costs incurred, any revised cost estimates
191 provided by the actuary, expenditures, and any other
192 factors affecting the fiscal stability of the plan, and may
193 make any additional modifications to the plan necessary
194 to ensure that the total financial requirements of the
195 agency for the current fiscal year are met. The financial
196 board may not change the types and levels of cost to
197 employees during its quarterly review except in the
198 event of a true emergency.

199 (i) For any fiscal year in which legislative appropri-
200 ations differ from the governor's estimate of general and
201 special revenues available to the agency, the finance
202 board shall, within thirty days after passage of the

203 budget bill, make any modifications to the plan neces-
204 sary to ensure that the total financial requirements of
205 the agency for the current fiscal year are met.

206 (j) The types and levels of costs to employers, em-
207 ployees and retired employees participating in public
208 employees insurance agency group insurance plans
209 which are currently in effect on the effective date of this
210 article, are hereby authorized. The types and levels of
211 costs to employees participating in public employees
212 insurance agency group insurance plans which are
213 currently in effect on the effective date of this article
214 shall remain in effect unless and until changed or
215 authorized to be changed by the finance board in a
216 financial plan prepared and approved in accordance
217 with this section.

**§5-16-6. Creation and composition of advisory board;
powers and duties of board generally;
expenses.**

1 (a) The public employees insurance agency advisory
2 board is hereby created and established to provide
3 advice and make recommendations to the director
4 concerning group hospital and surgical insurance, group
5 major medical insurance, and group life and accidental
6 death insurance for all employees in the manner as
7 hereinafter provided. All business of the advisory board
8 shall be transacted in the name of West Virginia public
9 employees insurance agency advisory board.

10 (b) The advisory board shall consist of fifteen
11 members who are citizens of the United States and
12 residents of this state as follows: Three members
13 representing licensed health care professionals, health
14 care facilities or other types of health care providers,
15 appointed by the governor, with the advice and consent
16 of the Senate; five members either covered by the public
17 employees insurance plans or from organizations
18 representing such employees, one of whom shall repre-
19 sent either retired public employees or retired educa-
20 tors, appointed by the governor, with the advice and
21 consent of the Senate, and selected so as to represent as
22 broadly as possible all elements of the employees
23 covered by the plan: *Provided*, That such members shall

24 not be (1) employees of or contractors to any health care
25 facility, (2) licensed health care professionals, (3)
26 members of the immediate family of licensed health
27 care professionals, or (4) an employee of or contractor
28 to any such licensed health care professionals; the
29 insurance commissioner or his or her designee; one
30 representative of the West Virginia health care cost
31 review authority, appointed by the governor, with the
32 advice and consent of the Senate; five members from the
33 public at large appointed by the governor, with the
34 advice and consent of the Senate. Members of the board
35 shall be selected to represent, as broadly as possible, the
36 different geographical areas within the state. No more
37 than ten of the fifteen members of the board shall be
38 of the same political party.

39 Of the members first appointed by the governor to the
40 advisory board, one health care provider member shall
41 be appointed for a term of two years; one health care
42 provider member shall be appointed for a term of four
43 years and one health care provider member shall be
44 appointed for a term of five years; the member who is
45 the representative of the West Virginia health care cost
46 review authority shall be appointed for a term of three
47 years; the five members who are participants in the
48 public employees insurance plan shall be appointed to
49 terms of one, two, three, four and five years respectively;
50 and the five members who are the public at large shall
51 be appointed to terms of one, two, three, four and five
52 years respectively. Subsequent appointed members shall
53 be appointed to five-year terms except for members
54 appointed to fill vacancies who shall serve for the
55 remainder of the vacant term. Members of the advisory
56 board are eligible for reappointment upon the expira-
57 tion of their terms but may not serve more than two full
58 five-year terms consecutively. Members' terms shall
59 commence on the first day of September of the year of
60 appointment and end on the thirty-first day of August
61 in the year in which the term expires.

62 The advisory board shall hold a meeting at least twice
63 each year and shall designate the time and place of such
64 meeting. Nine advisory board members shall constitute

65 a quorum at any meeting of the advisory board. Each
66 advisory board member shall be entitled to one vote on
67 each question before the advisory board. A majority of
68 the quorum present shall be required for a decision by
69 the advisory board at its meetings. The advisory board
70 shall keep a record of its proceedings.

71 The board shall elect one of its members as chairper-
72 son and shall meet at such time and place as shall be
73 specified by the call of the chairman. All meetings shall
74 be open to the public. Notice of each meeting shall be
75 given in writing to each member by the director at least
76 three days in advance of the meeting period.

77 The advisory board shall be responsible for advising
78 and making recommendations to the director regarding
79 the administration and management of the public
80 employees insurance agency as provided for in this
81 article. Under no circumstances, however, will the
82 decisions, advice or recommendations of the advisory
83 board be controlling or binding on the director.

84 No member of the advisory board shall receive any
85 compensation for serving as such; however, each
86 member of the advisory board shall be reimbursed for
87 all reasonable and necessary expenses actually incurred
88 by him or her in carrying out his or her duties as a
89 member of the advisory board.

**§5-16-7. Authorization to establish group hospital and
surgical insurance plan, group major medical
insurance plan, group prescription drug plan
and group life and accidental death insur-
ance plan; rules and regulations for adminis-
tration of plans; what plans may provide;
optional plans; separate rating for claims
experience purposes.**

1 The agency shall establish a group hospital and
2 surgical insurance plan or plans, a group prescription
3 drug insurance plan or plans, a group major medical
4 insurance plan or plans, and a group life and accidental
5 death insurance plan or plans for those employees herein
6 made eligible, and to establish and promulgate rules
7 and regulations for the administration of such plans,

8 subject to the limitations contained in this article. Such
9 plans may also include, among other things, medicines,
10 medical equipment, prosthetic appliances, and such
11 other inpatient and outpatient services and expenses
12 deemed appropriate and desirable by the agency.

13 The agency shall make available to each employee
14 herein made eligible, at full cost to the employee, the
15 opportunity to purchase optional group life and acciden-
16 tal death insurance in an amount not to exceed fifty
17 thousand dollars for life insurance and fifty thousand
18 dollars for accidental death insurance as established
19 under the rules and regulations of the agency. In
20 addition, each employee shall be entitled to have his
21 spouse and dependents, as defined by the rules and
22 regulations of the agency, included in such optional
23 coverage, at full cost to the employee, in an amount not
24 to exceed five thousand dollars for life insurance and
25 five thousand dollars for accidental death insurance for
26 the spouse and not to exceed two thousand dollars in life
27 insurance and two thousand dollars in accidental death
28 insurance for each eligible dependent; and with full
29 authorization hereby to the agency to make the same
30 available and provide such opportunity of purchase to
31 each employee.

32 The finance board may cause to be separately rated
33 for claims experience purposes (1) all employees of the
34 state of West Virginia, (2) all teaching and professional
35 employees of the university of West Virginia board of
36 trustees or the board of directors of the state college
37 system and county boards of education, (3) all nonteach-
38 ing employees of the university of West Virginia board
39 of trustees or the board of directors of the state college
40 system and county boards of education, or (4) any other
41 categorization which would ensure the stability of the
42 overall program.

§5-16-8. Conditions of insurance program.

1 The insurance plans herein provided for shall be
2 designed by the public employees insurance agency:

3 (1) To provide a reasonable relationship between the
4 hospital, surgical, medical, and prescription drug

5 benefits to be included and the expected reasonable and
6 customary hospital, surgical, medical and prescription
7 drug expenses as established by the director to be
8 incurred by the affected employee, his or her spouse and
9 his or her dependents. The establishment of reasonable
10 and customary expenses by the public employees
11 insurance agency pursuant to the preceding sentence is
12 not subject to the state administrative procedures act in
13 chapter twenty-nine-a of this code.

14 (2) To include reasonable controls which may include
15 deductible and coinsurance provisions applicable to
16 some or all of the benefits, and shall include other
17 provisions, including, but not limited to, copayments,
18 preadmission certification, case management programs,
19 and preferred provider arrangements.

20 (3) To prevent unnecessary utilization of the various
21 hospital, surgical, medical and prescription drug
22 services available.

23 (4) To provide reasonable assurance of stability in
24 future years for the plans.

25 (5) To provide major medical insurance for said
26 employees.

27 (6) To provide certain group life and accidental death
28 insurance for the employees covered under this article.

29 (7) To include provisions for the coordination of
30 benefits payable by the terms of such plans with the
31 benefits to which such employee, or his or her spouse
32 or his or her dependents may be entitled by the
33 provisions of any other group hospital, surgical, medical,
34 major medical, or prescription drug insurance or any
35 combination thereof.

36 (8) To provide a cash incentive plan for employees,
37 spouses, and dependents by the thirty-first day of
38 December, one thousand nine hundred eighty-eight, to
39 increase utilization of, and to encourage the use of, lower
40 cost alternative health care facilities, health care
41 providers and generic drugs. Such plan shall be
42 reviewed annually by the director and the advisory
43 board.

44 (9) To provide "wellness" programs and activities
45 which will include, but not be limited to, benefit plan
46 incentives to discourage tobacco, alcohol and chemical
47 abuse and an educational program to encourage proper
48 diet and exercise. In establishing "wellness" programs,
49 the division of vocational rehabilitation shall cooperate
50 with the public employees insurance agency in establish-
51 ing statewide wellness programs and with such division
52 of vocational rehabilitation to contact county boards of
53 education for the use of facilities, equipment or any
54 service related to such purpose, at the request of the
55 director, under the authority hereby granted to contract
56 therefor. Boards of education shall be limited to
57 charging only the cost of janitorial service and increased
58 utilities for the use of the gymnasium and related
59 equipment. The cost of the exercise program shall be
60 paid by county boards of education, the public em-
61 ployees insurance agency, or participating employees,
62 their spouses or dependents. All exercise programs shall
63 be made available to all employees, their spouses or
64 dependents and shall not be limited to employees of
65 county boards of education.

66 (10) To provide a program, to be administered by the
67 director, for a patient audit plan with reimbursement
68 up to a maximum of one thousand dollars annually, to
69 employees for discovery of health care provider or
70 hospital overcharges when the affected employee brings
71 such overcharge to the attention of the plan. The
72 hospital or health care provider shall certify to the
73 director that it has provided, prior to or simultaneously
74 with the submission of the statement of charges for
75 payments, an itemized statement of the charges to the
76 employee participant for which payment is requested of
77 the plan.

78 (11) To require that all employers give written notice
79 to each covered employee prior to institution of any
80 changes in benefits to employees, and to include
81 appropriate penalty for any employer not providing the
82 required information to any employee.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

1 The director is hereby given exclusive authorization
2 to execute such contract or contracts as are necessary
3 to carry out the provisions of this article and to provide
4 the plan or plans of group hospital and surgical
5 insurance coverage, group major medical insurance
6 coverage, group prescription drug insurance coverage
7 and group life and accidental death insurance coverage
8 selected in accordance with the provisions of this article,
9 such contract or contracts to be executed with one or
10 more agencies, corporations, insurance companies or
11 service organizations licensed to sell group hospital and
12 surgical insurance, group major medical insurance,
13 group prescription drug insurance and group life and
14 accidental death insurance in this state.

15 The group life and accidental death insurance herein
16 provided for shall be in the amount of ten thousand
17 dollars for every employee. The amount of the group life
18 and accidental death insurance to which an employee
19 would otherwise be entitled shall be reduced to five
20 thousand dollars upon such employee attaining age
21 sixty-five.

22 All of the insurance coverage to be provided for under
23 this article may be included in one or more similar
24 contracts issued by the same or different carriers.

25 The provisions of article three, chapter five-a of this
26 code, relating to the division of purchases of the
27 department of finance and administration, shall not
28 apply to any contracts for any insurance coverage or
29 professional services authorized to be executed under
30 the provisions of this article. Before entering into any
31 contract for any insurance coverage, as herein author-
32 ized, said director shall invite competent bids from all

33 qualified and licensed insurance companies or carriers,
34 who may wish to offer plans for the insurance coverage
35 desired. The director shall deal directly with insurers
36 in presenting specifications and receiving quotations for
37 bid purposes. No commission or finder's fee, or any
38 combination thereof, shall be paid to any individual or
39 agent; but this shall not preclude an underwriting
40 insurance company or companies, at their own expense,
41 from appointing a licensed resident agent, within this
42 state, to service the companies' contracts awarded under
43 the provisions of this article. Commissions reasonably
44 related to actual service rendered for such agent or
45 agents may be paid by the underwriting company or
46 companies: *Provided*, That in no event shall payment be
47 made to any agent or agents when no actual services are
48 rendered or performed. The director shall award such
49 contract or contracts on a competitive basis. In award-
50 ing the contract or contracts the director shall take into
51 account the experience of the offering agency, corpora-
52 tion, insurance company or service organization in the
53 group hospital and surgical insurance field, group major
54 medical insurance field, group prescription drug field
55 and group life and accidental death insurance field, and
56 its facilities for the handling of claims. In evaluating
57 these factors, the director may employ the services of
58 impartial, professional insurance analysts or actuaries
59 or both. Any contract executed by the director with a
60 selected carrier shall be a contract to govern all eligible
61 employees subject to the provisions of this article.
62 Nothing contained in this article shall prohibit any
63 insurance carrier from soliciting employees covered
64 hereunder to purchase additional hospital and surgical,
65 major medical or life and accidental death insurance
66 coverage.

67 The director may authorize the carrier with whom a
68 primary contract is executed to reinsure portions of such
69 contract with other carriers which elect to be a
70 reinsurer and who are legally qualified to enter into a
71 reinsurance agreement under the laws of this state.

72 Each employee who is covered under any such
73 contract or contracts shall receive a statement of

74 benefits to which such employee, his or her spouse and
75 his or her dependents are entitled thereunder, setting
76 forth such information as to whom such benefits shall
77 be payable, to whom claims shall be submitted, and a
78 summary of the provisions of any such contract or
79 contracts as they affect the employee, his or her spouse
80 and his or her dependents.

81 The director may at the end of any contract period
82 discontinue any contract or contracts it has executed
83 with any carrier and replace the same with a contract
84 or contracts with any other carrier or carriers meeting
85 the requirements of this article.

**§5-16-10. Contract provisions for group hospital and
surgical, group major medical, group pre-
scription drug and group life and accidental
death insurance for retired employees, their
spouses and dependents.**

1 Any contract or contracts entered into hereunder may
2 provide for group hospital and surgical, group major
3 medical, group prescription drug and group life and
4 accidental death insurance for retired employees and
5 their spouses and dependents as defined by rules and
6 regulations of the public employees insurance agency,
7 and on such terms as the director may deem
8 appropriate.

9 In the event the public employees insurance agency
10 provides the above benefits for retired employees, their
11 spouses and dependents, the public employees insurance
12 agency shall adopt rules and regulations prescribing the
13 conditions under which retired employees may elect to
14 participate in or withdraw from the plan or plans. Any
15 contract or contracts herein provided for shall be
16 secondary to any hospital, surgical, major medical,
17 prescription drug or other health insurance plan
18 administered by the United States department of health
19 and human services to which the retired employee,
20 spouse or dependent may be eligible under any law or
21 regulation of the United States.

§5-16-11. To whom benefits paid.

1 Any benefits payable under any group hospital and
2 surgical, group major medical and group prescription
3 drug plan or plans may be paid either directly to the
4 attending physician, hospital, medical group, or other
5 person, firm, association or corporation furnishing the
6 service upon which the claim is based, or to the insured
7 upon presentation of valid bills for such service, subject
8 to such provisions designed to facilitate payments as
9 may be made by the director.

**§5-16-12. Misrepresentation by employee or provider;
penalty.**

1 Any person who knowingly secures or attempts to
2 secure benefits payable under this article to which the
3 person is not entitled, or who knowingly secures or
4 attempts to secure greater benefits than those to which
5 the person is entitled, by willfully misrepresenting the
6 presence or extent of benefits to which the person is
7 entitled under a collateral insurance source, or by
8 willfully misrepresenting any material fact relating to
9 any other information requested by the director or by
10 willfully overcharging for services provided, or by
11 willfully misrepresenting the diagnosis or nature of the
12 service provided, may be found to be overpaid and shall
13 be civilly liable for any overpayment. In addition to the
14 civil remedy provided herein, the director shall withhold
15 payment of any benefits due to that person until any
16 overpayment has been recovered or may directly set off,
17 after holding internal administrative proceedings to
18 assure due process, any such overcharges or improperly
19 derived payment against benefits due such person
20 hereunder. Nothing in this section shall be construed to
21 limit any other remedy or civil or criminal penalty
22 provided by law.

**§5-16-13. Payment of costs by employer and employee;
coverage for employee's spouse and dependents generally; short term continuance of
coverage for involuntary employee termination; extended insurance coverage for re-
tired employees with accrued annual leave and sick leave; increased retirement benefits**

for retired employees with accrued annual and sick leave; additional eligible retired employees; option for health insurance coverage without life insurance coverage made available to retirees; health insurance for surviving dependents of deceased employees.

1 (a) The director is hereby authorized to provide under
2 any contract or contracts entered into under the
3 provisions of this article that the costs of any such group
4 hospital and surgical insurance, group major medical
5 insurance, group prescription drug insurance, group life
6 and accidental death insurance benefit plan or plans
7 may be paid by the employer and employee. In addition,
8 each employee shall be entitled to have his or her spouse
9 and dependents, as defined by the rules and regulations
10 of the public employees insurance agency, included in
11 any group hospital and surgical insurance, group major
12 medical insurance or group prescription drug insurance
13 coverage: *Provided*, That such spouse and dependent
14 coverage shall be limited to excess or secondary
15 coverage for each spouse and dependent who has
16 primary coverage from any other source. For purposes
17 of this section, the term "primary coverage" means
18 individual or group hospital and surgical insurance
19 coverage or individual or group major medical insur-
20 ance coverage or group prescription drug coverage in
21 which the spouse or dependent is the named insured or
22 certificate holder. The director may require proof
23 regarding spouse and dependent primary coverage and
24 shall adopt rules and regulations governing the nature,
25 discontinuance and resumption of any employee's
26 coverage for his or her spouse and dependents.

27 (b) Should a participating employee be terminated
28 from employment involuntarily or in reduction of work
29 force, the employee's insurance coverage provided under
30 this article shall continue for a period of three months
31 at no additional cost to the employee: *Provided*, That an
32 employee discharged for misconduct shall not be eligible
33 for extended benefits under this section: *Provided*,
34 *however*, That coverage may be extended up to the
35 maximum period of three months, while administrative

36 remedies contesting the charge of misconduct are
37 pursued: *Provided further*, That should the discharge for
38 misconduct be upheld, the full cost of the extended
39 coverage shall be reimbursed by the employee. If the
40 employee is again employed or recalled to active
41 employment within twelve months of his prior termina-
42 tion, he or she shall not be considered a new enrollee
43 and shall not be required to again contribute his or her
44 share of the premium cost, if he or she had already fully
45 contributed such share during the prior period of
46 employment.

47 (c) Except as otherwise provided in subsection (f) for
48 higher education full-time faculty employed on an
49 annual contract basis other than for twelve months,
50 when a participating employee, who has elected to
51 participate in the plan before the first day of July, one
52 thousand nine hundred eighty-eight, is compelled or
53 required by law to retire before reaching the age of
54 sixty-five, or when a participating employee voluntarily
55 retires as provided by law, that employee's accrued
56 annual leave and sick leave, if any, shall be credited
57 toward an extension of the insurance coverage provided
58 by this article, according to the following formulae:
59 Such insurance coverage for a retired employee shall
60 continue one additional month for every two days of
61 annual leave or sick leave, or both, which the employee
62 had accrued as of the effective date of his or her
63 retirement. For a retired employee, his or her spouse
64 and dependents, such insurance coverage shall continue
65 one additional month for every three days of annual
66 leave or sick leave, or both, which the employee had
67 accrued as of the effective date of his retirement.

68 (d) Notwithstanding the preceding subsection, except
69 as otherwise provided in subsection (f) for higher
70 education full-time faculty employed on an annual
71 contract basis other than for twelve months, when a
72 participating employee who elects to participate in the
73 plan on and after the first day of July, one thousand nine
74 hundred eighty-eight, is compelled or required by law
75 to retire before reaching the age of sixty-five, or when
76 such a participating employee voluntarily retires as

77 provided by law, that employee's annual leave or sick
78 leave, if any, shall be credited toward one-half of the
79 premium cost of the insurance provided by this article,
80 for periods and scope of coverage determined according
81 to the following formulae: (1) one additional month of
82 single retiree coverage for every two days of annual
83 leave or sick leave, or both, which the employee had
84 accrued as of the effective date of his or her retirement;
85 (2) one additional month of coverage for a retiree, his
86 or her spouse and dependents for every three days of
87 annual leave or sick leave, or both, which the employee
88 had accrued as of the effective date of his or her
89 retirement. The remaining premium cost shall be borne
90 by such retired employee if he or she elects such
91 coverage. For purposes of this subsection, an employee
92 who has been a participant under spouse or dependent
93 coverage and who reenters the plan within twelve
94 months after termination of his or her prior coverage,
95 shall be considered to have elected to participate in the
96 plan as of the date of commencement of the prior
97 coverage. For purposes of this subsection, an employee
98 shall not be considered a new employee after returning
99 from extended authorized leave on or after the first day
100 of July, one thousand nine hundred eighty-eight.

101 (e) In the alternative to the extension of insurance
102 coverage through premium payment provided in the two
103 preceding subsections, on and after the first day of July,
104 one thousand nine hundred eighty-eight, the participat-
105 ing employee's accrued annual leave and sick leave may
106 be applied, on the basis of two days retirement service
107 credit for each one day of accrued annual and sick leave,
108 toward an increase in the employee's retirement benefits
109 with such days constituting additional credited service
110 in computation of such benefits under any state retire-
111 ment system. However, such credited service shall not
112 be used in meeting initial eligibility for retirement
113 criteria, but only as additional service credited in excess
114 thereof.

115 (f) When a participating employee, who is a higher
116 education full-time faculty member employed on an
117 annual contract basis other than for twelve months, is

118 compelled or required by law to retire, on or after the
119 first day of August, one thousand nine hundred eighty-
120 eight, before reaching the age of sixty-five, or when such
121 a participating employee voluntarily retires as provided
122 by law, on or after the first day of August, one thousand
123 nine hundred eighty-eight, that employee's insurance
124 coverage, as provided by this article, shall be extended
125 according to the following formulae: Such insurance
126 coverage for a retired higher education full-time faculty
127 member, formerly employed on an annual contract basis
128 other than for twelve months, shall continue beyond the
129 effective date of his or her retirement one additional
130 year for each three and one-third years of teaching
131 service, as determined by uniform guidelines estab-
132 lished by the university of West Virginia board of
133 trustees and the board of directors of the state college
134 system, for individual coverage, or one additional year
135 for each five years of teaching service for "family"
136 coverage.

137 (g) Any employee who retired prior to the twenty-first
138 day of April, one thousand nine hundred seventy-two,
139 and who also otherwise meets the conditions of the
140 "retired employee" definition in section two of this
141 article shall be eligible for insurance coverage under the
142 same terms and provisions of this article. The premium
143 cost for any such coverage as established by the finance
144 board shall be borne by such retired employee.

145 (h) All retirees under the provisions of this article,
146 including those defined in section two of this article;
147 those retiring prior to the twenty-first day of April, one
148 thousand nine hundred seventy-two; and those hereafter
149 retiring, shall be eligible for and permitted to obtain
150 health insurance coverage. The premium cost for any
151 such coverage as established by the finance board, shall
152 be borne by such retired employee.

153 (i) A surviving spouse and dependents of a deceased
154 employee, who was either an active or retired employee
155 just prior to such decease, shall be entitled to be
156 included in any group insurance coverage provided
157 under this article, and such spouse and dependents shall

158 bear the premium cost of such insurance coverage. The
159 finance board shall establish the premium cost of any
160 such coverage.

161 (j) In construing the provisions of this section or any
162 other provisions of this code, the Legislature declares
163 that it is not now nor has it ever been the Legislature's
164 intent that elected public officials be provided any sick
165 leave, annual leave or personal leave, and the enactment
166 of this section is based upon the fact and assumption
167 that no statutory or inherent authority exists extending
168 sick leave, annual leave or personal leave to elected
169 public officials and the very nature of such positions
170 preclude the arising or accumulation of such, so as to
171 be thereafter usable as premium paying credits for
172 which such officials may claim extended insurance
173 benefits.

**§5-16-14. Program qualifying for favorable federal
income tax treatment.**

1 The director shall develop, implement and have in
2 place by the thirty-first day of December, one thousand
3 nine hundred ninety, deductible and employee premium
4 programs which qualify for favorable federal income
5 tax treatment under section 125 of the Internal Revenue
6 Code.

**§5-16-15. Optional dental, optical, disability and prepaid
retirement plan.**

1 On and after the first day of July, one thousand nine
2 hundred eighty-nine, the director shall make available
3 to participants in the public employees insurance system
4 (1) a dental insurance plan; (2) an optical insurance plan;
5 (3) a disability insurance plan; and (4) a prepaid
6 retirement insurance plan. Public employees insurance
7 participants may elect to participate in any one of these
8 plans separately or in combination. Notwithstanding
9 anything in this article to the contrary, all actuarial and
10 administrative costs of each plan shall be totally borne
11 by the premium payments of the participants or local
12 governing bodies electing to participate in that plan.
13 The director is authorized to employ such administra-
14 tive practices and procedures with respect to these
15 optional plans as are authorized for the administration

16 of other plans under this article. The director shall
17 establish separate funds (1) for deposit of dental
18 insurance premiums and payment of dental insurance
19 claims, (2) for deposit of optical insurance premium
20 payments and payment of optical insurance claims, (3)
21 for deposit of disability insurance premium payments
22 and payment of disability insurance claims. Such funds
23 shall not be supplemented by nor be used to supplement
24 any other funds.

§5-16-16. Preferred provider plan.

1 The director shall, on or before the first day of April,
2 one thousand nine hundred eighty-eight, or as soon as
3 practicable, establish a preferred provider system for
4 the delivery of health care to plan participants by all
5 health care providers, which may include, but not be
6 limited to, medical doctors, chiropractors, physicians,
7 osteopathic physicians, surgeons, hospitals, clinics,
8 nursing homes, pharmacies and pharmaceutical
9 companies.

10 The director shall establish the terms of the preferred
11 provider system and the incentives therefor. The terms
12 and incentives may include multi-year renewal options
13 as are not prohibited by the constitution of this state.

§5-16-17. Preexisting conditions not covered; defined.

1 A preexisting condition is an injury, sickness or
2 pregnancy, or any condition relating to that injury,
3 sickness or pregnancy, for which a participant is
4 diagnosed, receives treatment, or incurs expenses within
5 three months prior to the effective date of coverage:
6 *Provided*, That a preexisting condition shall not include
7 a condition which meets the definition of handicap as
8 provided in section three, article eleven, chapter five of
9 this code.

10 For all participants enrolling in the plan after the
11 effective date of this section, no payment shall be made
12 for expenses incurred for or in connection with a
13 preexisting condition unless the expenses are incurred
14 after the expiration of a one-year period during which
15 the participant is continuously participating in the plan:

16 *Provided*, That these provisions shall not apply to
17 employees who return from extended authorized leave
18 on or after the effective date of this section.

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of treasurer with respect thereto.

1 All employers operating from state general revenue or
2 special revenue funds or federal funds or any combina-
3 tion thereof shall budget the cost of insurance coverage
4 provided by the public employees insurance agency to
5 current and retired employees of the employer as a
6 separate line item, titled PEI, in its respective annual
7 budget and shall be responsible for the transfer of funds
8 to the director for the cost of insurance for employees
9 covered by the plan. Each spending unit shall pay to the
10 director its proportionate share from each source of
11 funds. Any agency wishing to charge general revenue
12 funds for insurance benefits for retirees under section
13 thirteen of this article must provide documentation to
14 the director that such benefits cannot be paid for by any
15 special revenue account or that the retiring employee
16 has been paid solely with general revenue funds for
17 twelve months prior to retirement.

18 All other employers not operating from the state
19 general revenue fund shall pay to the director their
20 share of premium costs from their respective budgets.
21 The finance board shall establish such employers' share
22 of premium costs to reflect and pay the actual costs of
23 such coverage including incurred but not reported
24 claims.

25 The contribution of such other employers (namely: a
26 county, city or town in the state; any separate corpora-
27 tion or instrumentality established by one or more
28 counties, cities or towns, as permitted by law; any
29 corporation or instrumentality supported in most part
30 by counties, cities or towns; any public corporation
31 charged by law with the performance of a governmental
32 function and whose jurisdiction is coextensive with one
33 or more counties, cities or towns; any comprehensive
34 community mental health center or comprehensive

35 mental retardation facility established, operated or
36 licensed by the secretary of health and human resources
37 pursuant to section one, article two-a, chapter twenty-
38 seven of this code, and which is supported in part by
39 state, county or municipal funds; and a combined city-
40 county health department created pursuant to article
41 two, chapter sixteen of the code) for their employees'
42 shall be such percentage of the cost of the employees'
43 insurance package as the employers deem reasonable
44 and proper under their own particular circumstances.

45 The employee's proportionate share of the premium or
46 cost shall be withheld or deducted by the employer from
47 such employee's salary or wages as and when paid and
48 such sums shall be forwarded to the director with such
49 supporting data as the director may require.

50 All moneys received by the public employees insur-
51 ance agency shall be deposited in a special fund or funds
52 as are necessary in the state treasury and the treasurer
53 of the state shall be custodian of such fund or funds and
54 shall administer such fund or funds in accordance with
55 the provisions of this article or as the director may from
56 time to time direct. The treasurer shall pay all warrants
57 issued by the state auditor against such fund or funds
58 as the director may direct in accordance with the
59 provisions of this article. On and after the first day of
60 July, one thousand nine hundred eighty-eight, all
61 payments previously required to be made to the public
62 employees insurance board shall be made to the public
63 employees insurance agency.

**§5-16-19. Authorization to take advantage of acts of
congress, accept gifts, grants and matching
funds.**

1 The public employees insurance agency is authorized
2 to take full advantage of the benefits and provisions of
3 any acts of congress and to accept any and all gifts,
4 grants and matching funds, whether in the form of
5 money or services.

§5-16-20. Expense fund.

1 The Legislature shall annually appropriate such sums

2 as may be necessary to pay the proportionate share of
3 the administrative costs for the state as an employer,
4 and each division, agency, board, commission or
5 department of the state which operates out of special
6 revenue funds or federal funds or both shall pay its
7 proportionate share of the administrative costs of the
8 insurance plan or plans authorized under the provisions
9 of this article. All other employers not operating from
10 the state general revenue fund shall pay their propor-
11 tionate share of the administrative costs of the insurance
12 plan or plans authorized under the provisions of this
13 article.

§5-16-21. No member or employee of public employees insurance agency shall gain directly or indirectly from any contract or contracts provided for hereunder; criminal penalties.

1 No elected or appointed official of the state of West
2 Virginia; nor any member, officer, or employees of the
3 Legislature; nor any officer, agent, servant or employee
4 in the executive branch of state government shall have
5 any interest, direct or indirect, in the gain or profits
6 arising from any contract or contracts provided for in
7 this article. Any such person who shall gain, directly or
8 indirectly, from any contract or contracts herein
9 provided for, except as an insured beneficiary thereof,
10 shall be guilty of a misdemeanor, and, upon conviction
11 thereof, shall be punished by a fine not exceeding one
12 thousand dollars, or by imprisonment in the county jail
13 for a period not exceeding one year, or by both, in the
14 discretion of the court: *Provided*, That nothing in this
15 section shall be construed to prohibit an elected or
16 appointed official of this state, nor an employee of the
17 legislative, judicial or executive branches, from provid-
18 ing health care or entering into contracts provided for
19 in section seventeen of this article.

§5-16-22. Permissive participation; exemptions.

1 The provisions of this article shall not be mandatory
2 upon any employee or employer who is not an employee
3 of or is not the state of West Virginia, its boards,
4 agencies, commissions, departments, institutions or

5 spending units or a county board of education, and
6 nothing contained in this article shall be construed so
7 as to compel any employee or employer to enroll in or
8 subscribe to any insurance plan authorized by the
9 provisions of this article.

10 Those employees enrolled in the insurance program
11 authorized under the provisions of article two-b, chapter
12 twenty-one-a of this code shall not be required to enroll
13 in or subscribe to an insurance plan or plans authorized
14 by the provisions of this article, and the employees of
15 any department which has an existing insurance
16 program for its employees to which the government of
17 the United States contributes any part or all of the
18 premium or cost thereof may be exempted from the
19 provisions of this article. Any employee or employer
20 exempted under the provisions of this paragraph may
21 enroll in any insurance program authorized by the
22 provisions of this article at any time, to the same extent
23 as any other qualified employee or employer, but any
24 such employee or employer shall not remain enrolled in
25 both such programs. The provisions of articles fourteen,
26 fifteen and sixteen, chapter thirty-three of this code,
27 relating to group life insurance, accident and sickness
28 insurance, and group accident and sickness insurance,
29 shall not be applicable to the provisions of this article
30 whenever the provisions of said articles and chapter are
31 in conflict with or contrary to any provision set forth
32 herein or to any plan or plans established by the public
33 employees insurance agency.

34 Employers, other than the state of West Virginia, its
35 boards, agencies, commissions, departments, institu-
36 tions, spending units, or a county board of education
37 shall be exempt from participating in the insurance
38 program provided for by the provisions of this article
39 unless participation by the employer has been approved
40 by a majority vote of the employer's governing body. It
41 shall be the duty of the clerk or secretary of the
42 governing body of an employer who by such majority
43 vote becomes a participant in the insurance program to
44 notify the director not later than ten days after such
45 vote.

§5-16-23. Members of Legislature may be covered, if cost of the entire coverage is paid by such members.

1 Notwithstanding the definition of the term "employee"
2 contained in section two of this article and notwithstand-
3 ing any other provision of this article to the contrary,
4 members of the Legislature may participate in and be
5 covered by any insurance plan or plans authorized
6 hereunder for state officers and employees, except that
7 all members of the Legislature who elect to participate
8 in or to be covered by any such plan or plans shall pay
9 their proportionate individual share of the full cost for
10 all group coverage on themselves and their spouses and
11 dependents, so that there will be no cost to the state for
12 the coverage of any such members, spouses and depend-
13 ents.

§5-16-24. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.

1 The director shall promulgate such rules and regula-
2 tions as may be required for the effective administration
3 of the provisions of this article. Except as specifically
4 provided in subsection (e), section four of this article, all
5 rules and regulations of the public employees insurance
6 agency and all hearings held by the public employees
7 insurance agency shall be exempt from the provisions
8 of chapter twenty-nine-a of this code. Any rules and
9 regulations now in existence promulgated by the public
10 employees insurance board or director shall remain in
11 full force and effect until they are amended or replaced
12 by the director.

13 Such regulations shall provide that any employee of
14 the state who has been compelled or required by law to
15 retire before reaching the age of sixty-five years shall
16 be eligible to participate in the public employees' health
17 insurance program at his own expense for the cost of
18 coverage after any extended coverage to which he, his

19 spouse and dependents may be entitled by virtue of his
20 accrued annual leave or sick leave, pursuant to the
21 provisions of section thirteen of this article, has expired.
22 Any employee who voluntarily retires, as provided by
23 law, shall be eligible to participate in the public
24 employees' health insurance program at his own expense
25 for the cost of coverage after any extended coverage to
26 which he, his spouse and dependents may be entitled by
27 virtue of his accrued annual leave or sick leave,
28 pursuant to the provisions of section thirteen of this
29 article, has expired. The dependents of any deceased
30 retired employee shall be entitled to continue their
31 participation and coverage upon payment of the total
32 cost for such coverage.

33 Any employee who is on a medical leave of absence,
34 approved by his employer, shall, subject to the following
35 provisions of this paragraph, be entitled to continue his
36 coverage until he returns to his employment, and such
37 employee and employer shall continue to pay their
38 proportionate share of premium costs as provided by
39 this article: *Provided*, That the employer shall be
40 obligated to pay its proportionate share of the premium
41 cost only for a period of one year: *Provided, however*,
42 That during the period of such leave of absence, the
43 employee shall, at least once each month, submit to the
44 employer the statement of a qualified physician certifying
45 that the employee is unable to return to work.

46 Any retiree, retiring heretofore or hereafter, shall be
47 eligible to participate in the public employees' life
48 insurance program, including the optional life insurance
49 coverage as already available to active employees under
50 this article, at his own expense for the cost of coverage,
51 based upon actuarial experience; and the director shall
52 prepare, by rule and regulation, for such participation
53 and coverages under declining term insurance and
54 optional additional coverage for such retirees.

§5-16-25. Reserve fund.

1 In the event that the budgeted allocation to the public
2 employees insurance agency exceeds actual costs in any
3 given month, the director shall deposit those moneys in

4 a reserve fund maintained by the public employees
5 insurance board or director, for the exclusive purpose
6 of offsetting any future increases in group insurance
7 plan costs.

§5-16-26. Quarterly report.

1 By the thirtieth day of October, one thousand nine
2 hundred ninety-one, and on or before the thirtieth day
3 of January, April, July and October of each year
4 thereafter, the director shall prepare for the approval
5 of the finance board, and thereafter present to the joint
6 committee on government and finance a quarterly
7 report setting forth:

8 (a) A summary of the cost to the plan of health care
9 claims incurred in the preceding calendar quarter;

10 (b) A summary of the funds accrued to the plan by
11 legislative appropriation, employer and employee
12 premiums or otherwise in the preceding calendar
13 quarter for payment of health care claims;

14 (c) An explanation of all cost containment measures,
15 increased premium rates and any other plan changes
16 adopted by the director in the preceding calendar
17 quarter and estimated cost savings and enhanced
18 revenues resulting therefrom, and a certification that
19 the director made a good faith effort to develop and
20 implement all reasonable health care cost containment
21 alternatives;

22 (d) Expected claim costs for the next calendar year;

23 (e) Such other information as the director deems
24 appropriate; and

25 (f) Any other financial or other information as may be
26 requested by the joint committee on government and
27 finance.

§5-16-27. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held unconsti-
3 tutional or invalid, such unconstitutionality or invalidity
4 shall not affect other provisions or applications of the
5 article, and to this end the provisions of this article are
6 declared to be severable.

CHAPTER 8

(Com. Sub. for H. B. 311—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed August 31, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven and eight, article nine of chapter four; to amend and reenact sections five, twenty-two-c, twenty-eight and fifty-four, article ten, chapter five; to further amend said article ten by adding thereto a new section, designated section twenty-two-d; to further amend said chapter five by adding thereto a new article, designated article ten-d; to amend and reenact sections two, nine and ten, article six, chapter twelve; to amend and reenact section twenty-six, article two, chapter fifteen; to amend and reenact sections four, thirty-four and thirty-five-b, article seven-a, chapter eighteen; to further amend article seven-a by adding thereto three new sections, designated sections eighteen-a, twenty-six-i and thirty-five-c; to amend and reenact section four-a, article twenty-three, chapter eighteen; to further amend said chapter eighteen by adding thereto a new article, designated article seven-b; to amend and reenact section fourteen-d, article three, chapter thirty-three; and to amend and reenact section three, article nine, chapter fifty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to public retirement systems; creation of a legislative committee on pensions and retirement, providing for its membership, duties, responsibilities and authority and compensation; providing for unified accounting of the public employees retirement system; providing supplemental benefits for certain annuitants; creating a consolidated public retirement board; providing for its membership, powers, duties, responsibilities and liabilities, officers, meetings and compensation; providing for the employment of an actuary for the board; providing for the transfer of administration of the public employees retirement system, the teachers retirement system, the department of public safety's

death, disability and retirement fund and the retirement system for judges of courts of record to the consolidated board as of a specified date; creating a teachers' defined contribution retirement system, defining terms therefor; providing for the administration of the system by the consolidated board; providing guidelines for participation in the system; providing for member and employer contributions; creating member annuity accounts, termination of membership; providing for the commencement of annuity payments; providing for the amount of annuity payments, providing for supplemental annuity contracts; providing for the investment of pension funds in corporate stock and providing restrictions on certain investments; providing a calculation for the allocation of funds to the teachers retirement reserve fund; providing a supplemental benefit for retired teachers; defining terms that will be used to determine reemployment for certain retirees, requiring a waiver and disclosure statement; providing for acceptance of work for the state on a contract basis for early retirees; providing for the termination of benefits, procedure and appeal; providing for the redirection of a percentage of proceeds from the additional fire and casualty insurance premium tax.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven and eight, article nine of chapter four be amended and reenacted; that sections five, twenty-two-c, twenty-eight and fifty-four, article ten, chapter five be amended and reenacted; that said article ten be further amended by adding thereto a new section, designated section twenty-two-d; that chapter five be further amended by adding thereto a new article, designated article ten-d; that sections two, nine and ten, article six, chapter twelve be amended and reenacted; that section twenty-six, article two, chapter fifteen be amended and reenacted; that sections four, thirty-four and thirty-five-b, article seven-a, chapter eighteen be amended and reenacted; that said article seven-a be further amended by adding thereto three new sections, designated sections eighteen-a, twenty-six-i and thirty-five-c; that section four-a, article twenty-three of said chapter eighteen be amended and reenacted; that said chapter

eighteen be further amended by adding thereto a new article, designated article seven-b; that section fourteen-d, article three, chapter thirty-three be amended and reenacted; and that section three, article nine, chapter fifty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

Chapter

- 4. **The Legislature.**
- 5. **General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 12. **Public Moneys and Securities.**
- 15. **Public Safety.**
- 18. **Education.**
- 33. **Insurance.**
- 51. **Courts and Their Officers.**

CHAPTER 4. THE LEGISLATURE

ARTICLE 9. LEGISLATIVE COMMITTEE ON PENSIONS AND RETIREMENT.

- §4-9-1. Definitions.
- §4-9-2. Creation of committee.
- §4-9-3. Powers and duties.
- §4-9-4. Appointment of members; terms.
- §4-9-5. Time and place of meetings; officers.
- §4-9-6. Staff.
- §4-9-7. Assistance of other agencies.
- §4-9-8. Members' expenses; reimbursement.

§4-9-1. Definitions.

1 (1) "Committee" as used in this article means the
2 legislative committee on pensions and retirement.

3 (2) "State retirement legislation" means a proposed
4 bill or resolution which would have a fiscal or actuarial
5 effect on any state retirement system. This definition is
6 to be liberally construed so that all reasonable doubts
7 are resolved in favor of inclusion.

8 (3) "Actuarial note" means an analysis and statement
9 of the cost, actuarial soundness and adherence to sound
10 pension policy of pension or retirement related legisla-
11 tion submitted by a qualified actuary or actuarial firm.

§4-9-2. Creation of committee.

1 There is hereby created a permanent joint standing
2 committee to continually study and investigate public
3 retirement systems. The name of the committee shall be
4 the legislative committee on pensions and retirement.
5 The committee shall have all the powers of any other
6 standing committee and all pension and retirement
7 related legislation introduced in the Legislature shall be
8 referred to the committee in addition to any other
9 reference the presiding officer may designate: *Provided,*
10 That upon reference of any pension or retirement
11 related legislation, the committee shall forward such
12 legislation to an actuary or actuarial firm who shall
13 return an actuarial note to the committee prior to the
14 committee's consideration of such legislation.

§4-9-3. Powers and duties.

1 The committee shall make a continuing study and
2 investigation of retirement benefit plans applicable to
3 nonfederal government employees in this state. The
4 powers and duties of the committee shall include, but
5 not be limited to, the following:

6 (a) Study of retirement benefit plans applicable to
7 nonfederal government employees in the state of West
8 Virginia, including, without limitation, federal plans
9 available to such employees;

10 (b) Making of recommendations within the scope of
11 the study with particular attention to financing of the
12 various pension funds and financing of accrued
13 liabilities;

14 (c) Consideration of all aspects of pension planning
15 and operation, and making of recommendations de-
16 signed to establish and maintain sound pension policy
17 as to all funds;

18 (d) Filing of a report to each regular session of the
19 Legislature;

20 (e) Analyzing of each item of proposed pension and
21 retirement legislation, including amendments thereto,
22 with particular reference to analysis as to cost, actuarial
23 soundness, and adherence to sound pension policy, and

24 reporting of its findings in regard thereto to the
25 Legislature; and

26 (f) Maintenance of reference materials concerning
27 pension and retirement matters, including, without
28 limitation, information as to laws and systems in other
29 states.

§4-9-4. Appointment of members; terms.

1 The committee shall consist of seven members of the
2 Senate to be appointed by the president of the Senate
3 and seven members of the House of Delegates to be
4 appointed by the speaker of the House. No more than
5 five of the seven members appointed by the president
6 of the Senate and the speaker of the House, respectively,
7 may be members of the same political party. Appoint-
8 ments shall be made in the same manner as any other
9 joint standing committee of the Legislature. Members
10 shall serve until their successor has been appointed.

§4-9-5. Time and place of meetings; officers.

1 The committee shall hold meetings at such times and
2 places as it may designate. The president of the Senate
3 shall appoint a cochair of the committee from the Senate
4 members and the speaker of the House of Delegates
5 shall appoint a cochair of the committee from the House
6 of Delegates members.

§4-9-6. Staff.

1 The committee may employ such professional, clerical
2 and technical assistants as it deems necessary in order
3 to perform the duties herein prescribed.

§4-9-7. Assistance of other agencies.

1 The committee may request information from any
2 state officer or agency in order to assist in carrying out
3 the terms of this article, and such officer or agency is
4 authorized and directed to promptly furnish any data
5 requested.

§4-9-8. Members' expenses; reimbursement.

1 The members of the committee and its assistants shall

2 be reimbursed for all expenses actually and necessarily
 3 incurred in the performance of their duties hereunder
 4 from the fund of the joint committee on government and
 5 finance. Compensation and other expenses of the
 6 committee may be paid from the fund of the joint
 7 committee on government and finance.

**CHAPTER 5.
 GENERAL POWERS AND AUTHORITY
 OF THE GOVERNOR, SECRETARY OF
 STATE AND ATTORNEY GENERAL; BOARD
 OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
 COMMISSIONS, OFFICES, PROGRAMS, ETC.**

Article

10. West Virginia Public Employees Retirement Act.
 10D. Consolidated Public Retirement Board.

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIRE-
 MENT ACT.**

- §5-10-5. Board of trustees created; powers and duties generally; composition.
 §5-10-22c. Temporary early retirement incentives program; legislative
 declaration and finding of compelling state interest and public
 purpose; specifying eligible and ineligible members for
 incentives program; options, conditions, and exceptions; certain
 positions abolished; special rule of eighty; effective, termination,
 and notice dates.
 §5-10-22d. Supplemental benefits for certain annuitants.
 §5-10-28. Unified accounting; funds.
 §5-10-54. Termination of benefits; procedure.

**§5-10-5. Board of trustees created; powers and duties
 generally; composition.**

1 The board of trustees of the West Virginia public
 2 employees retirement system is hereby continued. The
 3 administration and management of the retirement
 4 system, the responsibility for making effective the
 5 provisions of this article, and the authority to make all
 6 rules and regulations therefor are hereby vested in the
 7 said board of trustees through the thirtieth day of June,
 8 one thousand nine hundred ninety-one, and thereafter in
 9 the consolidated public retirement board created by
 10 article ten-d of this chapter and except as otherwise
 11 specifically provided in this article. The board shall
 12 consist of five trustees, as follows:

- 13 (a) The auditor of the state, by virtue of his office;
14 (b) The treasurer of the state, by virtue of his office;
15 (c) The commissioner of finance and administration,
16 by virtue of his office;
17 (d) A resident of the state, who is not a member,
18 retirant or beneficiary of the retirement system, to be
19 appointed by the governor, by and with the advice and
20 consent of the Senate;
21 (e) One member of the retirement system, who is an
22 employee of a participating public employer other than
23 the state of West Virginia, to be appointed by the
24 governor, by and with the advice and consent of the
25 Senate.

§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

1 The Legislature hereby finds and declares that a
2 compelling state interest exists in providing a tempo-
3 rary early retirement incentives program for encourag-
4 ing the early, voluntary retirement of those public
5 employees who were current, active contributing
6 members of this retirement system on the first day of
7 April, one thousand nine hundred eighty-eight, in the
8 reduction of the number of such employees and in
9 reduction of governmental costs therefor; that such
10 program constitutes a public purpose; and that the
11 special classifications and differentiations provided in
12 respect of such program are reasonable and equitable
13 ones for the accomplishment of such purpose and
14 program as enacted in Enrolled Committee Substitute
15 for H. B. No. 4672, regular session, one thousand nine
16 hundred eighty-eight, and as clarified and supple-
17 mented herein, retroactive to such beginning date,
18 aforesaid. The Legislature further finds that maintain-

19 ing an actuarially sound retirement fund is a necessity
20 and that the reemployment of persons who retire under
21 this section in any manner, including reemployment on
22 a contract basis, is contrary to the intent of the early
23 retirement program and severely threatens the fiscal
24 integrity of the retirement fund.

25 (a) For the purposes of this section: (1) "Contract"
26 means any personal service agreement, not involving the
27 sale of commodities, that cannot be performed within
28 sixty days or that exceeds two thousand five hundred
29 dollars in any twelve-month period. The term "contract"
30 does not include any agreement obtained by a retirant
31 through a bidding process and which is for the furnish-
32 ing of any commodity to a government agency;
33 (2) "governmental entity" means the state of West
34 Virginia; a constitutional branch or office of the state
35 government, or any subdivision thereof; a county, city
36 or town in the state; a county board of education; a
37 separate corporation or instrumentality established
38 pursuant to a state statute; any other entity currently
39 permitted to participate in any state public retirement
40 system or the public employees insurance agency; or any
41 officer or official of any entity listed above who is acting
42 in his or her official capacity; (3) "part-time elected or
43 appointed office" means any elected or appointed office
44 that pays annual compensation of less than two thousand
45 five hundred dollars or requires less than sixty days of
46 service in any twelve-month period; (4) "substitute
47 teacher" means a teacher, public school librarian,
48 registered professional nurse employed by the county
49 board of education or any other person employed for
50 counselling or instructional purposes in a public school
51 in this state who is temporarily fulfilling the duties of
52 an existing real person employed in a specific position
53 who is temporarily absent from that specified position.

54 (b) Beginning on the first day of April, one thousand
55 nine hundred eighty-eight, and continuing through the
56 thirty-first day of December, one thousand nine hundred
57 eighty-eight (or as extended by eligibility qualification
58 requirement, as hereinafter specified), eligible
59 members, being those active, contributing members

60 actually and currently employed on such beginning
61 date, retiring pursuant to this section, and from any
62 state, county or municipal position, covered under the
63 two divisions of this retirement system (the state
64 division and the public employer, nonstate division)
65 including those so employed on said beginning date and
66 leaving the system during the incentive period and who
67 are eligible for taking deferred retirement (but not
68 disability retirees) may elect to participate in this
69 incentive program and may elect any one of the three
70 following incentive options:

71 (1) Retirement incentive option one:

72 For the purpose of computing the member's annuity,
73 the normal final average salary shall be computed and
74 one-eighth thereof shall be added thereto in arriving at
75 the true final average salary for use in actual compu-
76 tation of retirement benefit.

77 (2) Retirement incentive option two:

78 A member may elect a lump sum payment, in
79 addition to his regular retirement annuity, equal to ten
80 percent of his final average salary not to exceed five
81 thousand dollars, and in the case of a deferred retire-
82 ment electing this option, such lump sum payment shall
83 be receivable and deferred to the time of receipt of such
84 deferred retirement annuity.

85 (3) Retirement incentive option three:

86 A person shall be credited with an additional two
87 years of contributing service and an additional two
88 years of age. The years credited under this option shall
89 in no way add to a member's final average salary factor
90 of computation.

91 Active, contributing members who desire to retire
92 under this section but who are unable to retire by the
93 thirty-first day of December, one thousand nine hundred
94 eighty-eight, and make use of the incentive retirement
95 program because an element of eligibility for retire-
96 ment, such as age or other element, will not be met until
97 a date after the thirty-first day of December, one
98 thousand nine hundred eighty-eight, and before the first

99 day of July, one thousand nine hundred eighty-nine,
100 shall be permitted to postpone actual retirement until
101 the date of fulfilling such element of eligibility and shall
102 retire on such date, before the temporary retirement
103 incentive program ends on the thirtieth day of June, one
104 thousand nine hundred eighty-nine, with proper credit
105 to be granted for such extended period: *Provided*, That
106 they shall have made application for retirement,
107 including choice of their respective option, and given
108 notice to their respective employer by the thirty-first
109 day of December, one thousand nine hundred eighty-
110 eight, although postponing actual retirement, as
111 aforesaid.

112 (c) Any member participating in this retirement
113 incentive program is not eligible to accept further
114 employment or accept, directly or indirectly, work on a
115 contract basis from any governmental entity: *Provided*,
116 That nothing in this section shall affect any contract
117 entered into prior to the effective date of this section:
118 *Provided, however*, That the executive director may
119 approve, upon written request and for good cause
120 shown, an exception allowing a retirant to perform work
121 on a contract basis. The executive director shall report
122 all approved exceptions to the board of trustees:
123 *Provided further*, That a person may retire under this
124 section and thereafter serve in an elective office: *And*
125 *provided further*, That he shall not receive an incentive
126 option under this section during the term of service in
127 said office, but shall receive his or her annuity calcu-
128 lated on regular basis, as if originally taken not under
129 this section but on such regular basis. At the end of such
130 term and cessation of service in such office during which
131 the member shall rejoin and reenter the retirement
132 system and pay contributions therefor, such regular
133 annuity shall be recalculated and an increased annuity
134 due to such additional employment shall be granted and
135 computed on regular basis and in similar manner as
136 under section forty-eight of this article. In respect of an
137 appointive office, as distinguished from an elective
138 office, any person retiring under this section and
139 thereafter serving in such appointive office shall not
140 receive an incentive option under this section during the

141 term of service in said office, but the same shall be
142 suspended during such period: *And provided further,*
143 That at the end of such term and cessation of service
144 in such appointive office the incentive option provided
145 for under this section shall be resumed: *And provided*
146 *further,* That any person elected or appointed to office
147 by the state or any of its political subdivisions who
148 waives whatever salary, wage or per diem compensation
149 he may be entitled to by virtue of service in such office
150 and who does not receive any income therefrom except
151 such reimbursement of out-of-pocket costs and expenses
152 as may be permitted by the statutes governing such
153 office shall continue to receive an incentive option under
154 this section. Such service shall not be counted as
155 contributed or credited service for purposes of comput-
156 ing retirement benefits.

157 If such elected or appointed office is a part-time
158 elected or appointed office, a person electing retirement
159 under this section may serve in such elected or ap-
160 pointed office without a loss of the benefits provided
161 under this section.

162 Prior to the initiation or renewal of any contract
163 entered into pursuant to the provisions of this section or
164 the acceptance of any elective or appointive office by a
165 person who has elected to retire under the early
166 retirement provisions of this article, such person shall
167 complete a disclosure and waiver statement executed
168 under oath and acknowledged by a notary public. The
169 board shall promulgate rules, pursuant to chapter
170 twenty-nine-a of this code, regarding the form and
171 contents of the disclosure and waiver statement. The
172 disclosure and waiver statement shall be forwarded to
173 the appropriate state public retirement system admin-
174 istrator who shall take action to ensure that the early
175 retirement incentive benefits are reduced in accordance
176 with the provisions of this section. The administrator
177 shall then certify such action in writing to the appro-
178 priate governmental entity.

179 In any event, an eligible member may retire under
180 this section and thereafter continue to receive his
181 incentive annuity and be employed as a substitute
182 teacher or as adjunct faculty.

183 Any such incentive retirants, under this section, may
184 not thereafter receive such annuity and enter or reenter
185 any governmental retirement system established or
186 authorized to be established by the state, notwithstand-
187 ing any provision of the code to the contrary, unless
188 required by constitutional provision or as hereby
189 specifically permitted to those retiring and thereafter
190 serving in elective office, as aforesaid.

191 The additional annuity allowed for temporary early
192 retirement under these options, in respect of state
193 division retirants of this system, is intended to be paid
194 from the retirement incentive account hereby created as
195 a special account in the state treasury and from the
196 funds therein established with moneys required to be
197 transferred by heads of spending units from the unused
198 portion of salary and fringe benefits in their budgets
199 accruing in respect of such positions vacated and
200 subsequently canceled under this temporary early
201 retirement program. Salary and fringe benefit moneys
202 actually saved in a particular fiscal year shall constitute
203 the fund source for payment of such additional annuity,
204 the funds of the retirement system to be used for
205 payment of the base annuity under the early retirement
206 incentive program: *Provided*, That such additional
207 annuity shall be paid from the unused portion of both
208 salary and fringe benefits and with any remainder of
209 any fringe benefit moneys, as such, to remain with the
210 spending unit and any remainder of salary, as such, to
211 be directed as additional funding to the teachers
212 retirement system and as a part of the assets thereof.
213 No such additional annuity shall be disallowed even
214 though initial receipts may not be sufficient, with funds
215 of the system to be applied for such purpose, as for the
216 base annuity. With respect to public employer division
217 retirants (nonstate division retirants of the system), such
218 incentive annuity shall be paid from the nonstate
219 division funds of the system.

220 (d) The executive secretary of the retirement system
221 shall provide forms for applicants. Such forms shall
222 include a detailed description of the incentive plan
223 options.

224 The executive secretary of the retirement system shall
225 file a report to the Legislature no later than the fifteenth
226 day of February, one thousand nine hundred eighty-
227 nine, and quarterly thereafter, detailing the number of
228 retirees who have elected to accept early retirement
229 incentive options, the dollar cost to date by option
230 selected, and the projected annual cost through the year
231 two thousand.

232 (e) Within every spending unit, department, board,
233 corporation, commission, or any other agency or entity
234 wherein two or multiples of two members elect to retire
235 either under the temporary early retirement incentives
236 set forth above, or under regular, voluntary retirement,
237 and countable on an agency-wide or entity-wide basis,
238 no more than one of such vacated positions may be filled,
239 with the second position being abolished upon the
240 effective day of the member's retirement. The vacant
241 position abolishment requirement shall not apply to
242 elective positions or appointed public officers whose
243 positions are established by state constitutional or
244 statutory provision. The retirant's employing entity shall
245 decide as to which of the vacated positions made
246 available through special early retirement or through
247 regular, voluntary retirement are to be abolished and
248 the head of such spending unit shall immediately notify
249 the state auditor, the legislative auditor, and the
250 commissioner of the department of finance and admin-
251 istration of the decisions and shall then apply and/or
252 transfer the remaining salary and fringe benefits as
253 aforesaid: *Provided*, That this vacant position abolish-
254 ment provision shall not apply to any county or
255 municipal position except those under the authority of
256 a county board of education, nor to any position or
257 positions, whether designated by spending unit, depart-
258 ment, agency, commission, entity or otherwise, which
259 the governor in respect of the executive branch, or the
260 chief justice of the supreme court of appeals in respect
261 of the judicial branch, or the president of the Senate or
262 speaker of the House of Delegates, in respect of the
263 legislative branch, may exempt or amend, under such
264 abolishment provision, upon his respective recommenda-

265 tion that such exemption or amendment is necessary to
266 provide for continuity of governmental operation or to
267 preserve the health, welfare or safety of the people of
268 West Virginia, and with the prior concurrence of the
269 joint committee on government and finance in such
270 recommendation, after the chairmen thereof shall cause
271 such committee to meet.

272 (f) *Special rule of eighty.*—Any active, contributing
273 member of the retirement system as of the first day of
274 April, one thousand nine hundred eighty-eight, who
275 selects one of the incentive options in this section, may
276 retire under the special early retirement provisions with
277 full pension rights, without reduction of benefits if the
278 sum of such member's age plus years of contributing
279 service equals or exceeds eighty: *Provided*, That such
280 person has at least twenty years of contributing service;
281 up to two years of which may be military service, or
282 prior service, or any combination thereof not exceeding
283 an aggregate of two years.

284 (g) *Termination of temporary retirement incentives*
285 *program.*—The right to elect, choose, select or use any
286 of the options, special rule of eighty, or other benefits
287 set forth in this section shall terminate on the thirtieth
288 day of June, one thousand nine hundred eighty-nine.

289 (h) The board shall promulgate rules and regulations
290 in accordance with the provisions of article three,
291 chapter twenty-nine of this code regarding the calcula-
292 tion of the amount of incentive option that may be
293 forfeited pursuant to the provisions of subsection (b) of
294 this section.

§5-10-22d. Supplemental benefits for certain annuitants.

1 Beginning on the first day of January, one thousand
2 nine hundred ninety-one, as an additional supplement to
3 other retirement allowances provided, and notwith-
4 standing the provisions of section twenty-two-b of this
5 article requiring appropriation by the Legislature for
6 payment of certain supplemental benefits, any annuitant
7 who is receiving a retirement annuity on the effective
8 date of this section shall receive a supplemental benefit,
9 prospectively, if the effective date of retirement for such

10 annuitant was prior to the first day of January, one
11 thousand nine hundred eighty-one. Each such annuitant
12 shall receive as his or her supplemental benefit an
13 increased annual amount which is the product of the
14 sum of six dollars multiplied by his or her years of
15 credited service. Nothing in this or any other section of
16 this code shall be construed to require any appropriation
17 of state general revenue funds for the payment of any
18 benefit provided for in this section.

§5-10-28. Unified accounting; funds.

1 For financing and accounting purposes, the West
2 Virginia public employees retirement system shall
3 consist of only one division, including in combination the
4 participating state employees and participating public
5 employees who are not state employees. Unified account-
6 ing of the retirement system transactions shall be
7 maintained for all the assets of the system. The
8 retirement system funds shall be (1) the members
9 deposit fund, (2) the employers accumulation fund,
10 (3) the retirement reserve fund, (4) the income fund,
11 and (5) the expense fund. Nothing contained in this
12 section or any prior provision of law shall be interpreted
13 to mean that any assets of the system, regardless of their
14 origin or date of receipt, are to be in any manner
15 segregated or insulated for the purposes of either paying
16 benefits due or determining or establishing accounting
17 or actuarial methodologies or functions utilized by the
18 retirement system. The amendments to this section
19 adopted during the third extraordinary session of the
20 1990 legislative session shall not be construed to limit
21 the powers of the board relating to contributions to or
22 benefits of the public employees retirement system, and
23 any and all powers residing in the board previously
24 administering the public employees retirement system
25 shall be preserved.

§5-10-54. Termination of benefits; procedure.

1 Whenever the board determines that (1) any person
2 has knowingly made any false statement or falsified or
3 permitted to be falsified any record or records of the
4 retirement system in an attempt to defraud the system,

5 or (2) any person who resumes employment with a
6 governmental entity or accepts, directly or indirectly,
7 work on a contract basis from a governmental entity,
8 except as provided for under this article, the board shall
9 terminate any benefit that person has received, is
10 receiving and is entitled to receive under the early
11 retirement provisions of this article. Further, if any
12 person taking early retirement under this article desires
13 to revoke his or her early retirement incentive, he or she
14 shall be allowed to do so if he or she is entitled to regular
15 retirement pursuant to this article: *Provided*, That such
16 revocation shall be retroactive to the date of last
17 employment and any incentive annuity, under any
18 incentive option, already received by the retiree be
19 repaid to the retirement system. Any person who
20 revokes his or her early retirement incentive shall be
21 thereafter carried upon the records of the retirement
22 system as a regular retiree and shall not be entitled to
23 any enhanced benefit by reason of the early retirement
24 options contained in this article: *Provided, however*, That
25 any person who chose to retire under the early retire-
26 ment provisions of this article who would not have been
27 and is not eligible for regular retirement but for the
28 early retirement incentive options must reapply for
29 admission to a retirement system and repay all pension
30 benefits plus regular interest which would have been
31 earned by the fund in the period during which the
32 annuity payments were paid to him or her since the date
33 his or her employment ceased.

34 Any termination of benefits may be appealed pursu-
35 ant to the state administrative procedures act in chapter
36 twenty-nine-a of this code. The board shall promulgate
37 rules and regulations regarding the procedure for
38 termination of benefits and the repayment of any benefit
39 in accordance with the provisions of article three,
40 chapter twenty-nine-a of this code.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

- §5-10D-1. Consolidated public retirement board created; transition; members; vacancies.
- §5-10D-2. Chairman and vice chairman; executive secretary; employees; treasurer; legal advisor; actuary.

§5-10D-3. Board meetings; quorum; vote; proceedings; compensation.

§5-10D-4. Employment of an actuary; duties; compensation.

§5-10D-1. Consolidated public retirement board created; transition; members; vacancies.

1 (a) There is hereby created a consolidated public
2 retirement board to administer all public retirement
3 plans in this state. It shall administer the public
4 employees retirement system established in article ten,
5 chapter five of this code; the teachers retirement system
6 established in article seven-a, chapter eighteen of this
7 code; the teachers' defined contribution retirement
8 system created by article seven-b, chapter eighteen of
9 this code; the death, disability and retirement fund of
10 the department of public safety created by article two,
11 chapter fifteen of this code; and the judges' retirement
12 system created under article nine, chapter fifty-one of
13 this code;

14 (b) The consolidated public retirement board shall
15 begin administration of the systems listed in subsection
16 (a) of this section on the first day of July, one thousand
17 nine hundred ninety-one: *Provided*, That the board shall
18 begin administration of the teachers' defined contribu-
19 tion retirement system established in article seven-b,
20 chapter eighteen of this code on the first day of January,
21 one thousand nine hundred ninety-one. Prior to that date
22 the existing entities which administer the system shall
23 cooperate with the board in the orderly transition of all
24 duties, responsibilities, records and other materials in
25 their possession;

26 (c) The membership of the consolidated public
27 retirement board consists of:

28 (1) The governor or his or her designee;

29 (2) The state auditor or his or her designee;

30 (3) The secretary of the department of administration
31 or his or her designee;

32 (4) Four residents of the state, who are not members,
33 retirants or beneficiaries of any of the public retirement
34 systems, to be appointed by the governor, with the
35 advice and consent of the Senate;

36 (5) A member, annuitant or retirant of the public
37 employees retirement system who is or was a state
38 employee; a member, annuitant or retirant of the public
39 employees retirement system who is not or was not a
40 state employee; a member, annuitant or retirant of the
41 teachers retirement system; a member, annuitant or
42 retirant of the department of public safety death,
43 disability and retirement fund; and a member, annui-
44 tant or retirant of the teachers' defined contribution
45 retirement system, all to be appointed by the governor,
46 with the advice and consent of the Senate.

47 (d) The appointed members of the board shall serve
48 five-year terms. Of the members initially appointed,
49 three shall be appointed for two-year terms; three shall
50 be appointed for three-year terms; and three shall be
51 appointed for five-year terms. Thereafter, all members
52 shall serve full five-year terms. A member appointed
53 pursuant to subdivision (5), subsection-c of this section
54 ceases to be a member of the board if he or she ceases
55 to be a member of the represented system. If a vacancy
56 occurs in the appointed membership, the governor,
57 within sixty days, shall fill the vacancy by appointment
58 for the unexpired term. No more than five appointees
59 shall be of the same political party.

60 (e) The consolidated public retirement board shall
61 have all the powers, duties, responsibilities and liabil-
62 ities of the public employees retirement system estab-
63 lished pursuant to article ten, chapter five of this code;
64 the teachers retirement system established pursuant to
65 article seven-a, chapter eighteen of this code; the
66 teachers' defined contribution system established
67 pursuant to article seven-b, chapter eighteen of this
68 code; the death, disability and retirement fund of the
69 department of public safety created pursuant to article
70 two, chapter fifteen of this code, and the judges'
71 retirement system created pursuant to article nine,
72 chapter fifty-one of this code and their appropriate
73 governing boards. The consolidated public retirement
74 board may promulgate all rules necessary to effectuate
75 its powers, duties and responsibilities: *Provided*, That
76 the board may adopt any or all of the rules and

77 regulations, previously promulgated, of a retirement
78 system which it administers.

§5-10D-2. Chairman and vice chairman; executive secretary; employees; treasurer; legal advisor; actuary.

1 (a) The secretary of the department of administration
2 shall call the first meeting of the consolidated public
3 retirement board no later than the fifteenth day of
4 January, one thousand nine hundred ninety-one.

5 (b) The board shall elect from its own number a
6 chairman and vice chairman.

7 (c) The board shall appoint an executive secretary of
8 the retirement systems. The executive secretary shall be
9 the chief administrative officer of all the systems, and
10 he or she shall not be a member of the board. He or she
11 shall perform such duties as are required of him or her
12 in this article and as the board from time to time
13 delegates to him or her. The compensation of the
14 executive secretary shall be fixed by the board subject
15 to the approval of the governor. The executive secretary
16 shall, with the approval of the board of trustees, employ
17 such administrative, technical, and clerical employees as
18 are required in the proper operation of the systems.

19 (d) The attorney general shall be the legal advisor to
20 the board of trustees.

21 (e) An actuary, employed by the state or the board
22 pursuant to section four of this article, shall be the
23 actuarial consultant to the board.

24 (f) Prior to the first day of July, one thousand nine
25 hundred ninety-one, the expenses of the board for the
26 administration of the teachers' defined contribution
27 retirement system created pursuant to article seven-b,
28 chapter eighteen of this code shall be paid by the
29 teachers retirement system created pursuant to article
30 seven-a, chapter eighteen of this code.

§5-10D-3. Board meetings; quorum; vote; proceedings; compensation.

1 (a) The board shall hold a meeting at least once each

2 three months, and shall designate the time and place
3 thereof. Five voting trustees constitute a quorum at any
4 meeting of the board. Each member is entitled to one
5 vote on each question before the board. The board shall
6 adopt its own rules of procedure and shall keep a record
7 of its proceedings. All meetings of the board shall be
8 public.

9 (b) The members shall serve as members without
10 compensation for their services as such: *Provided*, That
11 each member shall be reimbursed, upon approval of the
12 board, for any necessary expenses actually incurred by
13 him or her in carrying out his or her duties. No public
14 employee member may suffer any loss of salary or
15 wages on account of his or her service as trustee.

**§5-10D-4. Employment of an actuary; duties;
compensation.**

1 (a) The board is hereby empowered and authorized to
2 employ a state retirement actuary or actuarial firm with
3 such qualifications as the board may prescribe or to
4 utilize an actuary already in the employ of the state. The
5 actuary or actuarial firm shall perform the following
6 duties for the board:

7 (1) Analyze each item of state retirement legislation
8 as to cost, actuarial soundness and adherence to sound
9 pension policy;

10 (2) Prepare an actuarial note to be attached to each
11 item of state retirement legislation prior to its formal
12 introduction. Such actuarial note shall briefly summa-
13 rize the proposed legislation and set forth its anticipated
14 fiscal and actuarial impact on the affected state
15 retirement system or systems; and

16 (3) Such other duties as the board or the board of
17 trustees of the state public retirement system may
18 assign.

19 (b) The state retirement actuary or actuarial firm, if
20 one is employed by the board, shall be compensated in
21 an amount to be fixed by the board. He or she shall
22 receive, in addition, the necessary expenses incident to
23 the performance of his or her duties. In the event that

24 the board utilizes an actuary already employed by the
25 state to perform duties for the board, the board shall
26 reimburse the department or agency which actually
27 employs the actuary for expenses, including the pro rata
28 portion of salary, that the actuary actually expends in
29 the performance of duties for the board.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

§12-6-2. Definitions.

§12-6-9. Permissible investments.

§12-6-10. Restrictions on investments.

§12-6-2. Definitions.

1 As used in this article, unless a different meaning
2 clearly appears from the context:

3 (1) "Board" means the West Virginia state board of
4 investments;

5 (2) "Consolidated fund" means the investment fund
6 managed by the board and established pursuant to
7 subsection (b), section eight of this article;

8 (3) "Consolidated pension fund" means the investment
9 fund managed by the board and established pursuant to
10 subsection (a), section eight of this article;

11 (4) "Local government account" means the account
12 within the consolidated fund established pursuant to
13 subsection (b), section eight of this article;

14 (5) "Local government funds" means the moneys of a
15 political subdivision, including policemen's pension and
16 relief funds, firemen's pension and relief funds and
17 volunteer fire departments, transferred to the board for
18 deposit in the local government account;

19 (6) "Pension funds" means and includes the workers'
20 compensation fund; the state teachers retirement system
21 funds; the death, disability and retirement fund for
22 members of the department of public safety; the public
23 employees retirement system funds; the judges retire-
24 ment fund; and such other retirement or pension funds
25 and systems as may be hereafter established on behalf

26 of public employees of the state or of its political
27 subdivisions and administered by the state; or pension
28 funds established on behalf of public employees of its
29 political subdivisions and administered by the political
30 subdivisions;

31 (7) "Political subdivision" means and includes a
32 county, municipality, or any agency, authority, board,
33 commission or instrumentality of a county or municipal-
34 ity, and regional councils created pursuant to the
35 provisions of section five, article twenty-five, chapter
36 eight of this code;

37 (8) "Securities" means all bonds, notes, debentures or
38 other evidences of indebtedness, and corporate stock;

39 (9) "State account" means the account within the
40 consolidated fund established pursuant to subsection (b),
41 section eight of this article; and

42 (10) "State funds" means all moneys of the state
43 which may be lawfully invested except (a) the pension
44 fund (as defined in subdivision (6) of this section) and
45 (b) the "school fund" established by section four, article
46 XII of the state constitution.

§12-6-9. Permissible investments.

1 Notwithstanding the restrictions which may other-
2 wise be provided by law as to the investment of funds,
3 the board may invest funds made available to it in any
4 of the following:

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

8 (b) Any evidence of indebtedness issued by any
9 United States government agency guaranteed as to the
10 payment of both principal and interest, directly or
11 indirectly, by the United States of America including,
12 but not limited to, the following: Government National
13 Mortgage Association, Federal Land Banks, Federal
14 Home Loan Banks, Federal Intermediate Credit Banks,
15 Banks for Cooperatives, Tennessee Valley Authority,
16 United States Postal Service, Farmers Home Adminis-

17 tration, Export-Import Bank, Federal Financing Bank,
18 Federal Home Loan Mortgage Corporation, Student
19 Loan Marketing Association and Federal Farm Credit
20 Banks;

21 (c) Any evidence of indebtedness issued by the
22 Federal National Mortgage Association to the extent
23 such indebtedness is guaranteed by the Government
24 National Mortgage Association;

25 (d) Any evidence of indebtedness that is secured by
26 a first lien deed of trust or mortgage upon real property
27 situate within this state, if the payment thereof is
28 substantially insured or guaranteed by the United
29 States of America or any agency thereof;

30 (e) Direct and general obligations of this state;

31 (f) Any undivided interest in a trust, the corpus of
32 which is restricted to mortgages on real property and,
33 unless all of such property is situate within the state and
34 insured, such trust at the time of the acquisition of such
35 undivided interest, is rated in one of the three highest
36 rating grades by an agency which is nationally known
37 in the field of rating pooled mortgage trusts;

38 (g) Any bond, note, debenture, commercial paper or
39 other evidence of indebtedness of any private corpora-
40 tion or association organized and operating in the
41 United States: *Provided*, That any such security is, at
42 the time of its acquisition, rated in one of the three
43 highest rating grades by an agency which is nationally
44 known in the field of rating corporate securities:
45 *Provided, however*, That if any commercial paper and/or
46 any such security will mature within one year from the
47 date of its issuance, it shall, at the time of its acquisition,
48 be rated in one of the two highest rating grades by such
49 an agency: *Provided further*, That any such security not
50 rated in one of the two highest rating grades by any
51 such agency and commercial paper or other evidence of
52 indebtedness of any private corporation or association
53 shall be purchased only upon the written recommenda-
54 tion from an investment adviser that has over three
55 hundred million dollars in other funds under its
56 management;

57 (h) Negotiable certificates of deposit issued by any
58 bank, trust company, national banking association or
59 savings institution organized and operating in the
60 United States, which mature in less than one year and
61 are fully collateralized;

62 (i) Interest earning deposits including certificates of
63 deposit, with any duly designated state depository,
64 which deposits are fully secured by a collaterally
65 secured bond as provided in section four, article one of
66 this chapter; and

67 (j) Any corporate stock of any private corporation or
68 association organized and operating in the United States
69 and which is also listed on the Standard and Poor's List
70 of 500.

§12-6-10. Restrictions on investments.

1 Moneys on deposit in the consolidated fund and the
2 consolidated pension fund shall be invested as permitted
3 by section nine of this article subject to the restrictions
4 and conditions contained in this section:

5 (1) At no time shall more than seventy-five percent
6 of the portfolio of either fund be invested in securities
7 described in subdivision (g) of said section nine;

8 (2) At no time shall more than twenty percent of the
9 portfolio of either fund be invested in securities
10 described in said subdivision (g) which mature within
11 one year from the date of issuance thereof;

12 (3) At no time shall more than three percent of the
13 portfolio of either fund be invested in securities issued
14 by a single private corporation or association;

15 (4) At no time shall more than twenty percent of the
16 portfolio of the consolidated pension fund be invested in
17 securities described in subdivision (j) of section nine of
18 this article; and

19 (5) At no time may any of the consolidated fund be
20 invested in securities described in subdivision (j) of
21 section nine of this article.

22 For the purpose of making the computations required
23 by this section, securities shall be valued in accordance
24 with generally accepted accounting principles.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-26. Continuation of death, disability and retirement fund; retirement board.

1 There shall be continued the death, disability and
2 retirement fund heretofore created for the benefit of
3 members of the department of public safety and any
4 dependent of a retired or deceased member thereof.

5 There shall be deducted from the monthly payroll of
6 each member of the department of public safety and
7 paid into such fund six percent of the amount of his
8 salary, and an additional twelve percent of the monthly
9 salary of each member of said department shall be paid
10 by the state of West Virginia monthly into such fund out
11 of the annual appropriation for said department. There
12 shall also be paid into the fund such amounts as have
13 previously been collected by the superintendent of the
14 department of public safety on account of payments to
15 members for court attendance and mileage, rewards for
16 apprehending wanted persons, fees for traffic accident
17 reports and photographs, fees for criminal investigation
18 reports and photographs, fees for criminal history
19 record checks, fees for criminal history record reviews
20 and challenges or from any other sources designated by
21 the superintendent. All moneys payable into such fund
22 shall be deposited in the state treasury, and the
23 treasurer and auditor shall keep a separate account
24 thereof on their respective books.

25 The moneys in this fund, and the right of a member
26 to a retirement allowance, to the return of contributions,
27 or to any benefit under the provisions of this article, are
28 hereby exempt from any state or municipal tax; shall
29 not be subject to the execution, garnishment, attachment
30 or any other process whatsoever; and shall be unassign-
31 able except as is provided in this article.

32 The death, disability and retirement fund shall be

33 administered through the thirtieth day of June, one
34 thousand nine hundred ninety-one, by a retirement
35 board which shall consist of the attorney general, state
36 treasurer, the superintendent and two members in
37 active service of the department: *Provided*, That
38 members of said retirement board shall not be entitled
39 to receive any compensation in addition to the salary of
40 their respective offices for any service rendered as a
41 member of said retirement board: *Provided, however*,
42 That the superintendent may pay out of funds appro-
43 priated for operation of said department the reasonable
44 expenses of members of said board necessarily incurred
45 in connection with dispatch of any business properly
46 before such board. From the first day of July, one
47 thousand nine hundred ninety-one and thereafter, the
48 death, disability and retirement fund shall be adminis-
49 tered by the consolidated public retirement board
50 created by article ten-d, chapter five of this code. The
51 two members of said department shall be elected to
52 membership on the retirement board by vote of the
53 members of the department of public safety; such
54 election to be held on the first Tuesday in June next
55 following the passage of this article and on the first
56 Tuesday in June each two years thereafter. The attorney
57 general, state treasurer and the superintendent of the
58 department of public safety shall promulgate any and
59 all necessary rules and regulations for holding in a fair
60 and impartial manner the election on the first Tuesday
61 in June next following the passage of this article and
62 thereafter the retirement board consisting of the
63 attorney general, state treasurer, superintendent and
64 the two duly elected members of said department shall
65 have authority to promulgate and, from time to time,
66 revise rules and regulations for holding all subsequent
67 elections in a fair and impartial manner. All elections
68 shall be held under the direction of the superintendent
69 of said department in accordance with said rules and
70 regulations. The members of the department chosen to
71 serve on said retirement board shall hold office for a
72 period of two years commencing on the first day of July
73 next following the date of such election. When any
74 member elected to the retirement board shall die, resign

75 from the board, resign or be discharged from service in
76 the department, make application for retirement, be
77 retired, or become disabled, the office of such member
78 of the retirement board shall be declared vacant by the
79 superintendent of said department, and said superin-
80 tendent, to fill such vacancy, shall appoint the member
81 in active service of said department who as an unsuc-
82 cessful candidate at the preceding election of members
83 to said retirement board received the greatest number
84 of votes. No member of the retirement board shall
85 participate in any hearing at which his own petition for
86 retirement or the petition of any member of said
87 department who is related to him by blood or marriage
88 shall be presented for consideration.

89 At its first meeting following each election of
90 members to the retirement board, said board shall elect
91 one of its members to serve as chairman and a second
92 member to serve as secretary thereof. The retirement
93 board shall have the power to make rules and regula-
94 tions, not inconsistent with the provisions hereof,
95 governing procedure and order and manner of business
96 by and before such board. The retirement board shall
97 have the power to make awards and to revise and
98 terminate awards previously made for such times and
99 under such terms and conditions as are hereinafter
100 provided. The votes of a majority of the five members
101 of the board shall be necessary to the decision of any
102 matter by the board. Decisions made by the board shall
103 be supreme and final and there shall be no appeal
104 therefrom.

105 It shall be the duty of the retirement board on or
106 before the first day of July of each year to cause all
107 future awards from such fund to be valued and, to the
108 extent that moneys shall be available, reserves based on
109 sound actuarial principles for payment thereof to be
110 carried on the fund's account as a liability against the
111 reserve fund. The board shall have the authority to
112 employ an actuary for such purpose. The board shall
113 cause a system of accounting to be installed and
114 maintained to reflect currently and truly all transac-
115 tions or developments pertaining to age of members and

116 eligible dependents surviving deceased members,
 117 periods of service and aggregate earnings of all
 118 members eligible to participate in said fund and any
 119 other matter relating to maintenance of said fund or
 120 administration thereof, and each year to cause to be
 121 made and submitted to each member of said department
 122 a statement of the condition of said fund. Costs and
 123 expenses incurred in making actuarial studies, audits
 124 and installations and maintenance of such accounting
 125 system shall be paid by the superintendent from funds
 126 appropriated for operation of the department of public
 127 safety.

128 All moneys paid into and accumulated in said death,
 129 disability and retirement fund, except such amounts as
 130 shall be designated or set aside by the retirement board
 131 for payments of death, disability and retirement benefits
 132 and awards, shall be invested by the state board of
 133 investments as provided by law.

CHAPTER 18. EDUCATION.

Article

7A. State Teachers Retirement System.

7B. Teachers' Defined Contribution Retirement System.

23. Powers and Duties of Governing Boards.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-4. Teachers retirement board.

§18-7A-18a. Calculation of allocation to reserve fund.

§18-7A-26i. Supplemental benefits for retired teachers.

§18-7A-34. Loans to members.

§18-7A-35b. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

§18-7A-35c. Termination of benefits; procedure.

§18-7A-4. Teachers retirement board.

1 The general administration and the management of
 2 the retirement system are hereby continued in a
 3 "teachers retirement board" through the thirtieth day of
 4 June, one thousand nine hundred ninety-one and
 5 thereafter, in the consolidated public retirement board

6 created by article ten-d, chapter five of this code. The
7 retirement board shall have the right to sue and be sued,
8 plead and be impleaded, contract and be contracted
9 with and shall make all necessary rules and regulations
10 to carry out the provisions of this article. All of the
11 business of the board shall be transacted, all of its funds
12 invested, all warrants for money drawn and payments
13 made, and all of its cash and securities and other
14 property shall be held in the name of the "teachers
15 retirement board."

§18-7A-18a. Calculation of allocation to reserve fund.

1 (a) Beginning the first day of June, one thousand nine
2 hundred ninety-one, the consolidated public retirement
3 board, created pursuant to article ten-d, chapter five of
4 this code, shall make an annual calculation of the
5 aggregate full compensation actually received by the
6 following persons:

7 (1) Those persons employed on or after the first day
8 of July, one thousand nine hundred ninety-one, who
9 would have been teacher members of the state teachers'
10 retirement system under this article if such persons'
11 employment had begun prior to such date; and

12 (2) Those persons employed on and after the first day
13 of July, one thousand nine hundred ninety-one, who
14 would have been nonteaching members of the state
15 teachers' retirement system under this article if such
16 persons' employment had begun prior to such date.

17 (b) There shall be an annual allocation from the state
18 general revenue fund to the reserve fund, created by
19 section eighteen of this article, equal to the sum of seven
20 and one-half percent of the aggregate compensation
21 totals of subdivisions one and two, subsection (a) of this
22 section.

23 There shall be an additional allocation in each year
24 an amount equal to the total of all irrevocably forfeited
25 amounts in the suspension account established in section
26 eleven, article seven-b of this chapter plus earnings
27 thereon which have been certified to the several

28 contributing employers as irrevocably forfeited in the
29 prior fiscal year and subsequently utilized by said
30 contributing employers to reduce their total aggregate
31 contribution requirements pursuant to section seven-
32 teen, article seven-b of this chapter.

33 (c) The additional allocation provided in this section
34 represents a funding method by which a part of a
35 rational amortization plan will be established to
36 amortize the current unfunded liability of the teachers
37 retirement system created by this article. The additional
38 allocations are not and shall not be construed to be
39 moneys which are owed to, nor earned by any employee,
40 designated in subdivision (1) or (2), subsection (a) of this
41 section. The calculation of additional allocation provided
42 for herein is solely a mathematical formula to quantify
43 the savings in the state general revenue funds caused
44 by the enactment of the Teachers' Retirement Reform
45 Act codified in article seven-b of this chapter.

§18-7A-26i. Supplemental benefits for retired teachers.

1 Beginning on the first day of January, one thousand
2 nine hundred ninety-one, any annuitant who is receiving
3 a retirement annuity on the effective date of this section
4 shall receive a supplemental benefit, prospectively, if
5 the effective date of retirement for such annuitant was
6 prior to the first day of July, one thousand nine hundred
7 eighty-one, and such annuitant is not receiving supple-
8 mental benefits pursuant to section twenty-six-h of this
9 article. For the purposes of this section, "effective date
10 of retirement" means the last day of actual employment
11 or the last day carried on the payroll of the employer,
12 whichever is later, together with fully meeting all of the
13 eligibility requirements for retirement prior to the
14 aforesaid effective date.

15 Each such eligible annuitant shall receive as his or
16 her supplemental benefit an increased annual amount
17 which is the product of the sum of eighteen dollars
18 multiplied by his or her years of credited service.

19 For the purpose of calculating the supplemental
20 benefit provided in this section, fractional parts of a
21 service credit year are to be disregarded unless in excess

22 of one half of a credited service year, in which event a
23 full year of service credit shall be given.

24 For the purpose of computation for determination of
25 eligibility and for the amount of any supplemental
26 benefit hereunder, separate computation shall be made
27 of a retirant's own benefit and that which may be
28 receivable as beneficiary of another, under the provi-
29 sions of this article, with each such benefit being eligible
30 for the supplemental benefit herein provided.

31 Prior to the first day of January, one thousand nine
32 hundred ninety-one, the executive secretary of the board
33 shall provide to the Legislature information as to the
34 number of annuitants who retired before the first day
35 of July, one thousand nine hundred eighty-one, the
36 amounts of the annuities they receive, the amount of
37 funds necessary to provide cost of living increases to
38 such annuitants, and such other detail and related
39 information as the joint committee on government and
40 finance may direct.

§18-7A-34. Loans to members.

1 A member of the retirement system upon written
2 application may borrow from his individual account in
3 the teachers accumulation fund, subject to these
4 restrictions:

5 (1) Loans shall be made in multiples of ten dollars,
6 the minimal loan being one hundred dollars and the
7 maximum being eight thousand dollars except if the
8 total amount of loaned money outstanding exceeds forty
9 million dollars, the maximum will be three thousand
10 dollars until the teachers retirement board determines
11 that loans outstanding have been reduced to an extent
12 that eight thousand dollar loans are again authorized.

13 (2) Loans to any one member shall not exceed one half
14 of his contributions to his individual account in the
15 teachers accumulation fund.

16 (3) Interest charged on the amount of the loan shall
17 be six percent per annum, or a higher rate as set by the
18 teachers retirement board. If repayable in installments,
19 the interest shall not exceed the annual rate so estab-
20 lished upon the principal amount of the loan, for the
21 entire period of the loan, and such charge shall be added

22 to the principal amount of the loan. The minimal
23 interest charge shall be for six months.

24 (4) No member shall be eligible for more than one
25 loan in any one year.

26 (5) If a refund or benefit is payable to the borrower
27 or his beneficiary before he repays the loan with
28 interest, the balance due with interest to date shall be
29 deducted from such benefit or refund.

30 (6) From his monthly salary as a teacher the member
31 shall pay the loan and interest by deductions which will
32 pay the loan and interest in not more than sixty nor less
33 than six months. Upon notice of loan granted and
34 payment due, the employer shall be responsible for
35 making such salary deductions and reporting them to
36 the retirement board. At the option of the retirement
37 board, loan deductions may be collected as prescribed
38 herein for the collection of members' contribution, or
39 may be collected through issuance of warrant by
40 employer. If the borrower decides to make loan pay-
41 ments while not paid for service as a teacher, the
42 retirement board must accept such payments.

**§18-7A-35b. Temporary early retirement incentives
program; legislative declaration and
finding of compelling state interest and
public purpose; specifying eligible and
ineligible members for incentives
program; options, conditions, and excep-
tions; certain positions abolished; special
rule of eighty; effective, termination, and
notice dates.**

1 The Legislature hereby finds and declares that a
2 compelling state interest exists in providing a tempo-
3 rary, early retirement incentives program for encourag-
4 ing the early, voluntary retirement of those public
5 employees who were current, active, contributing
6 members of this retirement system on the first day of
7 April, one thousand nine hundred eighty-eight, in the
8 reduction of the number of such employees and in
9 reduction of governmental costs therefor; that such
10 program constitutes a public purpose; and that the
11 special classifications and differentiations provided in
12 respect of such program are reasonable and equitable

13 ones for the accomplishment of such purpose and
14 program as enacted in Enrolled Committee Substitute
15 for H. B. No. 4672, regular session, one thousand nine
16 hundred eighty-eight, and as clarified and supple-
17 mented herein, retroactive to such beginning date,
18 aforesaid. The Legislature further finds that maintain-
19 ing an actuarially sound retirement fund is essential and
20 that the reemployment in any manner, including
21 reemployment on a contract basis, by the state of any
22 person who retires under this section is contrary to the
23 intent of the early retirement program and severely
24 threatens the fiscal integrity of the retirement fund.

25 (a) For the purposes of this section: (1) "Contract"
26 means any personal service agreement, not involving the
27 sale of commodities, that cannot be performed within
28 sixty days or for which the total compensation exceeds
29 two thousand five hundred dollars in any twelve-month
30 period. The term "contract" does not include any
31 agreement obtained by a retirant through a bidding
32 process and which is for the furnishing of any commod-
33 ity to a government agency; (2) "governmental entity"
34 means the state of West Virginia; a constitutional
35 branch or office of the state government, or any
36 subdivision thereof; a county, city or town in the state;
37 a county board of education; a separate corporation or
38 instrumentality established pursuant to a state statute;
39 any other entity currently permitted to participate in
40 any state public retirement system or the public
41 employees insurance agency; or any officer or official of
42 any entity listed above who is acting in his or her official
43 capacity; (3) "substitute teacher" means a teacher,
44 public school librarian, registered professional nurse
45 employed by the county board of education or any other
46 person employed for counselling or instructional pur-
47 poses in a public school in this state who is temporarily
48 fulfilling the duties of an existing real person employed
49 in a specific position who is temporarily absent from
50 that specific position; (4) "part-time elected or ap-
51 pointed office" means any elected or appointed office
52 that compensates its members in an amount less than
53 two thousand five hundred dollars or requires less than
54 sixty days of service in any twelve-month period.

55 (b) Beginning on the first day of April, one thousand
56 nine hundred eighty-eight, and continuing through the
57 thirty-first day of December, one thousand nine hundred
58 eighty-eight (or as extended by contract or by eligibility
59 qualification requirement, as hereinafter specified),
60 eligible members, being those active, contributing
61 members actually and currently employed on such
62 beginning date, retiring pursuant to this section (except
63 disability retirees, but including those so employed on
64 said beginning date and leaving the system during the
65 incentive period and who are eligible for deferred
66 benefits), may elect to participate in this incentive
67 program and may elect any one of the three following
68 incentive options:

69 (1) Retirement incentive option one:

70 For the purpose of computing the member's annuity,
71 the normal final average salary shall be computed and
72 one eighth thereof shall be added thereto in arriving at
73 the true final average salary for use in actual compu-
74 tation of retirement benefit.

75 (2) Retirement incentive option two:

76 A member may elect a lump sum payment, in
77 addition to his regular retirement annuity, equal to ten
78 percent of his final average salary not to exceed five
79 thousand dollars, and in the case of a deferred retire-
80 ment electing this option, such lump sum payment shall
81 be receivable and deferred to the time of receipt of such
82 deferred retirement annuity.

83 (3) Retirement incentive option three:

84 A person shall be credited with an additional two
85 years of contributing service and an additional two
86 years of age. The years credited under this option shall
87 in no way add to a member's final average salary factor
88 of computation.

89 (c) Eligible, active, contributing members, aforesaid,
90 employed under agreement and rendering services
91 during school year one thousand nine hundred eighty-
92 eight—eighty-nine shall, if retiring pursuant to the
93 provisions of this section and the early retirement

94 incentive program set forth herein, make application for
95 retirement, including choice of their respective option,
96 and give notice to their respective county boards of
97 education by the thirty-first day of December, one
98 thousand nine hundred eighty-eight, but shall be
99 permitted to postpone actual retirement until imme-
100 diately after the close of such agreement period and said
101 school year; with proper credit to be granted for such
102 extended period.

103 Also, eligible, active, contributing members em-
104 ployed, not under agreement, who desire to retire under
105 this section but who are unable to retire by the thirty-
106 first day of December, one thousand nine hundred
107 eighty-eight, because an element of eligibility for
108 retirement, such as age or other element, will not be met
109 until a date after the thirty-first day of December, one
110 thousand nine hundred eighty-eight, and before the first
111 day of July, one thousand nine hundred eighty-nine,
112 shall be permitted to postpone actual retirement until
113 the date of fulfilling such element of eligibility and shall
114 retire on such date, before the temporary retirement
115 incentive program ends on the thirtieth day of June, one
116 thousand nine hundred eighty-nine; with proper credit
117 to be granted for such extended period: *Provided*, That
118 members eligible under the preceding paragraph and
119 this paragraph shall have made application for retire-
120 ment, including choice of their respective option, and
121 given notice to their respective employer by the thirty-
122 first day of December, one thousand nine hundred
123 eighty-eight, although postponing actual retirement, as
124 aforesaid: *Provided, however*, That an application for
125 retirement under the provisions of the preceding
126 paragraph and this paragraph shall be binding upon a
127 member unless the member provides the retirement
128 system and the local board of education or other
129 educational agency with written notification of his or
130 her decision not to retire by the first day of April, one
131 thousand nine hundred eighty-nine: *Provided further*,
132 That an eligible member under this paragraph or the
133 preceding paragraph who has a grievance or court
134 proceeding which is pending on the passage date of this
135 bill, shall be required to give final notice of decision not

136 to retire by the thirtieth day of June, one thousand nine
137 hundred eighty-nine: *And provided further*, That the
138 state teachers retirement board on or before the twenty-
139 fourth day of March, one thousand nine hundred eighty-
140 nine, shall provide calculations of anticipated retirement
141 benefits to those members who intend to retire pursuant
142 to the provisions of this section.

143 Eligible members, other than those covered under the
144 provisions of the two preceding paragraphs, desiring to
145 retire under this incentive program shall make their
146 option election prior to and take their respective
147 retirement by the close of the thirty-first day of
148 December, one thousand nine hundred eighty-eight.

149 Any eligible member who retires hereunder during
150 the school year (after the first day of July, one thousand
151 nine hundred eighty-eight, and on any date prior to the
152 thirtieth day of June, one thousand nine hundred eighty-
153 nine) shall have included such months of such school
154 year and the salary in respect thereof, if ones of higher
155 salary, in place of and for any like number of months
156 in his or her five-year period for computation of
157 annuities as provided for in section twenty-six of this
158 article.

159 (d) Any member participating in this retirement
160 incentive program is not eligible to accept further
161 employment or accept, directly or indirectly, work on a
162 contract basis from a governmental entity: *Provided*,
163 That nothing in this section shall effect any contract
164 entered into prior to the effective date of this section:
165 *Provided, however*, That the executive director may
166 approve, upon written request for good cause shown, an
167 exception allowing a retirant to perform work on a
168 contract basis: *Provided further*, That a person may
169 retire under this section and thereafter serve in an
170 elective office: *And provided further*, That he or she shall
171 not receive an incentive option under this section during
172 the term of service in said office, but shall receive his
173 or her annuity calculated on regular basis, as if
174 originally taken not under this section but on such
175 regular basis. At the end of such term and cessation of
176 service in such office, such incentive option shall

177 resume. In respect of an appointive office, as distin-
178 guished from an elective office, any person retiring
179 under this section and thereafter serving in such
180 appointive office shall not receive an incentive option
181 under this section during the term of service in said
182 office, but the same shall be suspended during such
183 period: *And provided further*, That at the end of such
184 term and cessation of service in such appointive office
185 the incentive option provided for under this section shall
186 be resumed: *And provided further*, That any person
187 elected or appointed to office by the state or any of its
188 political subdivisions who waives whatever salary, wage
189 or per diem compensation he or she may be entitled to
190 by virtue of service in such office and who does not
191 receive any income therefrom except such reimburse-
192 ment of out-of-pocket costs and expenses as may be
193 permitted by the statutes governing such office shall
194 continue to receive an incentive option under this
195 section. Such service shall not be counted as contributed
196 or credited service for purposes of computing retirement
197 benefits.

198 If such elected or appointed office is a part-time
199 elected or appointed office, a person electing retirement
200 under this section may serve in such elective or
201 appointive office with no loss of the benefits provided
202 under this section.

203 Prior to the initiation or renewal of any contract
204 entered into pursuant to this section or the acceptance
205 of any elective or appointive office, a person who has
206 elected to retire under the early retirement provisions
207 of this article shall complete a disclosure and waiver
208 statement executed under oath and acknowledged by a
209 notary public. The board shall promulgate rules,
210 pursuant to chapter twenty-nine-a of this code, regard-
211 ing the form and contents of the waiver and disclosure
212 statement. The disclosure and waiver statement shall be
213 forwarded to the appropriate state public retirement
214 system administrator who shall take action to ensure
215 that the early retirement incentive option benefit is
216 reduced in accordance with the provisions of this
217 section. The administrator shall then certify such action
218 in writing to the appropriate governmental entity.

219 In any event, an eligible member may retire under
220 this section and thereafter continue to receive his
221 incentive annuity and be employed as a substitute
222 teacher or as adjunct faculty, or as a school service
223 personnel substitute.

224 Any such incentive retirants, under this section, may
225 not thereafter receive such annuity and enter or reenter
226 any governmental retirement system established or
227 authorized to be established by the state, notwithstand-
228 ing any provision of the code to the contrary, unless
229 required by constitutional provision.

230 The additional annuity allowed for temporary early
231 retirement under these options is intended to be paid
232 from the retirement incentive account hereby created as
233 a special account in the state treasury and from the
234 funds therein established with moneys required to be
235 applied or transferred by heads of spending units from
236 the unused portion of salary and fringe benefits in their
237 budgets accruing in respect to such positions vacated
238 and subsequently canceled under this temporary early
239 retirement program. Salary and fringe benefit moneys
240 actually saved in a particular fiscal year shall constitute
241 the fund source. No such additional annuity shall be
242 disallowed even though initial receipts may not be
243 sufficient, with funds of the system to be applied for
244 such purpose, as for the base annuity.

245 (e) The executive secretary of the retirement system
246 shall provide forms for applicants. Such forms shall
247 include a detailed description of the incentive plan
248 options.

249 The executive secretary of the retirement system shall
250 file a report to the Legislature no later than the fifteenth
251 day of February, one thousand nine hundred eighty-
252 nine, and quarterly thereafter, detailing the number of
253 retirees who have elected to accept early retirement
254 incentive options, the dollar cost to date by option
255 selected, and the projected annual cost through the year
256 two thousand.

257 (f) Within every spending unit, department, board,
258 corporation, commission, or any other agency or entity
259 wherein two or multiples of two members elect to retire

260 either under the temporary early retirement incentives
261 set forth above, or under regular, voluntary retirement,
262 and countable on an agency-wide or entity-wide basis,
263 no more than one of such vacated positions may be filled,
264 with the second position being abolished upon the
265 effective day of the member's retirement: *Provided*,
266 That county boards of education in replacing employees
267 leaving under this temporary early retirement incentive
268 program shall be eligible to replace in that number as
269 authorized by the basic school aid formula and pursuant
270 to those guidelines in respect of number of positions lost
271 or projected to be lost due to declining enrollment,
272 changes in statutes, changes in state appropriations and
273 the other guidelines set forth and contained within said
274 basic school aid formula. The vacant position abolish-
275 ment requirement shall not apply to elective positions
276 or appointed public officers whose positions are estab-
277 lished by state constitutional or statutory provision. The
278 retirant's employing entity shall decide as to which of
279 the vacated positions made available through special
280 early retirement or through regular, voluntary retire-
281 ment are to be abolished and the head of such spending
282 unit shall immediately notify the state auditor, the
283 legislative auditor, and the commissioner of the depart-
284 ment of finance and administration of the decisions and
285 shall then apply and/or transfer, as aforesaid, the
286 remaining salary and fringe benefit appropriations:
287 *Provided, however*, That this vacant position abolishment
288 provision shall not apply to any county position, other
289 than those under the authority of county boards of
290 education, nor to any position or positions, whether
291 designated by spending unit, department, agency,
292 commission, entity or otherwise, which the governor
293 may exempt or amend under such abolishment provision
294 upon his recommendation that such exemption or
295 amendment is necessary to preserve the health, welfare
296 or safety of the people of West Virginia, and with the
297 prior concurrence of the joint committee on government
298 and finance in such recommendation, after the chairmen
299 thereof shall cause such committee to meet.

300 (g) *Special rule of eighty*.—Any active, contributing
301 member of the retirement system as of the first day of
302 April, one thousand nine hundred eighty-eight, who
303 selects one of the incentive options in this section, may

304 retire under the special early retirement provisions with
305 full pension rights, without reduction of benefits if the
306 sum of such member's age plus years of contributing
307 service equals or exceeds eighty: *Provided*, That such
308 person has at least twenty years of contributing service,
309 up to two years of which may be military service, or
310 prior service, or already paid and credited out-of-state
311 service (if so paid and credited by the first day of April,
312 one thousand nine hundred eighty-eight) or any combi-
313 nation thereof not exceeding an aggregate of two years.

314 (h) *Termination of temporary retirement incentives*
315 *program*.—The right to elect, choose, select or use any
316 of the options, special rule of eighty, or other benefits
317 set forth in this section shall terminate on the thirtieth
318 day of June, one thousand nine hundred eighty-nine.

§18-7A-35c. Termination of benefits; procedure.

1 Whenever the board determines that (1) any person
2 has knowingly made any false statement or falsified or
3 permitted to be falsified any record or records of the
4 retirement system in an attempt to defraud the system,
5 or (2) any person who resumes employment with any
6 governmental entity or accepts, directly or indirectly,
7 work on a contract basis from any governmental entity,
8 except as provided for under this article, the board shall
9 terminate any benefit that a person is receiving, has
10 received, or is entitled to receive under the early
11 retirement provisions of this article. Further, if any
12 person taking early retirement under this article desires
13 to revoke his or her early retirement incentive, he or she
14 shall be allowed to do so if he or she is entitled to regular
15 retirement pursuant to this article: *Provided*, That such
16 revocation shall be retroactive to the date of last
17 employment and any incentive annuity already received
18 by the retiree be repaid to the retirement system. Any
19 person who revokes his or her early retirement incentive
20 shall be thereafter carried upon the records of the
21 retirement system as a regular retiree and shall not be
22 entitled to any enhanced benefit by reason of the early
23 retirement options contained in this article: *Provided*,
24 *however*, That any person who opted to retire pursuant
25 to the early retirement provisions of this article who
26 would not have been and is not eligible for regular

27 retirement but for the early retirement incentive options
28 must upon returning to the employment of a participat-
29 ing employer, reapply for admission to a retirement
30 system and repay all pension benefits paid to that person
31 since the date his previous employment ceased. Any
32 termination of benefits may be appealed pursuant to the
33 state administrative procedures act in chapter twenty-
34 nine-a of this code. The board shall promulgate rules
35 regarding the procedure for termination of benefits and
36 the repayment of any benefit, in accordance with the
37 provisions of article three, chapter twenty-nine-a of this
38 code.

**ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIRE-
MENT SYSTEM.**

- §18-7B-1. Short title.
§18-7B-2. Definitions.
§18-7B-3. Defined contribution retirement system created and established;
body corporate.
§18-7B-4. Article to be liberally construed; purpose.
§18-7B-5. Administration of the teachers' defined contribution retirement
system.
§18-7B-6. Powers and duties of the consolidated board in the administration
of the defined contribution system.
§18-7B-7. Participation in teachers' defined contribution retirement system;
limiting participation in existing teachers retirement system.
§18-7B-8. Voluntary participation in system.
§18-7B-9. Members contribution; annuity account established.
§18-7B-10. Employer contributions.
§18-7B-11. Termination of membership.
§18-7B-12. Retirement, commencement of annuity payments.
§18-7B-13. Amount of annuity payments.
§18-7B-14. Supplemental annuity contracts.
§18-7B-15. Account statements.
§18-7B-16. Years of employment service.
§18-7B-17. Deposits to the members' annuity accounts.
§18-7B-18. Right to benefits not subject to execution, etc.

§18-7B-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "Teacher's Retirement Reform Act".

§18-7B-2. Definitions.

- 1 As used in this article, unless the context clearly
- 2 requires a different meaning:

- 3 (1) "Defined contribution system" or "system" means
4 the teachers' defined contribution retirement system
5 created and established by this article;
- 6 (2) "Existing retirement system" means the state
7 teachers retirement system established in article seven-
8 a of this chapter;
- 9 (3) "Existing employer" means any employer who
10 employed or employs a member of the existing retire-
11 ment system;
- 12 (4) "Consolidated board" or "board" means the
13 consolidated public retirement board created and
14 established pursuant to article ten-d, chapter five of this
15 code;
- 16 (5) "Member" or "employee" means the following
17 persons, if regularly employed for full-time service: (a)
18 Any person employed for instructional service in the
19 public schools of West Virginia; (b) principals; (c) public
20 school librarians; (d) superintendents of schools and
21 assistant county superintendents of schools; (e) any
22 county school attendance director holding a West
23 Virginia teacher's certificate; (f) the executive secretary
24 of the retirement board; (g) members of the research,
25 extension, administrative or library staffs of the public
26 schools; (h) the state superintendent of schools, heads
27 and assistant heads of the divisions under his supervi-
28 sion, or any other employee thereunder performing
29 services of an educational nature; (i) employees of the
30 state board of education who are performing services of
31 an educational nature; (j) any person employed in a non-
32 teaching capacity by the state board of education, any
33 county board of education, the state department of
34 education or the teachers retirement board, if such
35 person was formerly employed as a teacher in the public
36 schools; (k) all classroom teachers, principals and
37 educational administrators in schools under the super-
38 vision of the department of corrections, the department
39 of health or the department of human services; (l) any
40 person who is regularly employed for full-time service
41 by any county board of education, the state board of
42 education or the teachers retirement board; and (m) the

43 administrative staff of the public schools including
44 deans of instruction, deans of men and deans of women,
45 and financial and administrative secretaries;

46 (6) "Regularly employed for full-time service" means
47 employment in a regular position or job throughout the
48 employment term regardless of the number of hours
49 worked or the method of pay;

50 (7) "Year of employment service" means employment
51 for at least ten months, a month being defined as twenty
52 employment days: *Provided*, That no more than one year
53 of service may be accumulated in any twelve-month
54 period;

55 (8) "Employer" means the agency of and within the
56 state which has employed or employs a member;

57 (9) "Compensation" means the full compensation
58 actually received by members for service whether or not
59 a part of such compensation is received from other
60 funds, federal or otherwise, than those provided by the
61 state or its subdivisions;

62 (10) "Public schools" means all publicly supported
63 schools, including normal schools, colleges and univer-
64 sities in this state;

65 (11) "Member contribution" means an amount re-
66 duced from the employee's regular pay periods, and
67 deposited into the member's individual annuity account
68 within the defined contribution retirement system;

69 (12) "Employer contribution" means an amount
70 deposited into the member's individual annuity account
71 on a periodic basis coinciding with the employee's
72 regular pay period by an employer from its own funds;

73 (13) "Annuity account" or "annuity" means an ac-
74 count established for each member to record the deposit
75 of member contributions and employer contributions
76 and interest, dividends or other accumulations credited
77 on behalf of the member;

78 (14) "Retirement" means a member's withdrawal
79 from the active employment of a participating employer
80 and completion of all conditions precedent to retirement;

81 (15) "Permanent, total disability" means a mental or

82 physical incapacity requiring the absence from employ-
83 ment service for at least six months: *Provided*, That such
84 incapacity is shown by an examination by a physician
85 or physicians selected by the board.

§18-7B-3. Defined contribution retirement system created and established; body corporate.

1 The teachers' defined contribution retirement system
2 is hereby created and established to provide for the
3 secure, fair and orderly retirement of the teachers and
4 related personnel of the state. The defined contribution
5 retirement system shall constitute a body corporate and
6 all business of the system shall be transacted in the
7 name of the teachers' defined contribution retirement
8 system.

§18-7B-4. Article to be liberally construed; purpose.

1 The provisions of this article shall be liberally
2 construed so as to provide a general annuity based
3 retirement system for teachers in this state. The purpose
4 of this article is to provide a defined contribution
5 retirement program which is fully funded on a current
6 basis from employer and employee contribution.

§18-7B-5. Administration of the teachers' defined contribution retirement system.

1 The consolidated public retirement board created
2 pursuant to article ten-d, chapter five of this code shall
3 administer the teachers' defined contribution retirement
4 system. The board may sue and be sued, contract and
5 be contracted with and conduct all the business of the
6 defined contribution system in the name of the teachers'
7 defined contribution retirement system.

§18-7B-6. Powers and duties of the consolidated board in the administration of the defined contribution system.

1 The board has all powers necessary to effectuate the
2 purposes of this article. The board shall contract with
3 a private pension, insurance, annuity, mutual fund or
4 other qualified company or companies to administer the
5 day-to-day operations of the system. In selecting such
6 company or companies the board shall take into account

7 as its highest duty, the proper safeguard and protection
8 of the member and employer contributions and the
9 interest dividends, or other return thereon. The board
10 shall promulgate rules regarding the proper investment
11 of funds notwithstanding the provisions of article six,
12 chapter twelve of this code.

**§18-7B-7. Participation in teachers' defined contribution
retirement system; limiting participation in
existing teachers retirement system.**

1 Beginning the first day of July, one thousand nine
2 hundred ninety-one, the teachers' defined contribution
3 retirement system shall be the single retirement
4 program for all new employees whose employment
5 commences on or after that date. No additional new
6 employees except as may be provided herein may be
7 admitted to the existing retirement system. Members of
8 the existing retirement system whose employment
9 continues beyond the first day of July, one thousand nine
10 hundred ninety-one, are not affected by this article and
11 shall continue to contribute and participate in the
12 existing system without change in provisions or benefits.

13 Notwithstanding the provisions of section twenty-
14 three, article seven-a of this chapter, any employee
15 whose employment terminates after the thirtieth day of
16 June, one thousand nine hundred ninety-one, who is
17 later reemployed by an employer shall be eligible for
18 membership only in the teachers' defined contribution
19 system: *Provided*, That if such reemployment with an
20 existing employer occurs not more than six months after
21 the employee's previous employment, he or she shall be
22 entitled to readmission to the existing retirement system
23 in which he or she was originally a member: *Provided*,
24 *however*, That if such employee has withdrawn his or her
25 contributions from the existing retirement system, then
26 readmission shall not be permitted and the employee
27 will be entitled only to the defined contribution system.

28 An employee whose employment with an employer or
29 an existing employer is suspended as a result of an
30 approved leave of absence, approved maternity or
31 paternity break in service, or any other approved break
32 in service authorized by the board, is eligible for

33 readmission to the existing retirement system in which
34 he or she was a member.

35 In all cases where a question exists as to readmission
36 to membership in the existing retirement system, the
37 board shall decide the question.

§18-7B-8. Voluntary participation in system.

1 Any employee who is a member of the existing
2 retirement system may, upon written election, voluntar-
3 ily elect membership in the defined contribution system,
4 on a prospective basis, on or after the first day of July,
5 one thousand nine hundred ninety-one. All benefits
6 earned by any employee making such voluntary election
7 under the existing retirement system prior to such a
8 voluntary election shall be frozen and made available to
9 that employee upon retirement as provided by the
10 existing retirement system. For the purposes of this
11 section "frozen" means that the member's salary, years
12 of service and any other factor to determine benefits
13 shall be calculated as of the date that the member
14 elected membership in the defined contribution system
15 and after that date no increase in salary, years of service
16 or any other factor may be used to increase the
17 retirement benefit above that which it would be if a
18 person retired upon the date that the election is made.
19 After having made such election the employee may not
20 change such election or again become a member of the
21 existing retirement system.

§18-7B-9. Members' contributions; annuity account established.

1 Each employee who is a member of the defined
2 contribution system shall contribute four and one-half
3 percent of his or her gross compensation by salary
4 reduction. Such salary reductions shall be made by the
5 employer at the normal payroll intervals and shall be
6 remitted within five working days to the private
7 pension, insurance, annuity, mutual fund, or other
8 qualified company or companies designated by the
9 board to administer the day-to-day operations of the
10 system.

11 All member contributions shall be immediately
12 deposited to an account or accounts established in the

13 name of the member and held in trust for the benefit
14 of the member. An account agreement shall be issued
15 to each member setting forth the terms and conditions
16 under which contributions are received, and the
17 investment and retirement options available to the
18 member. The board shall promulgate by the thirtieth
19 day of June, one thousand nine hundred ninety-one,
20 pursuant to section six of this article, rules defining the
21 minimum requirements for the investment and retire-
22 ment options to be provided to the members.

23 Such rules, to the extent not inconsistent with the
24 applicable provisions of the Internal Revenue Code of
25 the United States, shall provide for varied retirement
26 options including, but not limited to:

- 27 (1) Lump sum distributions;
- 28 (2) Joint and survivor annuities;
- 29 (3) Other annuity forms in the discretion of the board;
- 30 (4) Variable annuities which gradually increase
31 monthly retirement payments: *Provided*, That said
32 increased payments are funded solely by the existing
33 current value of the member's account at the time the
34 member's retirement payments commencement and not,
35 to any extent, in a manner which would require
36 additional employer or employee contributions to any
37 member's account after retirement or after the cessation
38 of employment; and
- 39 (5) The instances in which, if any, distributions or
40 loans can be made to members from their annuity
41 account balances prior to having attained the age of
42 fifty-five.

§18-7B-10. Employer contributions.

1 Each participating employer shall annually make a
2 contribution equal to seven and one-half percent of each
3 members gross compensation whose employment com-
4 menced on or after the first day of July, one thousand
5 nine hundred ninety-one. The pro rata share of this
6 amount shall be paid upon each date that a member
7 contribution is made and shall be remitted as provided
8 for in section nine of this article for credit to the

9 member's annuity account. Each participating employer
10 has a fiduciary duty to its employees to ensure that the
11 employer contributions are timely made. In the case of
12 an officer or employee of the state, any unpaid contri-
13 bution shall be a state debt, contracted as a result of a
14 casual deficit in state revenues, to be accorded preferred
15 status over other expenditures.

16 In the event that any payment is not timely made, the
17 participating employer shall immediately give to the
18 employee and the state auditor notice in writing of the
19 nonpayment, in such form and accompanied by such
20 documentation as may be required by the auditor.
21 Notice to the auditor shall operate in the manner of a
22 requisition, and the auditor shall transmit a warrant to
23 the treasurer. At such time as funds are available in the
24 appropriate account, the treasurer shall pay the
25 employer contribution, together with appropriate daily
26 interest.

§18-7B-11. Termination of membership.

1 Any member whose employment with a participating
2 employer terminates after the completion of six com-
3 plete years of employment service shall be eligible to
4 terminate his or her annuity account and receive a
5 distribution from the member's annuity account, in an
6 amount equal to the member's contribution plus one
7 third of the employer contributions and any earnings
8 thereon. Any member whose employment with a
9 participating employer terminates after the completion
10 of nine complete years of employment service shall be
11 eligible to terminate his or her annuity account and
12 receive a distribution from the member's annuity
13 account, in an amount equal to the member's contribu-
14 tion plus two thirds of the employer's contributions and
15 any earnings thereon. Any member whose employment
16 with a participating employer terminates after the
17 completion of twelve complete years of employment
18 service shall be eligible to terminate his or her annuity
19 account and receive a distribution of all funds contrib-
20 uted and accumulated in his or her annuity account.
21 Any member whose employment with a participating
22 employer terminates prior to the completion of six

23 complete years of employment service shall be eligible
24 to terminate his or her annuity account and receive a
25 distribution from the member's annuity account, in an
26 amount equal to the member's contribution plus any
27 earnings thereon: *Provided*, That on the death or
28 permanent, total disability of any member, that member
29 shall be eligible to terminate his or her annuity account
30 and receive all funds contributed to or accumulated in
31 his or her annuity account.

32 The remaining balance, if any, in the member's
33 account after the distribution shall be remitted and paid
34 into a suspension account, hereby created, to be
35 administered by the board. The board shall promulgate
36 rules regarding the distribution of any balance in the
37 special account created by this section: *Provided*, That
38 any funds in the account shall be used solely for the
39 purpose of reducing employer contributions in future
40 years.

41 Any account balances remitted to the suspension
42 account herein shall be maintained by the board in said
43 suspension account in the name of the terminated
44 employee for a period of five years following initial
45 remittance to the suspension account. For each said
46 terminated employee at the culmination of the aforesaid
47 five-year period, the board shall certify in writing to
48 each contributing employer the amount of the account
49 balances plus earnings thereon attributable to each
50 separate contributing employers previously terminated
51 employees' accounts which have been irrevocably
52 forfeited due to the elapse of a five-year period since
53 termination pursuant to section sixteen of this article.

54 Upon certification to the several contributing employ-
55 ers of the aggregate account balances plus earnings
56 thereon which have been irrevocably forfeited pursuant
57 to this section, the several contributing employers shall
58 be permitted in the next succeeding fiscal year or years
59 to reduce their total aggregate contribution require-
60 ments pursuant to section seventeen of this article, for
61 the then current fiscal year by an amount equal to the
62 aggregate amounts irrevocably forfeited and certified as
63 such to each contributing employer.

64 Upon the utilization of the amounts irrevocably
65 forfeited to any contributing employer as a reduction in
66 the then current fiscal year contribution obligation and
67 upon notification provided by the several contributing
68 employers to the board of their intention to utilize
69 irrevocably forfeited amounts, the board shall direct the
70 distribution of said irrevocably forfeited amounts from
71 the suspension account to be deposited on behalf of the
72 contributing employer to the member annuity accounts
73 of its then current employees pursuant to section
74 seventeen of this article.

§18-7B-12. Retirement, commencement of annuity payments.

1 At any time after an employee reaches the age of fifty-
2 five years, he or she may elect to take retirement by
3 notifying the board or its designee in writing of such
4 intention not less than sixty days prior to the effective
5 date of retirement. Retirement payments shall com-
6 mence within thirty days of the retirement date under
7 such payment option or options as may be provided by
8 the board and elected by the employee.

§18-7B-13. Amount of annuity payments.

1 (a) The amount of annuity payments a retired
2 member shall receive shall be based solely upon the
3 balance in the member's annuity account at the date of
4 retirement, the retirement option selected, or in the
5 event of an annuity option being selected, the actuarial
6 life expectancy of the member, and such other factors
7 as normally govern annuity payments.

8 (b) The board, or its designee, is authorized upon
9 retirement of a member, with the approval of that
10 member, to purchase an annuity with the balance of the
11 member's account. Upon delivery of the annuity to the
12 member upon his or her retirement, the member shall
13 execute a release surrendering any claim the member
14 may have against the retirement trust.

§18-7B-14. Supplemental annuity contracts.

1 The board shall authorize the private pension,
2 insurance, annuity, mutual fund or other qualified
3 company or companies with whom it contracts to make

4 available to members such supplemental annuity
5 options, disability and other insurance or benefits as the
6 board deems appropriate: *Provided*, That such supple-
7 mental annuities, insurance and benefits shall be funded
8 solely from employee contributions.

§18-7B-15. Account statements.

1 The board shall prepare or cause to be prepared, on
2 an annual basis, an account statement for each
3 members' annuity account. The statement shall include,
4 but not be limited to, a statement of the current market
5 value of the members' account. The board shall pre-
6 scribe the form and content of the account statement not
7 inconsistent with the provisions of this section.

§18-7B-16. Years of employment service.

1 A member of the defined contribution system who
2 terminates employment with a participating employer
3 and does not remove any funds from his or her annuity
4 account and becomes reemployed with a participating
5 employer within five years shall retain his or her
6 previous years of employment service for purposes of the
7 provisions of section eleven of this article.

§18-7B-17. Deposits to the members' annuity accounts.

1 Beginning on the first day of July, one thousand nine
2 hundred ninety-one and thereafter, each county board of
3 education shall deposit in the member's annuity account
4 created pursuant to section nine of this article an
5 amount equal to seven and one-half percent of all
6 compensation paid to members of the defined contribu-
7 tion system in excess of that authorized for minimum
8 salaries in sections two and eight-a, article four, chapter
9 eighteen-a of this code to the extent that the excess
10 exceeds the amount distributed for salary equity to the
11 county.

§18-7B-18. Right to benefits not subject to execution, etc.

1 The right of any person to a benefit provided for in
2 this article shall not be subjected to execution, attach-
3 ment, garnishment, the operation of bankruptcy or
4 insolvency laws, or other process whatsoever, nor shall
5 any assignment thereof be enforceable in any court.

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-23-4a. Supplemental and additional retirement plans for employees; payroll deductions; authority to match employee contributions; retroactive curative and technical corrective action.

1 The governing boards shall have the authority to
2 contract for a supplemental retirement plan for any or
3 all of its employees to supplement the benefits such
4 employees will receive under the state teachers retire-
5 ment system. The governing boards shall have the
6 authority to make additional periodic deductions from
7 the salary payments due such employees in the amount
8 they are required to contribute for the supplemental
9 retirement plan selected by the board. The additional
10 deductions shall not exceed five percent of the salary of
11 employees under thirty-five years of age, six percent of
12 the salary of those thirty-five through forty-four years
13 of age, and seven and one-half percent of the salary of
14 those forty-five years of age and above, and shall not
15 cover any portion of an employee's salary which is
16 covered by the state teachers retirement system.

17 The governing boards shall also have the authority to
18 contract for an additional retirement plan for any of its
19 employees who elect to participate solely in such a
20 retirement plan selected by the governing boards
21 without participating in the state retirement system.
22 The governing boards shall have the authority to make
23 periodic deductions from the salary payments due such
24 employees in the amount they are required to contribute
25 to the additional plan, which deductions shall be the
26 same percentage of the participating employees' salaries
27 as that deducted from the salaries of members of the
28 state retirement system.

29 The board is further authorized, by way of additional
30 compensation to such employees, to pay an amount equal
31 to the contributions of such employees into either the
32 supplemental or additional retirement plan from funds
33 appropriated to it for personal services. Each participat-
34 ing employee shall have a full and immediate vested
35 interest in the retirement and death benefits accrued

36 from all the moneys paid into such supplemental or
37 additional retirement plan for his benefit. Upon proper
38 requisition of the board, the auditor shall periodically
39 issue a warrant, payable as specified in the requisition,
40 for the total contributions so withheld from the salaries
41 of all participating employees and for the governing
42 board's matching funds.

43 Pursuant to the provisions contained in article seven-
44 a and article twenty-three of this chapter, once a
45 member has elected one of the options contained in
46 section fourteen-a, article seven-a of this chapter and
47 section four-a, article twenty-three of this chapter, he
48 cannot thereafter change such election. The Legislature
49 declares that the amendment of this section in Enrolled
50 Committee Substitute for House Bill No. 4672, enacted
51 at the regular session, one thousand nine hundred
52 eighty-eight, was inadvertent and remained in said bill
53 contrary to legislative intent that the same be deleted;
54 therefore, such language is hereby retroactively deleted
55 and expunged as of the effective date of said Enrolled
56 Committee Substitute for House Bill No. 4672 as
57 curative and technical corrective action. The Legislature
58 further declares that such ambiguous and deficient
59 language inadvertently enacted in said bill shall be
60 given no force and effect whatsoever in any litigation
61 involving such language.

62 Beginning on the first day of July, one thousand nine
63 hundred ninety-one, any person whose employment
64 commences on or after that date and is eligible to
65 participate in an additional retirement plan provided
66 pursuant to this section shall be required to participate
67 in said additional plan and shall not be eligible to
68 participate in any other state retirement system.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance pre- mium tax; allocation of proceeds; effective date.

- 1 (a) For the purpose of providing additional revenue
- 2 for municipal policemen's and firemen's pension and
- 3 relief funds and the teachers retirement system reserve

4 fund and for volunteer and part volunteer fire compa-
5 nies and departments, there is hereby levied and
6 imposed, on and after the first day of January, one
7 thousand nine hundred eighty-two, an additional
8 premium tax equal to one percent of gross direct
9 premiums collected, less premiums returned to policy-
10 holders because of cancellation of policies, for fire
11 insurance and casualty insurance policies. For purposes
12 of this section, casualty insurance shall not include
13 insurance on the life of a debtor pursuant to or in
14 connection with a specific loan or other credit transac-
15 tion or insurance on a debtor to provide indemnity for
16 payments becoming due on a specific loan or other
17 credit transaction while the debtor is disabled as defined
18 in the policy. Except as otherwise provided in this
19 section, all provisions of this article relating to the levy,
20 imposition and collection of the regular premium tax
21 are applicable to the levy, imposition and collection of
22 the additional tax.

23 All moneys collected from this additional tax shall be
24 received by the commissioner and paid by him into a
25 special account in the state treasury, designated the
26 municipal pensions and protection fund. The net
27 proceeds of this tax after appropriation thereof by the
28 Legislature shall be distributed in accordance with the
29 provisions of this section.

30 (b) Before the first day of August, one thousand nine
31 hundred eighty-three, and before the first day of August
32 of each calendar year thereafter, the treasurer of each
33 municipality in which a municipal policemen's or
34 firemen's pension and relief fund has been established
35 shall report to the state treasurer the average monthly
36 number of members who worked at least one hundred
37 hours per month of municipal policemen's or firemen's
38 pension systems during the preceding fiscal year. Before
39 the first day of August, one thousand nine hundred
40 eighty-three, and before the first day of August of each
41 calendar year thereafter, the state fire marshal shall
42 report to the state treasurer the names and addresses
43 of all volunteer and part volunteer fire companies and
44 departments within the state which meet the eligibility

45 requirements established in section eight-a, article
46 fifteen, chapter eight of this code.

47 Before the first day of September, one thousand nine
48 hundred eighty-three, and before the first day of
49 September of each calendar year thereafter, the state
50 treasurer shall allocate and authorize for distribution
51 the revenues in the municipal pensions and protection
52 fund which were collected during the preceding calen-
53 dar year for the purposes set forth in this section. Sixty-
54 five percent of the aforementioned revenues allocated
55 shall be allocated to municipal policemen's and fire-
56 men's pension and relief funds; twenty-five percent of
57 such allocated revenues shall be allocated to volunteer
58 and part volunteer fire companies and departments, and
59 ten percent of such allocated revenues shall be allocated
60 to the Teachers Retirement System Reserve Fund
61 created by section eighteen, article seven-a, chapter
62 eighteen of this code: *Provided*, That in any year the
63 actuarial report required by section twenty, article
64 twenty-two, chapter eight of this code indicates no
65 actuarial deficiency in the municipal policemen's or
66 firemen's pension and relief fund, no revenues may be
67 allocated from the municipal pensions and protection
68 fund to that fund. The revenues from the municipal
69 pensions and protection fund shall then be allocated to
70 all other pension funds which have an actuarial
71 deficiency.

72 (c) (1) Each municipal pension and relief fund shall
73 have allocated and authorized for distribution a pro rata
74 share of the revenues allocated to municipal policemen's
75 and firemen's pension and relief funds based upon the
76 corresponding municipality's average monthly number
77 of members who worked at least one hundred hours per
78 month during the preceding fiscal year. All moneys
79 received by municipal pension and relief funds under
80 this section may be expended only for the purposes
81 described in sections sixteen through twenty-eight,
82 article twenty-two, chapter eight of this code.

83 (2) Each volunteer fire company or department shall
84 receive an equal share of the revenues allocated for
85 volunteer and part volunteer fire companies and
86 departments.

87 (3) In addition to the share allocated and distributed

88 in accordance with subdivision (1) of this subsection,
89 each municipal fire department composed of full-time
90 paid members and volunteers and part volunteer fire
91 companies and departments shall receive a share equal
92 to the share distributed to volunteer fire companies
93 under subdivision (2) of this subsection reduced by an
94 amount equal to such share multiplied by the ratio of
95 the number of full-time paid fire department members
96 who are also members of a municipal firemen's pension
97 system to the total number of members of such fire
98 department.

99 (d) The allocation and distribution of revenues
100 provided for in this section are subject to the provisions
101 of section twenty, article twenty-two, and sections eight-
102 a and eight-b, article fifteen, chapter eight of this code.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-3. Custody, permissible investment and administra- tion of retirement system trust fund; state auditor's authority as administrator and trust fund fiduciary; refunds required, including interest.

1 The state treasurer shall be the custodian of the fund
2 and of any investment securities of the retirement
3 system and shall give a separate and additional bond for
4 the faithful performance of his or her duties as such
5 custodian. The governor shall fix the amount of such
6 bond which shall be approved as to sufficiency and form
7 by the attorney general and shall be filed in the office
8 of the secretary of state. The premium on such bond
9 shall be paid from the fund.

10 In a manner and to an extent consonant with sound
11 administrative principles, the state board of investments
12 shall have authority to invest such fund in interest-
13 bearing securities of the United States of America, of
14 the state of West Virginia and of any political subdivi-
15 sion thereof or such other investments as may be
16 authorized or permitted by the provisions of article six,
17 chapter twelve of this code.

18 The state auditor shall be the primary fiscal officer,

19 responsible for the records and administration of the
20 trust fund, including budgetary matters incident to the
21 authority vested in him or her with respect to judicial
22 department appropriations under article VI, section 51
23 of the Constitution of West Virginia. The state auditor
24 shall also, as trust fund fiduciary, independently
25 determine anew, in a substantive sense and as a check
26 and balance, any information concerning eligible service
27 years, required money contributions, computation of
28 judge's retirement benefit or spousal benefit or any
29 other substantive element of qualification supplied or
30 certified to the state auditor by any other public officer,
31 including the supreme court administrator or the chief
32 executive, toward proper final review before issuance of
33 a state warrant in payment of any benefit under the
34 judges' retirement system.

35 Through the thirtieth day of June, one thousand nine
36 hundred ninety-one, the state auditor shall be the
37 primary fiscal officer, responsible for the records and
38 administration of the trust fund, including budgetary
39 matter incident to the authority vested in him or her
40 with respect to judicial department appropriations
41 under article VI, section 51 of the Constitution of West
42 Virginia. The state auditor shall also, as trust fund
43 fiduciary, independently determine anew, in a substan-
44 tive sense and as a check and balance, any information
45 concerning eligible service years, required money
46 contributions, computation of judge's retirement benefit
47 or spousal benefit or any other substantive element of
48 qualification supplied or certified to the state auditor by
49 any other public officer, including the supreme court
50 administrator or the chief executive, toward proper
51 final review before issuance of a state warrant in
52 payment of any benefit under the judges' retirement
53 system. From the first day of July, one thousand nine
54 hundred ninety-one and thereafter, the fund shall be
55 administered by the consolidated public retirement
56 board created by article ten-d, chapter five of this code.

57 In respect of any credited service heretofore acquired
58 under the *Dostert* decision and subsequent related
59 decisions, the state auditor shall make refund to any

60 person heretofore making payment to acquire such
61 service credit, primary or derivative, in the amount so
62 earlier paid, together with interest at the same rate such
63 sum actually earned because of its investment by the
64 auditor or treasurer, as the case may be, in the
65 consolidated pension pool or with the interest such sum
66 would have earned if timely invested in such pool,
67 whichever amount of interest be greater.

CHAPTER 9

(Com. Sub. for H. B. 302—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed August 25, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and eight, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to empowering the state building commission to issue state building revenue bonds for facilities under the jurisdiction of the division of corrections or the regional jail and correctional facilities authority; and providing for prior legislative approval of projects undertaken by the state building commission.

Be it enacted by the Legislature of West Virginia:

That sections four and eight, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-4. Powers of commission.

§5-6-8. Commission empowered to issue state building revenue bonds after legislative authorization; form and requirement for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

§5-6-4. Powers of commission.

- 1 The commission shall have power:
- 2 (1) To sue and be sued, plead and be impleaded;
- 3 (2) To have a seal and alter the same at pleasure;

- 4 (3) To contract to acquire and to acquire, in the name
5 of the commission or of the state, by purchase, lease,
6 lease-purchase, or otherwise, real property or rights or
7 easements necessary or convenient for its corporate
8 purposes and to exercise the power of eminent domain
9 to accomplish such purposes;
- 10 (4) To acquire, hold and dispose of personal property
11 for its corporate purposes;
- 12 (5) To make bylaws for the management and regula-
13 tion of its affairs;
- 14 (6) With the consent of the attorney general of the
15 state of West Virginia, to use the facilities of his office,
16 assistants and employees in all legal matters relating to
17 or pertaining to the commission;
- 18 (7) To appoint officers, agents and employees, and fix
19 their compensation;
- 20 (8) To make contracts, and to execute all instruments
21 necessary or convenient to effectuate the intent of, and
22 to exercise the powers granted to it by, this article;
- 23 (9) To renegotiate all contracts entered into by it
24 whenever, due to a change in situation, it appears to the
25 commission that its interests will be best served;
- 26 (10) To construct a building or buildings on real
27 property, which it may acquire, or which may be owned
28 by the state of West Virginia, in the city of Charleston,
29 as convenient as may be to the capitol building, together
30 with incidental approaches, structures and facilities,
31 subject to such consent and approval of the city of
32 Charleston in any case as may be necessary; and, in
33 addition, to acquire or construct a warehouse, including
34 office space therein, in Kanawha county for the West
35 Virginia alcohol beverage control commissioner, and
36 equip and furnish the same; and to acquire or construct,
37 through lease, purchase, lease-purchase, or bond
38 financing, hospitals or other facilities, buildings, or
39 additions or renovations to buildings as may be neces-
40 sary for the safety and care of patients, inmates and
41 guests at facilities under the jurisdiction of and
42 supervision of the division of health and at institutions

43 under the jurisdiction of the division of corrections or
44 the regional jail and correctional facilities authority;
45 and to formulate and program plans for the orderly and
46 timely capital improvement of all of said hospitals and
47 institutions and the state capitol buildings; and to
48 construct a building or buildings in Kanawha county to
49 be used as a general headquarters by the division of
50 public safety to accommodate that division's executive
51 staff, clerical offices, technical services, supply facilities
52 and dormitory accommodations; and to develop, improve
53 and expand state parks and recreational facilities to be
54 operated by the division of commerce; and to establish
55 one or more systems or complexes of buildings and
56 projects under control of the commission; and, subject
57 to prior agreements with holders of bonds previously
58 issued, to change the same from time to time, in order
59 to facilitate the issuance and sale of bonds of different
60 series on a parity with each other or having such
61 priorities between series as the commission may
62 determine; and to acquire by purchase, eminent domain
63 or otherwise all real property or interests therein
64 necessary or convenient to accomplish the purposes of
65 this subdivision;

66 (11) To maintain, construct and operate a project
67 authorized hereunder;

68 (12) To charge rentals for the use of all or any part
69 of a project or buildings at any time financed, con-
70 structed, acquired or improved in whole or in part with
71 the proceeds of sale of bonds issued pursuant to this
72 article, subject to and in accordance with such agree-
73 ments with bondholders as may be made as hereinafter
74 provided: *Provided*, That on and after the effective date
75 of the amendments to this section, to charge rentals for
76 the use of all or any part of a project or buildings at
77 any time financed, constructed, acquired, maintained or
78 improved in whole or in part with the proceeds of sale
79 of bonds issued pursuant to this article, subject to and
80 in accordance with such agreements with bondholders
81 as may be made as hereinafter provided, or with any
82 funds available to the state building commission,
83 including, but not limited to, all buildings and property

84 owned by the state of West Virginia or by the state
85 building commission, but no such rentals shall be
86 charged to the governor, attorney general, secretary of
87 state, state auditor, state treasurer, the Legislature and
88 the members thereof, the supreme court of appeals, nor
89 for their offices, agencies, official functions and duties;

90 (13) To issue negotiable bonds and to provide for the
91 rights of the holders thereof;

92 (14) To accept and expend any gift, grant or contri-
93 bution of money to, or for the benefit of, the commission,
94 from the state of West Virginia or any other source for
95 any or all of the purposes specified in this article or for
96 any one or more of such purposes as may be specified
97 in connection with such gift, grant or contribution;

98 (15) To enter on any lands and premises for the
99 purpose of making surveys, soundings and
100 examinations;

101 (16) To invest in United States government obliga-
102 tions, on a short-term basis, any surplus funds which the
103 commission may have on hand pending the completion
104 of any project or projects; and

105 (17) To do all things necessary or convenient to carry
106 out the powers given in this article.

107 The rights and powers set forth in subdivision (10) of
108 this section shall not be construed as in derogation of
109 any rights and powers now vested in the West Virginia
110 alcohol beverage control commissioner, the department
111 of mental health, the commissioner of public institutions
112 or the department of natural resources.

**§5-6-8. Commission empowered to issue state building
revenue bonds after legislative authorization;
form and requirements for bonds; procedure
for issuance; temporary bonds; funds, grants
and gifts.**

1 The commission is hereby empowered to raise the cost
2 of a project, as defined in this article, by the issuance

3 of state building revenue bonds of the state, the
4 principal of and interest on which bonds shall be
5 payable solely from the special fund herein provided for
6 such payment. Subject to the proceedings pursuant to
7 which any bonds outstanding were authorized and
8 issued pursuant to this article, the commission shall
9 pledge the moneys in such special fund, except such part
10 of the proceeds of sale of any bonds to be used to pay
11 the cost of a project, for the payment of the principal
12 of and interest on bonds issued pursuant to this article,
13 such pledge to apply equally and ratably to separate
14 series of bonds or upon such priorities as the commission
15 shall determine. Such bonds shall be authorized by
16 resolution of the commission which shall recite an
17 estimate by the commission of such cost, and shall
18 provide for the issuance of bonds in an amount suffi-
19 cient, when sold as hereinafter provided, to produce
20 such cost, less the amount of any funds, grant or grants,
21 gift or gifts, contribution or contributions received, or
22 in the opinion of the commission expected to be received,
23 from the United States of America or from any other
24 source. The acceptance by the commission of any and all
25 such funds, grants, gifts and contributions, whether in
26 money or in land, labor or materials, is hereby expressly
27 authorized. All such bonds shall have and are hereby
28 declared to have all the qualities of negotiable instru-
29 ments. Such bonds shall bear interest at not more than
30 twelve percent per annum, payable semiannually, and
31 shall mature in not more than forty years from their
32 date or dates, and may be made redeemable at the
33 option of the state, to be exercised by the commission,
34 at such price and under such terms and conditions, all
35 as the commission may fix prior to the issuance of such
36 bonds. The commission shall determine the form of such
37 bonds, including coupons, if any, to be attached thereto
38 to evidence the right of interest payments, which bonds
39 shall be signed by the chairman and secretary of the
40 commission, under the great seal of the state, attested
41 by the secretary of state, and the coupons, if any,
42 attached thereto shall bear the facsimile signature of the
43 chairman of the commission. In case any of the officers
44 whose signatures appear on the bonds or coupons issued

45 as hereinbefore authorized shall cease to be such officers
46 before the delivery of such bonds, such signatures shall
47 nevertheless be valid and sufficient for all purposes the
48 same as if they had remained in office until such
49 delivery. The commission shall fix the denominations of
50 such bonds, the principal and interest of which shall be
51 payable at the office of the treasurer of the state of West
52 Virginia, at the capitol of the state, or, at the option of
53 the holder, at some bank or trust company within or
54 without the state of West Virginia to be named in the
55 bonds, in such medium as may be determined by the
56 commission. The bonds and interest thereon shall be
57 exempt from taxation by the state of West Virginia, or
58 any county or municipality therein. The commission
59 may provide for the registration of such bonds in the
60 name of the owners as to principal alone, and as to both
61 principal and interest under such terms and conditions
62 as the commission may determine, and shall sell such
63 bonds in such manner as it may determine to be for the
64 best interest of the state, taking into consideration the
65 financial responsibility of the purchaser, and the terms
66 and conditions of the purchase, and especially the
67 availability of the proceeds of the bonds when required
68 for payment of the cost of the project, such sale to be
69 made at a price not lower than a price which, computed
70 upon standard tables of bond values, will show a net
71 return of not more than thirteen percent per annum to
72 the purchaser upon the amount paid therefor. The
73 proceeds of such bonds shall be used solely for the
74 payment of the cost of the project for which bonds were
75 issued, and shall be deposited and checked out as
76 provided by section five of this article, and under such
77 further restrictions, if any, as the commission may
78 provide. If the proceeds of bonds issued for a project or
79 a specific group of projects shall exceed the cost thereof,
80 the surplus shall be paid into the fund hereinafter
81 provided for payment of the principal and interest of
82 such bonds. Such fund may be used for the purchase of
83 any of the outstanding bonds payable from such fund at
84 the market price, but at not exceeding the price, if any,
85 at which such bonds shall in the same year be redeem-
86 able, and all bonds redeemed or purchased shall

87 forthwith be cancelled, and shall not again be issued.
88 Prior to the preparation of definitive bonds, the
89 commission may, under like restrictions, issue tempor-
90 ary bonds with or without coupons, exchangeable for
91 definitive bonds upon the issuance of the latter.
92 Notwithstanding the provisions of sections nine and ten,
93 article six, chapter twelve of this code, revenue bonds
94 issued under the authority herein granted shall be
95 eligible as investments for the workers' compensation
96 fund, teachers retirement fund, division of public safety
97 death, disability and retirement fund, West Virginia
98 public employees retirement system and as security for
99 the deposit of all public funds. Such revenue bonds may
100 be issued without any other proceedings or the happen-
101 ing of any other conditions or things than those
102 proceedings, conditions and things which are specified
103 and required by this article, or by the constitution of the
104 state. For all projects authorized under the provisions
105 of this article other than projects to be leased by the
106 commission to the regional jail and correctional facilities
107 authority, the aggregate amount of all issues of bonds
108 outstanding at one time shall not exceed sixty-two
109 million five hundred thousand dollars including the
110 renegotiation, reissuance or refinancing of any such
111 bonds, and no such project in connection with which
112 bonds are to be issued shall be initiated by the commis-
113 sion unless and until the Legislature, through enactment
114 of general law, approves the purpose, the amount of
115 bonds to be issued, and the total cost for such project,
116 construction or acquisition.

117 For projects which are to be leased by the commission
118 to the regional jail and correctional facilities authority,
119 legislative approval pursuant to the provisions of this
120 section shall not be required if such projects have
121 otherwise been approved by the Legislature in accord-
122 ance with the provisions of subsection (m), section five,
123 article twenty, chapter thirty-one of this code, and the
124 limitations on the amount of revenue bonds which may
125 be issued by the commission and the project costs shall
126 be governed by the terms of any concurrent resolution
127 adopted pursuant to said subsection.

CHAPTER 10

(Com. Sub. for H. B. 301—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed August 25, 1990; in effect from passage. Approved by the Governor.]

AN ACT directing the farm management commission to convey certain real property to the city of Moundsville and the county of Marshall; and providing that such conveyance shall be in the discretion of, and at the direction of, the regional jail and correctional facilities authority.

Be it enacted by the Legislature of West Virginia:

WEST VIRGINIA PENITENTIARY INSTITUTIONAL FARM.

§1. Farm management commission directed to convey portions of the West Virginia penitentiary institutional farm to city of Moundsville and county of Marshall.

1 Notwithstanding any provisions of article twelve-a,
2 chapter nineteen of this code to the contrary, the farm
3 management commission is hereby directed to transfer
4 and convey unto the city of Moundsville and the county
5 of Marshall certain portions of the parcel of land known
6 as the West Virginia Penitentiary Institutional Farm,
7 and any improvements, easements, or appurtenances
8 thereon, being situate in Moundsville, Marshall County,
9 West Virginia, as follows:

10 (1) A conveyance to the City of Moundsville of that
11 parcel of land situate at the easterly end of the Marshall
12 County Fairgrounds in the District of Clay of the County
13 of Marshall consisting of twenty and six hundred
14 twenty-seven thousandths acres (20.627 acres), the
15 precise metes and bounds of which are to be determined
16 by field survey; and

17 (2) A conveyance to the County of Marshall of either
18 a parcel of land situate at the northeasterly corner of
19 the intersection of Grave Creek Road with Fork Ridge

20 Road in the District of Clay in the County of Marshall,
21 consisting of not more than ten acres, or a parcel of land,
22 not exceeding ten acres, situate on the south side of Fork
23 Ridge Road approximately two thousand feet in an
24 easterly direction from the intersection of Fork Ridge
25 Road and Twelfth Street in the District of Clay in the
26 County of Marshall, as may be determined most
27 appropriate for the location of the Marshall County
28 Animal Shelter upon completion of a field survey and
29 soils investigations conducted by the County of Marshall,
30 the precise metes and bounds of which shall be deter-
31 mined by a field survey.

32 The decision to execute any such conveyance as
33 described herein shall be solely within the discretion of,
34 and at the direction of, the regional jail and correctional
35 facilities authority.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 2

(By Delegates Love and Pettit)

[Adopted August 23, 1990]

Urging the Governor and Congressional Delegation of Ohio to oppose, halt and prevent the construction of a hazardous waste incineration plant by Waste Technologies Inc. (WTI) in East Liverpool, Ohio, across the Ohio River from Chester, West Virginia, in support of the Let's Improve Valley Environment (L.I.V.E.) Organization.

WHEREAS, West Virginia residents in Chester and Northern Hancock County have expressed great concerns about the risk to both air and water, what will be burned and emitted, monitoring and evaluation standards, and toxic spills; and

WHEREAS, Incineration poses many serious health and environmental problems including toxic air emissions, contaminated wastewater, toxic ash, fugitive emissions from storage tanks and storage and handling hazards; and

WHEREAS, There is little information on how great the risks created are and the industry is a continuous source of air and groundwater pollution; and

WHEREAS, The Environmental Protection Agency has not done an Environmental Impact Study for this plant, and in 1986 when the EPA last reviewed the current incineration technology the agency found it lacking and recommended better monitoring of incinerator stack emissions and short and long-term health consequences to communities; therefore, be it

Resolved by the Legislature of West Virginia:

That the Governor and Congressional Delegation of Ohio are hereby urged to oppose, halt and prevent the construction of a hazardous waste incineration plant by WTI in East Liverpool, in support of the L.I.V.E. Organization; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the Governor of Ohio, the

members of Ohio's Congressional Delegation, the Governor of West Virginia, the members of West Virginia's Congressional Delegation, and W.T.I.

HOUSE CONCURRENT RESOLUTION 3

(By Mr. Speaker, Mr. Chambers, and Delegates Grubb, White, Hatfield, Cerra, Katz, Louderback, Rutledge, Compton, Buchanan, Damron, S. Cook, Prezioso, Sattes, Spencer, Berry, Tribett, Manuel, Pethtel, D. Cook, Reid, Susman, Browning, Staton, Seacrist, Houvouras, Hatcher, Williams, Schoonover, Murensky, Given, Farmer, Flanigan, Mezzatesta, Fantasia, Kelly, Wooton, Sharp, D. Miller, Rowe, V. Starcher, Murphy, Roop, Long, Beach, Basham and Michael)

[Adopted August 28, 1990]

Urging Congress to enact a national health plan providing access to health care for all Americans.

WHEREAS, At least thirty-seven million Americans, and three hundred forty thousand West Virginians, lack any public or private health insurance, an increase of more than twenty-five percent in the last decade; and

WHEREAS, Another twenty-six million Americans are estimated to be underinsured; and

WHEREAS, Seventy-five percent of the uninsured are workers and their families; and

WHEREAS, In the past twenty years health care costs in the United States outpaced inflation by a three to one margin; and

WHEREAS, This year we are expected to spend \$660 billion on health care in this country, increasing to more than a trillion dollars by the year 2000; and

WHEREAS, The United States spends more than twelve percent of its gross national product on health care compared to eight percent in Canada and seven percent for the average industrial nation; and

WHEREAS, The United States spends twice as much on health care per person than the average of Canada, Great Britain, Japan, Sweden and West Germany; and

WHEREAS, According to a recent study, the United States has

the most costly health care system in the world, yet it ranks twenty-second in the world in infant mortality, twelfth in life expectancy at birth, twenty-first in child mortality, and twenty-fourth in percentage of low birth weight babies; and

WHEREAS, An association of manufacturers states that health benefits reduce the average company's profits by twenty-five percent, and that health benefits are the largest nonwage labor cost in the typical manufacturing corporation; and

WHEREAS, Rising health care costs are the leading cause of personal and small business bankruptcies in America; and

WHEREAS, Seventy-eight percent of all striking workers were engaged in disputes over the preservation of health benefits; and

WHEREAS, Spiraling health care costs have a dramatic impact on West Virginia's fiscal stability; and

WHEREAS, This impact has been especially evident in the current crisis involving the Public Employees Insurance Agency (PEIA); and

WHEREAS, Past efforts to stabilize the financial problems of PEIA have included increased deductibles for public employees, borrowing funds to cover payment backlogs to health care providers, and increasing taxes dedicated to cover debts; and

WHEREAS, Other areas of state government—including the medicaid program and workers' compensation fund—have experienced the harsh impact of skyrocketing health care costs; and

WHEREAS, Recent efforts to address increasing health care costs in West Virginia include the passage of legislation to control both physician and hospital charges; and

WHEREAS, None of these efforts have been able to curtail the continuing increase in health care costs and the concomitant negative impact on the state's finances; and

WHEREAS, According to another study many West Virginia families cannot afford health insurance or the rising costs of health care; and

WHEREAS, A comprehensive national health policy is needed to address the health care crisis; and

WHEREAS, The United States and South Africa are the only two industrialized nations in the world that have failed to enact a national health policy that guarantees all citizens access to basic health care; and

WHEREAS, Health care is a basic human right and should be available to all citizens; and

WHEREAS, Federal leadership is required to enact a national health plan; therefore, be it

Resolved by the Legislature of West Virginia:

That Congress is hereby urged to enact a national health plan designed to guarantee access to health care for all citizens; and, be it

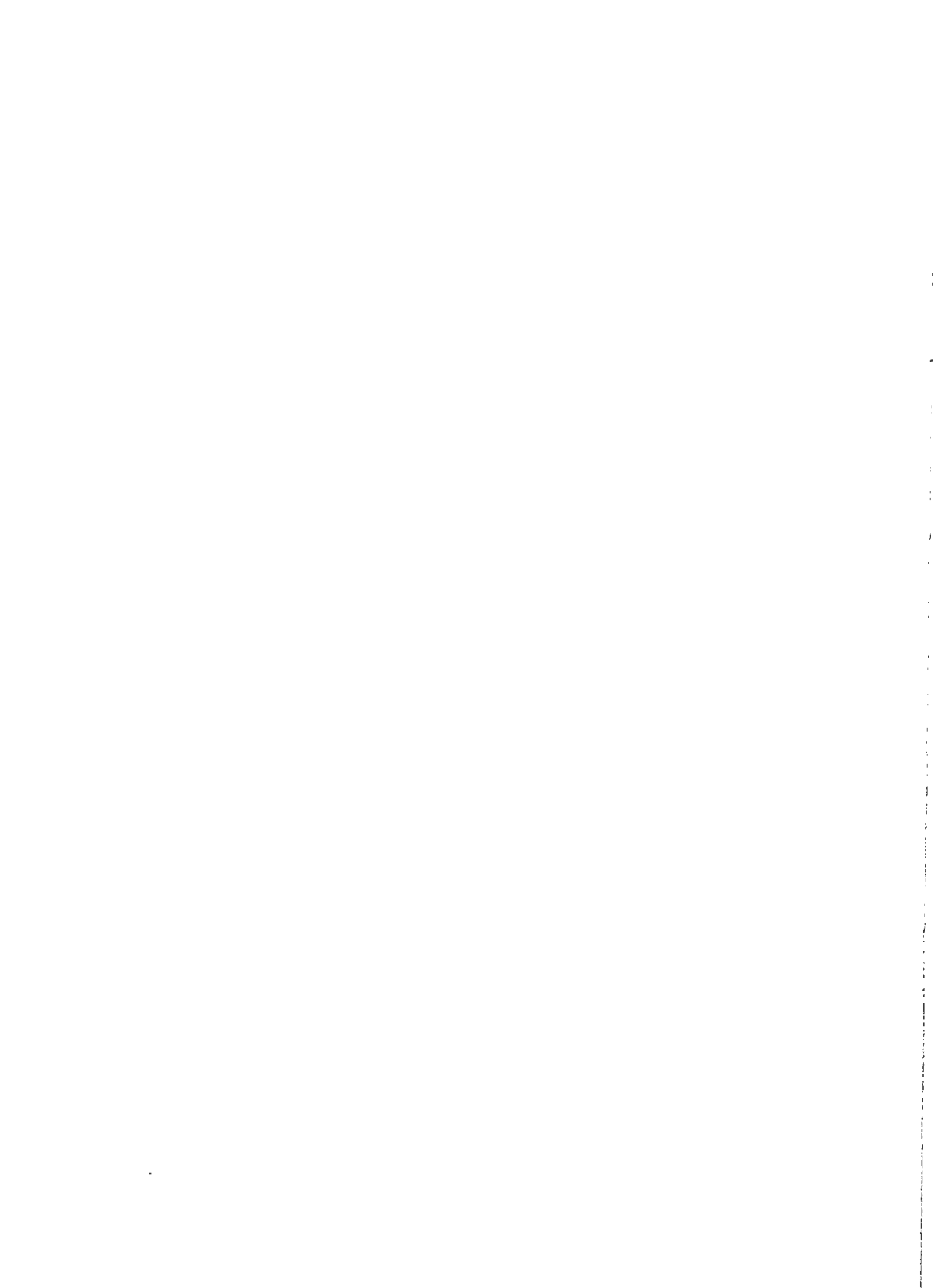
Further Resolved, That the Clerk of the House of Delegates send a copy of this resolution to each member of the West Virginia Congressional Delegation.

DISPOSITION OF BILLS ENACTED
Third Extraordinary Session, 1990
HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter
309	6	302	9
311	8	301	10

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter
9	1	1	4
7	2	8	5
6	3	5	7



INDEX TO CODE AMENDED AND REPEALED

Third Extraordinary Session, 1990

CODE AMENDED:

Ch.	Art.	Sec.		Page
4	9	1,2,3,4,5, 6,7,8	Legislative Committee on Pensions and Retirement.....	307
5	6	4.8	Powers of State Building Commission and issuance of state building revenue bonds under jurisdiction of the Division of Corrections or regional jail and correctional facilities authority.....	362
5	10	5,22c;22d*; 28,54	Board of Trustees, Public Employees Retirement System, temporary early retirement incentives program, supplemental benefits for certain annuitants, unified accounting, termination of benefits.....	310
5	10D*		Consolidated Public Retirement Board....	320
5	16		Public Employees Insurance Act.....	271
5	26*		Governor's Cabinet on children and families.....	29
5	27*		Severability.....	29
5F	2	1	Transfer and incorporation of agencies and boards.....	114
11	1C	1,3,4,5,7, 8,10,12	Property valuation.....	123
11	3	2a	Notice of increased assessment of real property.....	144
11	8	6e,6f;6g*	Levies.....	142
11	12B*		Minimum severance tax on coal.....	151
11	13	2n	Rate of tax on generating, producing or selling electricity.....	161
11	15	8c*;8d*;9, 16,30	Consumers sales tax exemption elimination for materials and supplies incorporated in real property owned by governmental entities.....	164
11	21	8,74	Credits against personal income tax and employer's return and payment of withheld taxes.....	180
11	24	9a	Severance tax credit.....	184
12	1	1,2,3,4,9, 10,12,13	State depositories.....	186
12	1A	1,2,3,4, 5,6,7	Linked Deposit Program.....	192
12	2	2,3,4,5	Itemized record of deposits, duty of depositories, deposits in correspondent banks of state depositories.....	198
12	3	1,11	Manner of payment of money from treasury, travel expenses, certain expenses for higher education governing boards.....	202
12	4	13	Bank reconciliations.....	205
12	5	2,4,6	Public securities.....	206
12	6	1a*;4,5, 6,9d*	Board of Investments.....	209

CODE AMENDED—(Continued):

Ch.	Art.	Sec.		Page
12	6	2,9,10	Board of Investments, definitions, permissible and restrictions on investments.....	325
13	1	14,17,18	Bond issues.....	215
15	2	26	Continuation of death, disability and retirement fund of the Department of Public Safety.....	329
18	1	4*	Educational improvement plan, goals for the year 2000.....	38
18	2	5,6,26,31	State board powers and duties, classification and standardization of schools, multicounty regional service agencies, plan for automatic cost of living adjustments.....	40
18	2E	5	School accreditation.....	45
18	4	4	County superintendent compensation and requirements of new appointee.....	50
18	5	1a,40	County board eligibility requirements and school entry age.....	51
18	5A*		Local school involvement.....	53
18	7A	4;18a*;26i*; 34,35b;35c*	Teachers retirement.....	332
18	7B*		Teachers Defined Contribution Retirement System.....	345
18	9A	1,4,5a,8; 8a*;9,13b,15	Public school support.....	217
18	9D	1,16	School building authority.....	62
18	22D	2,4,5,6,8,9	Higher education student assistance loan program.....	226
18	23	4a	Supplemental retirement plan for employees of governing boards.....	356
18	30	5	Appointment of board of directors, Higher Education Tuition Trust Act....	230
18	32*		Severability.....	65
18A	2	2,8,9;12*	School personnel.....	66
18A	3	1;1a*;1b*; 2;2a*;2b*;3,8	Training, certification, licensing, professional development.....	74
18A	3A*		Center for professional development.....	89
18A	4	1,2,5,5a,5b, 5d,8,8a,9	Salaries, school personnel.....	231
18A	4	7a*,8b,8c	Salaries, wages and other benefits.....	95
18A	5	4	Educational meetings.....	104
18A	7*		Severability.....	105
18B	3B*		West Virginia Literacy Project.....	105
18B	15*		Severability.....	107
19	12A	5	Powers, duties and responsibilities of Farm Management Commission.....	265
24	2	1g*;11b*	Rate incentives for utility investment in qualified clean coal and clean air control technology facilities, continuing prudence reviews.....	262
33	3	14d	Additional fire and casualty insurance premium tax.....	357

* Indicates new chapter, article or section.

INDEX

379

CODE AMENDED—(Continued):

Ch.	Art.	Sec.		Page
51	9	3	Custody, permissible investment and administration of retirement system trust fund for judges of courts of record.....	360

CODE REPEALED:

Ch.	Art.	Sec.		Page
18	2	6a,6b,6c, 22,28	Participation in National Standards Board, establishment of school teams, teachers' forum and academy.....	28
18	2C		Job-Preparation Program for school dropouts.....	28
18	2F		Schools of Excellence.....	28
49	6C		Children's trust fund for child abuse and neglect prevention.....	28

* Indicates new chapter, article or section.