

**ACTS**  
**OF THE**  
**LEGISLATURE**  
**OF**  
**WEST VIRGINIA**



**Regular Session, 2008**  
**First Extraordinary Session, 2008**  
**Second Extraordinary Session, 2008**  
**Second Extraordinary Session, 2007**

**Volume I**  
**Chapters 1 - 121**

**WEST VIRGINIA HOUSE OF DELEGATES**  
**HONORABLE RICHARD THOMPSON**  
**SPEAKER OF THE HOUSE**

\*\*\*\*\*

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## FOREWORD

These volumes contain the Acts of the Second Regular Session and the First Extraordinary Session of the 78th Legislature, 2008, and the Second Extraordinary Session, 2007.

### Second Regular Session, 2008

The Second Regular Session of the 78th Legislature convened on January 9, 2008. The constitutional sixty-day limit on the duration of the session was midnight, March 8, 2008. The Governor issued Proclamations on March 5, 2008 and March 11, 2008, extending the session for the purpose of considering the Budget bill, and the Legislature adjourned *sine die* on March 16, 2008.

Bills totaling 2,138 were introduced in the two houses during the session (1,350 House, of which 635 were carryover, and 788 Senate). The Legislature passed 246 bills, 129 House and 117 Senate.

The Governor vetoed seven House bills (**Com. Sub. for H. B. 4010**, Removing the limitation on terms for members on the board of library directors; **H. B. 4016**, Updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; **H. B. 4017**, Updating meaning of federal taxable income and certain other terms used in West Virginia Corporation Net Income Tax Act; **Com. Sub. for H. B. 4307**, Relating to bona fide residents wholly or solely owning greyhounds; **Com. Sub. for H. B. 4407**, Requiring automatic tire chains as standard equipment on all new school buses; **Com. Sub. for H. B. 4420**, Imposing corporate net income tax on certain regulated investment companies and real estate investment trusts used as tax sheltering vehicles; and **Com. Sub. for H. B. 4554**, Testing school bus operators every other year) and eight Senate bills (**Com. Sub. for S. B. 207**, Relating to Deputy Sheriff Retirement System Act; **Com. Sub. for S. B. 227**, Relating to State Teachers Retirement System; **Com. Sub. for S. B. 242**, Allowing point deduction for

certain licensees attending defensive driving class; **S. B. 337**, Eliminating obsolete language concerning Supreme Court clerk; **Com. Sub. for S. B. 477**, Increasing conservation officers' salaries and length of service; **S. B. 606**, Requiring hiring preference for summer school program positions; **Com. Sub. for S. B. 638**, Requiring information collection from catalytic converter purchasers; **S. B. 696**, Providing appraisal methods for certain multifamily rental properties; and **Com. Sub. for S. B. 736**, Relating to real property sales for persons with legal disabilities). The Legislature amended and again passed four bills (**H. B. 4016**, **H. B. 4017**, **Com. Sub. for H. B. 4420** and **Com. Sub. for S. B. 736**) leaving a net total of 234 bills, 125 House and 109 Senate, which became law.

There were 211 Concurrent Resolutions introduced during the session, 120 House and 91 Senate, of which 34 House and 30 Senate were adopted. There were 33 House Joint Resolutions (24 of which were carryover resolutions) and 17 Senate Joint Resolutions introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 41 House Resolutions, and the Senate introduced 41 Senate Resolutions, of which 36 House and 36 Senate were adopted.

The Senate failed to pass 45 House bills passed by the House, and 55 Senate bills failed passage by the House.

\* \* \* \* \*

### **First Extraordinary Session, 2008**

The Proclamation calling the Legislature into Extraordinary Session on March 16, 2008, contained seven items for consideration.

The Legislature passed nine bills, 4 House bills and 5 Senate bills. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* at 10:57 P.M. that same day.

\* \* \* \* \*

### **Second Extraordinary Session, 2008**

The Proclamation calling the Legislature into Extraordinary Session on June 24, 2008, contained thirteen items for consideration.

The Legislature passed nineteen bills, 10 House bills and 9 Senate bills. One House Concurrent Resolution and one Senate Concurrent Resolution was adopted and the Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on June 28, 2007.

\* \* \* \* \*

### **Second Extraordinary Session, 2007**

The Proclamation calling the Legislature into Extraordinary Session on August 17, 2007, contained seventeen items for consideration.

The Legislature passed fourteen bills, 7 House bills and 7 Senate bills. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on August 21, 2007.

These volumes 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 Office of the Clerk of the House, 212 Main Unit, State Capitol, Charleston, West Virginia 25305.

GREGORY M. GRAY  
*Clerk of the House and  
Keeper of the Rolls.*

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# MEMBERS OF THE HOUSE OF DELEGATES

## REGULAR SESSION, 2008

### OFFICERS

*Speaker*-- Richard Thompson, Wayne

*Clerk*--Gregory M. Gray, Charleston

*Sergeant at Arms*--Oce Smith, Fairmont

*Doorkeeper*--John Roberts, Hedgesville

| District       | Name                         | Address               | Legislative Service   |
|----------------|------------------------------|-----------------------|---|
| First          | Joe DeLong (D)               | Weirton               | 75 <sup>th</sup> - 78 <sup>th</sup>                                       |
|                | Randy Swartzmiller (D)       | New Cumberland        | 75 <sup>th</sup> - 78 <sup>th</sup>                                       |
| Second         | Timothy R. Ennis (D)         | Wellsburg             | 72 <sup>nd</sup> - 78 <sup>th</sup>                                       |
|                | Jack Yost (D)                | Wellsburg             | 76 <sup>th</sup> - 78 <sup>th</sup>                                       |
| Third          | Tal Hutchins (D)             | Wheeling              | 72 <sup>nd</sup> - 74 <sup>th</sup> ; 78 <sup>th</sup>                    |
|                | Orphy Klempa (D)             | Wheeling              | 78 <sup>th</sup>  |
| Fourth         | Kenneth D. Tucker (D)        | Moundsville           | 73 <sup>rd</sup> - 78 <sup>th</sup>                                       |
|                | Scott G. Vamer (D)           | Moundsville           | 71 <sup>st</sup> - 78 <sup>th</sup>                                       |
| Fifth          | Dave Pethel (D)              | Hundred               | 69 <sup>th</sup> - 71 <sup>st</sup> ; 74 <sup>th</sup> - 78 <sup>th</sup> |
| Sixth          | William Roger Romine (R)     | Sistersville          | 75 <sup>th</sup> - 78 <sup>th</sup>                                       |
| Seventh        | Lynwood "Woody" Ireland (R)  | Pullman               | 78 <sup>th</sup>  |
| Eighth         | Everette W. Anderson, Jr.(R) | Williamstown          | 71 <sup>st</sup> - 78 <sup>th</sup>                                       |
| Ninth          | Larry W. Border (R)          | Davisville            | 70 <sup>th</sup> - 78 <sup>th</sup>                                       |
| Tenth          | Tom Azinger (R)              | Vienna                | 72 <sup>nd</sup> - 78 <sup>th</sup>                                       |
|                | John Ellem (R)               | Parkersburg           | 75 <sup>th</sup> - 78 <sup>th</sup>                                       |
| Eleventh       | Daniel Poling (D)            | Parkersburg           | 78 <sup>th</sup>  |
|                | Bob Ashley (R)               | Spencer               | 67 <sup>th</sup> - 73 <sup>rd</sup> ; 75 <sup>th</sup> - 78 <sup>th</sup> |
| Twelfth        | Mitch Carmichael (R)         | Ripley                | 75 <sup>th</sup> - 78 <sup>th</sup>                                       |
| Thirteenth     | Dale Martin (D)              | Poca                  | 75 <sup>th</sup> - 78 <sup>th</sup>                                       |
|                | Brady Paxton (D)             | Liberty               | 71 <sup>st</sup> ; Appt. 4/22/99,<br>74 <sup>th</sup> -78 <sup>th</sup>   |
| Fourteenth     | Troy Andes (R)               | Hurricane             | 78 <sup>th</sup>  |
|                | Patti Eagloski Schoen (R)    | Scott Depot           | 76 <sup>th</sup> - 78 <sup>th</sup>                                       |
| Fifteenth      | Kevin J. Craig (D)           | Huntington            | 75 <sup>th</sup> - 78 <sup>th</sup>                                       |
|                | Jim Morgan (D)               | Huntington            | 69 <sup>th</sup> - 70 <sup>th</sup> ; 75 <sup>th</sup> - 78 <sup>th</sup> |
| Sixteenth      | Carol Miller (R)             | Huntington            | 78 <sup>th</sup>  |
|                | Kelli Sobonya (R)            | Huntington            | 76 <sup>th</sup> - 78 <sup>th</sup>                                       |
| Seventeenth    | Dale Stephens (D)            | Huntington            | 75 <sup>th</sup> ; 77 <sup>th</sup> - 78 <sup>th</sup>                    |
|                | Doug Reynolds (D)            | Huntington            | 78 <sup>th</sup>  |
| Eighteenth     | Richard Thompson (D)         | Lavelette             | 65 <sup>th</sup> , Resigned 6/81;<br>76 <sup>th</sup> - 78 <sup>th</sup>  |
|                | Don C. Perdue (D)            | Prichard              | 74 <sup>th</sup> - 78 <sup>th</sup>                                       |
| Nineteenth     | Larry W. Barker (D)          | Madison               | 77 <sup>th</sup> - 78 <sup>th</sup>                                       |
|                | Ted Ellis (D)                | Logan                 | 78 <sup>th</sup>  |
| Twentieth      | Jeff Eldridge (D)            | Harts                 | 77 <sup>th</sup> - 78 <sup>th</sup>                                       |
|                | Ralph Rodighiero (D)         | Logan                 | 78 <sup>th</sup>  |
| Twenty-first   | Lidella Wilson Hrutkay (D)   | Logan                 | 75 <sup>th</sup> - 78 <sup>th</sup>                                       |
|                | K. Steven Kominar (D)        | Kermit                | 72 <sup>nd</sup> - 78 <sup>th</sup>                                       |
| Twenty-second  | Harry Keith White (D)        | Gilbert               | Appt. 9/11/92, 70 <sup>th</sup> ;<br>71 <sup>st</sup> - 78 <sup>th</sup>  |
|                | Richard Browning (D)         | Oceana                | 69 <sup>th</sup> - 72 <sup>nd</sup> ; 76 <sup>th</sup> - 78 <sup>th</sup> |
| Twenty-third   | Mike Burdiss (D)             | Mullens               | 78 <sup>th</sup>  |
|                | Clif Moore (D)               | Thorpe                | 77 <sup>th</sup> - 78 <sup>th</sup>                                       |
| Twenty-fourth  | Eustace Frederick (D)        | Bluefield             | Appt. 10/17/93, 71 <sup>st</sup> ;<br>72 <sup>nd</sup> - 78 <sup>th</sup> |
|                | Marshall Long (D)            | Princeton             | 75 <sup>th</sup> - 78 <sup>th</sup>                                       |
| Twenty-fifth   | Thomas Mike Porter (R)       | Princeton             | 77 <sup>th</sup> - 78 <sup>th</sup>                                       |
|                | Gerald Crosier (D)           | Union                 | 76 <sup>th</sup> - 78 <sup>th</sup>                                       |
| Twenty-sixth   | Louis Gall (D)               | Beckley               | Appt. 8/10/07, 78 <sup>th</sup>   |
|                | Melvin Kessler (D)           | Beckley               | 78 <sup>th</sup>  |
| Twenty-seventh | Virginia Mahan (D)           | Green Sulphur Springs | 73 <sup>rd</sup> - 78 <sup>th</sup>                                       |
|                | Linda Sumner (R)             | Beckley               | 76 <sup>th</sup> - 78 <sup>th</sup>                                       |
|                | Ricky Moye (D)               | Crab Orchard          | 78 <sup>th</sup>  |

## MEMBERS OF THE HOUSE OF DELEGATES, Continued

| District       | Name                          | Address          | Legislative Service  |
|----------------|-------------------------------|------------------|--|
| Twenty-eighth  | Thomas W. Campbell (D)        | Lewisburg        | 73 <sup>rd</sup> - 78 <sup>th</sup>  |
|                | Ray Canterbury (R)            | Ronceverte       | 75 <sup>th</sup> - 78 <sup>th</sup>  |
| Twenty-ninth   | Margaret Anne Staggers (D)    | Fayetteville     | 78 <sup>th</sup>   |
|                | David G. Perry (D)            | Oak Hill         | 75 <sup>th</sup> - 78 <sup>th</sup>  |
|                | John Pino (D)                 | Oak Hill         | 67 <sup>th</sup> - 68 <sup>th</sup> ; 71 <sup>st</sup> - 78 <sup>th</sup>                    |
| Thirtieth      | Bonnie Brown (D)              | South Charleston | 66 <sup>th</sup> - 68 <sup>th</sup> ; 70 <sup>th</sup> ; 75 <sup>th</sup> - 78 <sup>th</sup> |
|                | Barbara Burruss Hatfield (D)  | South Charleston | 67 <sup>th</sup> - 69 <sup>th</sup> ; 74 <sup>th</sup> - 78 <sup>th</sup>                    |
|                | Nancy Peoples Guthrie (D)     | Charleston       | 78 <sup>th</sup>   |
|                | <sup>2</sup> Dave Higgins (D) | Charleston       | Appt. 4/16/07, 78 <sup>th</sup>  |
|                | Corey Palumbo (D)             | Charleston       | 76 <sup>th</sup> - 78 <sup>th</sup>  |
|                | Sharon Spencer (D)            | Charleston       | 66 <sup>th</sup> ; 68 <sup>th</sup> - 71 <sup>st</sup> ; 73 <sup>rd</sup> - 78 <sup>th</sup> |
|                | Danny Wells (D)               | Charleston       | 77 <sup>th</sup> - 78 <sup>th</sup>  |
|                | Carrie Webster (D)            | Charleston       | 75 <sup>th</sup> - 78 <sup>th</sup>  |
| Thirty-first   | Tim Armstead (R)              | Elkview          | Appt. 9/5/98, 73 <sup>rd</sup> ; 74 <sup>th</sup> - 78 <sup>th</sup>                         |
|                | Patrick Lane (R)              | Cross Lanes      | 77 <sup>th</sup> - 78 <sup>th</sup>  |
| Thirty-third   | Ron Walters (R)               | Charleston       | 71 <sup>st</sup> - 73 <sup>rd</sup> ; 75 <sup>th</sup> - 78 <sup>th</sup>                    |
|                | William F. Stemple (D)        | Arnoldsburg      | 73 <sup>rd</sup> - 78 <sup>th</sup>  |
| Thirty-fourth  | Brent Boggs (D)               | Gassaway         | 73 <sup>rd</sup> - 78 <sup>th</sup>  |
| Thirty-fifth   | Sam J. Argento (D)            | Mt. Nebo         | 77 <sup>th</sup> - 78 <sup>th</sup>  |
| Thirty-sixth   | Joe Talbott (D)               | Webster Springs  | 71 <sup>st</sup> - 72 <sup>nd</sup> ; 76 <sup>th</sup> - 78 <sup>th</sup>                    |
| Thirty-seventh | William G. Hartman (D)        | Elkins           | 76 <sup>th</sup> - 78 <sup>th</sup>  |
|                | Bill Proudfoot (D)            | Elkins           | 70 <sup>th</sup> - 78 <sup>th</sup>  |
| Thirty-eighth  | Doug Stalnakar (D)            | Weston           | 72 <sup>nd</sup> - 78 <sup>th</sup>  |
| Thirty-ninth   | Bill Hamilton (R)             | Buckhannon       | 76 <sup>th</sup> - 78 <sup>th</sup>  |
| Fortieth       | Mary M. Poling (D)            | Moatsville       | 75 <sup>th</sup> - 78 <sup>th</sup>  |
| Forty-first    | Richard J. Jaquinta (D)       | Clarksburg       | 76 <sup>th</sup> - 78 <sup>th</sup>  |
|                | Samuel J. Cann (D)            | Clarksburg       | 72 <sup>nd</sup> - 78 <sup>th</sup>  |
|                | Ron Fragale (D)               | Clarksburg       | 70 <sup>th</sup> - 73 <sup>rd</sup> ; 75 <sup>th</sup> - 78 <sup>th</sup>                    |
|                | Tim Miley (D)                 | Bridgeport       | 77 <sup>th</sup> - 78 <sup>th</sup>  |
| Forty-second   | Jeffery L. Tansill (R)        | Grafton          | 77 <sup>th</sup> - 78 <sup>th</sup>  |
| Forty-third    | Michael Caputo (D)            | Fairmont         | 73 <sup>rd</sup> - 78 <sup>th</sup>  |
|                | Tim Manchin (D)               | Fairmont         | 76 <sup>th</sup> - 78 <sup>th</sup>  |
|                | Linda Longstreth (D)          | Fairmont         | 77 <sup>th</sup> - 78 <sup>th</sup>  |
| Forty-fourth   | Robert D. Beach (D)           | Morgantown       | Appt. 5/98; 73 <sup>rd</sup> - 78 <sup>th</sup>  |
|                | Barbara Evans Fleischauer (D) | Morgantown       | 72 <sup>nd</sup> - 78 <sup>th</sup>  |
|                | Alex J. Shook (D)             | Morgantown       | 78 <sup>th</sup>   |
|                | Charlene Marshall (D)         | Morgantown       | 74 <sup>th</sup> - 78 <sup>th</sup>  |
| Forty-fifth    | Larry A. Williams (D)         | Tunnelton        | Appt. 10/8/93, 71st; 72 <sup>nd</sup> - 78 <sup>th</sup>                                     |
|                | Stan Shaver (D)               | Tunnelton        | 74 <sup>th</sup> - 78 <sup>th</sup>  |
| Forty-sixth    | Harold K. Michael (D)         | Moorefield       | 69 <sup>th</sup> - 78 <sup>th</sup>  |
| Forty-eighth   | Allen V. Evans (R)            | Dorcas           | 70 <sup>th</sup> - 78 <sup>th</sup>  |
| Forty-ninth    | Robert A. Schadler (R)        | Keyser           | 69 <sup>th</sup> - 70 <sup>th</sup> ; 74 <sup>th</sup> - 78 <sup>th</sup>                    |
| Fiftieth       | Ruth Rowan (R)                | Points           | 77 <sup>th</sup> - 78 <sup>th</sup>  |
| Fifty-first    | Daryl E. Cowles (R)           | Berkeley Springs | 78 <sup>th</sup>   |
| Fifty-second   | Craig P. Blair (R)            | Martinsburg      | 76 <sup>th</sup> - 78 <sup>th</sup>  |
| Fifty-third    | Jonathan Miller (R)           | Bunker Hill      | 78 <sup>th</sup>   |
| Fifty-fourth   | Walter E. Duke (R)            | Martinsburg      | 76 <sup>th</sup> - 78 <sup>th</sup>  |
| Fifty-fifth    | John Overington (R)           | Martinsburg      | 67 <sup>th</sup> - 78 <sup>th</sup>  |
| Fifty-sixth    | Robert C. Tabb (D)            | Kearneysville    | 76 <sup>th</sup> - 78 <sup>th</sup>  |
| Fifty-seventh  | John Doyle (D)                | Shepherdstown    | 66 <sup>th</sup> ; 71 <sup>st</sup> - 78 <sup>th</sup>                                       |
| Fifty-eighth   | Locke Wysong (D)              | Charles Town     | 77 <sup>th</sup> - 78 <sup>th</sup>  |

1 Appointed to fill the vacancy created by the resignation of Ron Thompson.

2 Appointed to fill the vacancy created by the resignation of Jon Amores.

(D) Democrats ..... 72  
 (R) Republicans ..... 28

TOTAL ..... 100



# MEMBERS OF THE SENATE

## REGULAR SESSION, 2008

### OFFICERS

*President*—Earl Ray Tomblin, Chapmanville  
*Clerk*—Darrell E. Holmes, Charleston  
*Sergeant at Arms*—Howard Wellman, Bluefield  
*Doorkeeper*—Andrew J. Trail, Charleston

| District    | Name                        | Address          | Legislative Service   |
|-------------|-----------------------------|------------------|---|
| First       | Edwin J. Bowman (D)         | Weirton          | 72 <sup>nd</sup> - 78 <sup>th</sup>   |
|             | Andy McKenzie (R)           | Wheeling         | 73 <sup>rd</sup> - 78 <sup>th</sup>   |
| Second      | Larry J. Edgell (D)         | New Martinsburg  | 74 <sup>th</sup> - 78 <sup>th</sup>   |
|             | Jeffrey V. Kessler (D)      | Glen Dale        | Appt. 11/97,73rd;<br>74 <sup>th</sup> - 78 <sup>th</sup>  |
| Third       | Donna J. Boley (R)          | St. Marys        | Appt. 5/14/85, 67 <sup>th</sup> ;<br>68 <sup>th</sup> - 78 <sup>th</sup>  |
|             | J. Frank Deem (R)           | Vienna           | (House 52 <sup>nd</sup> -56 <sup>th</sup> );<br>57 <sup>th</sup> -64 <sup>th</sup> - 65 <sup>th</sup> ;<br>(House 69 <sup>th</sup> ); 72 <sup>nd</sup> - 78 <sup>th</sup> |
| Fourth      | Karen L. Facemyer (R)       | Ripley           | (House 71 <sup>st</sup> - 74 <sup>th</sup> );<br>75 <sup>th</sup> - 78 <sup>th</sup>  |
| Fifth       | Mike Hall (R)               | Hurricane        | (House 72 <sup>nd</sup> - 74 <sup>th</sup> ); 78 <sup>th</sup>  |
|             | Robert H. Plymale (D)       | Ceredo           | 71 <sup>st</sup> - 78 <sup>th</sup>   |
| Sixth       | Evan H. Jenkins (D)         | Huntington       | 76 <sup>th</sup> - 78 <sup>th</sup>   |
|             | H. Truman Chafin (D)        | Williamson       | 66 <sup>th</sup> - 78 <sup>th</sup>   |
| Seventh     | John Pat Fanning (D)        | Iaeger           | 58 <sup>th</sup> - 64 <sup>th</sup> ; 67 <sup>th</sup> -68 <sup>th</sup> ;<br>73 <sup>rd</sup> - 78 <sup>th</sup>   |
|             | Earl Ray Tomblin (D)        | Chapmanville     | (House 62 <sup>nd</sup> -64 <sup>th</sup> );<br>65 <sup>th</sup> - 78 <sup>th</sup>   |
| Eighth      | Ron Stollings (D)           | Madison          | 78 <sup>th</sup>  |
|             | Vic Sprouse (R)             | South Charleston | (House 72 <sup>nd</sup> ); 73 <sup>rd</sup> - 78 <sup>th</sup>  |
| Ninth       | Erik P. Wells (D)           | Charleston       | 78 <sup>th</sup>  |
|             | Billy Wayne Bailey, Jr. (D) | Pineville        | Appt. 1/91, 70th;<br>71st - 78th  |
| Tenth       | Mike Green (D)              | Daniels          | 78 <sup>th</sup>  |
|             | Donald T. Caruth (R)        | Mercer           | (House 76 <sup>th</sup> ) 77 <sup>th</sup> - 78 <sup>th</sup>   |
| Eleventh    | Jesse O. Guills (R)         | Lewisburg        | 76 <sup>th</sup> - 78 <sup>th</sup>   |
|             | Shirley Love (D)            | Oak Hill         | 72 <sup>nd</sup> -77 <sup>th</sup>  |
| Twelfth     | C. Randy White (D)          | Webster Springs  | (House 73 <sup>rd</sup> - 75 <sup>th</sup> );<br>76 <sup>th</sup> - 78 <sup>th</sup>  |
|             | Joseph M. Minard (D)        | Clarksburg       | (House Appt. 1/83, 66 <sup>th</sup> ;<br>67 <sup>th</sup> -69 <sup>th</sup> ); 70 <sup>th</sup> ; 74 <sup>th</sup> - 78 <sup>th</sup>                                     |
| Thirteenth  | William R. Sharpe, Jr. (D)  | Weston           | 55 <sup>th</sup> - 64 <sup>th</sup> ; 67 <sup>th</sup> - 78 <sup>th</sup>   |
|             | Michael A. Oliverio, II (D) | Morgantown       | (House 71 <sup>st</sup> ); 72 <sup>nd</sup> - 78 <sup>th</sup>  |
| Fourteenth  | Roman W. Prezioso, Jr. (D)  | Fairmont         | (House 69 <sup>th</sup> - 72 <sup>nd</sup> );<br>73 <sup>rd</sup> -78th   |
|             | Jon Blair Hunter (D)        | Clarksburg       | 73 <sup>rd</sup> - 78 <sup>th</sup>   |
| Fifteenth   | Dave Sybolt (R)             | Kingwood         | 78 <sup>th</sup>  |
|             | Walt Helmick (D)            | Marlinton        | (House 1 yr.,69th);<br>Appt.9/89, 69 <sup>th</sup> ; 70 <sup>th</sup> - 78 <sup>th</sup>  |
| Sixteenth   | Clark Barnes (R)            | Randolph         | 77 <sup>th</sup> - 78 <sup>th</sup>   |
|             | John Yoder (R)              | Harpers Ferry    | 71 <sup>st</sup> - 72 <sup>nd</sup> ; 77 <sup>th</sup> - 78 <sup>th</sup>   |
| Seventeenth | John R. Unger II (D)        | Martinsburg      | 74 <sup>th</sup> - 78 <sup>th</sup>   |
|             | Brooks F. McCabe, Jr. (D)   | Charleston       | 74 <sup>th</sup> - 78 <sup>th</sup>   |
|             | Dan Foster (D)              | Charleston       | (House 76 <sup>th</sup> ) 77 <sup>th</sup> - 78 <sup>th</sup>   |
|             | ( D ) Democrats             |                  | 23  |
|             | ( R ) Republicans           |                  | 11  |
|             | TOTAL                       |                  | 34  |

**COMMITTEES OF THE HOUSE OF DELEGATES**  
**Regular Session, 2008**

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**STANDING**

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**AGRICULTURE AND NATURAL RESOURCES**

Stemple (*Agriculture Chair*), Tabb (*Agriculture Vice Chair*), Talbott (*Natural Resources Chair*), Argento (*Natural Resources Vice Chair*), Barker, Caputo, Crosier, Eldridge, Ellis, Fragale, Martin, Moore, Moye, Paxton, Rodigherio, Shaver, Varner, Wells, Hamilton, Anderson, Canterbury, Evans, Ireland, C. Miller and Romine.

**BANKING AND INSURANCE**

Moore (*Banking Chair*), Perry (*Banking Vice Chair*), Kominar (*Insurance Chair*), Barker (*Insurance Vice Chair*), Beach, Ellis, Guthrie, Hartman, Higgins, Hutchins, Iaquina, Kessler, Mahan, Michael, Miley, Reynolds, Talbott, Williams, Andes, Ashley, Azinger, Border, Carmichael, Schoen and Walters.

**CONSTITUTIONAL REVISION**

Fleischauer (*Chair*), Hutchins (*Vice Chair*), Brown, Campbell, Caputo, Doyle, Guthrie, Hatfield, Higgins, Kominar, Long, Marshall, Morgan, Palumbo, Pino, Staggers, Wells, Webster, Anderson, Blair, Ellem, Lane, J. Miller, Overington and Sobonya.

**EDUCATION**

M. Poling (*Chair*), Paxton (*Vice Chair*), Browning, Craig, Crosier, Ellis, Ennis, Fragale, Frederick, Gall, Moye, Perry, Pethel, Rodigherio, Shaver, Stephens, Wells, Wysong, Duke, Ireland, J. Miller, Romine, Rowan, Sumner and Tansill.

**FINANCE**

White (*Chair*), Boggs (*Vice Chair*), Barker, Campbell, Craig, Doyle, Iaquina, Klempa, Kominar, Manchin, Marshall, Perdue, M. Poling, Reynolds, Spencer, Stalnaker, Tucker, Yost, Anderson, Ashley, Blair, Border, Carmichael, Evans and Walters.

## HOUSE OF DELEGATES COMMITTEES

### **GOVERNMENT ORGANIZATION**

Morgan (*Chair*), Martin (*Vice Chair*), Argento, Beach, Caputo, Cann, DeLong, Eldridge, Hartman, Hatfield, Higgins, Hutchins, Michael, Palumbo, D. Poling, Staggers, Swartzmiller, Talbott, Andes, Canterbury, Cowles, C. Miller, Porter, Rowan and Schoen.

### **HEALTH AND HUMAN RESOURCES**

Perdue (*Chair*), Hatfield (*Vice Chair*), Boggs, Campbell, Cann, Eldridge, Fleischauer, Long, Longstreth, Marshall, Moore, Moye, Pino, Rodigherio, Staggers, Stalnaker, Spencer, Wysong, Ashley, Border, Canterbury, Lane, J. Miller, Rowan and Sumner.

### **INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS**

Marshall (*Economic Development and Small Business Chair*), Browning (*Economic Development and Small Business Vice Chair*), Tucker (*Industry and Labor Chair*) Pethtel (*Industry and Labor Vice Chair*), Campbell, Craig, Frederick, Guthrie, Hartman, Kessler, Klempa, Long, Mahan, Martin, Palumbo, Stephens, Spencer, Yost, Andes, Blair, Carmichael, Cowles, Hamilton, C. Miller and Sobonya.

### **JUDICIARY**

Webster (*Chair*), Proudfoot (*Vice Chair*), Brown, Burdiss, Fleischauer, Guthrie, Hrutkay, Kessler, Long, Longstreth, Mahan, Miley, Moore, Pino, Shook, Stemple, Tabb, Varner, Azinger, Ellem, Hamilton, Lane, Overington, Schadler and Sobonya.

### **PENSIONS AND RETIREMENT**

Spencer (*Chair*), Craig (*Vice Chair*), Browning, Stemple, Stephens, Canterbury and Duke.

### **POLITICAL SUBDIVISION**

Manchin (*Chair*), Yost (*Vice Chair*), Beach, Browning, Craig, Doyle, Gall, Kominar, Miley, Palumbo, Perry, D. Poling, Proudfoot, Reynolds, Swartzmiller, Tabb, Varner, Wysong, Cowles, Duke, Rowan, Schadler, Schoen, Sumner and Tansill.

## HOUSE OF DELEGATES COMMITTEES

### **ROADS AND TRANSPORTATION**

Hrutkay (*Chair*), Stephens (*Vice Chair*), Argento, Boggs, Burdiss, Crosier, Ennis, Klempa, Manchin, Martin, Michael, Pethtel, Pino, Proudfoot, Shook, Stalnaker, Wells, Wysong, Duke, Ellem, Evans, Porter, Romine, Schadler and Tansill.

### **RULES**

Richard Thompson (*Chair*), Caputo, DeLong, Fragale, Hatfield, Hrutkay, Morgan, M. Poling, Proudfoot, Talbott, Varner, Webster, White, Anderson, Armstead, Border, Carmichael and Overington.

### **VETERANS AFFAIRS AND HOMELAND SECURITY**

Iaquinta (*Veterans Affairs Chair*), Longstreth (*Veterans Affairs Vice Chair*), Swartzmiller (*Homeland Security Chair*), Ennis (*Homeland Security Vice Chair*), Burdiss, Cann, Hatfield, Hrutkay, Hutchins, Paxton, Pethtel, Shaver, Shook, Staggers, Stephens, Tucker, Williams, Yost, Armstead, Azinger, Ireland, Porter, Sumner, Tansill and Walters.

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## **JOINT COMMITTEES**

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### **ENROLLED BILLS**

Doyle (*Chair*), Beach (*Vice Chair*) and Fragale.

### **GOVERNMENT AND FINANCE**

Richard Thompson (*Co-Chair*), Caputo, DeLong, Webster, White and Armstead.

### **LEGISLATIVE RULE-MAKING REVIEW**

Brown (*Chair*), Miley (*Vice Chair*), Burdiss, Talbott, Overington and Sobonya.

HOUSE OF DELEGATES COMMITTEES

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**STATUTORY LEGISLATIVE COMMISSIONS**

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**INTERSTATE COOPERATION**

Pino (*Chair*), Frederick (*Vice Chair*), Blair and Walters.

**COMMISSION ON SPECIAL INVESTIGATIONS**

Richard Thompson (*Co-Chair*), DeLong, White, Armstead  
and Ellem.

**COMMITTEES OF THE SENATE**  
**Regular Session, 2008**

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**STANDING**

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**AGRICULTURE AND NATURAL RESOURCES**

Edgell (*Chair*), Love (*Vice Chair*), Bailey, Helmick, Hunter, Sharpe, Unger, Barnes, Facemyer, Guills and Sypolt.

**BANKING AND INSURANCE**

Minard (*Chair*), Jenkins (*Vice Chair*), Chafin, Fanning, Foster, Helmick, Kessler, Prezioso, Sharpe, Deem, Facemyer, Guills and Yoder.

**CONFIRMATIONS**

Love (*Chair*), Chafin (*Vice Chair*), Bailey, Bowman, Minard, Plymale, Hall, McKenzie and Yoder.

**ECONOMIC DEVELOPMENT**

McCabe (*Chair*), Oliverio (*Vice Chair*), Bowman, Fanning, Helmick, Kessler, Minard, Plymale, Prezioso, Unger, Caruth, Facemyer, McKenzie and Sprouse.

**EDUCATION**

Plymale (*Chair*), Edgell (*Vice Chair*), Bailey, Green, Hunter, Oliverio, Stollings, Unger, Wells, White, Boley, Guills, Hall and Sprouse.

**ENERGY, INDUSTRY AND MINING**

Sharpe (*Chair*), Hunter (*Vice Chair*), Fanning, Green, Helmick, Jenkins, Kessler, Stollings, Wells, Deem, Guills, Sprouse and Sypolt.

**FINANCE**

Helmick (*Chair*), Sharpe (*Vice Chair*), Bailey, Bowman, Chafin, Edgell, Fanning, Love, McCabe, Plymale, Prezioso, Unger, Boley, Facemyer, Guills, Sprouse and Sypolt.

## SENATE COMMITTEES

### **GOVERNMENT ORGANIZATION**

Bowman (*Chair*), Bailey (*Vice Chair*), Foster, Jenkins, Kessler, McCabe, Minard, Plymale, Stollings, White, Barnes, Boley, Sypolt and Yoder.

### **HEALTH AND HUMAN RESOURCES**

Prezioso (*Chair*), Stollings (*Vice Chair*), Bailey, Foster, Green, Hunter, Jenkins, McCabe, Sharpe, Boley, Guills, Hall and Sprouse.

### **INTERSTATE COOPERATION**

Jenkins (*Chair*), Foster (*Vice Chair*), Minard, Stollings, Wells, Caruth and Sypolt.

### **JUDICIARY**

Kessler (*Chair*), Oliverio (*Vice Chair*), Chafin, Foster, Green, Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder.

### **LABOR**

Oliverio (*Chair*), Green (*Vice Chair*), Edgell, Foster, Love, Prezioso, Wells, White, Barnes, Deem and Yoder.

### **MILITARY**

Hunter (*Chair*), Wells (*Vice Chair*), Bailey, Edgell, Minard, Oliverio, Boley, Hall and Sypolt.

### **NATURAL RESOURCES**

Fanning (*Chair*), White (*Vice Chair*), Bowman, Green, Helmick, Love, McCabe, Prezioso, Unger, Barnes, Deem, Facemyer and McKenzie.

### **PENSIONS**

Foster (*Chair*), McCabe (*Vice Chair*), Edgell, Oliverio, Plymale, Deem and Hall.

SENATE COMMITTEES

**RULES**

Tomblin (*Chair*), Bowman, Chafin, Helmick, Kessler, Prezioso, Sharpe, McKenzie, Boley and Caruth.

**TRANSPORTATION AND INFRASTRUCTURE**

Unger (*Chair*), Jenkins (*Vice Chair*), Fanning, Love, Stollings, White, Barnes, Facemyer and McKenzie.

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**JOINT COMMITTEES**

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**ENROLLED BILLS**

White (*Co-Chair*), Green, Love, Sprouse and Yoder.

**GOVERNMENT AND FINANCE**

Tomblin (*Co-Chair*), Chafin, Helmick, Kessler, Sharpe, Caruth and Deem.

**LEGISLATIVE RULE-MAKING REVIEW**

Minard (*Chair*), Fanning (*Vice Chair*), Prezioso, Unger, Boley and Facemyer.



# LEGISLATURE OF WEST VIRGINIA

# ACTS

SECOND REGULAR SESSION, 2008

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## CHAPTER 1

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(Com. Sub. for H.B. 4120 - By Delegates Webster, Brown, Shook,  
Hamilton, Azinger, Fleischauer, Miley, Mahan and Proudfoot)

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[Passed March 6, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 27, 2008.]

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AN ACT to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-25, relating to prohibiting inclusion of specific dollar amounts or figures related to damages in complaints for personal injury or wrongful death actions.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-25, to read as follows:

### **ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-25. Personal injury and wrongful death actions; complaint; specific amount of damages not to be stated.**

1 In any action to recover damages for personal injury or  
2 wrongful death, no specific dollar amount or figure relating  
3 to damages being sought may be included in the complaint.  
4 However, the complaint may include a statement reciting that  
5 the amount in controversy satisfies the minimum  
6 jurisdictional amount established for filing the action.  
7 Further, and pursuant to the West Virginia Rules of Civil  
8 Procedure pertaining to discovery, any party defendant may  
9 at any time request a written statement setting forth the nature  
10 and amount of damages sought. The request shall be served  
11 upon the plaintiff who shall serve a responsive statement as  
12 to the nature and amount of damages sought within thirty  
13 days thereafter. If no response is served within thirty days  
14 after receipt of service by the plaintiff, the party defendant  
15 requesting the statement may petition the court in which the  
16 action is pending to order the plaintiff to serve a responsive  
17 statement upon the requesting party defendant. This section  
18 applies only to complaints filed on or after the first day of  
19 July, two thousand eight.

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## CHAPTER 2

**(H.B. 4141 - By Delegates White and Webster)**

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[Passed March 5, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

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AN ACT to amend and reenact §55-17-3 of the Code of West Virginia, 1931, as amended, relating to reducing the number of written status reports on a civil action against a state government agency required to be provided by the chief officer of the government agency.

*Be it enacted by the Legislature of West Virginia:*

That §55-17-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 17. PROCEDURES FOR CERTAIN ACTIONS AGAINST THE STATE.**

**§55-17-3. Preliminary procedures; service on Attorney General; notice to the Legislature.**

1 (a)(1) Notwithstanding any provision of law to the  
2 contrary, at least thirty days prior to the institution of an  
3 action against a government agency, the complaining party or  
4 parties must provide the chief officer of the government  
5 agency and the Attorney General written notice, by certified  
6 mail, return receipt requested, of the alleged claim and the  
7 relief desired. Upon receipt, the chief officer of the  
8 government agency shall forthwith forward a copy of the  
9 notice to the President of the Senate and the Speaker of the  
10 House of Delegates. The provisions of this subdivision do  
11 not apply in actions seeking injunctive relief where the court  
12 finds that irreparable harm would have occurred if the  
13 institution of the action was delayed by the provisions of this  
14 subsection.

15 (2) The written notice to the chief officer of the  
16 government agency and the Attorney General required by  
17 subdivision (1) of this subsection is considered to be  
18 provided on the date of mailing of the notice by certified  
19 mail, return receipt requested. If the written notice is  
20 provided to the chief officer of the government agency as  
21 required by subdivision (1) of this subsection, any applicable  
22 statute of limitations is tolled for thirty days from the date the  
23 notice is provided and, if received by the government agency  
24 as evidenced by the return receipt of the certified mail, for  
25 thirty days from the date of the returned receipt.

26 (3) A copy of any complaint filed in an action as defined in  
27 section two of this article shall be served on the Attorney  
28 General.

29 (b) (1) Notwithstanding any procedural rule or any  
30 provision of this code to the contrary, in an action instituted  
31 against a government agency that seeks a judgment, as  
32 defined in section two of this article, the chief officer of the  
33 government agency which is named a party to the action  
34 shall, upon receipt of service, forthwith give written notice  
35 thereof, together with a copy of the complaint filed, to the  
36 President of the Senate and the Speaker of the House of  
37 Delegates.

38 (2) Upon request, the chief officer of the government  
39 agency shall furnish the President and Speaker with copies of  
40 pleadings filed and discovery produced in the proceeding and  
41 other documents, information and periodic reports relating to  
42 the proceeding as may be requested.

43 (3) The chief officer of a government agency who fails  
44 without good cause to comply with the provisions of this  
45 subsection is guilty of misfeasance. This subsection does not  
46 require a notice or report to the President and the Speaker  
47 that no action has been instituted or is pending against a  
48 governmental agency during a specified period.

49 (c) The requirements for notice and delivery of pleadings  
50 and other documents to the President of the Senate or  
51 Speaker of the House of Delegates pursuant to the provisions  
52 of this section do not constitute a waiver of any  
53 Constitutional immunity or protection that proscribes or  
54 limits actions, suits or proceedings against the Legislature or  
55 the State of West Virginia.

56 (d) The exercise of authority granted by the provisions of  
57 this section does not subject the Legislature or any member  
58 of the Legislature to any terms of a judgment.

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CHAPTER 3

**(H.B. 4019 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]**

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[Passed March 6, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2008.]

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AN ACT to amend and reenact §56-1-1a of the Code of West Virginia, 1931, as amended, relating to venue in civil actions; codifying certain portions of the common law doctrine of forum non conveniens; and required judicial considerations.

*Be it enacted by the Legislature of West Virginia:*

That §56-1-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

**ARTICLE 1. VENUE.**

**§ 56-1-1a. Forum non conveniens.**

1       (a) In any civil action if a court of this state, upon a  
2 timely written motion of a party, finds that in the interest of  
3 justice and for the convenience of the parties a claim or  
4 action would be more properly heard in a forum outside this  
5 state, the court shall decline to exercise jurisdiction under the  
6 doctrine of forum non conveniens and shall stay or dismiss  
7 the claim or action, or dismiss any plaintiff: *Provided*, That  
8 the plaintiff's choice of a forum is entitled to great deference,  
9 but this preference may be diminished when the plaintiff is a  
10 nonresident and the cause of action did not arise in this state.

11 In determining whether to grant a motion to stay or dismiss an  
12 action, or dismiss any plaintiff under the doctrine of forum non  
13 conveniens, the court shall consider:

14 (1) Whether an alternate forum exists in which the claim or  
15 action may be tried;

16 (2) Whether maintenance of the claim or action in the  
17 courts of this state would work a substantial injustice to the  
18 moving party;

19 (3) Whether the alternate forum, as a result of the  
20 submission of the parties or otherwise, can exercise jurisdiction  
21 over all the defendants properly joined to the plaintiff's claim;

22 (4) The state in which the plaintiff(s) reside;

23 (5) The state in which the cause of action accrued;

24 (6) Whether the balance of the private interests of the  
25 parties and the public interest of the state predominate in favor  
26 of the claim or action being brought in an alternate forum,  
27 which shall include consideration of the extent to which an  
28 injury or death resulted from acts or omissions that occurred in  
29 this state. Factors relevant to the private interests of the parties  
30 include, but are not limited to, the relative ease of access to  
31 sources of proof; availability of compulsory process for  
32 attendance of unwilling witnesses; the cost of obtaining  
33 attendance of willing witnesses; possibility of a view of the  
34 premises, if a view would be appropriate to the action; and all  
35 other practical problems that make trial of a case easy,  
36 expeditious and inexpensive. Factors relevant to the public  
37 interest of the state include, but are not limited to, the  
38 administrative difficulties flowing from court congestion; the  
39 interest in having localized controversies decided within the  
40 state; the avoidance of unnecessary problems in conflict of laws,  
41 or in the application of foreign law; and the unfairness of  
42 burdening citizens in an unrelated forum with jury duty;

43       (7) Whether not granting the stay or dismissal would  
44 result in unreasonable duplication or proliferation of  
45 litigation; and

46       (8) Whether the alternate forum provides a remedy.

47       (b) A motion pursuant to subsection (a) of this section is  
48 timely if it is filed either concurrently or prior to the filing of  
49 either a motion pursuant to Rule twelve of the West Virginia  
50 Rules of Civil Procedure or a responsive pleading to the first  
51 complaint that gives rise to the grounds for such a motion:  
52 *Provided*, That a court may, for good cause shown, extend  
53 the period for the filing of such a motion.

54       (c) If the statute of limitations in the alternative forum  
55 expires while the claim is pending in a court of this state, the  
56 court shall grant a dismissal under this section only if each  
57 defendant waives the right to assert a statute of limitation  
58 defense in the alternative forum. The court may further  
59 condition a dismissal under this section to allow for the  
60 reinstatement of the same cause of action in the same forum  
61 in the event a suit on the same cause of action or on any  
62 cause of action arising out of the same transaction or  
63 occurrence is commenced in an appropriate alternative forum  
64 within sixty days after the dismissal under this section and  
65 such alternative forum declines jurisdiction.

66       (d) In actions filed pursuant to Rule twenty-three of the  
67 West Virginia Rules of Civil Procedure the provisions of this  
68 section shall apply only to the class representative(s).

69       (e) A court that grants a motion to stay or dismiss an  
70 action pursuant to this section shall set forth specific findings  
71 of fact and conclusions of law.

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## CHAPTER 4

**(Com. Sub. for H.B. 4664 - By Delegates White,  
Kominar, Boggs and Iaquina)**

[Passed March 7, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 27, 2008.]

AN ACT to repeal §5A-3-27 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5A-3-1, §5A-3-11, §5A-3-11a, §5A-3-12 and §5A-3-45 of said code, all relating to the Purchasing Division of the Department of Administration; omitting antiquated language; revising specifications on which bids shall be based; removing requirement that director determine in writing that no funds above budgeted amount exist to award bid; requiring city and state of residence and business addresses for vendors; and allowing the state agency for surplus property to sell commodities to the public.

*Be it enacted by the Legislature of West Virginia:*

That §5A-3-27 of the Code of West Virginia, 1931, as amended, be repealed; and that §5A-3-1, §5A-3-11, §5A-3-11a, §5A-3-12 and §5A-3-45 of said code be amended and reenacted, all to read as follows:

### **ARTICLE 3. PURCHASING DIVISION.**

- §5A-3-1. Division created; purpose; director; applicability of article; continuation.
- §5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on written specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; requirements of vendors to pay taxes, fees and debts; and exception.
- §5A-3-11a. Negotiation when all bids exceed budget in requisition.
- §5A-3-12. Prequalification disclosure and payment of annual fee by vendors required; form and contents; register of vendors; false affidavits; penalties.
- §5A-3-45. Disposition of surplus state property; semiannual report; application of proceeds from sale.



**§5A-3-1. Division created; purpose; director; applicability of article; continuation.**

1 (a) The Purchasing Division of the Department of  
2 Administration is continued for the purpose of establishing  
3 centralized offices to provide purchasing, and travel services  
4 to the various state agencies. No person may be appointed  
5 director of the Purchasing Division unless that person is, at  
6 the time of appointment, a graduate of an accredited college  
7 or university and has spent a minimum of ten of the fifteen  
8 years immediately preceding his or her appointment  
9 employed in an executive capacity in purchasing for any unit  
10 of government or for any business, commercial or industrial  
11 enterprise. The provisions of this article apply to all of the  
12 spending units of state government, except as otherwise  
13 provided by this article or by law.

14 (b) The provisions of this article do not apply to the  
15 legislative branch unless otherwise provided or the  
16 Legislature or either house requests the director to render  
17 specific services under the provisions of this chapter, nor to  
18 purchases of stock made by the Alcohol Beverage Control  
19 Commissioner, nor to purchases of textbooks for the State  
20 Board of Education.

**§5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on written specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; requirements of vendors to pay taxes, fees and debts; and exception.**

1 (a) The director may make a purchase of commodities,  
2 printing, and services of twenty-five thousand dollars or less  
3 in amount in the open market, but the purchase shall,  
4 wherever possible, be based on at least three competitive  
5 bids, and shall include the cost of maintenance and expected

6 life of the commodities if the director determines there are  
7 nationally accepted industry standards for the commodities  
8 being purchased.

9 (b) The director may authorize spending units to purchase  
10 commodities, printing and services in the amount of two  
11 thousand five hundred dollars or less in the open market  
12 without competitive bids: *Provided*, That the cost of  
13 maintenance and expected life of the commodities must be  
14 taken into consideration if the director determines there are  
15 nationally accepted industry standards for the commodities  
16 being.

17 (c) Bids shall be based on the written specifications in the  
18 advertised bid request and may not be altered or withdrawn  
19 after the appointed hour for the opening of the bids.

20 (d) A vendor who has been debarred pursuant to the  
21 provisions of sections thirty-three-a through thirty-three-f,  
22 article three, chapter five-a of this code, may not bid on or be  
23 awarded a contract under this section.

24 (e) All open market orders, purchases based on advertised  
25 bid requests or contracts made by the director or by a state  
26 department shall be awarded to the lowest responsible bidder  
27 or bidders, taking into consideration the qualities of the  
28 commodities or services to be supplied, their conformity with  
29 specifications, their suitability to the requirements of the  
30 government, the delivery terms and, if the director determines  
31 there are nationally accepted industry standards, cost of  
32 maintenance and the expected life of the commodities:  
33 *Provided*, That state bids on school buses shall be accepted  
34 from all bidders who shall then be awarded contracts if they  
35 meet the state board's "Minimum Standards for Design and  
36 Equipment of School Buses." County boards of education  
37 may select from those bidders who have been awarded  
38 contracts and shall pay the difference between the state aid  
39 formula amount and the actual cost of bus replacement. Any  
40 or all bids may be rejected.

41 (f) If all bids received on a pending contract are for the  
42 same unit price or total amount, the director has the authority  
43 to reject all bids, and to purchase the required commodities,  
44 printing and services in the open market, if the price paid in  
45 the open market does not exceed the bid prices.

46 (g) The bid must be received by the Purchasing Division  
47 prior to the specified date and time of the bid opening. The  
48 failure to deliver or the nonreceipt of the bid by the  
49 Purchasing Division prior to the appointed date and hour  
50 shall result in the rejection of the bid. The vendor is solely  
51 responsible for the receipt of bid by the Purchasing Division  
52 prior to the appointed date and hour of the bid opening. All  
53 bids will be opened publicly by two or more persons from the  
54 Purchasing Division. Vendors will be given notice of the  
55 day, time and place of the public bid opening. Bids may be  
56 viewed immediately after being opened.

57 (h) After the award of the order or contract, the director,  
58 or someone appointed by him or her for that purpose, shall  
59 indicate upon the successful bid that it was the successful bid.  
60 Thereafter, the copy of each bid in the possession of the  
61 director shall be maintained as a public record, shall be open  
62 to public inspection in the office of the director and may not  
63 be destroyed without the written consent of the Legislative  
64 Auditor.

**§5A-3-11a. Negotiation when all bids exceed budget in  
requisition.**

1 (a) Spending units shall include the maximum budgeted  
2 amount available for each purchase in a requisition submitted  
3 to the Purchasing Division. No person may disclose this  
4 maximum budgeted amount to any vendor prior to the award  
5 of a contract. If all bids submitted pursuant to a solicitation  
6 exceed the funds available for the purchase, then a negotiated  
7 award may be made as set forth in this section.

8 (1) If the director determines in writing that there is only  
9 one responsive and responsible bidder, he or she may negotiate  
10 the price for a noncompetitive award or the specifications for a  
11 noncompetitive award based solely on the original purpose of  
12 the solicitation.

13 (2) If the Purchasing Division solicits bids with a request for  
14 quotation and there is more than one bidder, the director may  
15 negotiate with bidders determined in writing to be responsive  
16 and responsible, based on criteria contained in the bid invitation:  
17 *Provided*, That the director must negotiate first with the lowest  
18 bidder. If the director does not award the bid to the lowest  
19 bidder, he or she may close negotiations with that bidder and  
20 enter into negotiations with the next lowest bidder, and may  
21 continue to do so in like manner with the remaining responsive  
22 and responsible bidders. The director may not extend an offer  
23 to any bidder that is not first extended to the prior bidders in  
24 order of rank.

25 (3) If the Purchasing Division solicits bids utilizing a best  
26 value procurement, as set forth in section ten-b of this section,  
27 and there is more than one bidder, the director may negotiate  
28 with bidders determined in writing to be responsive and  
29 responsible, based on criteria contained in the bid invitation:  
30 *Provided*, That the director must negotiate first with the highest  
31 scoring bidder. If the director does not award the bid to the  
32 highest scoring bidder, he or she may close negotiations with  
33 that bidder and enter into negotiations with the next highest  
34 scoring bidder, and may continue to do so in like manner with  
35 the remaining responsive and responsible bidders. The director  
36 may not extend an offer to any bidder that is not first extended  
37 to the prior bidders in order of rank.

38 (b) After negotiations occur pursuant to subsection (a) of  
39 this section, if the director determines that more than fifteen  
40 percent of the value of the bid must be renegotiated by revising  
41 the specifications of the original solicitation, only a resolicitation  
42 may be initiated or the solicitation may be withdrawn.

43 (c) The director may not renegotiate with any bidder after  
44 closing negotiations with that bidder and entering into  
45 negotiations with the next bidder.

**§5A-3-12. Prequalification disclosure and payment of annual fee by vendors required; form and contents; register of vendors; false affidavits; penalties.**

1 (a) The director may not accept any bid received from any  
2 vendor unless the vendor has paid the annual fee specified in  
3 section four of this article and has filed with the director an  
4 affidavit of the vendor or the affidavit of a member of the  
5 vendor's firm, or, if the vendor is a corporation, the affidavit of  
6 an officer, director or managing agent, of the corporation,  
7 disclosing the following information:

8 (1) If the vendor is an individual, his or her name and city  
9 and state of residence and business address, and, if he or she has  
10 associates or partners sharing in his business, their names and  
11 city and state of residence and business addresses;

12 (2) If the vendor is a firm, the name and city and state of  
13 residence and business address of each member, partner or  
14 associate of the firm;

15 (3) If the vendor is a corporation created under the laws of  
16 this state or authorized to do business in this state, the name and  
17 business address of the corporation; the names and city and  
18 state of residence and business addresses of the president, vice  
19 president, secretary, treasurer and general manager, if any, of the  
20 corporation; and the names and city and state of residence and  
21 business addresses of each stockholder of the corporation  
22 owning or holding at least ten percent of the capital stock  
23 thereof;

24 (4) A statement of whether the vendor is acting as agent for  
25 some other individual, firm or corporation, and if so, a  
26 statement of the principal authorizing the representation shall be  
27 attached to the affidavit or whether the vendor is doing business  
28 as another entity;

29 (5) The vendor's latest Dun & Bradstreet rating, if there is  
30 any rating as to the vendor; and

31 (6) A list of one or more banking institutions to serve as  
32 references for the vendor.

33 (b) Whenever a change occurs in the information submitted  
34 as required, the change shall be reported immediately in the  
35 same manner as required in the original disclosure affidavit.

36 (c) The affidavit and information received by the director  
37 shall be kept in a register of vendors which shall be a public  
38 record and open to public inspection during regular business  
39 hours in the director's office and made readily available to the  
40 public.

41 (d) The director may waive the above requirements in the  
42 case of any corporation listed on any nationally recognized  
43 stock exchange and in the case of any vendor who or which is  
44 the sole source for the commodity in question.

45 (e) Any person who makes an affidavit falsely or who  
46 knowingly files or causes to be filed with the director, an  
47 affidavit containing a false statement of a material fact or  
48 omitting any material fact, is guilty of a misdemeanor, and,  
49 upon conviction, shall be fined not more than one thousand  
50 dollars, and, in the discretion of the court, confined in jail not  
51 more than one year. An individual convicted of a misdemeanor  
52 under this subsection may never hold an office of honor, trust or  
53 profit in this state, or serve as a juror.

**§5A-3-45. Disposition of surplus state property; semiannual  
report; application of proceeds from sale.**

1 (a) The state agency for surplus property has the exclusive  
2 power and authority to make disposition of commodities or  
3 expendable commodities now owned or in the future acquired  
4 by the state when the commodities are or become obsolete or  
5 unusable or are not being used or should be replaced.

6 (b) The agency shall determine what commodities or  
7 expendable commodities should be disposed of and make  
8 disposition in the manner which will be most advantageous to  
9 the state. The disposition may include:

10 (1) Transferring the particular commodities or expendable  
11 commodities between departments;

12 (2) Selling the commodities to county commissions, county  
13 boards of education, municipalities, public service districts,  
14 county building commissions, airport authorities, parks and  
15 recreation commissions, nonprofit domestic corporations  
16 qualified as tax exempt under Section 501(c)(3) of the Internal  
17 Revenue Code of 1986, as amended, or volunteer fire  
18 departments in this state when the volunteer fire departments  
19 have been held exempt from taxation under Section 501(c) of  
20 the Internal Revenue Code;

21 (3) Trading in the commodities as a part payment on the  
22 purchase of new commodities;

23 (4) Cannibalizing the commodities pursuant to procedures  
24 established under subsection (g) of this section;

25 (5) Properly disposing of the commodities as waste;

26 (6) Selling the commodities to the general public at the  
27 posted price or to the highest bidder by means of public  
28 auctions or sealed bids, after having first advertised the time,  
29 terms and place of the sale as a Class II legal advertisement in  
30 compliance with the provisions of article three, chapter fifty-  
31 nine of this code. The publication area for the publication is the  
32 county in which the sale is to be conducted. The sale may also  
33 be advertised in other advertising media that the agency  
34 considers advisable. The agency may sell to the highest bidder  
35 or to any one or more of the highest bidders, if there is more  
36 than one, or, if the best interest of the state will be served, reject  
37 all bids; or

38 (7) Selling the commodities to the highest bidder by means  
39 of an Internet auction site approved by the director, as set forth  
40 in an emergency rule pursuant to the provisions of chapter  
41 twenty-nine-a of this code.

42 (c) Upon the sale to the general public or transfer of  
43 commodities or expendable commodities between departments,  
44 or upon the sale of commodities or expendable commodities to  
45 an eligible organization, the agency shall set the price to be paid  
46 by the receiving eligible organization, with due consideration  
47 given to current market prices.

48 (d) The agency may sell expendable, obsolete or unused  
49 motor vehicles owned by the state to an eligible organization,  
50 other than volunteer fire departments. In addition, the agency  
51 may sell expendable, obsolete or unused motor vehicles owned  
52 by the state with a gross weight in excess of four thousand  
53 pounds to an eligible volunteer fire department. The agency,  
54 with due consideration given to current market prices, shall set  
55 the price to be paid by the receiving eligible organization for  
56 motor vehicles sold pursuant to this provision: *Provided*, That  
57 the sale price of any motor vehicle sold to an eligible  
58 organization may not be less than the "average loan" value, as  
59 published in the most recent available eastern edition of the  
60 National Automobile Dealer's Association (N.A.D.A.) Official  
61 Used Car Guide, if the value is available, unless the fair market  
62 value of the vehicle is less than the N.A.D.A. "average loan"  
63 value, in which case the vehicle may be sold for less than the  
64 "average loan" value. The fair market value shall be based on  
65 a thorough inspection of the vehicle by an employee of the  
66 agency who shall consider the mileage of the vehicle and the  
67 condition of the body, engine and tires as indicators of its fair  
68 market value. If no fair market value is available, the agency  
69 shall set the price to be paid by the receiving eligible  
70 organization with due consideration given to current market  
71 prices. The duly authorized representative of the eligible  
72 organization, for whom the motor vehicle or other similar  
73 surplus equipment is purchased or otherwise obtained, shall  
74 cause ownership and proper title to the motor vehicle to be



75 vested only in the official name of the authorized governing  
76 body for whom the purchase or transfer was made. The  
77 ownership or title, or both, shall remain in the possession of that  
78 governing body and be nontransferable for a period of not less  
79 than one year from the date of the purchase or transfer. Resale  
80 or transfer of ownership of the motor vehicle or equipment prior  
81 to an elapsed period of one year may be made only by reason of  
82 certified unserviceability.

83 (e) The agency shall report to the Legislative Auditor,  
84 semiannually, all sales of commodities or expendable  
85 commodities made during the preceding six months to eligible  
86 organizations. The report shall include a description of the  
87 commodities sold, the price paid by the eligible organization  
88 which received the commodities and to whom each commodity  
89 was sold.

90 (f) The proceeds of the sales or transfers shall be deposited  
91 in the State Treasury to the credit on a pro rata basis of the fund  
92 or funds out of which the purchase of the particular  
93 commodities or expendable commodities was made: *Provided,*  
94 That the agency may charge and assess fees reasonably related  
95 to the costs of care and handling with respect to the transfer,  
96 warehousing, sale and distribution of state property disposed of  
97 or sold pursuant to the provisions of this section.

98 (g)(1) For purposes of this section, "cannibalization" means  
99 the removal of parts from one commodity to use in the creation  
100 or repair of another commodity.

101 (2) The director of the Purchasing Division shall propose  
102 for promulgation legislative rules to establish procedures that  
103 permit the cannibalization of a commodity when it is in the best  
104 interests of the state. The procedures shall require the approval  
105 of the director prior to the cannibalization of the commodity  
106 under such circumstances as the procedures may prescribe.

107 (3) (A) Under circumstances prescribed by the procedures,  
108 state agencies shall be required to submit a form, in writing or

109 electronically, that, at a minimum, elicits the following  
110 information for the commodity the agency is requesting to  
111 cannibalize:

112 (i) The commodity identification number; (ii) the  
113 commodity's acquisition date; (iii) the commodity's acquisition  
114 cost; (iv) a description of the commodity; (v) whether the  
115 commodity is operable and, if so, how well it operates; (vi) how  
116 the agency will dispose of the remaining parts of the  
117 commodity; and (vii) who will cannibalize the commodity and  
118 how the person is qualified to remove and reinstall the parts.

119 (B) If the agency has immediate plans to use the  
120 cannibalized parts, the form shall elicit the following  
121 information for the commodity or commodities that will receive  
122 the cannibalized part or parts: (i) The commodity identification  
123 number; (ii) the commodity's acquisition date; (iii) the  
124 commodity's acquisition cost; (iv) a description of the  
125 commodity; (v) whether the commodity is operable; (vi)  
126 whether the part restores the commodity to an operable  
127 condition; and (vii) the cost of the parts and labor to restore the  
128 commodity to an operable condition without cannibalization.

129 (C) If the agency intends to retain the cannibalized parts for  
130 future use, it shall provide information justifying its request.

131 (D) The procedures shall provide for the disposal of the  
132 residual components of cannibalized property.

133 (h) (1) The director of the Purchasing Division shall  
134 propose for promulgation legislative rules to establish  
135 procedures that allow state agencies to dispose of commodities  
136 in a landfill, or by other lawful means of waste disposal, if the  
137 value of the commodity is less than the benefit that may be  
138 realized by the state by disposing of the commodity using  
139 another method authorized in this section. The procedures shall  
140 specify circumstances where the state agency for surplus  
141 property shall inspect the condition of the commodity prior to

142 authorizing the disposal and those circumstances when the  
143 inspection is not necessary prior to the authorization.

144 (2) Whenever a state agency requests permission to dispose  
145 of a commodity in a landfill, or by other lawful means of waste  
146 disposal, the state agency for surplus property has the right to  
147 take possession of the commodity and to dispose of the  
148 commodity using any other method authorized in this section.

149 (3) If the state agency for surplus property determines,  
150 within fifteen days of receiving a commodity, that disposing of  
151 the commodity in a landfill or by other lawful means of waste  
152 disposal would be more beneficial to the state than disposing of  
153 the commodity using any other method authorized in this  
154 section, the cost of the disposal is the responsibility of the  
155 agency from which it received the commodity.

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## CHAPTER 5

**(Com. Sub. for S.B. 553 - By Senators McCabe, Caruth,  
Bowman, Jenkins, Unger, Plymale and Foster)**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new article, designated §5A-6A-1, §5A-6A-  
2, §5A-6A-3, §5A-6A-4, §5A-6A-5, §5A-6A-6, §5A-6A-7,  
§5A-6A-8 and §5A-6A-9, all relating to establishing the  
Permitting and Licensing Information Act; authorizing the  
Governor's Office of Technology to establish a permitting and  
licensing information system; providing legislative findings;  
definitions; establishing authority and duties of the office;  
creating duty for agencies to provide permitting and licensing

information; reporting requirements; granting rule-making authority; and providing for limitations of the article.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5A-6A-1, §5A-6A-2, §5A-6A-3, §5A-6A-4, §5A-6A-5, §5A-6A-6, §5A-6A-7, §5A-6A-8 and §5A-6A-9, all to read as follows:

## **ARTICLE 6A. PERMITTING AND LICENSING INFORMATION ACT.**

§5A-6A-1. Short title.

§5A-6A-2. Legislative findings.

§5A-6A-3. Definitions.

§5A-6A-4. Permit and license information authority.

§5A-6A-5. Duty of agencies to provide permitting and licensing information; development of permitting and licensing information repository.

§5A-6A-6. Requirements for adopted, revised or terminated permitting or licensing information.

§5A-6A-7. Reporting requirements.

§5A-6A-8. Rule-making authority.

§5A-6A-9. Limitation.

### **§5A-6A-1. Short title.**

- 1        *Short title.* — This article may be known and cited as the
- 2        Permitting and Licensing Information Act.

### **§5A-6A-2. Legislative findings.**

- 1        (a) The Legislature finds that:
  - 2        (1) Persons conducting business activities in this state are
  - 3        required to obtain permits and licenses from various agencies
  - 4        that regulate those activities;
  - 5        (2) The efficiency of the permitting and licensing process
  - 6        is an integral component of effective government, business
  - 7        development and public participation; and

8 (3) It is in the public interest that the permitting and  
9 licensing process for business activities should be efficient  
10 and streamlined.

11 (b) Therefore, the Legislature declares that the permitting  
12 and licensing process for business activities be facilitated and  
13 coordinated by the Governor's Office of Technology.

**§5A-6A-3. Definitions.**

1 For the purposes of this article, the following words have  
2 the meaning assigned unless the context indicates otherwise:

3 (1) "Agency" means any board, department, division,  
4 authority, commission or other public entity that requires a  
5 permit or license to be obtained from the entity to conduct a  
6 business activity in this state.

7 (2) "Office" means the Governor's Office of Technology.

8 (3) "Permit" means any permit, license, authorization,  
9 certification, registration or other approval required to  
10 perform a business activity.

**§5A-6A-4. Permit and license information authority.**

1 (a) The Legislature hereby authorizes the Governor's  
2 Office of Technology to facilitate and coordinate the  
3 permitting and licensing process for business activities in this  
4 state.

5 (b) The office has the following authority to:

6 (1) Establish a central permit and license information  
7 repository;

8 (2) Determine the type of information that each agency  
9 must submit in order to provide adequate information to the

10 public regarding the permits and licenses needed for a  
11 particular business activity;

12 (3) Require state agencies and local agencies to provide  
13 their permit and license information, including the type and  
14 purpose of all permits and licenses the agency issues;

15 (4) Create an online permitting and licensing program  
16 monitored through the state web page; and

17 (5) Make recommendations to the Governor and the  
18 Legislature concerning the functionality of the central permit  
19 and license information repository to ensure its accessibility  
20 and reliability for use by agencies and the public.

**§5A-6A-5. Duty of agencies to provide permitting and licensing  
information; development of permitting and  
licensing information repository.**

1 (a) On or before the first day of October, two thousand  
2 eight, the office shall provide notice to all agencies that  
3 beginning on the first day of February, two thousand nine,  
4 that the agency shall submit licensing and permitting  
5 information to the office.

6 (b) On or before the first day of December, two thousand  
7 eight, the office shall establish, and provide to agencies that  
8 issue permits and licenses, the procedures and methods for  
9 submission of required permitting and licensing information  
10 for the permitting and licensing information repository.

11 (c) On or before the first day of February, two thousand  
12 nine, an agency that issues permits and licenses shall submit  
13 the required permitting and licensing information to the  
14 office in accordance with the procedures and methods  
15 established in this article.

16 (d) On or before the first day of July, two thousand nine,  
17 the office will create an internet-based, publicly accessible  
18 permitting and licensing information repository, in  
19 coordination with the state's e-government initiatives, that  
20 contains the following:

21 (1) A comprehensive detailed listing of the types of  
22 permits and licenses required for specific business activities;

23 (2) The purposes of the permits and licenses; and

24 (3) The agencies responsible for issuance of the permits  
25 and licenses, including the agency contact information.

26 (e) The permitting and licensing information repository  
27 shall allow individuals to obtain a listing of the types of  
28 permits and licenses required for specific business activities.

**§5A-6A-6. Requirements for adopted, revised or terminated  
permitting or licensing information.**

1 No later than thirty days prior to the effective date of the  
2 implementation, revision or termination of any permitting or  
3 licensing requirement, an agency, subject to the provisions of  
4 this article, is required to provide to the office the current  
5 information relating to a permit or license.

**§5A-6A-7. Reporting requirements.**

1 Annually, by the thirtieth day of December, the office  
2 shall report to the Joint Committee on Government and  
3 Finance and the Governor the status of the permitting and  
4 licensing information repository and identify any agency that  
5 has failed to comply with the requirements of this article.

**§5A-6A-8. Rule-making authority.**

1 The office may propose rules for legislative approval  
2 pursuant to the provisions of article three, chapter twenty-  
3 nine-a of this code to effectuate the purpose and provisions  
4 of this article.

**§5A-6A-9. Limitation.**

1 Although this article creates a central permitting and  
2 licensing information repository, each agency shall continue  
3 to administer its own permitting and licensing procedures and  
4 charge and collect the appropriate fees.

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**CHAPTER 6**

**(Com. Sub. for H.B. 4438 - By Delegates Morgan, Swartzmiller,  
Cann, Browning, Craig, Pethtel, Sobonya, C. Miller and Stalnaker)**

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[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2008.]

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AN ACT to amend and reenact §22-5-1, §22-5-11 and §22-5-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-5-11a, all relating to air pollution control; allowing for the expedited review of complete permit applications for sources other than major sources; allowing all facilities with complete applications for permission to commence construction and which have received written permission from the secretary to construct an altered or expanded source provided that operations of the altered or expanded source do not commence until its permit or permit modification is issued; setting timelines for permitting actions; making other clarifications of



the secretary's duties in minor source air permitting; requiring the promulgation of legislative rules; and requiring a legislative report.

*Be it enacted by the Legislature of West Virginia:*

That §22-5-1, §22-5-11 and §22-5-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §22-5-11a, all to read as follows:

## **ARTICLE 5. AIR POLLUTION CONTROL.**

§22-5-1. Declaration of policy and purpose.

§22-5-11. Construction, modification or relocation permits required for stationary sources of air pollutants.

§22-5-11a. Activities authorized in advance of permit issuance.

§22-5-14. Administrative review of permit actions.

### **§22-5-1. Declaration of policy and purpose.**

1 It is hereby declared to be the public policy of this state  
2 and the purpose of this article to achieve and maintain such  
3 levels of air quality as will protect human health and safety,  
4 and to the greatest degree practicable, prevent injury to plant  
5 and animal life and property, foster the comfort and  
6 convenience of the people, promote the economic and social  
7 development of this state and facilitate the enjoyment of the  
8 natural attractions of this state.

9 To these ends it is the purpose of this article to provide for  
10 a coordinated statewide program of air pollution prevention,  
11 abatement and control; to facilitate cooperation across  
12 jurisdictional lines in dealing with problems of air pollution not  
13 confined within single jurisdictions; to assure the economic  
14 competitiveness of the state by providing for the timely  
15 processing of permit applications and other authorizations under  
16 this article; and to provide a framework within which all values  
17 may be balanced in the public interest.

18 Further, it is the public policy of this state to fulfill its  
19 primary responsibility for assuring air quality pursuant to the  
20 "Federal Clean Air Act," as amended.

**§22-5-11. Construction, modification or relocation permits  
required for stationary sources of air pollutants.**

1 (a) Unless otherwise specifically provided in this article,  
2 no person shall construct, modify or relocate any stationary  
3 source of air pollutants without first obtaining a construction,  
4 modification or relocation permit as provided in this article.

5 (b) The secretary shall by rule specify the class or  
6 categories of stationary sources to which this section applies.  
7 Application for permits shall be made upon such form, in  
8 such manner, and within such time as the rule prescribes and  
9 shall include such information, as in the judgment of the  
10 secretary, will enable him or her to determine whether such  
11 source will be so designed as to operate in conformance with  
12 the provisions of this article or any rules of the secretary.

13 (c) Unless otherwise specifically provided in this article,  
14 the secretary shall issue a permit for a major stationary source  
15 within a reasonable time not to exceed three hundred sixty-  
16 five calendar days, after the secretary determines that the  
17 application is complete.

18 (d) Unless otherwise specifically provided in this article,  
19 the secretary shall issue a permit for all other sources  
20 including modifications of existing major stationary sources  
21 which are not major modifications within a reasonable time  
22 not to exceed ninety calendar days, after the date the  
23 secretary determines the application is complete. The  
24 Secretary may extend this time by thirty calendar days to  
25 allow for public comment.

26 (e) A permit application will be denied if the secretary  
27 determines that the proposed construction, modification or

28 relocation will not be in accordance with this article or rules  
29 promulgated thereunder.

30 (f) For purposes of this section, a modification is any  
31 physical change in, or change in the method of operation of,  
32 a stationary source which increases the amount of any air  
33 pollutant discharged by a source above the de minimis level  
34 set by the secretary.

35 (g) With respect to the construction of new nonmajor  
36 stationary sources, or modifications of nonmajor stationary  
37 sources, or modifications which are not major modifications  
38 to existing major stationary sources, or relocations of  
39 nonmajor stationary sources, the following requirements  
40 apply:

41 (1) The secretary shall issue an administrative update to  
42 a permit issued under this section with respect to any of these  
43 sources, unless he or she determines that the proposed  
44 administrative update will not be in accordance with this  
45 article or rules promulgated hereunder, in which case the  
46 secretary shall issue an order denying the administrative  
47 update. Any administrative update shall be issued by the  
48 secretary within a reasonable time not to exceed sixty  
49 calendar days after receipt of a complete application.  
50 Administrative updates are minor revisions of existing  
51 permits as further described and authorized by rule.

52 (2) The secretary shall, within a reasonable time not to  
53 exceed forty-five calendar days after the date the secretary  
54 determines that an application is complete, issue a  
55 registration under a general permit applicable to any of these  
56 sources, unless he or she determines that the proposed  
57 construction, modification or relocation will not be in  
58 accordance with this article or rules promulgated hereunder.  
59 General permits are permits authorizing the construction,  
60 modification or relocation of a category of sources by the

61 same owner or operator or involving the same or similar  
62 processes or pollutants upon the terms and conditions  
63 specified in the general permit for those types of sources.

64 (3) The secretary shall, within a reasonable time not to  
65 exceed forty-five calendar days after receipt of a complete  
66 application, issue a temporary permit or a relocation permit,  
67 unless he or she determines that the proposed construction,  
68 modification or relocation will not be in accordance with this  
69 article or rules promulgated hereunder. Temporary permits  
70 are permits authorizing the owner or operator to make limited  
71 changes for limited periods of time as further described and  
72 authorized by rule.

73 (h) The secretary shall determine whether an application  
74 filed under this section is complete within thirty calendar  
75 days after receipt of that application at which time the  
76 secretary shall notify the applicant in writing as to whether  
77 the application is complete or specify any additional  
78 information required for the application to be complete.

79 (i) The secretary, shall propose rules for legislative  
80 approval in accordance with the provisions of article three,  
81 chapter twenty nine-a of this code, to implement the  
82 provisions of this section by the first day of August, two  
83 thousand eight.

**§22-5-11a. Activities authorized in advance of permit issuance.**

1 (a) With respect to the modifications of nonmajor  
2 stationary sources, or modifications which are not major  
3 modifications to existing major stationary sources, the  
4 following activities are authorized in advance of permit  
5 issuance. Any authorized activities undertaken by or on  
6 behalf of the permit applicant prior to the issuance of a final  
7 permitting action by the secretary are undertaken at the  
8 permit applicant's own risk and with the knowledge that the

9 application for a permit or permit modification may be  
10 denied:

11 (1) Receiving or storing on-site or off-site any equipment  
12 or supplies which make up in part or in whole an emission  
13 unit or any support equipment, facilities, building or  
14 structure.

15 (2) A person who holds an active West Virginia air  
16 quality permit issued under this article at an existing source,  
17 and who has applied to the secretary for permission to alter,  
18 expand or modify that source or to allow a new emissions  
19 unit at that source, may begin the construction of any such  
20 alteration, expansion, modification or new emission unit in  
21 advance of permit issuance in accordance with this section.  
22 The person may not operate any altered, expanded, modified  
23 or new emission unit without first obtaining an air quality  
24 permit as required by rules promulgated by the secretary.

25 (3) The following sources are ineligible for submission of  
26 an application for permission to commence construction in  
27 advance of permit issuance:

28 (A) Sources subject to the "Federal Clean Air Act"  
29 subsections 112(g) or 112(j).

30 (B) Sources seeking federally enforceable permit  
31 conditions in order to avoid otherwise applicable standards;

32 (C) Sources requiring a specific case-by-case emission  
33 limitation or standard under 45CSR21 or 45CSR27.

34 (4) (A) To qualify for the authorization to construct in  
35 advance of permit issuance as provided in this section, the  
36 permittee shall submit to the secretary an application for  
37 permission to commence construction in advance of permit  
38 issuance.

39 (B) Such application for permission to commence  
40 construction shall include all of the following:

41 (1) The name and location of the source and the name  
42 and address of the permittee;

43 (2) The permit number of each active permit issued under  
44 this article for such source;

45 (3) The nature of the sources and equipment associated  
46 with such alteration, expansion, modification or new  
47 emission unit;

48 (4) An estimate of the maximum hourly and annual  
49 emissions of regulated air pollutants increased as a result of  
50 such alteration, expansion, modification or new emission  
51 unit;

52 (5) The air pollution control devices or methods that are  
53 to be employed in connection with the alteration, expansion,  
54 modification or new emission unit;

55 (6) A listing of the applicable state and federal air quality  
56 regulatory requirements for alteration, expansion,  
57 modification or new emission unit, and sufficient information  
58 which, in the judgement of the secretary, will demonstrate  
59 compliance with any applicable state and federal air quality  
60 regulatory requirements;

61 (7) The anticipated construction or building schedule for  
62 alteration, expansion, modification or new emission unit;

63 (8) A certification signed by the responsible official that  
64 the source, equipment and devices that are subject to a  
65 request for construction authorization will not be operated  
66 until the permittee has obtained a permit under rules  
67 promulgated by the secretary;

68 (9) A certification by the responsible official that any  
69 construction undertaken prior to the issuance of a final permit  
70 under rules of the secretary is undertaken at the permittee's  
71 own risk and with the knowledge that the permittee may be  
72 denied a permit or permit modification without regard to the  
73 permittee's financial investment or addition to or  
74 modification of the source;

75 (10) A certification signed by the responsible official that  
76 all of the information contained in the application is complete  
77 and accurate to the best of the responsible official's  
78 knowledge and ability; and

79 (11) Upon submission of the application for permission to  
80 construct, the applicant shall give notice by publishing a Class  
81 I legal advertisement of the applicant's intent to alter or expand  
82 the physical arrangement or operation of an existing stationary  
83 source and the opportunity to provide written comment to the  
84 secretary within thirty calendar days of the publication. The  
85 applicant shall post a visible and accessible sign, at a minimum  
86 2 feet square, at the entrance to the source or proposed site.  
87 The sign must be clearly marked indicating that an air quality  
88 permit has been applied for and include the West Virginia  
89 Division of Air Quality permitting section telephone number  
90 and web site for additional information. The applicant must  
91 post the sign for the duration of the public notice period.  
92 Public notice shall be in a newspaper having general  
93 circulation in the county or counties where the facility is  
94 located. The notice shall contain the information required by  
95 rules promulgated by the secretary. Within fifteen days of  
96 completion of the public comment period, the secretary shall  
97 consider and respond to all written comments. If the secretary  
98 finds that concerns raised by the public comment period give  
99 rise to issues or concerns that would cause a construction or  
100 operational permit not to be issued, the secretary may issue a  
101 revocation or stay of the authorization to construct until those  
102 issues or concerns are resolved.

103 (c) The secretary shall determine whether an application  
104 for permission to commence construction in advance of  
105 permit issuance is complete within fifteen calendar days after  
106 receipt of the application at which time the secretary shall  
107 notify the applicant in writing as to whether the application  
108 is complete or specify any additional information required for  
109 the application to be complete.

110 (d) Within fifteen calendar days after the secretary has  
111 made a determination that an application for permission to  
112 commence construction in advance of permit issuance is  
113 complete, unless the secretary for good cause shown, extends  
114 the fifteen day time period for up to an additional fifteen  
115 calendar days, the secretary shall notify the applicant in  
116 writing of his or her determination as to whether each of the  
117 following conditions has or has not been satisfied:

118 (1) The applicant is and has been for a period of at least  
119 three years in substantial compliance with all other active  
120 permits and applicable state and federal air quality regulatory  
121 requirements under this article;

122 (2) The applicant has demonstrated that the alteration,  
123 expansion, modification or new emission unit will be in  
124 compliance with all applicable state and federal air quality  
125 regulatory requirements;

126 (3) The alteration, expansion, modification or new  
127 emission unit will not interfere with attainment or  
128 maintenance of an applicable ambient air quality standard,  
129 cause or contribute to a violation of an applicable air quality  
130 increment or be inconsistent with the intent and purpose of  
131 this article;

132 (4) The facility will be altered or expanded so that it will  
133 be used for either the same or a similar use as the use already  
134 permitted;



135 (5) The alteration or expansion will not result in a  
136 disproportionate increase in size of the facility already  
137 permitted; and

138 (6) The alteration or expansion will result in the same or  
139 substantially similar emissions as the facility already  
140 permitted.

141 If the secretary finds that all of the conditions have been  
142 satisfied, the notice issued by the secretary shall state that  
143 construction of the alteration, expansion, modification or new  
144 emission unit in advance of permit issuance may begin  
145 immediately. If the secretary finds that one or more of the  
146 conditions has not been met, the notice shall state that the  
147 requested construction, alteration, expansion, modification or  
148 new emission unit may not begin prior to issuance of a new  
149 or modified permit.

150 (e) If at any time during the construction of such  
151 alteration, expansion, modification or new emission unit, the  
152 secretary determines that the source is not likely to qualify  
153 for a permit or permit modification under applicable rules,  
154 the secretary may order that construction cease until the  
155 secretary makes a decision on the application for a permit or  
156 permit modification. If the secretary orders that construction  
157 cease, then construction of the alteration, expansion,  
158 modification or new emission unit may resume only if the  
159 secretary either makes a subsequent written determination  
160 that the circumstances that resulted in such order have been  
161 adequately addressed or if the secretary issues a permit or  
162 permit modification under the rules that authorize  
163 construction to resume.

164 (f) The secretary shall evaluate an application for a  
165 permit or permit modification under the rules and make a  
166 decision on the same basis as if the construction of the  
167 alteration, expansion, modification or new emission unit in  
168 advance of permit issuance had not been authorized pursuant

169 to this section. No evidence regarding any contract entered  
170 into, financial investment made, construction undertaken, or  
171 economic loss incurred by any person or permittee who  
172 proceeds under this section without first obtaining a permit  
173 under this article is admissible in any contested case or  
174 judicial proceeding involving any permit required under the  
175 rules. No evidence as to any determination or order by the  
176 secretary pursuant to this section shall be admissible in any  
177 contested case or judicial proceeding related to any permit  
178 required under this article.

179 (g) Any permittee who proceeds under this section shall  
180 be precluded from bringing any action, suit or proceeding  
181 against the state, the officials, agents, and employees of the  
182 state or the secretary for any loss resulting from any contract  
183 entered into, financial investment made, construction  
184 undertaken, or economic loss incurred by the permittee in  
185 reliance upon the provisions of this section.

186 (h) This section does not relieve any person of the  
187 obligation to comply with any other requirement of state law,  
188 including any requirement to obtain any other permit or  
189 approval prior to undertaking any activity associated with  
190 preparation of the site or the alteration or expansion of the  
191 physical arrangement or method of operation of a source at  
192 a facility for which a permit is required under the rules.

193 (i) This section does not relieve any person from any  
194 preconstruction or construction prohibition imposed by any  
195 federal requirement, federal delegation, federally approved  
196 requirement in any state implementation plan, or federally  
197 approved requirement under the Title V permitting program,  
198 as determined solely by the secretary. This section does not  
199 apply to any construction, alteration, or expansion that is  
200 subject to requirements for prevention of significant  
201 deterioration or federal nonattainment new source review, as  
202 determined solely by the secretary. This section does not  
203 apply if it is inconsistent with any federal requirement,

204 federal delegation, federally approved requirement in any  
205 state implementation plan, or federally approved requirement  
206 under the Title V permitting program, as determined solely  
207 by the secretary.

208 (j) A permittee who submits an application to commence  
209 construction in advance of permit issuance under this section  
210 shall pay to the department a fee of two hundred dollars for  
211 each application submitted to cover a portion of the  
212 administrative costs of implementing this section.

213 (k) The secretary, in accordance with chapter  
214 twenty-nine-a of this code, shall propose legislative rule that  
215 may be necessary to implement the provisions of this section  
216 by the first day of August, two thousand eight.

217 (l) The secretary is directed to report back to the Joint  
218 Committee on Government and Finance by the first day of  
219 January, two thousand ten on the impact of the  
220 implementation of the expedited permits authorized pursuant  
221 to this section. The report shall include, but not be limited to,  
222 assessments regarding the number and types of facilities  
223 utilizing this section, whether the agency has found this  
224 expedited process has assisted these facilities to implement  
225 construction and make revisions to their operations  
226 efficiently, without adverse impacts on the agency, the  
227 permitting process, or state-wide air quality.

#### **§22-5-14. Administrative review of permit actions.**

1 Any person whose interest may be affected, including,  
2 but not necessarily limited to, the applicant and any person  
3 who participated in the public comment process, by a permit  
4 issued, modified or denied by the secretary, or construction  
5 authorization pursuant to section eleven-a of this article, may  
6 appeal such action of the secretary to the air quality board  
7 pursuant to article one, chapter twenty-two-b of this code.

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## CHAPTER 7

**(Com. Sub. for S.B. 657 - By Senators Kessler,  
McKenzie and Plymale)**

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[Passed March 8, 2008; in effect July 1, 2008.]  
[Approved by the Governor on March 28, 2008.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-1D-1, §21-1D-2, §21-1D-3, §21-1D-4, §21-1D-5, §21-1D-6, §21-1D-7, §21-1D-7a, §21-1D-8 and §21-1D-9, all relating to the West Virginia Alcohol and Drug-Free Workplace Act; providing definitions; providing a statement of policy; requiring public improvement contractors to have and implement a drug-free workplace program that requires drug and alcohol testing; providing standards and protocols for testing; providing for assistance for employees; requiring a drug-free workplace policy to be posted at a public improvement construction site; requiring drug-free workplace records and contents be open for inspection; providing penalties; providing for confidentiality; and providing that this article shall only apply to contracts awarded after this article takes effect.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §21-1D-1, §21-1D-2, §21-1D-3, §21-1D-4, §21-1D-5, §21-1D-6, §21-1D-7, §21-1D-7a, §21-1D-8 and §21-1D-9, all to read as follows:

**ARTICLE 1D. WEST VIRGINIA ALCOHOL AND DRUG-FREE WORKPLACE ACT.**

- §21-1D-1. Short Title.
- §21-1D-2. Definitions.
- §21-1D-3. Statement of policy.
- §21-1D-4. Drug-free workplace policy required for public improvement construction.
- §21-1D-5. Employee drug-free workplace policy required to bid for a public improvement contract.
- §21-1D-6. Drug-free workplace written policy to be kept posted.
- §21-1D-7. Drug-free workplace records and contents open for inspection.
- §21-1D-7a. Confidentiality; test results not to be used in criminal and administrative proceedings.
- §21-1D-8. Penalties for violation of this article.
- §21-1D-9. Existing contracts.

**§21-1D-1. Short Title.**

- 1 This article shall be called the West Virginia Alcohol and
- 2 Drug-Free Workplace Act.

**§21-1D-2. Definitions.**

- 1 (a) The term “alcohol test” means a procedure conducted
- 2 to determine if an individual is under the influence of
- 3 alcohol.

- 4 (b) The term “construction”, as used in this article, means
- 5 any construction, reconstruction, improvement, enlargement,
- 6 painting, decorating or repair of any public improvement let
- 7 to contract. The term “construction” does not include
- 8 temporary or emergency repairs.

- 9 (c) The term “contractor” means any employer working
- 10 on a public improvement without regard to whether they are
- 11 serving as the prime or subcontractor to another.

- 12 (d) The term “drug test” means a procedure using a nine-
- 13 panel drug screen in urine specimens that are collected from
- 14 individuals for the purpose of scientifically analyzing the
- 15 specimens to determine if the individual ingested, was
- 16 injected or otherwise exposed to a drug of abuse.

- 17 (e) The term “drug of abuse” means any substance listed
- 18 under subsection (h) of this section.

19 (f) The term “employee” means a laborer, mechanic or  
20 other worker. For the purposes of this article, employee does  
21 not include such persons as are employed or hired directly by  
22 a public authority on a regular or temporary basis engaged  
23 exclusively in making temporary or emergency repairs.  
24 Furthermore, employee does not include such persons  
25 employed by a contractor who does not work in public  
26 improvement construction.

27 (g) The term “medical review officer” means a physician  
28 who holds a certificate authorizing them to practice medicine  
29 and surgery or osteopathic medicine and surgery, has  
30 knowledge of substance abuse disorders, has the appropriate  
31 medical training to interpret and evaluate positive drug and  
32 alcohol test results together with a person’s medical history  
33 and other relevant biomedical information, has successfully  
34 completed qualification training as outlined in the Code of  
35 Federal Regulations at 49 C. F. R. Part 40 §121 (c) and has  
36 passed an exam administered by a nationally recognized  
37 medical review officer certification board or subspecialty  
38 board for medical practitioners in the field of medical review  
39 of federally mandated drug testing.

40 (h) The term “nine-panel drug screen” means a drug-  
41 testing program that tests for marijuana, cocaine, opiates  
42 including hydromorphone, oxycodone, hydrocodone,  
43 phencyclidine, amphetamines, barbiturates, benzodiazepines,  
44 methadone and propoxyphene at the substance screening and  
45 confirmation limits where provided under federally mandated  
46 drug and alcohol testing programs or otherwise accepted as  
47 the industry standard.

48 (i) The term “public authority”, as used in this article,  
49 means any officer, board or commission or other agency of  
50 the State of West Virginia authorized by law to enter into a  
51 contract for the construction of a public improvement,  
52 including any institution supported, in whole or in part, by

53 public funds of the State of West Virginia and this article  
54 applies to expenditures of these institutions made, in whole  
55 or in part, from public funds.

56 (j) The term “public improvement”, as used in this article,  
57 includes all buildings, roads, highways, bridges, streets,  
58 alleys, sewers, ditches, sewage disposal plants, waterworks,  
59 airports and all other structures upon which construction may  
60 be let to contract by the State of West Virginia.

61 (k) The term “random drug testing” means a procedure in  
62 which employees who perform safety-sensitive tasks are  
63 selected to undergo a drug test by a statistically valid random  
64 selection method without prearrangement or planning.

65 (l) The term “reasonable cause” means a belief based on  
66 facts and inferences based primarily upon, but not limited to:  
67 (1) Observable phenomena, such as direct observation of use,  
68 possession or distribution of alcohol or a controlled  
69 substance, or of the physical symptoms of being under the  
70 influence of alcohol or a controlled substance, such as, but  
71 not limited to, slurred speech, dilated pupils, odor of an  
72 alcoholic beverage or a controlled substance, changes in  
73 affect or dynamic mood swings; (2) a pattern of abnormal  
74 conduct, erratic or aberrant behavior or deteriorating work  
75 performance such as frequent absenteeism, excessive  
76 tardiness or recurrent accidents, that appears to be related to  
77 the use of alcohol or a controlled substance and does not  
78 appear to be attributable to other factors; (3) the identification  
79 of an employee as the focus of a criminal investigation into  
80 unauthorized possession, use or trafficking of a controlled  
81 substance; (4) a report of use of alcohol or a controlled  
82 substance provided by a reliable and credible source; and (5)  
83 repeated or flagrant violations of the safety or work rules of  
84 the employee’s employer, that are determined by the  
85 employee’s supervisor to pose a substantial risk of physical  
86 injury or property damage and that appears to be related to

87 the use of alcohol or a controlled substance and that does not  
88 appear attributable to other factors.

89 (m) The term “safety-sensitive duty” means any task or  
90 duty fraught with such risks of injury to the employee or  
91 others that even a momentary lapse of attention or judgment,  
92 or both, can lead to serious bodily harm or death.

93 (n) The term “under the influence of alcohol” means a  
94 concentration of eight hundredths of one percent or more by  
95 weight of alcohol in an individual’s blood or a concentration  
96 of eight hundredths of one gram or more by weight of alcohol  
97 per two hundred ten liters of an individual’s breath.

**§21-1D-3. Statement of policy.**

1 It is hereby declared to be the policy of the State of West  
2 Virginia to require public improvement contractors to have  
3 and implement a drug-free workplace policy that requires  
4 drug and alcohol testing.

**§21-1D-4. Drug-free workplace policy required for public improvement construction.**

1 Except as provided in section eight of this article, no  
2 public authority may award a public improvement contract  
3 which is to be let to bid to a contractor unless the terms of the  
4 contract require the contractor and its subcontractors to  
5 implement and maintain a written drug-free workplace policy  
6 in compliance with this article and the contractor and its  
7 subcontractors provide a sworn statement in writing, under  
8 the penalties of perjury, that they maintain a valid drug-free  
9 workplace policy in compliance with this article. The public  
10 improvement contract shall provide for the following:

11 (1) That the contractor implements its drug-free  
12 workplace policy;



13 (2) Cancellation of the contract by the awarding public  
14 authority if the contractor:

15 (A) Fails to implement its drug-free workplace policy;

16 (B) Fails to provide information regarding implementation  
17 of the contractor's drug-free workplace policy at the request of  
18 the public authority; or

19 (C) Provides to the public authority false information  
20 regarding the contractor's drug-free workplace policy.

**§21-1D-5. Employee drug-free workplace policy required to bid  
for a public improvement contract.**

1 After the first day of July, two thousand eight, any  
2 solicitation for a public improvement contract shall require  
3 each contractor that submits a bid for the work to submit at  
4 the same time an affidavit that the contractor has a written  
5 plan for a drug-free workplace policy. A public improvement  
6 contract may not be awarded to a contractor who does not  
7 have a written plan for a drug-free workplace policy and who  
8 has not submitted that plan to the appropriate contracting  
9 authority in timely fashion.

10 For subcontractors, compliance with this section may  
11 take place before their work on the public improvement is  
12 begun.

13 A drug-free workplace policy shall include the following:

14 (1) Establish drug testing and alcohol testing protocols  
15 that at a minimum require a contractor to:

16 (A) Conduct preemployment drug tests of all employees;

17 (B) Conduct random drug testing that annually tests at  
18 least ten percent of the contractor's employees who perform  
19 safety-sensitive duties;

20 (C) Conduct a drug test or alcohol test of any employee  
21 who may have caused or contributed to an accident while  
22 conducting job duties where reasonable cause exists to  
23 suspect that the employee may be intoxicated or under the  
24 influence of a controlled substance not prescribed by the  
25 employee's physician when, but not limited to, the employer  
26 has evidence that an employee is or was using alcohol or a  
27 controlled substance drawn from specific documented,  
28 objective facts and reasonable inferences drawn from these  
29 facts in light of experience and training.

30 The drug or alcohol test shall be conducted as soon as  
31 possible after the accident occurred and after any necessary  
32 medical attention has been administered to the employee.

33 (D) Conduct a drug test or alcohol test of any employee  
34 when a trained supervisor has reasonable cause to believe  
35 that the employee has reported to work or is working under  
36 the influence of a drug of abuse or alcohol. Written  
37 documentation as to the nature of a supervisor's reasonable  
38 cause shall be created.

39 In order to ascertain and justify implementation of a  
40 reasonable cause test, all supervisors will be trained to  
41 recognize drug- and alcohol-related signs and symptoms.

42 (2) Require that all drug tests performed pursuant to this  
43 section be conducted by a laboratory certified by the United  
44 States Department of Health and Human Services or its  
45 successor;

46 (3) Establish standards governing the performance of  
47 drug tests by such a laboratory that include, but are not  
48 limited to, the following:

49 (A) The collection of urine specimens of individuals in a  
50 scientifically or medically approved manner and under  
51 reasonable and sanitary conditions;

52 (B) The collection and testing of urine specimens with  
53 due regard for the privacy of the individual being tested and  
54 in a manner reasonably calculated to prevent substitutions or  
55 interference with the collection and testing of specimens;

56 (C) The documentation of urine specimens through  
57 procedures that reasonably preclude the possibility of  
58 erroneous identification of test results and that provide the  
59 individual being tested a reasonable opportunity to furnish  
60 information identifying any prescription or nonprescription  
61 drugs used by the individual in connection with a medical  
62 condition to the medical review officer;

63 (D) The collection, maintenance, storage and  
64 transportation of urine specimens in a manner that reasonably  
65 precludes the possibility of contamination or adulteration of  
66 the specimens;

67 (E) The testing of a urine specimen of an individual to  
68 determine if the individual ingested, was injected or  
69 otherwise introduced with a drug of abuse in a manner that  
70 conforms to scientifically accepted analytical methods and  
71 procedures that include verification and confirmation of any  
72 positive test result by gas chromatography or mass  
73 spectrometry.

74 (4) Establish standards and procedures governing the  
75 performance of alcohol tests;

76 (5) Require that a medical review officer review all drug  
77 tests that yield a positive result;

78 (6) Establish procedures by which an individual who  
79 undergoes a drug test or alcohol test may contest a positive  
80 test result;

81 (7) Require that when an employee of a contractor tests  
82 positive for a drug of abuse or alcohol, or if an employee is

83 caught adulterating a drug or alcohol test, as defined in  
84 section four hundred twelve, article four, chapter sixty-a of  
85 this code, the employee shall be subject to appropriate  
86 disciplinary measures up to and including termination from  
87 employment, in accordance with the contractor's written  
88 drug-free workplace policy. If not terminated, the employee  
89 shall be subject to random drug or alcohol tests at any time  
90 for one year after the positive test;

91 (8) Require that when a supervisor has reasonable cause  
92 to believe an employee is under the influence of a drug of  
93 abuse or alcohol at work and requires the employee to take a  
94 drug or alcohol test, the employee shall immediately be  
95 suspended from performing safety-sensitive tasks by the  
96 contractor until such time as a drug or alcohol test is  
97 performed and results of that test are available;

98 (9) Require a contractor to provide to any employee  
99 testing positive for a drug of abuse or alcohol the list of  
100 community resources where employees may seek assistance  
101 for themselves or their families as identified in paragraph  
102 (D), subdivision (12) of this section;

103 (10) Require that a contractor assist an employee who  
104 voluntarily acknowledges that the employee may have a  
105 substance abuse problem by providing the list of community  
106 resources where employees may seek assistance for  
107 themselves or their families as identified in paragraph (D),  
108 subdivision (12) of this section;

109 (11) Require that a contractor establish a written drug-  
110 free workplace policy regarding substance abuse and provide  
111 a copy of the written policy to each of its employees and to  
112 each applicant for employment. The written policy shall  
113 contain, at a minimum, all of the following:

114 (A) A summary of all the elements of the drug-free  
115 workplace policy established in accordance with this article;

116 (B) A statement that it is the contractor's intention to  
117 create a drug-free workplace environment;

118 (C) Identification of an employee who has been  
119 designated the contractor's drug-free workplace  
120 representative;

121 (D) Shall list the types of tests an employee may be  
122 subject to, which may include, but are not limited to, the  
123 following:

124 (i) Preemployment;

125 (ii) Post-accident;

126 (iii) Random; and

127 (iv) Reasonable cause.

128 (12) Require that a contractor provide within six weeks  
129 of new employment at least two hours of drug-free workplace  
130 employee education for all employees unless that employee  
131 has already received such training anytime within a prior  
132 two-year period. The employee shall participate in drug-free  
133 workplace employee education at least biannually thereafter.  
134 The employee education shall include all of the following:

135 (A) Detailed information about the content of the  
136 contractor's specific drug-free workplace policy and an  
137 opportunity for employees to ask questions regarding the  
138 policy;

139 (B) The distribution of a hard copy of the written drug-  
140 free workplace policy, including collecting an employee-  
141 signed acknowledgment receipt from each employee;

142 (C) Specific explanation of the basics of drugs and  
143 alcohol abuse, including, but not limited to, the disease

144 model, signs and symptoms associated with substance abuse,  
145 and the effects and dangers of drugs or alcohol in the  
146 workplace; and

147 (D) A list of community resources where employees may  
148 seek assistance for themselves or their families.

149 (13) Require that a contractor provide at least two hours  
150 of drug-free workplace supervisor training for all supervisory  
151 employees and annually thereafter. The supervisor training  
152 shall include all of the following:

153 (A) How to recognize a possible drug or alcohol problem;

154 (B) How to document behaviors that demonstrate a drug  
155 or alcohol problem;

156 (C) How to confront employees with the problem from  
157 observed behaviors;

158 (D) How to initiate reasonable suspicion and post-  
159 accident testing;

160 (E) How to handle the procedures associated with random  
161 testing;

162 (F) How to make an appropriate referral for assessment  
163 and assistance;

164 (G) How to follow up with employees returning to work  
165 after a positive test; and

166 (H) How to handle drug-free workplace responsibilities  
167 in a manner that is consistent with the applicable sections of  
168 any pertinent collective bargaining agreements.

**§21-1D-6. Drug-free workplace written policy to be kept posted.**

1 A clearly legible copy of the contractor's written drug-  
2 free workplace policy shall be kept posted in a prominent and  
3 easily accessible place at the public improvement  
4 construction site thereof by each contractor subject to the  
5 provisions of this article.

**§21-1D-7. Drug-free workplace records and contents open for inspection.**

1 Every contractor shall keep an accurate record showing  
2 the names, occupation and safety-sensitive status of all  
3 employees, in connection with the construction on the public  
4 improvement, and showing any drug tests or alcohol tests  
5 performed and employee education and supervisor training  
6 received, which record shall be open at all reasonable hours  
7 for inspection by the public authority which let the contract  
8 and its officers and agents. It is not necessary to preserve the  
9 record for a period longer than three years after the  
10 termination of the contract.

**§21-1D-7a. Confidentiality; test results not to be used in criminal and administrative proceedings.**

1 All drug testing information specifically related to  
2 individual employees is confidential and should be treated as  
3 such by anyone authorized to review or compile program  
4 records. Drug test results may not be used in a criminal  
5 proceeding without the employee's consent.

**§21-1D-8. Penalties for violation of this article.**

1 (a) Any contractor who violates any provision of this  
2 article is, for the first offense, guilty of a misdemeanor and,  
3 upon conviction thereof, shall be fined not more than one  
4 thousand dollars; for the second offense, the person is guilty  
5 of a misdemeanor and, upon conviction thereof, shall be  
6 fined not less than one thousand dollars nor more than five  
7 thousand dollars; for the third or any subsequent offense, the

8 person is guilty of a misdemeanor and, upon conviction  
9 thereof, shall be fined not less than five thousand dollars nor  
10 more than twenty-five thousand dollars and the contractor  
11 shall be excluded from bidding any additional new public  
12 improvement projects for a period of one year.

13 (b) Any person who directly or indirectly aids, requests  
14 or authorizes any other person to violate any of the  
15 provisions of this article is guilty of a misdemeanor and,  
16 upon conviction thereof, shall be fined not less than fifty  
17 dollars nor more than two hundred fifty dollars.

#### **§21-1D-9. Existing contracts.**

1 This article applies only to contracts for construction on  
2 public improvements awarded after the effective date of this  
3 article.

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## CHAPTER 8

**(H.B. 4075 - By Delegates DeLong, Caputo, Fragale,  
Webster, White, Kominar and Shook)**

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[Passed March 7, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2008.]

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AN ACT to amend and reenact §15-3A-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15-3A-7, all relating to use of video image recording devices in an Amber Alert activation; providing for video image monitoring during Amber Alert activations; and, directing the Secretary of Military Affairs and Public Safety to develop a plan to implement a video monitoring system during Amber Alerts.



*Be it enacted by the Legislature of West Virginia:*

That §15-3A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §15-3A-7, all to read as follows:

### **ARTICLE 3A. AMBER ALERT PLAN.**

§15-3A-2. Findings and determinations relative to "Amber's Plan".

§15-3A-7. Providing for the use of video image recording devices for search purposes during an Amber Alert Activation.

#### **§15-3A-2. Findings and determinations relative to "Amber's Plan".**

- 1       (a) The Legislature finds and determines that:
  - 2           (1) Public alerts can be one of the most effective tools in  
3 combating child abductions;
  - 4           (2) Law-enforcement officers and other professionals  
5 specializing in the field of abducted and missing children  
6 agree that the most critical moments in the search for an  
7 abducted child are the first few hours immediately following  
8 the abduction, asserting that if a child is not found within two  
9 to four hours, it is unlikely that child will be found alive;
  - 10          (3) The rapid dissemination of information, including a  
11 description of the abducted child, details of the abduction,  
12 abductor and vehicle involved, to the citizens of the affected  
13 community and region is, therefore, critical;
  - 14          (4) Alerted to an abduction, the citizenry become an  
15 extensive network of eyes and ears serving to assist law  
16 enforcement in quickly locating and safely recovering the  
17 child;

18 (5) The most effective method of immediately notifying  
19 the public of a child abduction is through the broadcast  
20 media; and

21 (6) That in addition to public alerts, other tools allowing  
22 rapid response and identification of the movements of  
23 persons suspected in a child abduction require the use of all  
24 forms of developing technologies to assist law enforcement  
25 in rapid response to these alerts and is an additional tool for  
26 assuring the well being and safety of our children. Thus, the  
27 use of traffic video recording and monitoring devices for the  
28 purpose of surveillance of a suspect vehicle adds yet another  
29 set of eyes to assist law enforcement and aid in the safe  
30 recovery of the child.

31 (b) The Legislature declares that given the successes  
32 other states and regions have experienced in using broadcast  
33 media alerts to quickly locate and safely recover abducted  
34 children, and, with the recent development of highway video  
35 recording and monitoring systems, it is altogether fitting and  
36 proper, and within the public interest, to establish these  
37 programs for West Virginia.

**§15-3A-7. Providing for the use of video image recording  
devices for search purposes during an Amber  
Alert Activation.**

1 (a) The State Police and the Division of Highways shall  
2 coordinate a process to utilize all available video recording  
3 and monitoring devices for the purpose of monitoring Amber  
4 Alert suspect vehicles. This program shall be called the  
5 “Guardian Angel Video Monitoring” Program.

6 (b) The secretary of military affairs and public safety  
7 shall also develop a plan to provide for the State Police to  
8 monitor and utilize video recording and monitoring devices  
9 during an Amber Alert. This “Guardian Angel Video

10 Monitoring” implementation plan shall include at a  
11 minimum, the following:

12 (1) Utilization of any state or local video recording and  
13 monitoring devices upon agreement with the department,  
14 agency or political subdivision in control of the video  
15 recording device; and

16 (2) Development of policies and initiatives relating to  
17 facilitating sharing of information with neighboring states  
18 wherein suspect vehicles in Amber Alerts may be crossing  
19 state lines.

20 (c) The secretary shall submit the plan to the Joint  
21 Committee on Government and Finance no later than  
22 December 1, 2008. The plan shall include an analysis of all  
23 related costs for equipping and using a statewide video  
24 recording and monitoring system during the duration of an  
25 Amber Alert and recommendations for any additional  
26 legislation or actions necessary to further facilitate the  
27 implementation of the “Guardian Angel Video Monitoring”  
28 program.

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## CHAPTER 9

**(Com. Sub. for S.B. 305 - By Senators Kessler,  
Unger, Jenkins, White and Hunter)**

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[Passed March 5, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

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AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new section, designated §7-1-14; and to

amend and reenact §7-10-4 of said code, all relating generally to custody and care of animals abandoned, neglected or cruelly treated; authorizing county commissions to adopt ordinances, rules and regulations relating to such animals; providing for protection of such animals and the public's health, safety and the environment; providing guidance on developing ordinances, rules and regulations relating to such animals; authorizing county commissions that adopt such ordinances, rules and regulations to also limit the number of animals owned or kept based on ability to care for the animals; authorizing county commissions to establish penalties in such ordinances, rules and regulations; and clarifying evidentiary standards in hearings before magistrates involving in the seizure of abandoned, neglected or cruelly treated animals.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-1-14; and that §7-10-4 of said code be amended and reenacted, all to read as follows:

**Article**

1. County Commissions Generally.
10. Humane Officers.

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-14. Custody and care of animals abandoned, neglected or cruelly treated; animals causing public nuisance, health risk or safety hazard; authority of county commission.**

- 1 (a) Notwithstanding any provision of this code to the
- 2 contrary, any county commission may adopt ordinances,
- 3 rules and regulations providing for the custody and care of
- 4 animals that have been abandoned, neglected or cruelly
- 5 treated for the protection of any such animal and to prevent
- 6 it from becoming a public nuisance or risk to public health or
- 7 safety or the environment.

- 8 (b) Any such ordinance, rule or regulation may require  
9 each owner to provide for each of his or her animals:
- 10 (1) Adequate food which provides sufficient quantity and  
11 nutritive value to maintain each animal in good health;
- 12 (2) Adequate water which provides easy access to clean,  
13 fresh, potable water of a drinkable temperature in sufficient  
14 volume and suitable intervals to maintain normal hydration  
15 for each animal;
- 16 (3) Adequate shelter to protect the animal from the  
17 elements and other animals;
- 18 (4) Adequate space in the primary enclosure for the  
19 particular animal depending upon its age, size, species and  
20 weight which is regularly cleaned to prevent an unsanitary  
21 accumulation of urine and feces;
- 22 (5) Adequate exercise to assure that the animal maintains  
23 normal muscle tone and mass for the age, species, size and  
24 condition of the animal; and
- 25 (6) Veterinary care when needed or to prevent suffering  
26 or disease transmission.
- 27 (c) Any such ordinance, rule or regulation may limit the  
28 number of animals owned, kept or maintained by an  
29 individual, group or organization, whether public or private  
30 based on the person's ability to provide for the animals as set  
31 forth in subsection (b) of this section.
- 32 (d) Any such ordinance, rule or regulation shall provide  
33 appropriate penalties for violations and shall authorize  
34 humane officers to take possession of any animal that is not  
35 properly cared for as required by such ordinance, rule or  
36 regulation.

**ARTICLE 10. HUMANE OFFICERS.****§7-10-4. Custody and care of animals abandoned, neglected or cruelly treated; hearing; bonds; liability for costs; liens; exclusions.**

1       (a) Subject to the provisions of subsection (h) of this  
2 section, a humane officer shall take possession of any animal,  
3 including birds or wildlife in captivity, known or believed to  
4 be abandoned, neglected, deprived of necessary sustenance,  
5 shelter, medical care or reasonable protection from fatal  
6 freezing or heat exhaustion or cruelly treated or used as  
7 defined in sections nineteen and nineteen-a, article eight,  
8 chapter sixty-one of this code.

9       (b) The owner or persons in possession, if his or her  
10 identity and residence are known, of any animal seized  
11 pursuant to subsection (a) of this section shall be provided  
12 written notice of the seizure, his or her liability for the cost  
13 and care of the animal seized as provided in this section and  
14 the right to request a hearing in writing before a magistrate in  
15 the county where the animal was seized. The magistrate  
16 court shall schedule any hearing requested within ten  
17 working days of the receipt of the request. The failure of an  
18 owner or person in possession to request a hearing within  
19 five working days of the seizure is prima facie evidence of  
20 the abandonment of the animal. At the hearing, if requested,  
21 the magistrate shall determine by a preponderance of the  
22 evidence if the animal was abandoned, neglected or deprived  
23 of necessary sustenance, shelter, medical care or reasonable  
24 protection from fatal freezing or heat exhaustion or otherwise  
25 treated or used cruelly as set forth in this section.

26       (c)(1) If a hearing is requested and the magistrate finds  
27 by a preponderance of the evidence that the owner did  
28 abandon, neglect or cruelly treat the animal, or if no hearing  
29 is requested and the magistrate finds by a preponderance of

30 the evidence, based upon the affidavit of the humane officer,  
31 that the owner did abandon, neglect or cruelly treat the  
32 animal, the magistrate shall enter an order awarding custody  
33 of the animal to any humane officer for further disposition in  
34 accordance with reasonable practices for the humane  
35 treatment of animals. After hearing the evidence, if the  
36 magistrate is not convinced the animal was neglected or  
37 cruelly treated, he or she may dismiss the action and order the  
38 animal be returned to the owner. If the magistrate finds in  
39 favor of the humane officer, the owner of the animal shall  
40 post a bond with the court in an amount sufficient to provide  
41 for the reasonable costs of care, medical treatment and  
42 provisions for the animal for at least thirty days. The bond  
43 shall be filed with the court within five days following the  
44 court's finding against the owner. At the end of the time for  
45 which expenses are covered by the original bond if the  
46 animal remains in the care of the humane officer and the  
47 owner desires to prevent disposition of the animal by the  
48 humane officer, the owner shall post an additional bond with  
49 the court within five days of the expiration of the original  
50 bond. During this period the humane officer is authorized to  
51 place the animal in a safe private home or other safe private  
52 setting in lieu of retaining the animal in an animal shelter.  
53 The person whose animal is seized is liable for all costs of the  
54 care of the seized animal.

55 (2) If a bond has been posted in accordance with  
56 subdivision (1) of this subsection, the custodial animal care  
57 agency may draw from the bond the actual reasonable costs  
58 incurred by the agency in providing care, medical treatment  
59 and provisions to the impounded animal from the date of the  
60 initial impoundment to the date of the final disposition of the  
61 animal.

62 (d) Any person whose animal is seized and against whom  
63 the magistrate enters a finding pursuant to this section is  
64 liable during any period it remains in the possession of the

65 humane officer for the reasonable costs of care, medical  
66 treatment and provisions for the animal not covered by the  
67 posting of the bond as provided in subdivision (1), subsection  
68 (c) of this section. The magistrate shall require the person  
69 liable for these costs to post bond to provide for the  
70 maintenance of the seized animal. This expense, if any,  
71 becomes a lien on the animal and must be discharged before  
72 the animal is released to the owner. Upon dismissal or  
73 withdrawal of the complaint, any unused portion of posted  
74 bonds shall be returned to the owner. Upon a finding in favor  
75 of the humane officer, all interest in the impounded animal  
76 shall transfer to the humane officer for disposition in  
77 accordance with reasonable practices for the humane  
78 treatment of animals. Any additional expense above the  
79 value of the animal may be recovered by the humane officer  
80 or custodial agency.

81 (e) After the humane officer takes possession of the  
82 animal pursuant to a finding by a magistrate that the animal  
83 has been abandoned, neglected or cruelly treated and a  
84 licensed veterinarian determines that the animal should be  
85 humanely destroyed to end its suffering, the veterinarian may  
86 order the animal to be humanely destroyed and neither the  
87 humane officer, animal euthanasia technician nor the  
88 veterinarian is subject to any civil or criminal liability as a  
89 result of such action.

90 (f) The term “humanely destroyed” as used in this section  
91 means:

92 (1) Humane euthanasia of an animal by hypodermic  
93 injection by a licensed veterinarian or by an animal  
94 euthanasia technician certified in accordance with the  
95 provisions of article ten-a, chapter thirty of this code; or

96 (2) Any other humane euthanasia procedure approved by  
97 the American Veterinary Medical Association, the Humane  
98 Society of the United States or the American Humane  
99 Association.



100 (g) In case of an emergency in which an animal cannot be  
101 humanely destroyed in an expeditious manner, an animal  
102 may be destroyed by shooting if:

103 (1) The shooting is performed by someone trained in the  
104 use of firearms with a weapon and ammunition of suitable  
105 caliber and other characteristics designed to produce  
106 instantaneous death by a single shot; and

107 (2) Maximum precaution is taken to minimize the  
108 animal's suffering and to protect other persons and animals.

109 (h) The provisions of this section do not apply to farm  
110 livestock, as defined in subsection (d), section two, article  
111 ten-b, chapter nineteen of this code; poultry, gaming fowl or  
112 wildlife kept in private or licensed game farms if kept and  
113 maintained according to usual and accepted standards of  
114 livestock; poultry, gaming fowl, wildlife or game farm  
115 production and management; nor to the humane use of  
116 animals or activities regulated under and in conformity with  
117 the provisions of 7 U. S. C. §2131, *et seq.*, and the  
118 regulations promulgated thereunder.

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## CHAPTER 10

**(Com. Sub. for S.B. 150 - By Senators Tomblin,  
Mr. President, and Caruth)  
[By Request of the Executive]**

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[Passed March 16, 2008; in effect from passage.]  
[Approved by the Governor on March 21, 2008.]

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AN ACT making appropriations of public money out of the Treasury  
in accordance with section fifty-one, article VI of the Constitution.

*Be it enacted by the Legislature of West Virginia:*

## Title

- I. General Provisions.
- II. Appropriations.
- III. Administration.

## TITLE I—GENERAL PROVISIONS.

## Title I

- §1. General policy.
- §2. Definitions.
- §3. Classification of appropriations.
- §4. Method of expenditure.
- §5. Maximum expenditures.

1           **Section 1. General policy.**—The purpose of this bill is  
2 to appropriate money necessary for the economical and  
3 efficient discharge of the duties and responsibilities of the  
4 state and its agencies during the fiscal year two thousand  
5 nine.

1           **Sec. 2. Definitions.**—For the purpose of this bill:  
2           "Governor" shall mean the Governor of the State of  
3 West Virginia.

4           "Code" shall mean the Code of West Virginia, one  
5 thousand nine hundred thirty-one, as amended.

6           "Spending unit" shall mean the department, bureau,  
7 division, office, board, commission, agency or institution to  
8 which an appropriation is made.

9           The "fiscal year two thousand nine" shall mean the  
10 period from the first day of July, two thousand eight, through  
11 the thirtieth day of June, two thousand nine.

12           "General revenue fund" shall mean the general operating  
13 fund of the state and includes all moneys received or  
14 collected by the state except as provided in section two,  
15 article two, chapter twelve of the code or as otherwise  
16 provided.

17 "Special revenue funds" shall mean specific revenue  
18 sources which by legislative enactments are not required to  
19 be accounted for as general revenue, including federal funds.

20 "From collections" shall mean that part of the total  
21 appropriation which must be collected by the spending unit  
22 to be available for expenditure. If the authorized amount of  
23 collections is not collected, the total appropriation for the  
24 spending unit shall be reduced automatically by the amount  
25 of the deficiency in the collections. If the amount collected  
26 exceeds the amount designated "from collections," the excess  
27 shall be set aside in a special surplus fund and may be  
28 expended for the purpose of the spending unit as provided by  
29 article two, chapter eleven-b of the code.

1 **Sec. 3. Classification of appropriations.**—An  
2 appropriation for:

3 "Personal services" shall mean salaries, wages and other  
4 compensation paid to full-time, part-time and temporary  
5 employees of the spending unit but shall not include fees or  
6 contractual payments paid to consultants or to independent  
7 contractors engaged by the spending unit.

8 Unless otherwise specified, appropriations for "personal  
9 services" shall include salaries of heads of spending units.

10 "Annual increment" shall mean funds appropriated for  
11 "eligible employees" and shall be disbursed only in  
12 accordance with article five, chapter five of the code.

13 Funds appropriated for "annual increment" shall be  
14 transferred to "personal services" or other designated items  
15 only as required.

16 "Employee benefits" shall mean social security matching,  
17 workers' compensation, unemployment compensation,

18 pension and retirement contributions, public employees  
19 insurance matching, personnel fees or any other benefit  
20 normally paid by the employer as a direct cost of  
21 employment. Should the appropriation be insufficient to  
22 cover such costs, the remainder of such cost shall be  
23 transferred by each spending unit from its "personal services"  
24 line item or its "unclassified" line item or other appropriate  
25 line item to its "employee benefits" line item. If there is no  
26 appropriation for "employee benefits," such costs shall be  
27 paid by each spending unit from its "personal services" line  
28 item, its "unclassified" line item or other appropriate line  
29 item. Each spending unit is hereby authorized and required  
30 to make such payments in accordance with the provisions of  
31 article two, chapter eleven-b of the code.

32 "BRIM Premiums" shall mean the amount charged as  
33 consideration for insurance protection and includes the  
34 present value of projected losses and administrative expenses.  
35 Premiums are assessed for coverages, as defined in the  
36 applicable policies, for claims arising from, inter alia, general  
37 liability, wrongful acts, property, professional liability and  
38 automobile exposures.

39 Should the appropriation for "BRIM Premiums" be  
40 insufficient to cover such cost, the remainder of such costs  
41 shall be transferred by each spending unit from its "personal  
42 services" line item, its "employee benefit" line item, its  
43 "unclassified" line item or any other appropriate line item to  
44 "BRIM Premiums" for payment to the Board of Risk and  
45 Insurance Management. Each spending unit is hereby  
46 authorized and required to make such payments.

47 Each spending unit shall be responsible for all  
48 contributions, payments or other costs related to coverage  
49 and claims of its employees for unemployment  
50 compensation. Such expenditures shall be considered an  
51 employee benefit.

52 "Current expenses" shall mean operating costs other than  
53 personal services and shall not include equipment, repairs  
54 and alterations, buildings or lands.

55 Each spending unit shall be responsible for and charged  
56 monthly for all postage meter service and shall reimburse the  
57 appropriate revolving fund monthly for all such amounts.  
58 Such expenditures shall be considered a current expense.

59 "Equipment" shall mean equipment items which have an  
60 appreciable and calculable period of usefulness in excess of one  
61 year.

62 "Repairs and alterations" shall mean routine maintenance  
63 and repairs to structures and minor improvements to property  
64 which do not increase the capital assets.

65 "Buildings" shall include new construction and major  
66 alteration of existing structures and the improvement of lands  
67 and shall include shelter, support, storage, protection or the  
68 improvement of a natural condition.

69 "Lands" shall mean the purchase of real property or  
70 interest in real property.

71 "Capital outlay" shall mean and include buildings, lands  
72 or buildings and lands, with such category or item of  
73 appropriation to remain in effect as provided by section  
74 twelve, article three, chapter twelve of the code.

75 From appropriations made to the spending units of state  
76 government, upon approval of the governor there may be  
77 transferred to a special account an amount sufficient to match  
78 federal funds under any federal act.

79 Appropriations classified in any of the above categories  
80 shall be expended only for the purposes as defined above and  
81 only for the spending units herein designated: *Provided*, That  
82 the secretary of each department shall have the authority to

83 transfer within the department those general revenue funds  
84 appropriated to the various agencies of the department:  
85 *Provided, however,* That no more than five percent of the  
86 general revenue funds appropriated to any one agency or  
87 board may be transferred to other agencies or boards within  
88 the department\* ~~and no funds so transferred may be~~  
89 ~~transferred to a "personal services" line:~~ *Provided further,*  
90 That the secretary of each department and the director,  
91 commissioner, executive secretary, superintendent, chairman  
92 or any other agency head not governed by a departmental  
93 secretary as established by chapter five-f of the code shall  
94 have the authority to transfer funds appropriated to "personal  
95 services" and "employee benefits" to other lines within the  
96 same account and no funds from other lines shall be  
97 transferred to the "personal services" line: *And provided*  
98 *further,* That the secretary of each department and the  
99 director, commissioner, executive secretary, superintendent,  
100 chairman or any other agency head not governed by a  
101 departmental secretary as established by chapter five-f of the  
102 code shall have the authority to transfer general revenue  
103 funds appropriated to "annual increment" to other general  
104 revenue accounts within the same department, bureau or  
105 commission for the purpose of providing an annual increment  
106 in accordance with article five, chapter five of the code: *And*  
107 *provided further,* That no authority exists hereunder to  
108 transfer funds into line-items to which no funds are  
109 legislatively appropriated: *And provided further,* That if the  
110 Legislature by subsequent enactment consolidates agencies,  
111 boards or functions, the secretary or other appropriate agency  
112 head may transfer the funds formerly appropriated to such  
113 agency, board or function in order to implement such  
114 consolidation. No funds may be transferred from a Special  
115 Revenue Account, dedicated account, capital expenditure  
116 account or any other account or fund specifically exempted  
117 by the Legislature from transfer, except that the use of the  
118 appropriations from the State Road Fund for the office of the  
119 Secretary of the Department of Transportation is not a use

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\*CLERK'S NOTE: The Governor struck language on lines 88 and 89.

120 other than the purpose for which such funds were dedicated  
121 and is permitted.

122 Appropriations otherwise classified shall be expended  
123 only where the distribution of expenditures for different  
124 purposes cannot well be determined in advance or it is  
125 necessary or desirable to permit the spending unit the  
126 freedom to spend an appropriation for more than one of the  
127 above classifications.

1 **Sec. 4. Method of expenditure.**—Money appropriated  
2 by this bill, unless otherwise specifically directed, shall be  
3 appropriated and expended according to the provisions of  
4 article three, chapter twelve of the code or according to any  
5 law detailing a procedure specifically limiting that article.

1 **Sec. 5. Maximum expenditures.**—No authority or  
2 requirement of law shall be interpreted as requiring or  
3 permitting an expenditure in excess of the appropriations set  
4 out in this bill.

TITLE II – APPROPRIATIONS.

TITLE II--APPROPRIATIONS.

§1. Appropriations from general revenue.

ADMINISTRATION, DEPARTMENT OF

|   |    |
|---|----|
| Administration, Department of--Office of the            |    |
| Secretary--Fund No. 0186 .....                          | 91 |
| Children's Health Insurance Agency--Fund No. 0588 ..... | 97 |
| Committee for the Purchase of Commodities and           |    |
| Services from the Handicapped--Fund                     |    |
| No. 0233 .....  | 97 |
| Consolidated Public Retirement Board--Fund              |    |
| No. 0195 .....  | 92 |
| Ethics Commission--Fund No. 0223 .....                  | 96 |
| Finance, Division of--Fund No. 0203 .....               | 93 |
| General Services, Division of--Fund No. 0230 .....      | 93 |
| Prosecuting Attorneys' Institute, West Virginia--       |    |
| Fund No. 0557 .....                                     | 97 |
| Public Defender Services--Fund No. 0226 .....           | 96 |
| Public Employees Grievance Board – Fund No. 0220 .....  | 95 |

|  |     |
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1        **Section 1. Appropriations from general revenue.**—From  
 2 the State Fund, General Revenue, there are hereby  
 3 appropriated conditionally upon the fulfillment of the  
 4 provisions set forth in article two, chapter eleven-b of the  
 5 code the following amounts, as itemized, for expenditure  
 6 during the fiscal year two thousand nine.

**LEGISLATIVE**

*1—Senate*

Fund 0165 FY 2009 Org 2100

|                                   | <b>Activity</b> | <b>General<br/>Revenue<br/>Fund</b> |
|-----------------------------------|-----------------|-------------------------------------|
| 1 Compensation of Members (R) ... | 003 \$          | 1,010,000                           |

|    |                                       |     |               |
|----|---------------------------------------|-----|---------------|
| 2  | Compensation and Per Diem of          |     |               |
| 3  | Officers and Employees (R) . . .      | 005 | 3,003,210     |
| 4  | Employee Benefits (R) . . . . .       | 010 | 597,712       |
| 5  | Current Expenses and                  |     |               |
| 6  | Contingent Fund (R) . . . . .         | 021 | 700,000       |
| 7  | Repairs and Alterations (R) . . . . . | 064 | 450,000       |
| 8  | Computer Supplies (R) . . . . .       | 101 | 40,000        |
| 9  | Computer Systems (R) . . . . .        | 102 | 250,000       |
| 10 | Printing Blue Book (R) . . . . .      | 103 | 150,000       |
| 11 | Expenses of Members (R) . . . . .     | 399 | 700,000       |
| 12 | BRIM Premium (R) . . . . .            | 913 | <u>29,482</u> |
| 13 | Total . . . . .                       |     | \$ 6,930,404  |

14       The appropriations for the senate for the fiscal year 2008  
15 are to remain in full force and effect and are hereby  
16 reappropriated to June 30, 2009. Any balances so  
17 reappropriated may be transferred and credited to the fiscal  
18 year 2009 accounts.

19       Upon the written request of the Clerk of the Senate, the  
20 auditor shall transfer amounts between items of the total  
21 appropriation in order to protect or increase the efficiency of  
22 the service.

23       The Clerk of the Senate, with the approval of the  
24 president, is authorized to draw his or her requisitions upon  
25 the auditor, payable out of the Current Expenses and  
26 Contingent Fund of the senate, for any bills for supplies and  
27 services that may have been incurred by the senate and not  
28 included in the appropriation bill, for supplies and services  
29 incurred in preparation for the opening, the conduct of the  
30 business and after adjournment of any regular or  
31 extraordinary session, and for the necessary operation of the  
32 senate offices, the requisitions for which are to be  
33 accompanied by bills to be filed with the auditor.

34       The Clerk of the Senate, with the written approval of the  
35 president, or the President of the Senate shall have authority

36 to employ such staff personnel during any session of the  
 37 Legislature as shall be needed in addition to staff personnel  
 38 authorized by the senate resolution adopted during any such  
 39 session. The Clerk of the Senate, with the written approval  
 40 of the president, or the President of the Senate shall have  
 41 authority to employ such staff personnel between sessions of  
 42 the Legislature as shall be needed, the compensation of all  
 43 staff personnel during and between sessions of the  
 44 Legislature, notwithstanding any such senate resolution, to be  
 45 fixed by the President of the Senate. The clerk is hereby  
 46 authorized to draw his or her requisitions upon the auditor for  
 47 the payment of all such staff personnel for such services,  
 48 payable out of the appropriation for Compensation and Per  
 49 Diem of Officers and Employees or Current Expenses and  
 50 Contingent Fund of the senate.

51 For duties imposed by law and by the senate, the Clerk of  
 52 the Senate shall be paid a monthly salary as provided by the  
 53 senate resolution, unless increased between sessions under  
 54 the authority of the president, payable out of the  
 55 appropriation for Compensation and Per Diem of Officers  
 56 and Employees or Current Expenses and Contingent Fund of  
 57 the senate.

58 The distribution of the blue book shall be by the office of  
 59 the Clerk of the Senate and shall include seventy-five copies  
 60 for each member of the Legislature and two copies for each  
 61 classified and approved high school and junior high or  
 62 middle school and one copy for each elementary school  
 63 within the state.

*2—House of Delegates*

Fund 0170 FY 2009 Org 2200

|   |                                     |    |           |
|---|-------------------------------------|----|-----------|
| 1 | Compensation of Members (R) . . 003 | \$ | 2,270,000 |
| 2 | Compensation and Per Diem of        |    |           |
| 3 | Officers and Employees (R) . . 005  |    | 700,000   |

## APPROPRIATIONS

|   |                                   |     |               |
|---|-----------------------------------|-----|---------------|
| 4 | Current Expenses and Contin-      |     |               |
| 5 | gent Fund (R) . . . . .           | 021 | 4,621,1       |
| 6 | Expenses of Members (R) . . . . . | 399 | 1,190,000     |
| 7 | BRIM Premium (R) . . . . .        | 913 | <u>28,120</u> |
| 8 | Total . . . . .                   |     | \$ 8,809,282  |

9 The appropriations for the house of delegates for the fiscal  
10 year 2008 are to remain in full force and effect and are  
11 hereby reappropriated to June 30, 2009. Any balances so  
12 reappropriated may be transferred and credited to the fiscal  
13 year 2009 accounts.

14 Upon the written request of the Clerk of the House of  
15 Delegates, the auditor shall transfer amounts between items  
16 of the total appropriation in order to protect or increase the  
17 efficiency of the service.

18 The Clerk of the House of Delegates, with the approval of  
19 the speaker, is authorized to draw his or her requisitions upon  
20 the auditor, payable out of the Current Expenses and  
21 Contingent Fund of the house of delegates, for any bills for  
22 supplies and services that may have been incurred by the  
23 house of delegates and not included in the appropriation bill,  
24 for bills for services and supplies incurred in preparation for  
25 the opening of the session and after adjournment, and for the  
26 necessary operation of the house of delegates' offices, the  
27 requisitions for which are to be accompanied by bills to be  
28 filed with the auditor.

29 The Speaker of the House of Delegates, upon approval of  
30 the house committee on rules, shall have authority to employ  
31 such staff personnel during and between sessions of the  
32 Legislature as shall be needed, in addition to personnel  
33 designated in the house resolution, and the compensation of  
34 all personnel shall be as fixed in such house resolution for the  
35 session, or fixed by the speaker, with the approval of the  
36 house committee on rules, during and between sessions of the



37 Legislature, notwithstanding such house resolution. The  
 38 Clerk of the House of Delegates is hereby authorized to draw  
 39 requisitions upon the auditor for such services, payable out of  
 40 the appropriation for the Compensation and Per Diem of  
 41 Officers and Employees or Current Expenses and Contingent  
 42 Fund of the house of delegates.

43 For duties imposed by law and by the house of delegates,  
 44 including salary allowed by law as keeper of the rolls, the  
 45 Clerk of the House of Delegates shall be paid a monthly  
 46 salary as provided in the house resolution, unless increased  
 47 between sessions under the authority of the speaker, with the  
 48 approval of the house committee on rules, and payable out of  
 49 the appropriation for Compensation and Per Diem of Officers  
 50 and Employees or Current Expenses and Contingent Fund of  
 51 the house of delegates.

3—*Joint Expenses*

(WV Code Chapter 4)

Fund 0175 FY 2009 Org 2300

|    |                                    |     |               |
|----|------------------------------------|-----|---------------|
| 1  | Joint Committee on Government      |     |               |
| 2  | and Finance (R) . . . . .          | 104 | \$ 7,300,000  |
| 3  | Legislative Printing (R) . . . . . | 105 | 800,000       |
| 4  | Legislative Rule-Making            |     |               |
| 5  | Review Committee (R) . . . . .     | 106 | 155,000       |
| 6  | Legislative Computer System (R)    | 107 | 950,000       |
| 7  | Joint Standing Committee           |     |               |
| 8  | on Education (R) . . . . .         | 108 | 88,000        |
| 9  | Tax Reduction and Federal          |     |               |
| 10 | Funding Increased Compliance       |     |               |
| 11 | (TRAFFIC)(R) . . . . .             | 642 | 15,000,000    |
| 12 | BRIM Premium (R) . . . . .         | 913 | <u>22,000</u> |
| 13 | Total . . . . .                    |     | \$ 24,315,000 |

14 The appropriations for the joint expenses for the fisca.  
 15 year 2008 are to remain in full force and effect and are  
 16 hereby reappropriated to June 30, 2009. Any balances so  
 17 reappropriated may be transferred and credited to the fiscal  
 18 year 2009 accounts.

19 Upon the written request of the Clerk of the Senate, with  
 20 the approval of the President of the Senate, and the Clerk of  
 21 the House of Delegates, with the approval of the Speaker of  
 22 the House of Delegates, and a copy to the Legislative  
 23 Auditor, the auditor shall transfer amounts between items of  
 24 the total appropriation in order to protect or increase the  
 25 efficiency of the service.

26 The appropriation for the Tax Reduction and Federal  
 27 Funding Increased Compliance (TRAFFIC) (fund 0175,  
 28 activity 642) is intended for possible general state tax  
 29 reductions or the offsetting of any reductions in federal  
 30 funding for state programs.

## JUDICIAL

### *4—Supreme Court— General Judicial*

#### Fund 0180 FY 2009 Org 2400

|    |   |                |
|----|---|----------------|
| 1  | Personal Services (R) . . . . . 001     | \$ 64,058,926  |
| 2  | Annual Increment (R) . . . . . 004      | 870,250        |
| 3  | Employee Benefits (R) . . . . . 010     | 20,236,863     |
| 4  | Childrens' Protection Act . . . . . 090 | 862,938        |
| 5  | Unclassified (R) . . . . . 099          | 23,380,486     |
| 6  | Judges' Retirement System (R) .. 110    | 2,763,000      |
| 7  | Retirement Systems-                     |                |
| 8  | Unfunded Liability (R) . . . . . 775    | 3,271,000      |
| 9  | BRIM Premium (R) . . . . . 913          | <u>374,015</u> |
| 10 | Total . . . . .                         | \$ 115,817,478 |

11 The appropriations to the supreme court of appeals for the  
 12 fiscal years 2007 and 2008 are to remain in full force and  
 13 effect and are hereby reappropriated to June 30, 2009. Any  
 14 balances so reappropriated may be transferred and credited to  
 15 the fiscal year 2009 accounts.

16 This appropriation shall be administered by the  
 17 Administrative Director of the Supreme Court of Appeals,  
 18 who shall draw requisitions for warrants in payment in the  
 19 form of payrolls, making deductions therefrom as required by  
 20 law for taxes and other items.

21 The appropriations for the Judges' Retirement System  
 22 (activity 110) and Retirement Systems-Unfunded Liability  
 23 (activity 775) are to be transferred to the consolidated public  
 24 retirement board, in accordance with the law relating thereto,  
 25 upon requisition of the Administrative Director of the  
 26 Supreme Court of Appeals.

## EXECUTIVE

### *5—Governor's Office*

(WV Code Chapter 5)

Fund 0101 FY 2009 Org 0100

|   |                                     |     |    |           |
|---|-------------------------------------|-----|----|-----------|
| 1 | Personal Services . . . . .         | 001 | \$ | 2,433,155 |
| 2 | Salary of Governor . . . . .        | 002 |    | 122,500   |
| 3 | Annual Increment . . . . .          | 004 |    | 27,870    |
| 4 | Employee Benefits . . . . .         | 010 |    | 722,929   |
| 5 | Unclassified (R) . . . . .          | 099 |    | 1,446,075 |
| 6 | National Governors' Association . . | 123 |    | 95,200    |
| 7 | Southern States Energy Board . . .  | 124 |    | 28,732    |
| 8 | Southern Governors' Association . . | 314 |    | 25,000    |
| 9 | Pharmaceutical Advocate . . . . .   | 753 |    | 614,601   |

APPROPRIATIONS

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|    |                            |     |    |               |
|----|----------------------------|-----|----|---------------|
| 10 | BRIM Premium . . . . .     | 913 |    | 206,143       |
| 11 | P20 Jobs Cabinet . . . . . | 954 |    | <u>40,000</u> |
| 12 | Total . . . . .            |     | \$ | 5,762,205     |

13 Any unexpended balances remaining in the appropriations  
 14 for Unclassified (fund 0101, activity 099), Publication of  
 15 Papers and Transition Expenses—Surplus (fund 0101,  
 16 activity 359), Capital Outlay, Repairs and Equipment (fund  
 17 0101, activity 589), JOBS Fund (fund 0101, activity 665),  
 18 and Pharmaceutical Cost Management Council (fund 0101,  
 19 activity 796) at the close of the fiscal year 2008 are hereby  
 20 reappropriated for expenditure during the fiscal year 2009.

*6—Governor's Office—  
 Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2009 Org 0100

|   |                                  |     |    |         |
|---|----------------------------------|-----|----|---------|
| 1 | Unclassified—Total (R) . . . . . | 096 | \$ | 646,936 |
|---|----------------------------------|-----|----|---------|

2 Any unexpended balance remaining in the appropriation  
 3 for Unclassified-Total (fund 0102, activity 096) at the close  
 4 of the fiscal year 2008 is hereby reappropriated for  
 5 expenditure during the fiscal year 2009.

6 Funds are to be used for current general expenses,  
 7 including compensation of employees, household  
 8 maintenance, cost of official functions and additional  
 9 household expenses occasioned by such official functions.

*7—Governor's Office—  
 Civil Contingent Fund*

(WV Code Chapter 5)

Fund 0105 FY 2009 Org 0100

1 Civil Contingent Fund-Total (R) . 114 \$ 4,000,000

2 Any unexpended balances remaining in the appropriation  
3 for Stream Restoration—Surplus (fund 0105, activity 078),  
4 Business and Economic Development Stimulus—Surplus  
5 (fund 0105, activity 084), Civil Contingent Fund—Total  
6 (fund 0105, activity 114), Civil Contingent  
7 Fund—Total—Surplus (fund 0105, activity 238), Civil  
8 Contingent Fund— Surplus (fund 0105, activity 263),  
9 Business and Economic Development Stimulus (fund 0105,  
10 activity 586), and Civil Contingent Fund (fund 0105, activity  
11 614) at the close of the fiscal year 2008 are hereby  
12 reappropriated for expenditure during the fiscal year 2009.

13 From this appropriation there may be expended, at the  
14 discretion of the Governor, an amount not to exceed one  
15 thousand dollars as West Virginia's contribution to the  
16 interstate oil compact commission.

17 The above appropriation is intended to provide  
18 contingency funding for accidental, unanticipated, emergency  
19 or unplanned events which may occur during the fiscal year  
20 and is not to be expended for the normal day-to-day  
21 operations of the governor's office.

*8—Auditor's Office—  
General Administration*

(WV Code Chapter 12)

Fund 0116 FY 2009 Org 1200

|   |                             |     |    |           |
|---|-----------------------------|-----|----|-----------|
| 1 | Personal Services . . . . . | 001 | \$ | 2,264,450 |
| 2 | Salary of Auditor . . . . . | 002 |    | 85,000    |
| 3 | Annual Increment . . . . .  | 004 |    | 47,686    |

## APPROPRIATIONS

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|   |                             |     |    |               |
|---|-----------------------------|-----|----|---------------|
| 4 | Employee Benefits . . . . . | 010 |    | 793,983       |
| 5 | Unclassified . . . . .      | 099 |    | 622,226       |
| 6 | BRIM Premium . . . . .      | 913 |    | <u>15,428</u> |
| 7 | Total . . . . .             |     | \$ | 3,828,773     |

*9—Treasurer's Office*

(WV Code Chapter 12)

Fund 0126 FY 2009 Org 1300

|    |   |     |    |               |
|----|---|-----|----|---------------|
| 1  | Personal Services . . . . .                   | 001 | \$ | 1,984,224     |
| 2  | Salary of Treasurer . . . . .                 | 002 |    | 85,000        |
| 3  | Annual Increment . . . . .                    | 004 |    | 31,060        |
| 4  | Employee Benefits . . . . .                   | 010 |    | 640,025       |
| 5  | Unclassified (R) . . . . .                    | 099 |    | 849,757       |
| 6  | Abandoned Property Program . . .              | 118 |    | 305,051       |
| 7  | Tuition Trust Fund (R) . . . . .              | 692 |    | 157,136       |
| 8  | Personal Finance Education Program            |     |    |               |
| 9  | for 21 <sup>st</sup> Century Skills . . . . . | 313 |    | 250,000       |
| 10 | BRIM Premium . . . . .                        | 913 |    | <u>30,809</u> |
| 11 | Total . . . . .                               |     | \$ | 4,333,062     |

12 Any unexpended balances remaining in the appropriations  
 13 for Unclassified (fund 0126, activity 099) and Tuition Trust  
 14 Fund (fund 0126, activity 692) at the close of the fiscal year  
 15 2008 are hereby reappropriated for expenditure during the  
 16 fiscal year 2009.

*10—Department of Agriculture*

(WV Code Chapter 19)

Fund 0131 FY 2009 Org 1400

|   |                                  |     |    |           |
|---|----------------------------------|-----|----|-----------|
| 1 | Personal Services . . . . .      | 001 | \$ | 4,073,184 |
| 2 | Salary of Commissioner . . . . . | 002 |    | 85,000    |
| 3 | Annual Increment . . . . .       | 004 |    | 109,293   |

|    |                                     |     |               |
|----|-------------------------------------|-----|---------------|
| 4  | Employee Benefits . . . . .         | 010 | 1,584,724     |
| 5  | Animal Identification Program . .   | 039 | 207,264       |
| 6  | State Farm Museum . . . . .         | 055 | 110,000       |
| 7  | Unclassified (R) . . . . .          | 099 | 1,457,459     |
| 8  | Gypsy Moth Program (R) . . . . .    | 119 | 1,218,571     |
| 9  | Huntington Farmers Market . . . . . | 128 | 50,000        |
| 10 | Black Fly Control (R) . . . . .     | 137 | 805,926       |
| 11 | Donated Foods Program . . . . .     | 363 | 50,000        |
| 12 | Predator Control (R) . . . . .      | 470 | 260,000       |
| 13 | Logan Farmers Market . . . . .      | 501 | 43,036        |
| 14 | Bee Research . . . . .              | 691 | 75,754        |
| 15 | Microbiology Program (R) . . . . .  | 785 | 161,583       |
| 16 | Moorefield Agriculture Center (R) . | 786 | 1,162,363     |
| 17 | BRIM Premium . . . . .              | 913 | 145,962       |
| 18 | 4-H Camp Improvements . . . . .     | 941 | 0*            |
| 19 | Threat Preparedness . . . . .       | 942 | 77,107        |
| 20 | WV Food Banks . . . . .             | 969 | 100,000       |
| 21 | Seniors's Farmers' Market Nutrition |     |               |
| 22 | Coupon Program . . . . .            | 970 | <u>65,000</u> |
| 23 | Total . . . . .                     |     | \$ 12,832,226 |

24 Any unexpended balances remaining in the appropriations  
25 for Unclassified-Surplus (fund 0131, activity 097),  
26 Unclassified (fund 0131, activity 099), Gypsy Moth Program  
27 (fund 0131, activity 119), Black Fly Control (fund 0131,  
28 activity 137), Predator Control (fund 0131, activity 470),  
29 Microbiology Program (fund 0131, activity 785), and  
30 Moorefield Agriculture Center (fund 0131, activity 786) at  
31 the close of the fiscal year 2008 are hereby reappropriated for  
32 expenditure during the fiscal year 2009.

33 A portion of the Unclassified appropriation may be  
34 transferred to a special revenue fund for the purpose of  
35 matching federal funds for marketing and development  
36 activities.

---

\*CLERK'S NOTE: The Governor reduced the amount in line 18 from \$99,000 to \$0.

37 From the above appropriation for WV Food Banks  
 38 (activity 969), the full appropriation shall be allocated to the  
 39 Huntington Food Bank and the Mountaineer Food Bank in  
 40 Braxton County.

*11—West Virginia Conservation Agency*

(WV Code Chapter 19)

Fund 0132 FY 2009 Org 1400

|   |                                      |     |    |               |
|---|--------------------------------------|-----|----|---------------|
| 1 | Personal Services . . . . .          | 001 | \$ | 502,380       |
| 2 | Annual Increment . . . . .           | 004 |    | 10,726        |
| 3 | Employee Benefits . . . . .          | 010 |    | 197,665       |
| 4 | Unclassified (R) . . . . .           | 099 |    | 446,997       |
| 5 | Soil Conservation Projects (R) . . . | 120 |    | 8,997,620     |
| 6 | Marlinton Flood Wall (R) . . . . .   | 757 |    | 1,500,000     |
| 7 | BRIM Premium . . . . .               | 913 |    | <u>12,969</u> |
| 8 | Total . . . . .                      |     | \$ | 11,668,357    |

9 Any unexpended balances remaining in the appropriations  
 10 for Unclassified (fund 0132, activity 099), Soil Conservation  
 11 Projects (fund 0132, activity 120), Maintenance of Flood  
 12 Control Projects (fund 0132, activity 522), and Marlinton  
 13 Flood Wall (fund 0132, activity 757) at the close of the fiscal  
 14 year 2008 are hereby reappropriated for expenditure during  
 15 the fiscal year 2009.

*12—Department of Agriculture—  
 Meat Inspection*

(WV Code Chapter 19)

Fund 0135 FY 2009 Org 1400

|   |                              |     |    |         |
|---|------------------------------|-----|----|---------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 684,808 |
|---|------------------------------|-----|----|---------|



2 Any part or all of this appropriation may be transferred to  
3 a special revenue fund for the purpose of matching federal  
4 funds for the above-named program.

*13—Department of Agriculture—  
Agricultural Awards*

(WV Code Chapter 19)

Fund 0136 FY 2009 Org 1400

|   |                             |     |               |
|---|-----------------------------|-----|---------------|
| 1 | Programs & Awards for 4-H   |     |               |
| 2 | Clubs and FFA/FHA . . . . . | 577 | \$ 15,000     |
| 3 | Commissioner’s Awards and   |     |               |
| 4 | Programs . . . . .          | 737 | <u>43,650</u> |
| 5 | Total . . . . .             |     | \$ 58,650     |

*14—Department of Agriculture—  
West Virginia Agricultural Land Protection Authority*

(WV Code Chapter 8A)

Fund 0607 FY 2009 Org 1400

|   |                              |     |            |
|---|------------------------------|-----|------------|
| 1 | Unclassified-Total . . . . . | 096 | \$ 110,000 |
|---|------------------------------|-----|------------|

*15—Attorney General*

(WV Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 2009 Org 1500

|   |                                      |     |              |
|---|--------------------------------------|-----|--------------|
| 1 | Personal Services (R) . . . . .      | 001 | \$ 2,464,631 |
| 2 | Salary of Attorney General . . . . . | 002 | 87,500       |
| 3 | Annual Increment . . . . .           | 004 | 58,175       |
| 4 | Employee Benefits (R) . . . . .      | 010 | 871,585      |
| 5 | Unclassified (R) . . . . .           | 099 | 791,716      |

|    |  |                |
|----|--|----------------|
| 90 | APPROPRIATIONS                         | [Ch. 10        |
| 6  | Better Government Bureau . . . . . 740 | 312,129        |
| 7  | Agency Client Revolving                |                |
| 8  | Liquidity Pool . . . . . 362           | 120,000        |
| 9  | BRIM Premium . . . . . 913             | <u>118,590</u> |
| 10 | Total . . . . .                        | \$ 4,824,326   |

11 Any unexpended balances remaining in the above  
12 appropriations for Personal Services (fund 0150, activity  
13 001), Employee Benefits (fund 0150, activity 010), and  
14 Unclassified (fund 0150, activity 099) at the close of the  
15 fiscal year 2008 are hereby reappropriated for expenditure  
16 during the fiscal year 2009.

17 When legal counsel or secretarial help is appointed by the  
18 attorney general for any state spending unit, this account shall  
19 be reimbursed from such spending units specifically  
20 appropriated account or from accounts appropriated by  
21 general language contained within this bill: *Provided*, That  
22 the spending unit shall reimburse at a rate and upon terms  
23 agreed to by the state spending unit and the attorney general:  
24 *Provided, however*, That if the spending unit and the attorney  
25 general are unable to agree on the amount and terms of the  
26 reimbursement, the spending unit and the attorney general  
27 shall submit their proposed reimbursement rates and terms to  
28 the Governor for final determination.

*16—Secretary of State*

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2009 Org 1600

|   |  |            |
|---|--|------------|
| 1 | Personal Services . . . . . 001            | \$ 684,299 |
| 2 | Salary of Secretary of State . . . . . 002 | 82,500     |
| 3 | Annual Increment . . . . . 004             | 14,890     |
| 4 | Employee Benefits . . . . . 010            | 262,196    |
| 5 | Unclassified (R) . . . . . 099             | 95,127     |

|   |                                   |     |    |               |
|---|-----------------------------------|-----|----|---------------|
| 6 | Technology Improvements . . . . . | 599 |    | 0             |
| 7 | BRIM Premium . . . . .            | 913 |    | <u>33,554</u> |
| 8 | Total . . . . .                   |     | \$ | 1,172,566     |

9 Any unexpended balance remaining in the appropriation  
 10 for Unclassified (fund 0155, activity 099) at the close of the  
 11 fiscal year 2008 is hereby reappropriated for expenditure  
 12 during the fiscal year 2009.

*17—State Election Commission*

(WV Code Chapter 3)

Fund 0160 FY 2009 Org 1601

|   |                              |     |    |        |
|---|------------------------------|-----|----|--------|
| 1 | Unclassified—Total . . . . . | 096 | \$ | 10,275 |
|---|------------------------------|-----|----|--------|

**DEPARTMENT OF ADMINISTRATION**

*18—Department of Administration—  
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2009 Org 0201

|    |                                 |     |    |            |
|----|---------------------------------|-----|----|------------|
| 1  | Personal Services . . . . .     | 001 | \$ | 479,703    |
| 2  | Annual Increment . . . . .      | 004 |    | 2,486      |
| 3  | Employee Benefits . . . . .     | 010 |    | 124,292    |
| 4  | Teachers' Retirement Savings    |     |    |            |
| 5  | Realized . . . . .              | 095 |    | 3,826,000  |
| 6  | Unclassified . . . . .          | 099 |    | 117,632    |
| 7  | State Employee Sick Leave       |     |    |            |
| 8  | Fund . . . . .                  | 378 |    | 5,000,000  |
| 9  | Lease Rental Payments . . . . . | 516 |    | 16,000,000 |
| 10 | Design-Build Board . . . . .    | 540 |    | 19,068     |
| 11 | Financial Advisor . . . . .     | 304 |    | 200,000    |

|    |                    |     |               |
|----|--------------------|-----|---------------|
| 12 | BRIM Premium ..... | 913 | <u>10,071</u> |
| 13 | Total .....        |     | \$ 25,779,252 |

14 Any unexpended balance remaining in the appropriation  
 15 for Financial Advisor (fund 0186, activity 304) at the close  
 16 of the fiscal year 2008 is hereby reappropriated for  
 17 expenditure during the fiscal year 2009.

18 The appropriation for Lease Rental Payments shall be  
 19 disbursed as provided by chapter thirty-one, article fifteen,  
 20 section six-b of the code.

21 The above appropriation for Teachers' Retirement  
 22 Savings Realized (activity 095) shall be transferred to the  
 23 Employee Pension and Health Care Benefit Fund (fund  
 24 2044).

25 From the above appropriation for Financial Advisor  
 26 (activity 304) amounts may be expended for financial  
 27 consulting services\*, ~~conditioned upon the provider of the~~  
 28 ~~services' monthly reports to the Joint Committee on~~  
 29 ~~Government and Finance on all aspects of its work, including~~  
 30 ~~all findings, reports, recommendations, projects and tasks.~~

*19—Consolidated Public Retirement Board*

(WV Code Chapter 5)

Fund 0195 FY 2009 Org 0205

1 Any unexpended balance remaining in the appropriation  
 2 for Pension Merger Administrative Costs (fund 0195, activity  
 3 429) at the close of the fiscal year 2008 is hereby  
 4 reappropriated for expenditure during the fiscal year 2009.

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\*CLERK'S NOTE: The Governor deleted language on lines 27 through 30.

5 The division of highways, division of motor vehicles,  
 6 public service commission and other departments, bureaus,  
 7 divisions, or commissions operating from special revenue  
 8 funds and/or federal funds shall pay their proportionate share  
 9 of the retirement costs for their respective divisions. When  
 10 specific appropriations are not made, such payments may be  
 11 made from the balances in the various special revenue funds  
 12 in excess of specific appropriations.

*20—Division of Finance*

(WV Code Chapter 5A)

Fund 0203 FY 2009 Org 0209

|   |                             |     |    |               |
|---|-----------------------------|-----|----|---------------|
| 1 | Personal Services . . . . . | 001 | \$ | 82,411        |
| 2 | Annual Increment . . . . .  | 004 |    | 1,101         |
| 3 | Employee Benefits . . . . . | 010 |    | 29,431        |
| 4 | Unclassified . . . . .      | 099 |    | 140,663       |
| 5 | GAAP Project (R) . . . . .  | 125 |    | 858,538       |
| 6 | BRIM Premium . . . . .      | 913 |    | <u>16,722</u> |
| 7 | Total . . . . .             |     | \$ | 1,128,866     |

8 Any unexpended balance remaining in the appropriation  
 9 for GAAP Project (fund 0203, activity 125) at the close of the  
 10 fiscal year 2008 is hereby reappropriated for expenditure  
 11 during the fiscal year 2009.

*21—Division of General Services*

(WV Code Chapter 5A)

Fund 0230 FY 2009 Org 0211

|   |                             |     |    |           |
|---|-----------------------------|-----|----|-----------|
| 1 | Personal Services . . . . . | 001 | \$ | 1,495,957 |
| 2 | Annual Increment . . . . .  | 004 |    | 27,742    |
| 3 | Employee Benefits . . . . . | 010 |    | 597,813   |

|    |                                 |                |
|----|---------------------------------|----------------|
| 94 | APPROPRIATIONS                  | [Ch. 10        |
| 4  | Unclassified . . . . . 099      | 736,079        |
| 5  | Fire Service Fee . . . . . 126  | 14,000         |
| 6  | Preservation and Maintenance of |                |
| 7  | Statues and Monuments on        |                |
| 8  | Capitol Grounds . . . . . 371   | 68,000         |
| 9  | BRIM Premium . . . . . 913      | <u>112,481</u> |
| 10 | Total . . . . .                 | \$ 3,052,072   |

11 From the above appropriation for Preservation and  
 12 Maintenance of Statues and Monuments on Capitol Grounds  
 13 (activity 371), the Division shall ~~first restore The Union~~  
 14 ~~Soldiers, Sailors and Marines Monument, then consider the~~  
 15 ~~suggestions of the National Park Service resulting from its~~  
 16 ~~ongoing informal assessment of the condition of these statues~~  
 17 ~~and memorials in setting further priorities for preservation~~  
 18 ~~and maintenance. The Division shall report on its progress~~  
 19 ~~in these efforts at each meeting of the Council of Finance and~~  
 20 ~~Administration, along with its priorities for this and future~~  
 21 ~~funding. The Division shall also consult the Division of~~  
 22 ~~Culture and History and Capitol Building Commission in all~~  
 23 ~~aspects of planning, assessment, maintenance and restoration.~~

*22-Division of Purchasing*

(WV Code Chapter 5A)

Fund 0210 FY 2009 Org 0213

|   |                                 |              |
|---|---------------------------------|--------------|
| 1 | Personal Services . . . . . 001 | \$ 946,578   |
| 2 | Annual Increment . . . . . 004  | 15,360       |
| 3 | Employee Benefits . . . . . 010 | 301,996      |
| 4 | Unclassified . . . . . 099      | 209,345      |
| 5 | BRIM Premium . . . . . 913      | <u>6,167</u> |
| 6 | Total . . . . .                 | \$ 1,479,446 |

---

\*CLERK'S NOTE: The Governor struck language on lines 13 through 21.

7 The division of highways shall reimburse the Unclassified  
 8 appropriation (fund 2031, activity 099) within the division of  
 9 purchasing for all actual expenses incurred pursuant to the  
 10 provisions of section thirteen, article two-a, chapter  
 11 seventeen of the code.

*23-Commission on Uniform State Laws*

(WV Code Chapter 29)

Fund 0214 FY 2009 Org 0217

1 Unclassified-Total ..... 096 \$ 45,000

2 To pay expenses for members of the commission on  
 3 uniform state laws.

*24-West Virginia Public Employees Grievance Board*

(WV Code Chapter 6C)

Fund 0220 FY 2009 Org 0219

|   |                         |     |    |              |
|---|-------------------------|-----|----|--------------|
| 1 | Personal Services ..... | 001 | \$ | 650,070      |
| 2 | Annual Increment .....  | 004 |    | 10,057       |
| 3 | Employee Benefits ..... | 010 |    | 178,618      |
| 4 | Unclassified .....      | 099 |    | 154,567      |
| 5 | BRIM Premium .....      | 913 |    | <u>3,885</u> |
| 6 | Total .....             |     | \$ | 997,197      |

7 Any unexpended balance remaining in the appropriation  
 8 for Unclassified-Surplus (fund 0220, activity 097) at the  
 9 close of the fiscal year 2008 is hereby reappropriated for  
 10 expenditure during the fiscal year 2009.

*25-Ethics Commission*

(WV Code Chapter 6B)

Fund 0223 FY 2009 Org 0220

|   |                    |     |    |              |
|---|--------------------|-----|----|--------------|
| 1 | Unclassified ..... | 099 | \$ | 713,325      |
| 2 | BRIM Premium ..... | 913 |    | <u>3,098</u> |
| 3 | Total .....        |     | \$ | 716,423      |

*26-Public Defender Services*

(WV Code Chapter 29)

Fund 0226 FY 2009 Org 0221

|   |                                    |     |    |               |
|---|------------------------------------|-----|----|---------------|
| 1 | Personal Services .....            | 001 | \$ | 634,977       |
| 2 | Annual Increment .....             | 004 |    | 10,109        |
| 3 | Employee Benefits .....            | 010 |    | 217,738       |
| 4 | Unclassified .....                 | 099 |    | 346,240       |
| 5 | Appointed Counsel Fees and         |     |    |               |
| 6 | Public Defender Corporations (R) . | 127 |    | 30,493,799    |
| 7 | Public Defender Corporations (R) . | 352 |    | 0             |
| 8 | BRIM Premium .....                 | 913 |    | <u>18,340</u> |
| 9 | Total .....                        |     | \$ | 31,721,203    |

10 Any unexpended balances remaining in the above  
 11 appropriations for Appointed Counsel Fees and Public  
 12 Defender Corporations (fund 0226, activity 127), and Public  
 13 Defender Corporations (fund 0226, activity 352) at the close  
 14 of the fiscal year 2008 are hereby reappropriated for  
 15 expenditure during the fiscal year 2009.

16 From the above appropriation for Unclassified (activity  
 17 099), \$37,500 is to be used for the exclusive purpose of  
 18 hiring additional help for the processing of attorney  
 19 reimbursements.



*27-Committee for the Purchase of  
Commodities and Services from the Handicapped*

(WV Code Chapter 5A)

Fund 0233 FY 2009 Org 0224

1 Unclassified-Total . . . . . 096 \$ 5,046

*28-West Virginia Prosecuting Attorneys Institute*

(WV Code Chapter 7)

Fund 0557 FY 2009 Org 0228

|   |                                     |     |    |                |
|---|-------------------------------------|-----|----|----------------|
| 1 | Forensic Medical Examinations (R) . | 683 | \$ | 144,201        |
| 2 | Federal Funds/Grant Match (R) . .   | 749 |    | <u>100,991</u> |
| 3 | Total . . . . .                     |     | \$ | 245,192        |

4 Any unexpended balances remaining in the appropriations  
5 for Forensic Medical Examinations (fund 0557, activity 683)  
6 and Federal Funds/Grant Match (fund 0557, activity 749) at  
7 the close of the fiscal year 2008 are hereby reappropriated for  
8 expenditure during the fiscal year 2009.

*29-Children’s Health Insurance Agency*

(WV Code Chapter 5)

Fund 0588 FY 2009 Org 0230

1 Unclassified-Total . . . . . 096 \$ 10,971,688

*30-West Virginia Retiree Health Benefit Trust Fund*

(WV Code Chapter 5)

Fund 0611 FY 2009 Org 0232

1 Unclassified-Total-Transfer . . . . . 402        \$ 30,730,000

2        The above appropriation for Unclassified-Total-Transfer  
3 (fund 0611, activity 402) shall be transferred to the OPEB  
4 Benefit Contribution Accumulation Fund (fund 2541, org  
5 0232).

*31-Real Estate Division*

(WV Code Chapter 5A)

Fund 0610 FY 2009 Org 0233

1 Unclassified-Total . . . . . 096        \$     526,413

**DEPARTMENT OF COMMERCE***32-Division of Tourism*

(WV Code Chapter 5B)

Fund 0246 FY 2009 Org 0304

1        Any unexpended balances remaining in the appropriations  
2 for Tourism Special Projects-Surplus (fund 0246, activity  
3 293) and Tourism-Special Projects (fund 0246, activity 859)  
4 at the close of the fiscal year 2008 are hereby reappropriated  
5 for expenditure during the fiscal year 2009.

*33-Division of Forestry*

(WV Code Chapter 19)

Fund 0250 FY 2009 Org 0305

1 Personal Services . . . . . 001        \$    2,588,335

|   |                             |     |    |                |
|---|-----------------------------|-----|----|----------------|
| 2 | Annual Increment . . . . .  | 004 |    | 68,934         |
| 3 | Employee Benefits . . . . . | 010 |    | 1,071,036      |
| 4 | Unclassified . . . . .      | 099 |    | 756,016        |
| 5 | BRIM Premium . . . . .      | 913 |    | <u>164,914</u> |
| 6 | Total . . . . .             |     | \$ | 4,649,235      |

7 Out of the above appropriation a sum may be used to  
 8 match federal funds for cooperative studies or other funds for  
 9 similar purposes.

*34-Geological and Economic Survey*

(WV Code Chapter 29)

Fund 0253 FY 2009 Org 0306

|   |                                    |     |    |               |
|---|------------------------------------|-----|----|---------------|
| 1 | Personal Services . . . . .        | 001 | \$ | 1,303,901     |
| 2 | Annual Increment . . . . .         | 004 |    | 39,017        |
| 3 | Employee Benefits . . . . .        | 010 |    | 451,363       |
| 4 | Unclassified . . . . .             | 099 |    | 203,313       |
| 5 | Mineral Mapping System (R) . . . . | 207 |    | 1,599,433     |
| 6 | Geoscience Education Program . .   | 541 |    | 25,000        |
| 7 | BRIM Premium . . . . .             | 913 |    | <u>29,180</u> |
| 8 | Total . . . . .                    |     | \$ | 3,651,207     |

9 Any unexpended balance remaining in the appropriation  
 10 for Mineral Mapping System (fund 0253, activity 207) at the  
 11 close of the fiscal year 2008 is hereby reappropriated for  
 12 expenditure during the fiscal year 2009.

13 The above Unclassified appropriation includes funding to  
 14 secure federal and other contracts and may be transferred to  
 15 a special revolving fund (fund 3105, activity 099) for the  
 16 purpose of providing advance funding for such contracts.

*35-West Virginia Development Office*

## (WV Code Chapter 5B)

Fund 0256 FY 2009 Org 0307

|    |                                       |     |    |            |
|----|---------------------------------------|-----|----|------------|
| 1  | Personal Services . . . . .           | 001 | \$ | 3,655,971  |
| 2  | Annual Increment . . . . .            | 004 |    | 87,759     |
| 3  | Employee Benefits . . . . .           | 010 |    | 1,199,889  |
| 4  | ARC-WV Home of Your                   |     |    |            |
| 5  | Own Alliance . . . . .                | 048 |    | 40,000     |
| 6  | Southern WV Career Center . . . .     | 071 |    | 491,750    |
| 7  | Unclassified . . . . .                | 099 |    | *3,079,569 |
| 8  | Partnership Grants (R) . . . . .      | 131 |    | 1,950,000  |
| 9  | National Youth Science Camp . . .     | 132 |    | 200,000    |
| 10 | Local Economic Development            |     |    |            |
| 11 | Partnerships (R) . . . . .            | 133 |    | 1,870,000  |
| 12 | ARC Assessment . . . . .              | 136 |    | 167,308    |
| 13 | Mid-Atlantic Aerospace                |     |    |            |
| 14 | Complex (R) . . . . .                 | 231 |    | 176,783    |
| 15 | Guaranteed Work Force                 |     |    |            |
| 16 | Grant (R) . . . . .                   | 242 |    | 2,247,000  |
| 17 | Mingo County Surface                  |     |    |            |
| 18 | Mine Project . . . . .                | 296 |    | 125,000    |
| 19 | Robert C. Byrd Institute for Advanced |     |    |            |
| 20 | Flexible Manufacturing-Technology     |     |    |            |
| 21 | Outreach and Programs for             |     |    |            |
| 22 | Environmental and Advanced            |     |    |            |
| 23 | Technologies . . . . .                | 367 |    | 519,800    |
| 24 | Advantage Valley . . . . .            | 389 |    | 74,300     |
| 25 | Chemical Alliance Zone . . . . .      | 390 |    | 38,300     |
| 26 | WV High Tech Consortium . . . . .     | 391 |    | 235,783    |
| 27 | Charleston Farmers Market . . . . .   | 476 |    | 100,000    |
| 28 | Industrial Park Assistance (R) . . .  | 480 |    | 0          |
| 29 | International Offices (R) . . . . .   | 593 |    | 690,644    |
| 30 | Small Business Development (R) . .    | 703 |    | 423,187    |

---

\*CLERK'S NOTE: The Governor reduced the amount in line 7 from \$3,169,569 to \$3,079,569.

|    |   |     |               |
|----|---|-----|---------------|
| 31 | WV Manufacturing Extension              |     |               |
| 32 | Partnership . . . . .                   | 731 | 144,000       |
| 33 | Polymer Alliance . . . . .              | 754 | 115,000       |
| 34 | Regional Councils . . . . .             | 784 | 440,000       |
| 35 | Mainstreet Program . . . . .            | 794 | 200,000       |
| 36 | National Institute of Chemical          |     |               |
| 37 | Studies . . . . .                       | 805 | 70,500        |
| 38 | Local Economic Development              |     |               |
| 39 | Assistance (R) . . . . .                | 819 | 7,250,000     |
| 40 | I-79 Development Council . . . . .      | 824 | *50,000       |
| 41 | Community College Workforce             |     |               |
| 42 | Development . . . . .                   | 878 | 0             |
| 43 | College Transition Program . . . . .    | 887 | 0             |
| 44 | WV Advance Workforce                    |     |               |
| 45 | Development . . . . .                   | 893 | 0             |
| 46 | Technical Program Development . . . . . | 894 | 0             |
| 47 | BRIM Premium . . . . .                  | 913 | 26,096        |
| 48 | Hardwood Alliance Zone . . . . .        | 992 | <u>42,600</u> |
| 49 | Total . . . . .                         |     | \$ 25,831,239 |

50

51 Any unexpended balances remaining in the appropriations  
52 for Tourism—Unclassified—Surplus (fund 0256, activity  
53 075), Unclassified-Surplus (fund 0256, activity 097),  
54 Partnership Grants (fund 0256, activity 131), Local  
55 Economic Development Partnerships (fund 0256, activity  
56 133), Mid-Atlantic Aerospace Complex (fund 0256, activity  
57 231), Guaranteed Work Force Grant (fund 0256, activity  
58 242), Local Economic Development Assistance—Surplus  
59 (fund 0256, activity 266), Small Business Financial  
60 Assistance (fund 0256, activity 360), Industrial Park  
61 Assistance (fund 0256, activity 480), Leverage Technology  
62 and Small Business Development Program (fund 0256,  
63 activity 525), International Offices (fund 0256, activity 593),  
64 Small Business Development (fund 0256, activity 703),

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\*CLERK'S NOTE: The Governor reduced the amount in line 40 from \$80,000 to \$50,000.

65 Local Economic Development Assistance (fund 0256,  
66 activity 819), Economic Development Assistance (fund 0256,  
67 activity 900), and Mining Safety Technology (fund 0256,  
68 activity 945) at the close of the fiscal year 2008 are hereby  
69 reappropriated for expenditure during the fiscal year 2009.

70 The above appropriation to Local Economic Development  
71 Partnerships (activity 133) shall be used by the West Virginia  
72 development office for the award of funding assistance to  
73 county and regional economic development corporations or  
74 authorities participating in the certified development  
75 community program developed under the provisions of  
76 section fourteen, article two, chapter five-b of the code. The  
77 West Virginia development office shall award the funding  
78 assistance through a matching grant program, based upon a  
79 formula whereby funding assistance may not exceed thirty-  
80 four thousand dollars per county served by an economic  
81 development corporation or authority.

82 From the above appropriation for the Unclassified (fund  
83 0256, activity 099), \$125,000 is for King Coal Highway  
84 Authority; \$125,000 is for Coal Field Expressway Authority;  
85 \$100,000 is for Coal Heritage Highway Authority; \$100,000  
86 is for Coal Heritage Area Authority; \$50,000 is for Little  
87 Kanawha River Parkway; \$90,000 is for Midland Trail  
88 Scenic Highway Association; \$57,000 is for Shawnee  
89 Parkway Authority; \$100,000 is for Corridor G Highway  
90 Authority; \$75,000 is for Corridor H Authority\*; ~~and~~  
91 ~~\$50,000 is for Route 2 I68 Highway Authority.~~

92 From the above appropriation for the Unclassified (fund  
93 0256, activity 099) \$250,000 is for Hatfield McCoy  
94 Recreational Trail; and \$80,000 is for the National Railway  
95 Historical Society New River Excursion.

---

\*CLERK'S NOTE: The Governor deleted language on lines 90 and 91.

*36-Division of Labor*

(WV Code Chapters 21 and 47)

Fund 0260 FY 2009 Org 0308

|   |                             |     |    |               |
|---|-----------------------------|-----|----|---------------|
| 1 | Personal Services . . . . . | 001 | \$ | 1,964,122     |
| 2 | Annual Increment . . . . .  | 004 |    | 35,812        |
| 3 | Employee Benefits . . . . . | 010 |    | 900,554       |
| 4 | Unclassified . . . . .      | 099 |    | 712,975       |
| 5 | BRIM Premium . . . . .      | 913 |    | <u>47,521</u> |
| 6 | Total . . . . .             |     | \$ | 3,660,984     |

*37-Division of Natural Resources*

(WV Code Chapter 20)

Fund 0265 FY 2009 Org 0310

|    |                                  |     |    |                |
|----|----------------------------------|-----|----|----------------|
| 1  | Personal Services . . . . .      | 001 | \$ | 9,747,402      |
| 2  | Annual Increment . . . . .       | 004 |    | 327,177        |
| 3  | Employee Benefits . . . . .      | 010 |    | 4,064,505      |
| 4  | Gypsy Moth Suppression Program – |     |    |                |
| 5  | Wildlife Management Areas . .    | 014 |    | 42,997         |
| 6  | Unclassified . . . . .           | 099 |    | 12,255         |
| 7  | Litter Control Conservation      |     |    |                |
| 8  | Officers . . . . .               | 564 |    | 161,281        |
| 9  | Upper Mud River Flood Control .  | 654 |    | 183,836        |
| 10 | Land Purchase . . . . .          | 761 |    |                |
| 11 | Law Enforcement . . . . .        | 806 |    | *2,929,345     |
| 12 | BRIM Premium . . . . .           | 913 |    | <u>308,815</u> |
| 13 | Total . . . . .                  |     | \$ | 18,909,993     |

14 Any unexpended balance remaining in the above  
 15 appropriation for Fish Hatchery Improvements (fund 0265,  
 16 activity 825) at the close of the fiscal year 2008 is hereby  
 17 reappropriated for expenditure during the fiscal year 2009.

---

\*CLERK'S NOTE: The Governor reduced the amount in line 11 from \$4,061,725 to \$2,929,345.

18 Any revenue derived from mineral extraction at any state  
 19 park shall be deposited in a special revenue account of the  
 20 division of natural resources, first for bond debt payment  
 21 purposes and with any remainder to be for park operation and  
 22 improvement purposes.

*38-Division of Miners' Health, Safety and Training*

(WV Code Chapter 22)

Fund 0277 FY 2009 Org 0314

|   |                             |     |    |               |
|---|-----------------------------|-----|----|---------------|
| 1 | Personal Services . . . . . | 001 | \$ | 6,188,925     |
| 2 | Annual Increment . . . . .  | 004 |    | 83,914        |
| 3 | Employee Benefits . . . . . | 010 |    | 2,230,537     |
| 4 | Unclassified (R) . . . . .  | 099 |    | 2,197,375     |
| 5 | WV Diesel Equipment         |     |    |               |
| 6 | Commission . . . . .        | 712 |    | 38,034        |
| 7 | BRIM Premium . . . . .      | 913 |    | <u>72,393</u> |
| 8 | Total . . . . .             |     | \$ | 10,811,178    |

9 ~~The appropriation above for Unclassified (fund 0277,~~  
 10 ~~fiscal year 2006, activity 099) shall be used in developing,~~  
 11 ~~procuring and/or deploying, technologies to assist in locating~~  
 12 ~~and communicating with trapped miners, supporting life,~~  
 13 ~~transporting rescue personnel and rescued individuals~~  
 14 ~~through underground mines and otherwise assist with mine~~  
 15 ~~rescue operations.~~

*39-Board of Coal Mine Health and Safety*

(WV Code Chapter 22)

Fund 0280 FY 2009 Org 0319

|   |                             |     |    |         |
|---|-----------------------------|-----|----|---------|
| 1 | Personal Services . . . . . | 001 | \$ | 119,465 |
|---|-----------------------------|-----|----|---------|

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\*CLERK'S NOTE: The Governor struck language on lines 9 through 15.



|         |                                 |               |
|---------|---------------------------------|---------------|
| Ch. 10] | APPROPRIATIONS                  | 105           |
| 2       | Annual Increment . . . . . 004  | 1,004         |
| 3       | Employee Benefits . . . . . 010 | 32,357        |
| 4       | Unclassified . . . . . 099      | <u>27,217</u> |
| 5       | Total . . . . . \$              | 180,043       |

*40-Coal Mine Safety and Technical Review Committee*

(WV Code Chapter 22)

Fund 0285 FY 2009 Org 0320

|   |                            |               |
|---|----------------------------|---------------|
| 1 | Unclassified . . . . . 099 | \$ 63,352     |
| 2 | Coal Forum . . . . . 664   | <u>25,000</u> |
| 3 | Total . . . . . \$         | 88,352        |

*41-Department of Commerce-  
Office of the Secretary*

(WV Code Chapter 19)

Fund 0606 FY 2009 Org 0327

|   |                                    |            |
|---|------------------------------------|------------|
| 1 | Unclassified - Total . . . . . 096 | \$ 474,770 |
|---|------------------------------------|------------|

*42-Division of Energy*

(WV Code Chapter 5H)

Fund 0612 FY 2009 Org 0328

|   |                                    |             |
|---|------------------------------------|-------------|
| 1 | Unclassified - Total . . . . . 096 | \$1,769,661 |
|---|------------------------------------|-------------|

2 From the above appropriation for Unclassified - Total  
3 (fund 0612, activity 096) \$730,000 is for West Virginia  
4 University and \$730,000 is for Southern West Virginia  
5 Community and Technical College for the Mine Training and  
6 Energy Technologies Academy.

**DEPARTMENT OF EDUCATION**

*43-State Department of Education-  
School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2009 Org 0402

|   |                             |     |                  |
|---|-----------------------------|-----|------------------|
| 1 | Personal Services . . . . . | 001 | \$245,455        |
| 2 | Annual Increment . . . . .  | 004 | 4,743            |
| 3 | Employee Benefits . . . . . | 010 | 87,562           |
| 4 | Unclassified . . . . .      | 099 | <u>2,186,597</u> |
| 5 | Total . . . . .             |     | \$2,524,357      |

*44-State FFA-FHA Camp and Conference Center*

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2009 Org 0402

|   |                             |     |              |
|---|-----------------------------|-----|--------------|
| 1 | Personal Services . . . . . | 001 | \$618,821    |
| 2 | Annual Increment . . . . .  | 004 | 20,678       |
| 3 | Employee Benefits . . . . . | 010 | 251,410      |
| 4 | Unclassified . . . . .      | 099 | 130,500      |
| 5 | BRIM Premium . . . . .      | 913 | <u>34,65</u> |
| 6 | Total . . . . .             |     | \$1,056,060  |

*45-State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2009 Org 0402

|   |                             |     |              |
|---|-----------------------------|-----|--------------|
| 1 | Personal Services . . . . . | 001 | \$ 3,552,974 |
| 2 | Annual Increment . . . . .  | 004 | 47,263       |
| 3 | Employee Benefits . . . . . | 010 | 1,095,782    |
| 4 | Unclassified (R) . . . . .  | 099 | *3,400,000   |

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\***CLERK'S NOTE:** The Governor reduced the amount on line 4 from \$3,915,000 to \$3,400,000.

|    |   |     |           |
|----|---|-----|-----------|
| 5  | 34/1000 Waiver . . . . .                        | 139 | 320,000   |
| 6  | Increased Enrollment . . . . .                  | 140 | 8,680,000 |
| 7  | Safe Schools . . . . .                          | 143 | 2,276,132 |
| 8  | Teacher Mentor (R) . . . . .                    | 158 | *850,000  |
| 9  | National Teacher Certification (R)              | 161 | 1,000,000 |
| 10 | Allowance for County Transfers .                | 264 | 240,169   |
| 11 | Technology Repair and                           |     |           |
| 12 | Modernization . . . . .                         | 298 | 1,000,000 |
| 13 | Tax Assessment Errors . . . . .                 | 353 | 84,598    |
| 14 | HVAC Technicians . . . . .                      | 355 | 496,546   |
| 15 | Early Retirement Notification                   |     |           |
| 16 | Incentive . . . . .                             | 366 | 300,000   |
| 17 | MATH Program . . . . .                          | 368 | 400,000   |
| 18 | Teacher Reimbursement . . . . .                 | 573 | 300,000   |
| 19 | Hospitality Training . . . . .                  | 600 | 434,199   |
| 20 | Low Student Enrollment                          |     |           |
| 21 | Allowance . . . . .                             | 615 | 800,000   |
| 22 | Foreign Student Education (R) . . .             | 636 | 93,881    |
| 23 | State Teacher of the Year . . . . .             | 640 | 42,643    |
| 24 | Principals Mentorship . . . . .                 | 649 | 80,000    |
| 25 | Allowance for Work Based                        |     |           |
| 26 | Learning . . . . .                              | 744 | 60,000    |
| 27 | Pilot Program of Structured in-school           |     |           |
| 28 | Alternatives . . . . .                          | 826 | 100,000   |
| 29 | 21 <sup>st</sup> Century Learners (R) . . . . . | 886 | 2,746,533 |
| 30 | BRIM Premium . . . . .                          | 913 | 338,053   |
| 31 | High Acuity Health Care                         |     |           |
| 32 | Needs Program . . . . .                         | 920 | 1,000,000 |
| 33 | School Nurse Funding . . . . .                  | 921 | 1,107,618 |
| 34 | 21 <sup>st</sup> Century Assessment and         |     |           |
| 35 | Professional Development . . .                  | 931 | 4,500,000 |
| 36 | WV Commission on Holocaust                      |     |           |
| 37 | Education . . . . .                             | 935 | *0        |
| 38 | Regional Education Service                      |     |           |
| 39 | Agencies . . . . .                              | 972 | 4,200,000 |

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\*CLERK'S NOTE: The Governor reduced the amount on line 8 from \$1,000,000 to \$850,000; and on line 37, he reduced the amount from \$15,000 to \$0.

|     |  |                |
|-----|--|----------------|
| 108 | APPROPRIATIONS                           | [Ch. 10        |
| 40  | Sparse Population Allocation . . . . 973 | 420,000        |
| 41  | School Access Safety . . . . . 978       | 0              |
| 42  | Educational Program Allowance . 996      | 250,000        |
| 43  | High Acuity Special Needs . . . . . 634  | 500,000        |
| 44  | Allowance for Extraordinary              |                |
| 45  | Sustained Growth . . . . . 943           | <u>809,871</u> |
| 46  | Total . . . . .                          | \$42,206,262   |

47     The above appropriation includes the state board of  
48     education and their executive office.

49     Any unexpended balances remaining in the appropriations  
50     for Collaborative Resource Allocation (fund 0313, activity  
51     041), Educational Achievement Incentive (fund 0313,  
52     activity 042), Unclassified (fund 0313, activity 099), Teacher  
53     Mentor (fund 0313, activity 158), National Teacher  
54     Certification (fund 0313, activity 161), Foreign Student  
55     Education (fund 0313, activity 636), 21<sup>st</sup> Century Learners  
56     (fund 0313, activity 886), and Educational Enhancements-  
57     Surplus (fund 0313, activity 927) at the close of the fiscal  
58     year 2008 are hereby reappropriated for expenditure during  
59     the fiscal year 2009.

60     From the above appropriation for Sparse Population  
61     Allocation (activity 973), funding shall be provided in the  
62     same manner as in Fiscal Year 2008. It shall be available to  
63     those counties whose population falls at or below 2.5 students  
64     per square mile and which have more than 650 square miles  
65     for transportation purposes.

66     From the above appropriation for Educational Program  
67     Allowance (activity 996), \$100,000 shall be expended for  
68     Webster County Board of Education for Hacker Valley and  
69     \$150,000 for the Randolph County Board of Education for  
70     Pickens School.

71     From the above appropriation for Low Student Enrollment  
72     Allowance (activity 615), funds shall be allocated to county

73 boards of education in accordance with the provisions of § 18-  
74 9A-22 of the Code of West Virginia.

75 The above appropriation for Hospitality Training (activity  
76 600), shall be allocated only to entities that have a plan  
77 approved for funding by the Department of Education, at the  
78 funding level determined by the State Superintendent of  
79 Schools. Plans shall be submitted to the State Superintendent  
80 of Schools to be considered for funding.

81 ~~\*From the above appropriation for Unclassified (activity~~  
82 ~~099) \$150,000 is for Hancock County Board of Education,~~  
83 ~~\$120,000 is for Hardy County Board of Education, \$225,000~~  
84 ~~is for Pendleton County Board of Education and \$20,000 is~~  
85 ~~for Taylor County Board of Education. This funding is~~  
86 ~~needed to offset the deficits at these County Boards of~~  
87 ~~Education.~~

*46-State Department of Education-  
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2009 Org 0402

|   |                                      |     |                     |
|---|--------------------------------------|-----|---------------------|
| 1 | Special Education-Counties . . . . . | 159 | \$ 7,271,757        |
| 2 | Special Education-Institutions . . . | 160 | 3,683,391           |
| 3 | Education of Juveniles Held in       |     |                     |
| 4 | Predispositional Juvenile            |     |                     |
| 5 | Detention Centers . . . . .          | 302 | 588,624             |
| 6 | Education of Institutionalized       |     |                     |
| 7 | Juveniles and Adults (R) . . . . .   | 472 | <u>16,249,117</u>   |
| 8 | Total . . . . .                      |     | <u>\$27,792,889</u> |

9 Any unexpended balance remaining in the appropriation  
10 for Education of Institutionalized Juveniles and Adults (fund  
11 0314, activity 472) at the close of the fiscal year 2008 is

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\*CLERK'S NOTE: The Governor struck language on lines 81 through 87.

12 hereby reappropriated for expenditure during the fiscal year  
13 2009.

14 From the above appropriation for Education of  
15 Institutionalized Juveniles and Adults (activity 472), an  
16 additional \$250,000 shall be provided for the Burlington  
17 Center-Mineral County.

18 From the above appropriations, the superintendent shall  
19 have authority to expend funds for the costs of special  
20 education for those children residing in out-of-state  
21 placements.

*47-State Department of Education-  
State Aid to Schools*

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2009 Org 0402

|    |                                       |     |                      |
|----|---------------------------------------|-----|----------------------|
| 1  | Other Current Expenses . . . . .      | 022 | \$ 145,546,433       |
| 2  | Professional Educators . . . . .      | 151 | 850,299,661          |
| 3  | Service Personnel . . . . .           | 152 | 275,319,410          |
| 4  | Fixed Charges . . . . .               | 153 | 104,513,542          |
| 5  | Transportation . . . . .              | 154 | 65,862,890           |
| 6  | Administration . . . . .              | 155 | 35,642,483           |
| 7  | 21st Century Strategic Technology     |     |                      |
| 8  | Learning Growth . . . . .             | 936 | 1,882,410            |
| 9  | Improved Instructional Programs .     | 156 | 34,387,231           |
| 10 | Advanced Placement . . . . .          | 053 | <u>775,245</u>       |
| 11 | Basic Foundation Allowances . . . . . |     | 1,514,229,305        |
| 12 | Less Local Share                      |     | <u>(358,289,205)</u> |
| 13 | Total Basic State Aid . . . . .       |     | 1,155,940,100        |
| 14 | Public Employees' Insurance           |     |                      |
| 15 | Matching . . . . .                    | 012 | 202,961,229          |
| 16 | Teachers' Retirement System . . .     | 019 | 49,839,994           |
| 17 | School Building Authority . . . . .   | 453 | 23,345,075           |

|    |                             |     |                    |
|----|-----------------------------|-----|--------------------|
| 18 | Retirement Systems-Unfunded |     |                    |
| 19 | Liability . . . . .         | 775 | <u>289,707,000</u> |
| 20 | Total . . . . .             |     | \$1,721,793,398    |

*48-State Board of Education-  
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2009 Org 0402

|    |                                 |     |    |                |
|----|---------------------------------|-----|----|----------------|
| 1  | Personal Services . . . . .     | 001 | \$ | 1,039,288      |
| 2  | Annual Increment . . . . .      | 004 |    | 21,910         |
| 3  | Employee Benefits . . . . .     | 010 |    | 367,061        |
| 4  | Unclassified . . . . .          | 099 |    | 1,210,000      |
| 5  | Wood Products-Forestry          |     |    |                |
| 6  | Vocational Program . . . . .    | 146 |    | 57,530         |
| 7  | Albert Yanni Vocational Program | 147 |    | 150,000        |
| 8  | Vocational Aid . . . . .        | 148 |    | 17,202,326     |
| 9  | Adult Basic Education . . . . . | 149 |    | 3,895,435      |
| 10 | Program Modernization . . . . . | 305 |    | 1,000,000      |
| 11 | Technical and Secondary Program |     |    |                |
| 12 | Improvement Staff . . . . .     | 330 |    | 293,054        |
| 13 | GED Testing . . . . .           | 339 |    | 583,238        |
| 14 | Aquaculture Support . . . . .   | 769 |    | 89,533         |
| 15 | FFA Grant Awards . . . . .      | 839 |    | 13,000         |
| 16 | Pre-Engineering Academy         |     |    |                |
| 17 | Program . . . . .               | 840 |    | <u>300,000</u> |
| 18 | Total . . . . .                 |     |    | \$26,222,375   |

19 Any unexpended balance remaining in the appropriation  
 20 for GED Testing (fund 0390, activity 339) at the close of the  
 21 fiscal year 2008 is hereby reappropriated for expenditure  
 22 during the fiscal year 2009.

*49-State Board of Education-  
Division of Educational Performance Audits*

## APPROPRIATIONS

[Ch. 10]

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2009 Org 0402

|   |                             |     |    |                |
|---|-----------------------------|-----|----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ | 431,237        |
| 2 | Annual Increment . . . . .  | 004 |    | 4,836          |
| 3 | Employee Benefits . . . . . | 010 |    | 115,435        |
| 4 | Unclassified . . . . .      | 099 |    | <u>179,782</u> |
| 5 | Total . . . . .             |     |    | \$731,290      |

*50-West Virginia Schools for the Deaf and the Blind*

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2009 Org 0403

|   |                                  |     |    |               |
|---|----------------------------------|-----|----|---------------|
| 1 | Personal Services . . . . .      | 001 | \$ | 8,026,343     |
| 2 | Annual Increment . . . . .       | 004 |    | 8,066         |
| 3 | Employee Benefits . . . . .      | 010 |    | 3,195,238     |
| 4 | Unclassified . . . . .           | 099 |    | 1,607,491     |
| 5 | Capital Outlay and Maintenance . | 755 |    | 125,000       |
| 6 | BRIM Premium . . . . .           | 913 |    | <u>66,286</u> |
| 7 | Total . . . . .                  |     |    | \$13,028,424  |

**DEPARTMENT OF EDUCATION AND THE ARTS***51-Department of Education and the Arts-  
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0294 FY 2009 Org 0431

|   |                            |     |    |           |
|---|----------------------------|-----|----|-----------|
| 1 | Unclassified (R) . . . . . | 099 | \$ | 886,687   |
| 2 | Center for Professional    |     |    |           |
| 3 | Development (R) . . . . .  | 115 |    | 3,173,913 |



|    |                                 |     |              |
|----|---------------------------------|-----|--------------|
| 4  | WV Humanities Council . . . . . | 168 | 450,000      |
| 5  | Benedum Professional            |     |              |
| 6  | Development Collaborative . .   | 427 | 1,100,000    |
| 7  | Governor's Honor Academy (R) .  | 478 | 500,450      |
| 8  | Professional Development        |     |              |
| 9  | Collaborative . . . . .         | 629 | 0            |
| 10 | Energy Express . . . . .        | 861 | 470,000      |
| 11 | Special Olympic Games . . . . . | 966 | 25,000       |
| 12 | BRIM Premium . . . . .          | 913 | <u>4,509</u> |
| 13 | Total . . . . .                 |     | \$6,610,559  |

14 Any unexpended balances remaining in the appropriations  
15 for Unclassified (fund 0294, activity 099), Center for  
16 Professional Development (fund 0294 activity 115),  
17 Governor's Honor Academy (fund 0294, activity 478), and  
18 CPD-Math Initiative (fund 0294, activity 517) at the close of  
19 the fiscal year 2008 are hereby reappropriated for expenditure  
20 during the fiscal year 2009.

*52-Division of Culture and History*

(WV Code Chapter 29)

Fund 0293 FY 2009 Org 0432

|    |                                 |     |               |
|----|---------------------------------|-----|---------------|
| 1  | Personal Services . . . . .     | 001 | \$ 2,549,592  |
| 2  | Annual Increment . . . . .      | 004 | 60,977        |
| 3  | Employee Benefits . . . . .     | 010 | 1,038,775     |
| 4  | Unclassified . . . . .          | 099 | 898,468       |
| 5  | Culture and History Programming | 732 | 292,945       |
| 6  | Capital Outlay and              |     |               |
| 7  | Maintenance (R) . . . . .       | 755 | 200,000       |
| 8  | Historical Highway Marker       |     |               |
| 9  | Program (R) . . . . .           | 844 | 75,000        |
| 10 | BRIM Premium . . . . .          | 913 | <u>48,979</u> |
| 11 | Total . . . . .                 |     | \$5,164,736   |

12 Any unexpended balances remaining in the appropriations  
 13 for Capital Outlay, Repairs and Equipment (fund 0293,  
 14 activity 589), Capital Outlay, Repairs and  
 15 Equipment—Surplus (fund 0293, activity 677), Capital  
 16 Outlay and Maintenance (fund 0293, activity 755),  
 17 Independence Hall (fund 0293, activity 812), and Historical  
 18 Highway Marker Program (fund 0293, activity 844) at the  
 19 close of the fiscal year 2008 are hereby reappropriated for  
 20 expenditure during the fiscal year 2009.

21 The Unclassified appropriation includes funding for the  
 22 arts funds, department programming funds, grants, fairs and  
 23 festivals and Camp Washington Carver and shall be  
 24 expended only upon authorization of the division of culture  
 25 and history and in accordance with the provisions of chapter  
 26 five-a, article three, and chapter twelve of the code.

27 All federal moneys received as reimbursement to the  
 28 division of culture and history for moneys expended from the  
 29 general revenue fund for the arts fund and historical  
 30 preservation are hereby reappropriated for the purposes as  
 31 originally made, including personal services, current  
 32 expenses and equipment.

*53-Library Commission*

(WV Code Chapter 10)

Fund 0296 FY 2009 Org 0433

|   |                             |     |    |               |
|---|-----------------------------|-----|----|---------------|
| 1 | Personal Services . . . . . | 001 | \$ | 991,852       |
| 2 | Annual Increment . . . . .  | 004 |    | 36,840        |
| 3 | Employee Benefits . . . . . | 010 |    | 375,662       |
| 4 | Unclassified . . . . .      | 099 |    | 240,587       |
| 5 | Services to Blind and       |     |    |               |
| 6 | Handicapped . . . . .       | 181 |    | 183,750       |
| 7 | BRIM Premium . . . . .      | 913 |    | <u>24,817</u> |

8 Total ..... \$1,853,508

*54-Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 0300 FY 2009 Org 0439

|   |                         |     |    |               |
|---|-------------------------|-----|----|---------------|
| 1 | Personal Services ..... | 001 | \$ | 3,195,396     |
| 2 | Annual Increment .....  | 004 |    | 69,536        |
| 3 | Employee Benefits ..... | 010 |    | 1,106,562     |
| 4 | Unclassified (R) .....  | 099 |    | 1,042,965     |
| 5 | Mountain Stage .....    | 249 |    | 300,000       |
| 6 | Capital Outlay and      |     |    |               |
| 7 | Maintenance (R) .....   | 755 |    | 100,000       |
| 8 | BRIM Premium .....      | 913 |    | <u>56,048</u> |
| 9 | Total .....             |     |    | \$5,870,507   |

10 Any unexpended balances remaining in the appropriations  
 11 for Unclassified (fund 0300, activity 099) and Capital Outlay  
 12 and Maintenance (fund 0300, activity 755) at the close of the  
 13 fiscal year 2008 are hereby reappropriated for expenditure  
 14 during the fiscal year 2009.

*55-State Board of Rehabilitation-  
 Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 0310 FY 2009 Org 0932

|   |                                  |     |    |           |
|---|----------------------------------|-----|----|-----------|
| 1 | Personal Services .....          | 001 | \$ | 7,439,147 |
| 2 | Annual Increment .....           | 004 |    | 166,317   |
| 3 | Independent Living Services .... | 009 |    | 500,000   |
| 4 | Employee Benefits .....          | 010 |    | 2,838,985 |
| 5 | Unclassified .....               | 099 |    | 502,066   |
| 6 | Workshop Development .....       | 163 |    | 1,816,149 |

|     |                                 |               |
|-----|---------------------------------|---------------|
| 116 | APPROPRIATIONS                  | [Ch. 10       |
| 7   | Supported Employment            |               |
| 8   | Extended Services . . . . . 206 | 119,032       |
| 9   | Ron Yost Personal Assistance    |               |
| 10  | Fund (R) . . . . . 407          | 400,000       |
| 11  | Employment Attendant            |               |
| 12  | Care Program . . . . . 598      | 229,000       |
| 13  | Capital Outlay and              |               |
| 14  | Maintenance (R) . . . . . 755   | 200,000       |
| 15  | BRIM Premium . . . . . 913      | <u>67,033</u> |
| 16  | Total . . . . .                 | \$14,277,729  |

17 Any unexpended balances remaining in the appropriations  
18 for Ron Yost Personal Assistance Fund (fund 0310, activity  
19 407), Capital Outlay, Repairs and Equipment-Surplus (fund  
20 0310, activity 677), and Capital Outlay and Maintenance  
21 (fund 0310, activity 755) at the close of the fiscal year 2008  
22 are hereby reappropriated for expenditure during the fiscal  
23 year 2009.

24 From the above appropriation for Workshop Development  
25 (activity 163), funds shall be used exclusively with the  
26 private non-profit community rehabilitation program  
27 organizations known as work centers or sheltered workshops.  
28 The appropriation shall also be used to continue the support  
29 of the program, services, and individuals with disabilities  
30 currently in place at those 31 organizations.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*56-Environmental Quality Board*

(WV Code Chapter 20)

Fund 0270 FY 2009 Org 0311

|   |                                 |           |
|---|---------------------------------|-----------|
| 1 | Personal Services . . . . . 001 | \$ 73,982 |
| 2 | Annual Increment . . . . . 004  | 260       |

|         |                                 |            |
|---------|---------------------------------|------------|
| Ch. 10] | APPROPRIATIONS                  | 117        |
| 3       | Employee Benefits . . . . . 010 | 16,833     |
| 4       | Unclassified . . . . . 099      | 49,935     |
| 5       | BRIM Premium . . . . . 913      | <u>684</u> |
| 6       | Total . . . . .                 | \$141,694  |

*57-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 0273 FY 2009 Org 0313

|    |                                    |               |
|----|------------------------------------|---------------|
| 1  | Personal Services . . . . . 001    | \$ 3,510,144  |
| 2  | Annual Increment . . . . . 004     | 71,462        |
| 3  | Employee Benefits . . . . . 010    | 1,218,217     |
| 4  | Unclassified . . . . . 099         | 1,024,862     |
| 5  | Dam Safety . . . . . 607           | 207,477       |
| 6  | West Virginia Stream Partners      |               |
| 7  | Program . . . . . 637              | 77,396        |
| 8  | WV Contribution to River           |               |
| 9  | Commissions . . . . . 776          | 148,485       |
| 10 | Office of Water Resources          |               |
| 11 | Non-Enforcement Activity . . . 855 | 1,166,633     |
| 12 | Water Resources Protection         |               |
| 13 | and Management . . . . . 068       | 567,475       |
| 14 | BRIM Premium . . . . . 913         | 56,802        |
| 15 | Welch DEP Office Continuing        |               |
| 16 | Operation . . . . . 993            | <u>79,115</u> |
| 17 | Total . . . . .                    | \$8,128,068   |

*58-Air Quality Board*

(WV Code Chapter 16)

Fund 0550 FY 2009 Org 0325

|   |                            |              |
|---|----------------------------|--------------|
| 1 | Unclassified . . . . . 099 | \$ 96,733    |
| 2 | BRIM Premium . . . . . 913 | <u>2,771</u> |
| 3 | Total . . . . .            | \$99,504     |

**DEPARTMENT OF HEALTH  
AND HUMAN RESOURCES**

*59-Department of Health and Human Resources-  
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0400 FY 2009 Org 0501

|   |                                  |     |    |                |
|---|----------------------------------|-----|----|----------------|
| 1 | Unclassified . . . . .           | 099 | \$ | 214,461        |
| 2 | Women's Commission (R) . . . . . | 191 |    | 194,487        |
| 3 | Commission for the Deaf          |     |    |                |
| 4 | and Hard of Hearing . . . . .    | 704 |    | <u>258,396</u> |
| 5 | Total . . . . .                  |     |    | \$667,344      |

6 Any unexpended balance remaining in the appropriation  
7 for the Women's Commission (fund 0400, activity 191) at  
8 the close of the fiscal year 2008 is hereby reappropriated for  
9 expenditure during the fiscal year 2009.

*60-Division of Health-  
Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2009 Org 0506

|   |                                   |     |    |           |
|---|-----------------------------------|-----|----|-----------|
| 1 | Personal Services . . . . .       | 001 | \$ | 7,860,235 |
| 2 | Annual Increment . . . . .        | 004 |    | 207,144   |
| 3 | Employee Benefits . . . . .       | 010 |    | 3,169,593 |
| 4 | Chief Medical Examiner . . . . .  | 045 |    | 4,022,767 |
| 5 | Unclassified . . . . .            | 099 |    | 5,127,035 |
| 6 | Safe Drinking Water Program . . . | 187 |    | 533,563   |
| 7 | Women, Infants and Children . . . | 210 |    | 65,000    |
| 8 | Basic Public Health Services      |     |    |           |
| 9 | Support . . . . .                 | 212 |    | 3,359,583 |

|    |                                     |     |            |
|----|-------------------------------------|-----|------------|
| 10 | Early Intervention . . . . .        | 223 | 3,307,043  |
| 11 | Cancer Registry . . . . .           | 225 | 285,854    |
| 12 | ABCA Tobacco Retailer               |     |            |
| 13 | Education Program-Transfer . .      | 239 | 200,000    |
| 14 | CARDIAC Project . . . . .           | 375 | 470,000    |
| 15 | State EMS Technical Assistance .    | 379 | 1,434,441  |
| 16 | EMS Program for Children . . . . .  | 381 | 50,686     |
| 17 | Statewide EMS Program               |     |            |
| 18 | Support (R) . . . . .               | 383 | 958,394    |
| 19 | Primary Care Centers-               |     |            |
| 20 | Mortgage Finance . . . . .          | 413 | 786,918    |
| 21 | Black Lung Clinics . . . . .        | 467 | 198,646    |
| 22 | Center for End of Life . . . . .    | 545 | 250,000    |
| 23 | Women's Right to Know . . . . .     | 546 | 40,000     |
| 24 | Pediatric Dental Services . . . . . | 550 | 150,216    |
| 25 | Vaccine for Children . . . . .      | 551 | 440,275    |
| 26 | Adult Influenza Vaccine . . . . .   | 552 | 65,000     |
| 27 | Tuberculosis Control . . . . .      | 553 | 256,480    |
| 28 | Maternal and Child Health Clinics,  |     |            |
| 29 | Clinicians and Medical              |     |            |
| 30 | Contracts and Fees (R) . . . . .    | 575 | 7,837,985  |
| 31 | Epidemiology Support . . . . .      | 626 | 1,729,371  |
| 32 | Primary Care Support . . . . .      | 628 | 8,846,513  |
| 33 | State Aid to Local Health           |     |            |
| 34 | Departments . . . . .               | 702 | 12,050,718 |
| 35 | Health Right Free Clinics . . . . . | 727 | 2,749,336  |
| 36 | Capital Outlay and                  |     |            |
| 37 | Maintenance (R) . . . . .           | 755 | 250,000    |
| 38 | Healthy Lifestyles (R) . . . . .    | 778 | 168,000    |
| 39 | Emergency Response Entities -       |     |            |
| 40 | Special Projects . . . . .          | 822 | *800,000   |
| 41 | Assistance to Primary Health Care   |     |            |
| 42 | Centers Community Health            |     |            |
| 43 | Foundation (R) . . . . .            | 845 | 1,150,000  |

\*CLERK'S NOTE: The Governor reduced the amount on line 40 from \$1,000,000 to \$800,000.

|    |                                 |     |                  |
|----|---------------------------------|-----|------------------|
| 44 | Osteoporosis and Arthritis      |     |                  |
| 45 | Prevention . . . . .            | 849 | 289,145          |
| 46 | Tobacco Education Program (R) . | 906 | 5,680,185        |
| 47 | BRIM Premium . . . . .          | 913 | 211,214          |
| 48 | State Trauma and Emergency      |     |                  |
| 49 | Care System . . . . .           | 918 | <u>1,350,547</u> |
| 50 | Total . . . . .                 |     | \$76,551,887     |

51 Any unexpended balances remaining in the appropriations  
52 for Statewide EMS Program Support (fund 0407, activity  
53 383), Maternal and Child Health Clinics, Clinicians and  
54 Medical Contracts and Fees (fund 0407, activity 575), Capital  
55 Outlay and Maintenance (fund 0407, activity 755), Healthy  
56 Lifestyles (fund 0407, activity 778), Assistance to Primary  
57 Health Care Centers Community Health Foundation (fund  
58 0407, activity 845) and Tobacco Education Program (fund  
59 0407, activity 906) at the close of the fiscal year 2008 are  
60 hereby reappropriated for expenditure during the fiscal year  
61 2009.

62 From the above appropriation for Unclassified (activity  
63 099), an amount not less than \$100,000 is for the West  
64 Virginia Cancer Coalition.

65 From the above appropriation for Maternal and Child  
66 Health Clinics, Clinicians and Medical Contracts and Fees  
67 (fund 0407, activity 575) \$250,000 is for the West Virginia  
68 University Center for Excellence in Women's Health.

69 From the Unclassified line item (activity 099), \$50,000  
70 shall be expended for the West Virginia Aids Coalition. Also  
71 included in the above appropriation for Unclassified, is an  
72 additional \$100,000 for Human Papillomavirus (HPV)  
73 Education.

74 From the Maternal and Child Health Clinics, Clinicians,  
75 and Medical Contracts and Fees line item, \$400,000 shall be  
76 transferred to the Breast and Cervical Cancer Diagnostic  
77 Treatment Fund.



78 From the above appropriation for ABCA Tobacco Retailer  
79 Education Program-Transfer (activity 239), \$200,000 shall be  
80 transferred to the Alcohol Beverage Control Administration  
81 (fund 7352, org 0708) for expenditure.

82 Included in the above appropriation for Primary Care  
83 Centers-Mortgage Finance is \$50,000 for the mortgage  
84 payment for the Lincoln Primary Care Center, Inc.; \$53,140  
85 for the mortgage payment for the Monroe Health Center;  
86 \$42,564 for the mortgage payment for Roane County Family  
87 Health Care, Inc.; \$30,000 for the mortgage payment for the  
88 Tug River Health Association, Inc.; \$48,000 for the mortgage  
89 payment for the Primary Care Systems (Clay); \$20,000 for  
90 the mortgage payment for the Belington Clinic; \$30,000 for  
91 the mortgage payment for the Tri-County Health Clinic;  
92 \$15,000 for the mortgage payment for Valley Health Care  
93 (Randolph); \$58,560 for the mortgage payment for Valley  
94 Health Systems, Inc. (Woman's Place and Harts Health  
95 Clinic); \$8,000 for the mortgage payment for Northern  
96 Greenbrier Health Clinic; \$12,696 for the mortgage payment  
97 for the Women's Care, Inc. (Putnam); \$25,000 for the  
98 mortgage payment for the Preston-Taylor Community Health  
99 Centers, Inc.; \$20,000 for the mortgage payment for the  
100 North Fork Clinic (Pendleton); \$40,000 for the mortgage  
101 payment for the Pendleton Community Care; \$38,400 for the  
102 mortgage payment for Clay-Battelle Community Health  
103 Center; \$33,600 for the mortgage payment for Mountaineer  
104 Health Clinic in Paw Paw; \$13,000 for the mortgage payment  
105 for the St. George Medical Clinic; \$28,000 for the mortgage  
106 payment for the Bluestone Health Center; \$45,000 for the  
107 mortgage payment for Wheeling Health Right; \$48,000 for  
108 the mortgage payment for the Minnie Hamilton Health Care  
109 Center, Inc.; \$54,000 for the mortgage payment for the  
110 Shenandoah Valley Medical Systems, Inc.; \$45,000 for the  
111 mortgage payment for the Change, Inc.; and \$28,958 for the  
112 mortgage payment for the Wirt County Health Services  
113 Association.

114 Also included in the above appropriation for State Aid to  
 115 Local Health Departments is additional funding for salary  
 116 increases.

117 From the above appropriation for Unclassified (activity  
 118 099), \$50,000 is for Hospital Hospitality House of  
 119 Huntington.

*61-Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 0525 FY 2009 Org 0506

|    |                               |     |    |                  |
|----|-------------------------------|-----|----|------------------|
| 1  | Personal Services . . . . .   | 001 | \$ | 666,257          |
| 2  | Annual Increment . . . . .    | 004 |    | 14,869           |
| 3  | Employee Benefits . . . . .   | 010 |    | 266,951          |
| 4  | Special Olympics . . . . .    | 208 |    | 26,074           |
| 5  | Behavioral Health Program-    |     |    |                  |
| 6  | Unclassified (R) . . . . .    | 219 | *  | 52,779,562       |
| 7  | Family Support Act . . . . .  | 221 |    | 1,093,923        |
| 8  | Institutional Facilities      |     |    |                  |
| 9  | Operations (R) . . . . .      | 335 |    | 84,999,251       |
| 10 | Capital Outlay and            |     |    |                  |
| 11 | Maintenance (R) . . . . .     | 755 |    | 2,000,000        |
| 12 | Colin Anderson Community      |     |    |                  |
| 13 | Placement (R) . . . . .       | 803 |    | 1,164,000        |
| 14 | Renaissance Program . . . . . | 804 |    | 194,000          |
| 15 | BRIM Premium . . . . .        | 913 |    | <u>1,088,070</u> |
| 16 | Total . . . . .               |     |    | \$144,342,957    |

17 Any unexpended balances remaining in the appropriations  
 18 for Behavioral Health Program-Unclassified (fund 0525,  
 19 activity 219), Institutional Facilities Operations (fund 0525,

---

\*CLERK'S NOTE: The Governor reduced the amount on line 6 from \$52,829,562 to \$52,779,562.

20 activity 335), Capital Outlay (fund 0525, activity 511),  
21 Capital Outlay and Maintenance (fund 0525, activity 755),  
22 and Colin Anderson Community Placement (fund 0525,  
23 activity 803) at the close of the fiscal year 2008 are hereby  
24 reappropriated for expenditure during the fiscal year 2009.

25 The secretary shall, within fifteen days after the close of  
26 the six-month period of said fiscal year, file with the  
27 legislative auditor and the department of revenue an itemized  
28 report of expenditures made during the preceding six-month  
29 period.

30 Included in the above appropriation for Behavioral Health  
31 Program - Unclassified (fund 0525, activity 219) is  
32 ~~\*\$150,000~~ \$100,000 for the Four Angels Substance Abuse  
33 Treatment Project development.

34 From the above appropriation to Institutional Facilities  
35 Operations, together with available funds from the division  
36 of health-hospital services revenue account (fund 5156,  
37 activity 335), on July 1, 2008, the sum of one hundred sixty  
38 thousand dollars shall be transferred to the department of  
39 agriculture-land division as advance payment for the  
40 purchase of food products; actual payments for such  
41 purchases shall not be required until such credits have been  
42 completely expended.

43 Additional funds have been appropriated in fund 5156,  
44 fiscal year 2009, organization 0506, for the operation of the  
45 institutional facilities. The secretary of the department of  
46 health and human resources is authorized to utilize up to ten  
47 percent of the funds from the Institutional Facilities  
48 Operations line item to facilitate cost effective and cost  
49 saving services at the community level.

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\*CLERK'S NOTE: The Governor reduced the amount on line 32 from  
\$150,000 to \$100,000.

*62-Division of Health-  
West Virginia Drinking Water Treatment*

(WV Code Chapter 16)

Fund 0561 FY 2009 Org 0506

|   |                              |     |            |
|---|------------------------------|-----|------------|
| 1 | West Virginia Drinking Water |     |            |
| 2 | Treatment Revolving Fund-    |     |            |
| 3 | Transfer .....               | 689 | \$ 700,000 |

4     The above appropriation for Drinking Water Treatment  
 5     Revolving Fund-Transfer shall be transferred to the West  
 6     Virginia Drinking Water Treatment Revolving Fund or  
 7     appropriate bank depository and the Drinking Water  
 8     Treatment Revolving-Administrative Expense Fund as  
 9     provided by chapter sixteen of the code.

*63-Human Rights Commission*

(WV Code Chapter 5)

Fund 0416 FY 2009 Org 0510

|   |                         |     |               |
|---|-------------------------|-----|---------------|
| 1 | Personal Services ..... | 001 | \$ 735,925    |
| 2 | Annual Increment .....  | 004 | 19,912        |
| 3 | Employee Benefits ..... | 010 | 231,987       |
| 4 | Unclassified .....      | 099 | 261,293       |
| 5 | BRIM Premium .....      | 913 | <u>19,326</u> |
| 6 | Total .....             |     | \$ 1,268,443  |

*64-Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2009 Org 0511

|    |  |     |               |
|----|--|-----|---------------|
| 1  | Personal Services . . . . .              | 001 | \$ 26,896,975 |
| 2  | Annual Increment . . . . .               | 004 | 773,138       |
| 3  | Employee Benefits . . . . .              | 010 | 10,631,343    |
| 4  | Unclassified . . . . .                   | 099 | 17,208,257    |
| 5  | Child Care Development . . . . .         | 144 | 1,271,030     |
| 6  | Medical Services Contracts and           |     |               |
| 7  | Office of Managed Care . . . . .         | 183 | 2,335,469     |
| 8  | Medical Services (R) . . . . .           | 189 | 393,705,687   |
| 9  | Social Services . . . . .                | 195 | 75,586,872    |
| 10 | Family Preservation Program . . . . .    | 196 | 1,565,000     |
| 11 | Family Resource Networks (R) . . . . .   | 274 | 1,905,367     |
| 12 | Domestic Violence Legal                  |     |               |
| 13 | Services Fund . . . . .                  | 384 | 400,000       |
| 14 | James "Tiger" Morton Catastrophic        |     |               |
| 15 | Illness Fund . . . . .                   | 455 | 942,395       |
| 16 | Child Protective Services                |     |               |
| 17 | Case Workers . . . . .                   | 468 | 17,141,545    |
| 18 | Medical Services Trust Fund              |     |               |
| 19 | Transfer . . . . .                       | 512 | 5,000,000     |
| 20 | OSCAR and RAPIDS . . . . .               | 515 | 3,522,921     |
| 21 | WV Teaching Hospitals                    |     |               |
| 22 | Tertiary/Safety Net . . . . .            | 547 | *4,856,000    |
| 23 | Child Welfare System . . . . .           | 603 | 2,664,962     |
| 24 | In-Home Family Education . . . . .       | 688 | *750,000      |
| 25 | WV Works Separate State                  |     |               |
| 26 | Program . . . . .                        | 698 | 5,000,000     |
| 27 | Child Support Enforcement . . . . .      | 705 | 6,902,512     |
| 28 | Medicaid Auditing . . . . .              | 706 | 603,904       |
| 29 | Temporary Assistance for Needy           |     |               |
| 30 | Families/Maintenance of Effort . . . . . | 707 | 22,969,096    |
| 31 | Child Care Maintenance of                |     |               |
| 32 | Effort Match . . . . .                   | 708 | 5,693,743     |

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\*CLERK'S NOTE: The Governor reduced the amount on line 22 from \$6,356,000 to \$4,856,000.; and on line 24 reduced the amount from \$1,000,000 to \$750,000.

|    |                                     |     |                |
|----|-------------------------------------|-----|----------------|
| 33 | Child and Family Services . . . . . | 736 | 2,850,000      |
| 34 | Grants for Licensed Domestic        |     |                |
| 35 | Violence Programs and               |     |                |
| 36 | Statewide Prevention . . . . .      | 750 | 1,500,000      |
| 37 | Capital Outlay and Maintenance .    | 755 | 25,000         |
| 38 | Medical Services                    |     |                |
| 39 | Administrative Costs . . . . .      | 789 | 18,531,012     |
| 40 | Indigent Burials (R) . . . . .      | 851 | 1,700,000      |
| 41 | BRIM Premium . . . . .              | 913 | 834,187        |
| 42 | Rural Hospitals Under 150 Beds .    | 940 | 2,596,000      |
| 43 | Children's Trust Fund-Transfer .    | 951 | <u>300,000</u> |
| 44 | Total . . . . .                     |     | \$638,412,415  |

45 Any unexpended balances remaining in the appropriations  
 46 for Medical Services (fund 0403, activity 189), Family  
 47 Resource Networks (fund 0403, activity 274), and Indigent  
 48 Burials (fund 0403, activity 851) at the close of the fiscal  
 49 year 2008 are hereby reappropriated for expenditure during  
 50 the fiscal year 2009.

51 The above appropriation for James "Tiger" Morton  
 52 Catastrophic Illness Fund (activity 455) shall be transferred  
 53 to the James "Tiger" Morton Catastrophic Illness Fund (fund  
 54 5454) as provided by chapter sixteen, article five-q, of the  
 55 code.

56 The above appropriation for Domestic Violence Legal  
 57 Services Fund (activity 384) shall be transferred to the  
 58 Domestic Violence Legal Services Fund (fund 5455).

59 Notwithstanding the provisions of Title I, section three of  
 60 this bill, the secretary of the department of health and human  
 61 resources shall have the authority to transfer funds within the  
 62 above account: *Provided*, That no more than five percent of  
 63 the funds appropriated to one line item may be transferred to  
 64 other line items: *Provided, however*, That no funds from

65 other line items shall be transferred to the personal services  
66 line item.

67 From the above appropriation for Child Support  
68 Enforcement (fund 0403, activity 705) an amount not to  
69 exceed \$300,000 may be transferred to a local banking  
70 depository to be utilized to offset funds determined to be  
71 uncollectible.

72 From the above appropriation for the Grants for Licensed  
73 Domestic Violence Programs and Statewide Prevention  
74 (activity 750), \$500,000 shall be divided equally and  
75 distributed among the fourteen (14) licensed programs and  
76 the West Virginia Coalition Against Domestic Violence  
77 (WVCADV).

78 Any unexpended balance remaining in the appropriation  
79 for Grants for Licensed Domestic Violence Programs and  
80 Statewide Prevention (activity 750), shall be distributed  
81 according to the formula established by the Family Protection  
82 Services Board.

83 The secretary shall have authority to expend funds for the  
84 educational costs of those children residing in out-of-state  
85 placements, excluding the costs of special education  
86 programs.

87 The above appropriation for Children's Trust Fund-  
88 Transfer (activity 951) shall be transferred to the Children's  
89 Fund (fund 5469, org 0511).

90 From the WV Works Separate State Program (activity  
91 698), \$1,700,000 shall be transferred to the WV WORKS  
92 Separate State College Program Fund, and \$3,300,000 shall  
93 be transferred to the WV WORKS Separate State Two Parent  
94 Families Program Fund.

95       ~~\*From the above appropriation for Medical Services~~  
 96 ~~(activity 189), the division shall expend any funds necessary~~  
 97 ~~to comply with the Court Order dated March 15, 2000 in the~~  
 98 ~~Benjamin H. Et. Al. Joan Ohl case.~~

**DEPARTMENT OF MILITARY AFFAIRS  
AND PUBLIC SAFETY**

*65-Department of Military Affairs and Public Safety-  
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0430 FY 2009 Org 0601

|   |                                 |     |                |
|---|---------------------------------|-----|----------------|
| 1 | Unclassified (R) . . . . .      | 099 | \$540,719      |
| 2 | BRIM Premium . . . . .          | 913 | 9,404          |
| 3 | Homeland State Security         |     |                |
| 4 | Administrative Agency (R) . . . | 953 | 578,999        |
| 5 | WV Fire and EMS Survivor        |     |                |
| 6 | Benefit . . . . .               | 939 | <u>250,000</u> |
| 7 | Total . . . . .                 |     | \$1,379,122    |

8       Any unexpended balances remaining in the appropriations  
 9 for Unclassified (fund 0430, activity 099), Capital Outlay  
 10 (fund 0430, activity 511), Interoperable Communications  
 11 System-Surplus (fund 0430, activity 771) and Homeland  
 12 State Security Administrative Agency (fund 0430, activity  
 13 953), at the close of the fiscal year 2008 are hereby  
 14 reappropriated for expenditure during the fiscal year 2009.

*66-Adjutant General-  
State Militia*

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\*CLERK’S NOTE: The Governor deleted language on lines 95 through 98.



(WV Code Chapter 15)

Fund 0433 FY 2009 Org 0603

|   |                             |     |    |             |
|---|-----------------------------|-----|----|-------------|
| 1 | Personal Services . . . . . | 001 | \$ | 0           |
| 2 | Annual Increment . . . . .  | 004 |    | 0           |
| 3 | Employee Benefits . . . . . | 010 |    | 0           |
| 4 | Unclassified (R) . . . . .  | 099 |    | *19,954,605 |
| 5 | Mountaineer Challenge       |     |    |             |
| 6 | Academy . . . . .           | 709 |    | 0           |
| 7 | BRIM Premium . . . . .      | 913 |    | <u>0</u>    |
| 8 | Total . . . . .             |     | \$ | *19,954,605 |

9       Any unexpended balances remaining in the appropriations  
10 for Unclassified (fund 0433, activity 099), and Armory  
11 Capital Improvements—Surplus (fund 0433, activity 325) at  
12 the close of the fiscal year 2008 are hereby reappropriated for  
13 expenditure during the fiscal year 2009.

14       From the above appropriation an amount approved by the  
15 adjutant general and the secretary of military affairs and  
16 public safety may be transferred to the State Armory Board  
17 for operation and maintenance of National Guard Armories.

18       From the above appropriation for Unclassified (fund 0433,  
19 activity 099) ~~\*\$100,000 is for the Oak Hill Armory and an~~  
20 amount not less than \$1,200,000 is for the Mountaineer  
21 Challenge Academy.

*67-Adjutant General-  
Military Fund*

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\*CLERK’S NOTE: The Governor reduced the amount on line 4 from \$20,054,605 to \$19,954,605 and struck language on line 19.

(WV Code Chapter 15)

Fund 0605 FY 2009 Org 0603

|   |                              |     |    |         |
|---|------------------------------|-----|----|---------|
| 1 | Unclassified—Total . . . . . | 096 | \$ | 200,000 |
|---|------------------------------|-----|----|---------|

*68-West Virginia Parole Board*

(WV Code Chapter 62)

Fund 0440 FY 2009 Org 0605

|   |                                 |     |    |               |
|---|---------------------------------|-----|----|---------------|
| 1 | Personal Services . . . . .     | 001 | \$ | 191,650       |
| 2 | Annual Increment . . . . .      | 004 |    | 2,307         |
| 3 | Employee Benefits . . . . .     | 010 |    | 224,707       |
| 4 | Unclassified . . . . .          | 099 |    | 209,172       |
| 5 | Salaries of Members of West     |     |    |               |
| 6 | Virginia Parole Board . . . . . | 227 |    | 455,000       |
| 7 | BRIM Premium . . . . .          | 913 |    | <u>13,681</u> |
| 8 | Total . . . . .                 |     |    | \$1,096,517   |

*69-Division of Homeland Security and  
Emergency Management*

(WV Code Chapter 15)

Fund 0443 FY 2009 Org 0606

|   |                                   |     |    |         |
|---|-----------------------------------|-----|----|---------|
| 1 | Personal Services . . . . .       | 001 | \$ | 428,083 |
| 2 | Annual Increment . . . . .        | 004 |    | 8,060   |
| 3 | Employee Benefits . . . . .       | 010 |    | 166,375 |
| 4 | Unclassified (R) . . . . .        | 099 |    | 349,637 |
| 5 | Radiological Emergency            |     |    |         |
| 6 | Preparedness . . . . .            | 554 |    | 30,000  |
| 7 | Federal Funds/Grant Match (R) . . | 749 |    | 742,344 |
| 8 | Mine and Industrial Accident      |     |    |         |
| 9 | Rapid Response Call Center . .    | 781 |    | 558,154 |

|         |                                      |                |
|---------|--------------------------------------|----------------|
| Ch. 10] | APPROPRIATIONS                       | 131            |
| 10      | Early Warning Flood System (R) . 877 | 522,340        |
| 11      | BRIM Premium . . . . . 913           | 35,158         |
| 12      | Disaster Mitigation . . . . . 952    | 100,000        |
| 13      | WVU Charleston Poison                |                |
| 14      | Control Hotline . . . . . 944        | <u>596,100</u> |
| 15      | Total . . . . .                      | \$3,536,251    |

16 Any unexpended balances remaining in the appropriations  
17 for Unclassified (fund 0443, activity 099), Flood Reparations  
18 (fund 0443, activity 400), Homeland Security Over  
19 Obligation-Surplus (fund 0443, activity 693), Federal  
20 Funds/Grant Match (fund 0443, activity 749), Early Warning  
21 Flood System (fund 0443, activity 877), and Homeland  
22 Security Grant Match—Surplus (fund 0443, activity 957) at  
23 the close of the fiscal year 2008 are hereby reappropriated for  
24 expenditure during the fiscal year 2009.

*70-Division of Corrections-  
Central Office*

(WV Code Chapters 25, 28, 49 and 62)

Fund 0446 FY 2009 Org 0608

|   |                                 |                |
|---|---------------------------------|----------------|
| 1 | Personal Services . . . . . 001 | \$ 415,385     |
| 2 | Annual Increment . . . . . 004  | 7,235          |
| 3 | Employee Benefits . . . . . 010 | 130,271        |
| 4 | Unclassified . . . . . 099      | <u>103,470</u> |
| 5 | Total . . . . .                 | \$ 656,361     |

6 Any unexpended balance remaining in the appropriation  
7 for Management Information System (fund 0446, activity  
8 398) at the close of the fiscal year 2008 is hereby  
9 reappropriated for expenditure during the fiscal year 2009.

*71-Division of Corrections-  
Correctional Units*

(WV Code Chapters 25, 28, 49 and 62)

Fund 0450 FY 2009 Org 0608

|    |                                      |     |    |                |
|----|--------------------------------------|-----|----|----------------|
| 1  | Employee Benefits . . . . .          | 010 | \$ | 363,744        |
| 2  | Childrens Protection Act (R) . . . . | 090 |    | 927,500        |
| 3  | Unclassified . . . . .               | 099 |    | 1,303,949      |
| 4  | Charleston Work Release . . . . .    | 456 |    | 1,361,601      |
| 5  | Beckley Correctional Center . . . .  | 490 |    | 1,004,662      |
| 6  | Huntington Work Release . . . . .    | 495 |    | 902,862        |
| 7  | Anthony Center . . . . .             | 504 |    | 4,693,121      |
| 8  | Huttonsville Correctional Center     | 514 |    | 20,592,822     |
| 9  | Northern Correctional Facility . .   | 534 |    | 6,882,871      |
| 10 | Inmate Medical Expenses (R) . . .    | 535 |    | 22,726,064     |
| 11 | Pruntytown Correctional Center .     | 543 |    | 6,820,548      |
| 12 | Payments to Federal, County and/or   |     |    |                |
| 13 | Regional Jails . . . . .             | 555 |    | 20,000,000     |
| 14 | Corrections Academy . . . . .        | 569 |    | 1,287,167      |
| 15 | Martinsburg Correctional Center .    | 663 |    | 3,328,255      |
| 16 | Parole Services . . . . .            | 686 |    | 2,462,243      |
| 17 | Special Services . . . . .           | 687 |    | 3,183,086      |
| 18 | Capital Outlay and                   |     |    |                |
| 19 | Maintenance (R) . . . . .            | 755 |    | 2,000,000      |
| 20 | Stephens Correctional Facility . .   | 791 |    | 5,724,500      |
| 21 | St. Mary's Correctional Facility .   | 881 |    | 13,037,432     |
| 22 | Denmar Correctional Facility . . .   | 882 |    | 4,319,182      |
| 23 | Ohio County Correctional Facility    | 883 |    | 1,510,923      |
| 24 | Mt. Olive Correctional Facility . .  | 888 |    | 20,119,819     |
| 25 | Lakin Correctional Facility . . . .  | 896 |    | 10,470,456     |
| 26 | BRIM Premium . . . . .               | 913 |    | <u>923,862</u> |
| 27 | Total . . . . .                      |     |    | \$155,946,669  |

28 Any unexpended balances remaining in the appropriations  
 29 for Children's Protection Act (fund 0450, activity 090),  
 30 Unclassified- Surplus (fund 0450, activity 097), Inmate  
 31 Medical Expenses (fund 0450, activity 535), and Capital  
 32 Outlay and Maintenance (fund 0450, activity 755) at the

33 close of the fiscal year 2008 are hereby reappropriated for  
34 expenditure during the fiscal year 2009.

35 The commissioner of corrections shall, within fifteen days  
36 after the close of each six-month period of said fiscal year,  
37 file with the legislative auditor and the department of revenue  
38 an itemized report of expenditures made during the preceding  
39 six-month period. Such report shall include the total of  
40 expenditures made for personal services, annual increment,  
41 current expenses (inmate medical expenses and other),  
42 repairs and alterations and equipment.

43 The commissioner of corrections shall also have the  
44 authority to transfer between line items appropriated to the  
45 individual correctional units above and may transfer funds  
46 from the individual units to Payments to Federal, County  
47 and/or Regional Jails (fund 0450, activity 555) or Inmate  
48 Medical Expenses (fund 0450, activity 535).

49 From the above appropriation to Unclassified, on July 1,  
50 2008, the sum of three hundred thousand dollars shall be  
51 transferred to the department of agriculture-land division as  
52 advance payment for the purchase of food products; actual  
53 payments for such purchases shall not be required until such  
54 credits have been completely expended.

*72-West Virginia State Police*

(WV Code Chapter 15)

Fund 0453 FY 2009 Org 0612

|   |                                    |     |    |            |
|---|------------------------------------|-----|----|------------|
| 1 | Personal Services . . . . .        | 001 | \$ | 42,344,076 |
| 2 | Annual Increment . . . . .         | 004 |    | 250,154    |
| 3 | Employee Benefits . . . . .        | 010 |    | 8,635,864  |
| 4 | Childrens Protection Act . . . . . | 090 |    | 943,127    |
| 5 | Unclassified . . . . .             | 099 |    | 8,903,839  |

|     |                                       |                  |
|-----|---------------------------------------|------------------|
| 134 | APPROPRIATIONS                        | [Ch. 10          |
| 6   | Vehicle Purchase . . . . . 451        | 2,000,000        |
| 7   | Barracks Lease Payments . . . . . 556 | 440,088          |
| 8   | Communications and                    |                  |
| 9   | Other Equipment (R) . . . . . 558     | 1,013,285        |
| 10  | Trooper Retirement Fund . . . . . 605 | 4,250,347        |
| 11  | Retirement Systems-Unfunded           |                  |
| 12  | Liability . . . . . 775               | 1,271,000        |
| 13  | Handgun Administration Expense 747    | 78,388           |
| 14  | Capital Outlay and                    |                  |
| 15  | Maintenance (R) . . . . . 755         | 500,000          |
| 16  | Automated Fingerprint                 |                  |
| 17  | Identification System (R) . . . . 898 | 642,083          |
| 18  | BRIM Premium . . . . . 913            | <u>5,714,983</u> |
| 19  | Total . . . . .                       | \$76,987,234     |

20 Any unexpended balances remaining in the appropriations  
21 for Barracks Maintenance and Construction (fund 0453,  
22 activity 494), Communications and Other Equipment (fund  
23 0453, activity 558), Capital Outlay and Maintenance (fund  
24 0453, activity 755), Law Enforcement-Special Projects (fund  
25 0453, activity 787), and Automated Fingerprint Identification  
26 System (fund 0453, activity 898) at the close of the fiscal  
27 year 2008 are hereby reappropriated for expenditure during  
28 the fiscal year 2009.

29 From the above appropriation for Capital Outlay and  
30 Maintenance, the sum of \$250,000 shall be utilized for the  
31 construction of a new detachment in Calhoun County,  
32 provided that the Calhoun County Board of Education is  
33 willing to donate the land for the site to the State Police, and  
34 provided further that any site preparation needed on the site  
35 shall be completed as part of the donation.

36 From the above appropriation for Personal Services, an  
37 amount not less than \$25,000 shall be expended to offset the  
38 costs associated with providing police services for the West  
39 Virginia State Fair.

## (WV Code Chapter 9A)

Fund 0456 FY 2009 Org 0613

|    |                                     |     |    |               |
|----|-------------------------------------|-----|----|---------------|
| 1  | Personal Services . . . . .         | 001 | \$ | 1,080,974     |
| 2  | Annual Increment . . . . .          | 004 |    | 43,710        |
| 3  | Employee Benefits . . . . .         | 010 |    | 428,109       |
| 4  | Unclassified . . . . .              | 099 |    | 214,847       |
| 5  | Veterans' Field Offices . . . . .   | 228 |    | 175,985       |
| 6  | Veterans' Nursing Home (R) . . . .  | 286 |    | 6,511,329     |
| 7  | Veterans' Toll Free Assistance      |     |    |               |
| 8  | Line . . . . .                      | 328 |    | 5,000         |
| 9  | Veterans' Reeducation               |     |    |               |
| 10 | Assistance (R) . . . . .            | 329 |    | 211,604       |
| 11 | Veterans' Grant Program (R) . . . . | 342 |    | 150,000       |
| 12 | Memorial Day Patriotic Exercise .   | 697 |    | 20,000        |
| 13 | Educational Opportunities for       |     |    |               |
| 14 | Children of Deceased                |     |    |               |
| 15 | Veterans (R) . . . . .              | 854 |    | 100,000       |
| 16 | Veterans' Grave Markers . . . . .   | 473 |    | 15,750        |
| 17 | Veterans' Transportation . . . . .  | 485 |    | 975,000       |
| 18 | BRIM Premium . . . . .              | 913 |    | <u>23,860</u> |
| 19 | Total . . . . .                     |     | \$ | 9,956,168     |

20 Any unexpended balances remaining in the appropriations  
 21 for Veterans' Nursing Home (fund 0456, activity 286),  
 22 Veterans' Reeducation Assistance (fund 0456, activity 329),  
 23 Veterans' Grant Program (fund 0456, activity 342), Women's  
 24 Veterans' Monument (fund 0456, activity 385), Veterans'  
 25 Bonus (fund 0456, activity 483), and Educational  
 26 Opportunities for Children of Deceased Veterans (fund 0456,  
 27 activity 854) at the close of the fiscal year 2008 are hereby  
 28 reappropriated for expenditure during the fiscal year 2009.

29 The above appropriation for Veterans' Nursing Home  
 30 (fund 0456, activity 286) may be transferred to the Veterans

- 31 Facilities Support Fund (fund 6703, org 0613) at the  
32 discretion of the director of the Division of Veterans' Affairs.

*74-Division of Veterans' Affairs-  
Veterans' Home*

(WV Code Chapter 9A)

Fund 0460 FY 2009 Org 0618

|   |                             |     |    |               |
|---|-----------------------------|-----|----|---------------|
| 1 | Personal Services . . . . . | 001 | \$ | 745,703       |
| 2 | Annual Increment . . . . .  | 004 |    | 24,944        |
| 3 | Employee Benefits . . . . . | 010 |    | 340,249       |
| 4 | Unclassified . . . . .      | 099 |    | <u>80,019</u> |
| 5 | Total . . . . .             |     |    | \$1,190,915   |

*75-Fire Commission*

(WV Code Chapter 29)

Fund 0436 FY 2009 Org 0619

|   |                              |     |    |        |
|---|------------------------------|-----|----|--------|
| 1 | Unclassified—Total . . . . . | 096 | \$ | 87,853 |
|---|------------------------------|-----|----|--------|

*76-Division of Criminal Justice Services*

(WV Code Chapter 15)

Fund 0546 FY 2009 Org 0620

|   |  |     |    |              |
|---|--|-----|----|--------------|
| 1 | Personal Services . . . . .            | 001 | \$ | 309,419      |
| 2 | Annual Increment . . . . .             | 004 |    | 4,525        |
| 3 | Employee Benefits . . . . .            | 010 |    | 104,818      |
| 4 | Unclassified . . . . .                 | 099 |    | 136,879      |
| 5 | Community Corrections (R) . . . . .    | 561 |    | 3,500,000    |
| 6 | Statistical Analysis Program . . . . . | 597 |    | 51,329       |
| 7 | Grants Program . . . . .               | 694 |    | 500,000      |
| 8 | Child Advocacy Centers . . . . .       | 458 |    | 1,000,000    |
| 9 | BRIM Premium . . . . .                 | 913 |    | <u>1,660</u> |



10 Total . . . . . \$ 5,608,630

11 Any unexpended balances remaining in the appropriations  
 12 for Community Corrections—Surplus(fund 0546, activity  
 13 060) and Community Corrections (fund 0546, activity 561)  
 14 at the close of the fiscal year 2008 are hereby reappropriated  
 15 for expenditure during the fiscal year 2009.

16 From the above appropriation for Child Advocacy Centers  
 17 (fund 0546, activity 458), the division may retain an amount  
 18 not to exceed 5% of the total appropriation for administrative  
 19 purposes.

*77-Division of Juvenile Services*

(WV Code Chapter 49)

Fund 0570 FY 2009 Org 0621

|    |   |              |
|----|---|--------------|
| 1  | Jones Building Treatment Center . 261   | \$ 1,770,000 |
| 2  | Statewide Reporting Centers . . . . 262 | 1,480,700    |
| 3  | Robert L. Shell Juvenile                |              |
| 4  | Center (R) . . . . . 267                | 2,097,569    |
| 5  | Central Office (R) . . . . . 701        | 2,307,233    |
| 6  | Capital Outlay and                      |              |
| 7  | Maintenance (R) . . . . . 755           | 500,000      |
| 8  | Gene Spadaro Juvenile                   |              |
| 9  | Center (R) . . . . . 793                | 2,101,329    |
| 10 | BRIM Premium . . . . . 913              | 113,016      |
| 11 | WV Industrial Home for                  |              |
| 12 | Youth (R) . . . . . 979                 | 11,177,004   |
| 13 | Davis Center (R) . . . . . 980          | 2,982,871    |
| 14 | Eastern Regional Juvenile               |              |
| 15 | Center (R) . . . . . 981                | 2,058,683    |
| 16 | Northern Regional Juvenile              |              |
| 17 | Center (R) . . . . . 982                | 1,110,465    |
| 18 | North Central Regional                  |              |
| 19 | Juvenile Center (R) . . . . . 983       | 1,871,644    |

|    |                                   |     |                  |
|----|-----------------------------------|-----|------------------|
| 20 | Southern Regional Juvenile        |     |                  |
| 21 | Center (R) . . . . .              | 984 | 1,930,002        |
| 22 | Tiger Morton Center (R) . . . . . | 985 | 2,077,929        |
| 23 | Donald R. Kuhn Juvenile           |     |                  |
| 24 | Center (R) . . . . .              | 986 | 4,152,672        |
| 25 | J.M. "Chick" Buckbee              |     |                  |
| 26 | Juvenile Center (R) . . . . .     | 987 | <u>1,989,111</u> |
| 27 | Total . . . . .                   |     | \$39,720,228     |

28 Any unexpended balances remaining in the appropriations  
 29 for Robert L. Shell Juvenile Center (fund 0570, activity 267),  
 30 Central Office (fund 0570, activity 701), Capital Outlay and  
 31 Maintenance (fund 0570, activity 755), Southern WV Youth  
 32 Diagnostic Center (fund 0570, activity 792), Gene Spadaro  
 33 Juvenile Center (fund 0570, activity 793), WV Industrial  
 34 Home for Youth (fund 0570, activity 979), Davis Center  
 35 (fund 0570, activity 980), Eastern Regional Juvenile Center  
 36 (fund 0570, activity 981), Northern Regional Juvenile Center  
 37 (fund 0570, activity 982), North Central Regional Juvenile  
 38 Center (fund 0570, activity 983), Southern Regional Juvenile  
 39 Center (fund 0570, activity 984), Tiger Morton Center (fund  
 40 0570, activity 985), Donald R. Kuhn Juvenile Center (fund  
 41 0570, activity 986), J.M. "Chick" Buckbee Juvenile Center  
 42 (fund 0570, activity 987), Salem Canine (fund 0570, activity  
 43 988), Davis Canine (fund 0570, activity 989), and The  
 44 Academy (fund 0570, activity 990) at the close of the fiscal  
 45 year 2008 are hereby reappropriated for expenditure during  
 46 the fiscal year 2009, with the exception of fund 0570, fiscal  
 47 year 2004, activity 701 (\$501.03); fund 0570, fiscal year  
 48 2006, activity 267 (\$216,431.76); fund 0570, fiscal year  
 49 2007, activity 267 (\$9,285.16); Fund 0570 fiscal year 2006,  
 50 activity 792 (\$6,611.33); fund 0570, fiscal year 2007, activity  
 51 792 (\$100,000.00); fund 0570, fiscal year 2006, activity 793  
 52 (\$42,198.25); fund 0570, fiscal year 2007, activity 793  
 53 (\$35,000.00); fund 0570, fiscal year 2006, activity 701  
 54 (\$165,327.61); fund 0570, fiscal year 2007, activity 701  
 55 (\$29,227.19); fund 0570, fiscal year 2006, activity 979  
 56 (\$211,279.38); fund 0570, fiscal year 2007, activity 979

57 (\$130,000); fund 0570, fiscal year 2006, activity 980  
58 (\$3,541.98); fund 0570, fiscal year 2006, activity 981  
59 (\$127,700.58); fund 0570, fiscal year 2007, activity 981  
60 (\$460,000.00); fund 0570, fiscal year 2006, activity 983  
61 (\$52,532.92); fund 0570, fiscal year 2007, activity 983  
62 (\$73.00); fund 0570, fiscal year 2006, activity 984  
63 (\$46,871.46); fund 0570, fiscal year 2006, activity 985  
64 (\$53,802.04); fund 0570, fiscal year 2007, activity 985  
65 (\$63,028.27); fund 0570, fiscal year 2006, activity 986  
66 (\$11,391.53); fund 0570, fiscal year 2006, activity 987  
67 (\$124,477.40); fund 0570, fiscal year 2007, activity 987  
68 (\$25,000.00); fund 0570, fiscal year 2007, activity 988  
69 (\$36,044.51); fund 0570, fiscal year 2007, activity 989  
70 (\$1,436.77); fund 0570, fiscal year 2006, activity 990  
71 (\$42,508.92); fund 0570, fiscal year 2007, activity 990  
72 (\$5,728.91); which shall expire on June 30, 2008.

73 The director shall, within fifteen days after the close of  
74 each six-month period of said fiscal year, file with the  
75 legislative auditor and the department of revenue an itemized  
76 report of expenditures made during the preceding six-month  
77 period. Such report shall include the total expenditures made  
78 for personal services, annual increment, current expenses,  
79 repairs and alterations, and equipment.

80 From the above appropriations, on July 1, 2008, the sum  
81 of fifty thousand dollars shall be transferred to the  
82 department of agriculture-land division as advance payment  
83 for the purchase of food products; actual payments for such  
84 purchases shall not be required until such credits have been  
85 completely expended.

86 The director of juvenile services shall also have the  
87 authority to transfer between line items appropriated to the  
88 individual juvenile centers above.

(WV Code Chapter 5F)

Fund 0585 FY 2009 Org 0622

|   |                             |     |    |              |
|---|-----------------------------|-----|----|--------------|
| 1 | Personal Services . . . . . | 001 | \$ | 1,348,894    |
| 2 | Annual Increment . . . . .  | 004 |    | 38,090       |
| 3 | Employee Benefits . . . . . | 010 |    | 577,613      |
| 4 | Unclassified (R) . . . . .  | 099 |    | 440,451      |
| 5 | BRIM Premium . . . . .      | 913 |    | <u>7,026</u> |
| 6 | Total . . . . .             |     |    | \$2,412,074  |

7 Any unexpended balances remaining in the appropriations  
 8 for Equipment (fund 0585, activity 070) and Unclassified  
 9 (fund 0585, activity 099) at the close of the fiscal year 2008  
 10 are hereby reappropriated for expenditure during the fiscal  
 11 year 2009.

**DEPARTMENT OF REVENUE***79-Office of the Secretary*

(WV Code Chapter 11)

Fund 0465 FY 2009 Org 0701

|   |                              |     |    |         |
|---|------------------------------|-----|----|---------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 876,428 |
|---|------------------------------|-----|----|---------|

2 Any unexpended balance remaining in the appropriation  
 3 for Unclassified (fund 0465, activity 099) at the close of the  
 4 fiscal year 2008 is hereby reappropriated for expenditure  
 5 during the fiscal year 2009.

*80-Tax Division*

(WV Code Chapter 11)

Fund 0470 FY 2009 Org 0702

|   |                                    |     |    |               |
|---|------------------------------------|-----|----|---------------|
| 1 | Personal Services (R) . . . . .    | 001 | \$ | 13,178,514    |
| 2 | Annual Increment . . . . .         | 004 |    | 322,206       |
| 3 | Employee Benefits (R) . . . . .    | 010 |    | 4,722,547     |
| 4 | Unclassified (R) . . . . .         | 099 |    | 8,999,097     |
| 5 | GIS Development Project (R) . . .  | 562 |    | 150,000       |
| 6 | Remittance Processor (R) . . . . . | 570 |    | 381,015       |
| 7 | Multi State Tax Commission . . . . | 653 |    | 77,958        |
| 8 | BRIM Premium . . . . .             | 913 |    | <u>14,420</u> |
| 9 | Total . . . . .                    |     |    | \$27,845,757  |

10 Any unexpended balances remaining in the appropriations  
 11 for Personal Services (fund 0470, activity 001), Employee  
 12 Benefits (fund 0470, activity 010), Tax Technology Upgrade  
 13 (fund 0470, activity 094), Unclassified (fund 0470, activity  
 14 099), Integrated Tax Accounting System (fund 0470, activity  
 15 292), GIS Development Project (fund 0470, activity 562),  
 16 and Remittance Processor (fund 0470, activity 570) at the  
 17 close of the fiscal year 2008 are hereby reappropriated for  
 18 expenditure during the fiscal year 2009.

*81-State Budget Office*

(WV Code Chapter 11B)

Fund 0595 FY 2009 Org 0703

|   |                              |     |    |              |
|---|------------------------------|-----|----|--------------|
| 1 | Unclassified (R) . . . . .   | 099 | \$ | 936,212      |
| 2 | Pay Equity Reserve . . . . . | 364 |    | 250,000      |
| 3 | BRIM Premium . . . . .       | 913 |    | <u>5,183</u> |
| 4 | Total . . . . .              |     | \$ | 1,191,395    |

5 Any unexpended balance remaining in the appropriation  
 6 for Unclassified (fund 0595, activity 099) at the close of the  
 7 fiscal year 2008 is hereby reappropriated for expenditure  
 8 during the fiscal year 2009.

*82-West Virginia Office of Tax Appeals*

(WV Code Chapter 11)

Fund 0593 FY 2009 Org 0709

1 Unclassified-Total (R) . . . . . 096 \$ 685,819

2 Any unexpended balance remaining in the appropriation  
3 for Unclassified—Total (fund 0593, activity 096) at the close  
4 of the fiscal year 2008 is hereby reappropriated for  
5 expenditure during the fiscal year 2009.

*83-Division of Professional and Occupational Licenses-  
State Athletic Commission*

(WV Code Chapter 29)

Fund 0523 FY 2009 Org 0933

1 Unclassified-Total . . . . . 096 \$ 89,500

**DEPARTMENT OF TRANSPORTATION**

*84-State Rail Authority*

(WV Code Chapter 29)

Fund 0506 FY 2009 Org 0804

|   |                        |     |    |                |
|---|------------------------|-----|----|----------------|
| 1 | Unclassified . . . . . | 099 | \$ | 2,617,304      |
| 2 | BRIM Premium . . . . . | 913 |    | <u>205,260</u> |
| 3 | Total . . . . .        |     | \$ | 2,822,564      |

4 From the above appropriation for Unclassified (activity  
5 099), \$30,000 shall be expended for improvements at the  
6 Duffield Station.

*85-Division of Public Transit*

(WV Code Chapter 17)

Fund 0510 FY 2009 Org 0805

|   |                                  |     |    |                  |
|---|----------------------------------|-----|----|------------------|
| 1 | Unclassified (R) . . . . .       | 099 | \$ | 1,758,342        |
| 2 | Federal Funds/Grant Match(R) . . | 749 |    | <u>1,265,000</u> |
| 3 | Total . . . . .                  |     | \$ | 3,023,342        |

4 Any unexpended balances remaining in the appropriations  
5 for Unclassified (fund 0510, activity 099), Grant Match (fund  
6 0510, activity 388), and Federal Funds/Grant Match (fund  
7 0510, activity 749) at the close of the fiscal year 2008 are  
8 hereby reappropriated for expenditure during the fiscal year  
9 2009.

*86-Public Port Authority*

(WV Code Chapter 17)

Fund 0581 FY 2009 Org 0806

|   |                            |     |    |              |
|---|----------------------------|-----|----|--------------|
| 1 | Unclassified (R) . . . . . | 099 | \$ | 437,851      |
| 2 | BRIM Premium . . . . .     | 913 |    | <u>5,570</u> |
| 3 | Total . . . . .            |     | \$ | 443,421      |

4 Any unexpended balances remaining in the appropriations  
5 for Unclassified-Total (fund 0581, activity 096) and  
6 Unclassified (fund 0581, activity 099) at the close of the  
7 fiscal year 2008 are hereby reappropriated for expenditure  
8 during the fiscal year 2009.

*87-Aeronautics Commission*

(WV Code Chapter 29)

Fund 0582 FY 2009 Org 0807

|   |                            |     |    |                |
|---|----------------------------|-----|----|----------------|
| 1 | Unclassified (R) . . . . . | 099 | \$ | 1,317,600      |
| 2 | Civil Air Patrol . . . . . | 234 |    | <u>163,258</u> |
| 3 | Total . . . . .            |     | \$ | 1,480,858      |

4 Any unexpended balances remaining in the appropriations  
 5 for Unclassified-Surplus (fund 0582, activity 097) and  
 6 Unclassified (fund 0582, activity 099) at the close of the  
 7 fiscal year 2008 are hereby reappropriated for expenditure  
 8 during the fiscal year 2009.

9 From the above appropriation for Unclassified, the sum of  
 10 \$120,000 shall be distributed equally to each of the twelve  
 11 local Civil Air Patrol Squadrons.

### **BUREAU OF SENIOR SERVICES**

*88-Bureau of Senior Services*

(WV Code Chapter 29)

Fund 0420 FY 2009 Org 0508

1 Any unexpended balance remaining in the appropriation  
 2 for Unclassified-Total-Surplus (fund 0420, activity 284) at  
 3 the close of the fiscal year 2008 is hereby reappropriated for  
 4 expenditure during the fiscal year 2009.

### **HIGHER EDUCATION**

*89-West Virginia Council for  
 Community and Technical College Education-  
 Control Account*

(WV Code Chapter 18B)

Fund 0596 FY 2009 Org 0420



|    |                                    |     |                  |
|----|------------------------------------|-----|------------------|
| 1  | New River Community and            |     |                  |
| 2  | Technical College . . . . .        | 358 | \$ 5,673,054     |
| 3  | West Virginia Council for          |     |                  |
| 4  | Community and Technical            |     |                  |
| 5  | Education (R) . . . . .            | 392 | 886,664          |
| 6  | Eastern West Virginia Community    |     |                  |
| 7  | and Technical College . . . . .    | 412 | 2,062,115        |
| 8  | West Virginia State Community      |     |                  |
| 9  | and Technical College . . . . .    | 445 | 4,038,673        |
| 10 | Southern West Virginia Community   |     |                  |
| 11 | and Technical College . . . . .    | 446 | 8,633,197        |
| 12 | West Virginia Northern Community   |     |                  |
| 13 | and Technical College . . . . .    | 447 | 7,710,716        |
| 14 | West Virginia University-          |     |                  |
| 15 | Parkersburg . . . . .              | 471 | 9,735,011        |
| 16 | West Virginia University Institute |     |                  |
| 17 | for Technology Community           |     |                  |
| 18 | and Technical College . . . . .    | 486 | 3,896,885        |
| 19 | Marshall Community and             |     |                  |
| 20 | Technical College . . . . .        | 487 | 5,911,742        |
| 21 | Community College                  |     |                  |
| 22 | Workforce Development (R) .        | 878 | 1,000,000        |
| 23 | Blue Ridge Community and           |     |                  |
| 24 | Technical College . . . . .        | 885 | 2,955,463        |
| 25 | College Transition Program (R) ..  | 887 | 333,500          |
| 26 | West Virginia Advance Workforce    |     |                  |
| 27 | Development (R) . . . . .          | 893 | 4,000,000        |
| 28 | Technical Program                  |     |                  |
| 29 | Development (R) . . . . .          | 894 | 2,500,000        |
| 30 | Pierpont Community and             |     |                  |
| 31 | Technical College . . . . .        | 930 | <u>8,328,395</u> |
| 32 | Total . . . . .                    |     | \$ 67,665,415    |

33 Any unexpended balances remaining in the appropriations  
34 for Unclassified-Surplus (fund 0596, activity 097),  
35 Unclassified (fund 0596, activity 099), the West Virginia  
36 Council for Community and Technical Education (fund 0596,

37 activity 392), Community College Workforce Development  
 38 (fund 0596, activity 878), College Transition Program (fund  
 39 0596, activity 887), West Virginia Advance Workforce  
 40 Development (fund 0596, activity 893), and Technical  
 41 Program Development (fund 0596, activity 894) at the close  
 42 of the fiscal year 2008 are hereby reappropriated for  
 43 expenditure during the fiscal year 2009.

44 From the above appropriation for the Community College  
 45 Workforce Development (activity 878), \$200,000 shall be  
 46 expended on the Mine Training Program in Southern West  
 47 Virginia.

48 The institutions operating with special revenue funds  
 49 and/or federal funds shall pay their proportionate share of the  
 50 Board of Risk and Insurance Management total insurance  
 51 premium cost for their respective institutions.

*90-Higher Education Policy Commission-  
 Administration-  
 Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2009 Org 0441

|   |                                  |     |               |
|---|----------------------------------|-----|---------------|
| 1 | Unclassified . . . . .           | 099 | \$ 2,981,965  |
| 2 | Higher Education Grant Program . | 164 | *33,660,000   |
| 3 | WVNET . . . . .                  | 169 | 2,072,112     |
| 4 | VISTA E-Learning (R) . . . . .   | 519 | 300,000       |
| 5 | PROMISE Scholarship—             |     |               |
| 6 | Transfer . . . . .               | 800 | 14,616,000    |
| 7 | HEAPS Grant Program . . . . .    | 867 | 5,003,696     |
| 8 | BRIM Premium . . . . .           | 913 | <u>56,054</u> |
| 9 | Total . . . . .                  |     | \$ 59,114,403 |

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\*CLERK’S NOTE: The Governor reduced the amount on line 2 from \$34,084,576 to \$33,660,000.

10 Any unexpended balances remaining in the appropriations  
 11 for Research Challenge (fund 0589, activity 502), VISTA E-  
 12 Learning (fund 0589, activity 519), and Vice Chancellor for  
 13 Health Sciences-Rural Health Initiative Program and Site  
 14 Support (fund 0589, activity 595) at the close of the fiscal  
 15 year 2008 are hereby reappropriated for expenditure during  
 16 the fiscal year 2009.

17 The above appropriation for Higher Education Grant  
 18 Program (activity 164) shall be transferred to the Higher  
 19 Education Grant Fund (fund 4933, org 0441) established by  
 20 chapter eighteen-c, article five, section three.

21 The above appropriation for PROMISE Scholarship-  
 22 Transfer (activity 800) shall be transferred to the PROMISE  
 23 Scholarship Fund (fund 4296, org 0441) established by  
 24 chapter eighteen-c, article seven, section seven.

25 From the above appropriation for Unclassified (activity  
 26 099) \$800,000 is for West Liberty State College Highland  
 27 Complex.

*91-Higher Education Policy Commission-  
 System-Control Account*

(WV Code Chapter 18B)

Fund 0586 FY 2009 Org 0442

|   |                                   |     |              |
|---|-----------------------------------|-----|--------------|
| 1 | WVU School of Health Science-     |     |              |
| 2 | Eastern Division . . . . .        | 056 | \$ 2,605,638 |
| 3 | School of Osteopathic Medicine .  | 172 | 7,448,615    |
| 4 | Marshall Medical School . . . . . | 173 | 12,331,828   |
| 5 | WVU—School of Health              |     |              |
| 6 | Sciences . . . . .                | 174 | 17,095,568   |
| 7 | WVU School of Health Sciences-    |     |              |
| 8 | Charleston Division . . . . .     | 175 | 2,615,805    |
| 9 | Rural Health Outreach Programs .  | 377 | 600,000      |

|    |  |     |                  |
|----|--|-----|------------------|
| 10 | School of Osteopathic Medicine                                 |     |                  |
| 11 | BRIM Subsidy . . . . .   | 403 | 174,475          |
| 12 | Bluefield State College . . . . .                              | 408 | 6,442,321        |
| 13 | Concord University . . . . .                                   | 410 | 9,977,767        |
| 14 | Fairmont State University . . . . .                            | 414 | 13,769,754       |
| 15 | Glenville State College . . . . .                              | 428 | 6,489,617        |
| 16 | Shepherd University . . . . .                                  | 432 | 11,018,482       |
| 17 | West Liberty State College . . . . .                           | 439 | 9,125,137        |
| 18 | West Virginia State University . .                             | 441 | 10,734,590       |
| 19 | Marshall University . . . . .                                  | 448 | 49,306,129       |
| 20 | Marshall University Medical                                    |     |                  |
| 21 | School BRIM Subsidy . . . . .                                  | 449 | 1,015,462        |
| 22 | West Virginia University . . . . .                             | 459 | *115,142,018     |
| 23 | West Virginia University School                                |     |                  |
| 24 | of Medicine BRIM Subsidy . .                                   | 460 | 1,400,038        |
| 25 | West Virginia University Institute                             |     |                  |
| 26 | for Technology . . . . .                                       | 479 | 8,547,469        |
| 27 | State Priorities-Brownfield                                    |     |                  |
| 28 | Professional Development (R)                                   | 531 | *802,830         |
| 29 | Rural Health Initiative-Medical                                |     |                  |
| 30 | Schools Support . . . . .                                      | 581 | 475,235          |
| 31 | Area Health Education Centers . .                              | 743 | 0                |
| 32 | West Virginia State University                                 |     |                  |
| 33 | Land Grant Match . . . . .                                     | 956 | 1,908,000        |
| 34 | West Virginia University—                                      |     |                  |
| 35 | Potomac State . . . . .  | 994 | <u>4,604,493</u> |
| 36 | Total . . . . .  |     | \$294,101,271    |
| 37 | Any unexpended balances remaining in the                       |     |                  |
| 38 | appropriations for Marshall School of Medicine-Surplus         |     |                  |
| 39 | (fund 0586, activity 452), WVUIT-ABET Accreditation            |     |                  |
| 40 | (fund 0586, activity 454), Jackson's Mill (fund 0586, activity |     |                  |
| 41 | 461), State Priorities-Brownfield Professional Development     |     |                  |
| 42 | (fund 0586, activity 531), Jackson's Mill-Surplus (fund 0586,  |     |                  |

\*CLERK'S NOTE: The Governor reduced the amount on line 22 from \$115,512,018 to \$115,142,018; and on line 28, he reduced the amount from \$902,830 to \$802,830.

43 activity 842), Higher Education-Special Projects-Surplus  
44 (fund 0586, activity 946), and Blanchette Rockefeller  
45 Neurological Services-Surplus (fund 0586, activity 947) at  
46 the close of fiscal year 2008 are hereby reappropriated for  
47 expenditure during the fiscal year 2009.

48 Included in the appropriation for WVU—School of  
49 Health Sciences and Marshall Medical School are \$943,080  
50 and \$295,477, respectively, for Graduate Medical Education  
51 which may be transferred to the Department of Health and  
52 Human Resources' Medical Service Fund (fund 5084) for the  
53 purpose of matching federal or other funds to be used in  
54 support of graduate medical education, subject to approval of  
55 the Vice-Chancellor for Health Sciences and the Secretary of  
56 the Department of Health and Human Resources. If approval  
57 is denied, the funds may be utilized by the respective  
58 institutions for expenditure on graduate medical education.

59 Included in the above appropriation for WVU—School  
60 of Health Sciences is \$800,000 for the Blanchette Rockefeller  
61 Project.

62 Included in the above appropriation for Glenville State  
63 College is \$200,000 for a 13 county consortium between the  
64 County School Systems and Glenville State and \$25,000 is  
65 for Glenville State Athletic Program.

66 Included in the above appropriation for West Virginia  
67 University is \$34,500 for the Marshall and WVU Faculty and  
68 Course Development International Study Project, \$246,429  
69 for the WVU Law School—Skills Program, \$147,857 for the  
70 WVU Coal and Energy Research Bureau, \$19,714 for the  
71 WVU College of Engineering and Mineral  
72 Resources—Diesel Training—Transfer, \$82,500 for the  
73 WVU-Sheep Study, \$500,000 for the Mining Engineering  
74 Program, \$500,000 for the Center for Multiple Sclerosis  
75 Program, \$550,000 for the Davis College of Forestry  
76 Agriculture and Consumer Sciences various improvements,

77 \$200,000 for Reedsville Arena, Meat Labs, and outreach  
78 activities, \$80,000 for a Landscape Architect at Davis  
79 College of Forestry Agriculture and Consumer Sciences,  
80 \$100,000 for the WVU-Soil Testing Program, \$100,000 for  
81 a veterinarian, 50,000 for the WVU Cancer Study, 220,000  
82 for the WVU Petroleum Engineering Program, ~~\*\$260,000 for~~  
83 ~~the Alzheimer's Disease Registry, \$110,000~~ \$100,000 for the  
84 rifle team, \$250,000 for the Jackson's Mill Arena building,  
85 \$500,000 for the Jackson's Mill Infrastructure electricity and  
86 water, and \$100,000 for Turkey Research at Raymann  
87 Memorial Farms.

88 Included in the above appropriation for Marshall Medical  
89 School is \$417,351 for the Marshall University Forensic Lab  
90 and \$175,061 for the Marshall University Center for Rural  
91 Health.

92 Included in the above appropriation for Marshall  
93 University is \$181,280 for the Marshall University-Southern  
94 WV CTC 2+2 Program.

95 Included in the above appropriation for Concord  
96 University is \$100,000 for the Geographic Alliance.

97 Included in the above appropriation for Shepherd  
98 University is \$100,000 for the Gateway Program.

99 ~~\*From the above appropriation for State Priorities-~~  
100 ~~Brownfield Professional Development (fund 0586, activity~~  
101 ~~531) \$50,000 shall be made payable to both Marshall~~  
102 ~~University and West Virginia University for a demographer.~~

103 From the above appropriation for Rural Health Outreach  
104 Programs (fund 0586, activity 377) includes rural health

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\*CLERK'S NOTE: The Governor struck language on lines 82 and 83; on line 83 he reduced the amount from \$110,000 to \$100,000, and he struck language on lines 99 through 102.

105 activities and programs; rural residency development and  
106 education; and rural outreach activities. These funds shall be  
107 dispersed equally among the three (3) medical schools.

108 From the above appropriation for WVU-Potomac State is  
109 \$50,000 for maintenance, repairs and equipment, \$75,000 for  
110 Potomac State Farms for maintenance, repairs, and  
111 equipment and \$82,500 for the Potomac State Equine  
112 Program.

113 The institutions operating from special revenue funds  
114 and/or federal funds shall pay their proportionate share of the  
115 Board of Risk and Insurance Management total insurance  
116 premium cost for their respective institutions.

117 From the above appropriations to the respective medical  
118 schools, the line items for BRIM subsidies funding shall be  
119 paid to the Board of Risk and Insurance Management as a  
120 general revenue subsidy against the "Total Premium Billed"  
121 to each institution as part of the full cost of their malpractice  
122 insurance coverage.

123 Total TITLE II, Section 1-  
124 General Revenue . . . . . \$3,902,732,810

1 **Sec. 2. Appropriations from state road fund.**-From the  
2 state road fund there are hereby appropriated conditionally  
3 upon the fulfillment of the provisions set forth in article two,  
4 chapter eleven-b of the code the following amounts, as  
5 itemized, for expenditure during the fiscal year two thousand  
6 nine.

**DEPARTMENT OF TRANSPORTATION**

*92-Division of Motor Vehicles*

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2009 Org 0802

|   |                         | <b>Activity</b> | <b>State<br/>Road<br/>Fund</b> |
|---|-------------------------|-----------------|--------------------------------|
| 1 | Personal Services ..... | 001             | \$ 15,153,148                  |
| 2 | Annual Increment .....  | 004             | 318,804                        |
| 3 | Employee Benefits ..... | 010             | 6,626,528                      |
| 4 | Unclassified .....      | 099             | <u>12,747,633</u>              |
| 5 | Total .....             |                 | \$ 34,846,113                  |

*93-Division of Highways*

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2009 Org 0803

|    |                                  |     |                  |
|----|----------------------------------|-----|------------------|
| 1  | Debt Service .....               | 040 | \$ 50,000,000    |
| 2  | Maintenance .....                | 237 | 296,608,000      |
| 3  | Maintenance, Contract Paving and |     |                  |
| 4  | Secondary Road Maintenance       | 272 | 100,000,000      |
| 5  | Bridge Repair and Replacement .. | 273 | 50,000,000       |
| 6  | Inventory Revolving .....        | 275 | 2,000,000        |
| 7  | Equipment Revolving .....        | 276 | 15,000,000       |
| 8  | General Operations .....         | 277 | 45,370,538       |
| 9  | Interstate Construction .....    | 278 | 80,000,000       |
| 10 | Other Federal Aid Programs ....  | 279 | 325,700,000      |
| 11 | Appalachian Programs .....       | 280 | 160,000,000      |
| 12 | Nonfederal Aid Construction .... | 281 | 30,000,000       |
| 13 | Highway Litter Control .....     | 282 | <u>1,699,000</u> |
| 14 | Total .....                      |     | \$ 1,156,377,538 |

15 The above appropriations are to be expended in  
 16 accordance with the provisions of chapters seventeen and  
 17 seventeen-c of the code.

18 The commissioner of highways shall have the authority  
 19 to operate revolving funds within the state road fund for the



20 operation and purchase of various types of equipment used  
 21 directly and indirectly in the construction and maintenance of  
 22 roads and for the purchase of inventories and materials and  
 23 supplies.

24 There is hereby appropriated within the above items  
 25 sufficient money for the payment of claims, accrued or  
 26 arising during this budgetary period, to be paid in accordance  
 27 with sections seventeen and eighteen, article two, chapter  
 28 fourteen of the code.

29 It is the intent of the Legislature to capture and match all  
 30 federal funds available for expenditure on the Appalachian  
 31 highway system at the earliest possible time. Therefore,  
 32 should amounts in excess of those appropriated be required  
 33 for the purposes of Appalachian programs, funds in excess of  
 34 the amount appropriated may be made available upon  
 35 recommendation of the commissioner and approval of the  
 36 governor. Further, for the purpose of Appalachian programs,  
 37 funds appropriated to line items may be transferred to other  
 38 line items upon recommendation of the commissioner and  
 39 approval of the governor.

40 Total TITLE II, Section 2-  
 41 State Road Fund \$1,191,937,541

1 **Sec. 3. Appropriations from other funds.**-From the  
 2 funds designated there are hereby appropriated conditionally  
 3 upon the fulfillment of the provisions set forth in article two,  
 4 eleven-b of the code the following amounts, as itemized, for  
 5 expenditure during the fiscal year two thousand nine.

## LEGISLATIVE

### *94-Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 1731 FY 2009 Org 2300

|    | <b>Activity</b>   | <b>Other Funds</b> |
|----|---|--------------------|
| 1  | Personal Services . . . . . 001                             | \$ 286,000         |
| 2  | Annual Increment . . . . . 004                              | 6,200              |
| 3  | Employee Benefits . . . . . 010                             | 109,200            |
| 4  | Unclassified . . . . . 099                                  | 135,603            |
| 5  | Economic Loss Claim Payment                                 |                    |
| 6  | Fund (R) . . . . . 334                                      | <u>3,597,775</u>   |
| 7  | Total . . . . .   | \$4,134,778        |
| 8  | Any unexpended balance remaining in the appropriation       |                    |
| 9  | for Economic Loss Claim Payment Fund (fund 1731, activity   |                    |
| 10 | 334) at the close of the fiscal year 2008 is hereby         |                    |
| 11 | reappropriated for expenditure during the fiscal year 2009. |                    |

**EXECUTIVE**

*95-Auditor's Office-  
Land Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2009 Org 1200

|    |  |                |
|----|--|----------------|
| 1  | Personal Services . . . . . 001                                | \$ 286,431     |
| 2  | Annual Increment . . . . . 004                                 | 9,300          |
| 3  | Employee Benefits . . . . . 010                                | 134,986        |
| 4  | Unclassified . . . . . 099                                     | <u>676,054</u> |
| 5  | Total . . . . .  | \$ 1,106,771   |
| 6  | There is hereby appropriated from this fund, in addition       |                |
| 7  | to the above appropriation, the necessary amount for the       |                |
| 8  | expenditure of funds other than personal services or           |                |
| 9  | employee benefits to enable the division to pay the direct     |                |
| 10 | expenses relating to land sales as provided in chapter eleven- |                |
| 11 | a of the West Virginia Code.                                   |                |

12 The total amount of this appropriation shall be paid from  
13 the special revenue fund out of fees and collections as  
14 provided by law.

*96-Auditor's Office-  
Local Government Purchasing Card Expenditure Fund*

(WV Code Chapter 6)

Fund 1224 FY 2009 Org 1200

1 Unclassified-Total ..... 096 \$ 154,922

*97-Auditor's Office-  
Securities Regulation Fund*

(WV Code Chapter 32)

Fund 1225 FY 2009 Org 1200

|   |                         |     |    |                  |
|---|-------------------------|-----|----|------------------|
| 1 | Personal Services ..... | 001 | \$ | 1,164,662        |
| 2 | Annual Increment .....  | 004 |    | 18,316           |
| 3 | Employee Benefits ..... | 010 |    | 469,696          |
| 4 | Unclassified .....      | 099 |    | <u>1,471,122</u> |
| 5 | Total .....             |     |    | \$3,123,796      |

*98-Auditor's Office-  
Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1233 FY 2009 Org 1200

1 Unclassified-Total ..... 096 \$ 400,000

2 Fifty percent of the deposits made into this fund shall be  
3 transferred to the Treasurer's Office-Technology Support and

- 4 Acquisition Fund (fund 1329, org 1300) for expenditure for  
5 the purposes described in West Virginia Code § 12-3-10c.

*99-Auditor's Office-  
Purchasing Card Administration Fund*

(WV Code Chapter 12)

Fund 1234 FY 2009 Org 1200

1 Unclassified-Total ..... 096      \$    3,254,610

*100-Auditor's Office-  
Office of the Chief Inspector*

(WV Code Chapter 6)

Fund 1235 FY 2009 Org 1200

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 2,033,874      |
| 2 | Annual Increment .....  | 004 |    | 39,288         |
| 3 | Employee Benefits ..... | 010 |    | 705,782        |
| 4 | Unclassified .....      | 099 |    | <u>622,315</u> |
| 5 | Total .....             |     | \$ | 3,401,259      |

*101-Treasurer's Office-  
College Prepaid Tuition and Savings Program  
Administrative Account*

(WV Code Chapter 18)

Fund 1301 FY 2009 Org 1300

1 Unclassified-Total ..... 096      \$    1,402,462

*102-Treasurer's Office-  
Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1329 FY 2009 Org 1300

|   |                    |           |    |         |
|---|--------------------|-----------|----|---------|
| 1 | Unclassified-Total | ..... 096 | \$ | 475,000 |
|---|--------------------|-----------|----|---------|

*103-Department of Agriculture-  
Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2009 Org 1400

|   |                   |           |    |                |
|---|-------------------|-----------|----|----------------|
| 1 | Personal Services | ..... 001 | \$ | 1,310,710      |
| 2 | Annual Increment  | ..... 004 |    | 22,281         |
| 3 | Employee Benefits | ..... 010 |    | 472,490        |
| 4 | Unclassified      | ..... 099 |    | <u>878,386</u> |
| 5 | Total             | .....     | \$ | 2,683,867      |

*104-Department of Agriculture-  
West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 2009 Org 1400

|   |                   |           |    |                |
|---|-------------------|-----------|----|----------------|
| 1 | Personal Services | ..... 001 | \$ | 53,384         |
| 2 | Annual Increment  | ..... 004 |    | 998            |
| 3 | Employee Benefits | ..... 010 |    | 15,673         |
| 4 | Unclassified      | ..... 099 |    | <u>975,996</u> |
| 5 | Total             | .....     | \$ | 1,046,051      |

*105-Department of Agriculture-  
General John McCausland Memorial Farm*

(WV Code Chapter 19)

Fund 1409 FY 2009 Org 1400

1 Unclassified-Total . . . . . 096 \$ 100,000

2 The above appropriation shall be expended in accordance  
3 with article twenty-six, chapter nineteen of the code.

*106-Department of Agriculture-  
Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 2009 Org 1400

1 Unclassified-Total . . . . . 096 \$ 1,507,094

*107-Department of Agriculture-  
Donated Food Fund*

(WV Code Chapter 19)

Fund 1446 FY 2009 Org 1400

1 Unclassified-Total . . . . . 096 \$ 4,539,525

*108-Department of Agriculture-  
Integrated Predation Management Fund*

(WV Code Chapter 7)

Fund 1465 FY 2009 Org 1400

1 Unclassified-Total . . . . . 096 \$ 25,000

*109-Attorney General-  
Antitrust Enforcement*

(WV Code Chapter 47)

Fund 1507 FY 2009 Org 1500

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 262,577        |
| 2 | Annual Increment .....  | 004 |    | 2,437          |
| 3 | Employee Benefits ..... | 010 |    | 79,102         |
| 4 | Unclassified .....      | 099 |    | <u>138,055</u> |
| 5 | Total .....             |     | \$ | 482,171        |

*110-Attorney General-  
Preneed Burial Contract Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2009 Org 1500

|   |                          |     |    |         |
|---|--------------------------|-----|----|---------|
| 1 | Unclassified-Total ..... | 096 | \$ | 240,591 |
|---|--------------------------|-----|----|---------|

*111-Attorney General-  
Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Fund 1514 FY 2009 Org 1500

|   |                          |     |    |         |
|---|--------------------------|-----|----|---------|
| 1 | Unclassified-Total ..... | 096 | \$ | 775,000 |
|---|--------------------------|-----|----|---------|

*112-Secretary of State-  
Service Fees and Collection Account*

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2009 Org 1600

|   |                         |     |    |           |
|---|-------------------------|-----|----|-----------|
| 1 | Personal Services ..... | 001 | \$ | 1,199,555 |
| 2 | Annual Increment .....  | 004 |    | 12,904    |

APPROPRIATIONS

|   |                             |     |    |                  |
|---|-----------------------------|-----|----|------------------|
| 3 | Employee Benefits . . . . . | 010 |    | 345,136          |
| 4 | Unclassified . . . . .      | 099 |    | <u>1,055,406</u> |
| 5 | Total . . . . .             |     | \$ | 2,613,001        |

**DEPARTMENT OF ADMINISTRATION**

*113-Department of Administration-  
Office of the Secretary  
Employee Pension and Health Care Benefit Fund*

(WV Code Chapter 18)

Fund 2044 FY 2009 Org 0201

|   |                              |     |    |           |
|---|------------------------------|-----|----|-----------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 3,826,000 |
|---|------------------------------|-----|----|-----------|

2 The above appropriation for Unclassified-Total (fund  
3 2044, activity 096) shall be transferred to the Consolidated  
4 Public Retirement Board - West Virginia Teachers'  
5 Retirement System Employers Accumulation Fund (fund  
6 2601).

*114-Division of Information Services and Communications*

(WV Code Chapter 5A)

Fund 2220 FY 2009 Org 0210

|   |                             |     |    |                   |
|---|-----------------------------|-----|----|-------------------|
| 1 | Personal Services . . . . . | 001 | \$ | 18,019,794        |
| 2 | Annual Increment . . . . .  | 004 |    | 342,459           |
| 3 | Employee Benefits . . . . . | 010 |    | 5,979,009         |
| 4 | Unclassified . . . . .      | 099 |    | <u>13,519,644</u> |
| 5 | Total . . . . .             |     | \$ | 37,860,906        |

6 The total amount of this appropriation shall be paid from a  
7 special revenue fund out of collections made by the division of  
8 information services and communications as provided by law.



9 Each spending unit operating from the general revenue  
 10 fund, from special revenue funds or receiving reimbursement  
 11 for postage from the federal government shall be charged  
 12 monthly for all postage meter service and shall reimburse the  
 13 revolving fund monthly for all such amounts.

*115-Division of Personnel*

(WV Code Chapter 29)

Fund 2440 FY 2009 Org 0222

|   |                             |     |    |                  |
|---|-----------------------------|-----|----|------------------|
| 1 | Personal Services . . . . . | 001 | \$ | 2,780,493        |
| 2 | Annual Increment . . . . .  | 004 |    | 72,348           |
| 3 | Employee Benefits . . . . . | 010 |    | 957,191          |
| 4 | Unclassified . . . . .      | 099 |    | <u>1,182,707</u> |
| 5 | Total . . . . .             |     | \$ | 4,992,739        |

6 The total amount of this appropriation shall be paid from  
 7 a special revenue fund out of fees collected by the division of  
 8 personnel.

*116-West Virginia Prosecuting Attorneys Institute*

(WV Code Chapter 7)

Fund 2521 FY 2009 Org 0228

|   |                                  |     |    |         |
|---|----------------------------------|-----|----|---------|
| 1 | Unclassified-Total (R) . . . . . | 096 | \$ | 550,092 |
|---|----------------------------------|-----|----|---------|

2 Any unexpended balance remaining in the appropriation  
 3 for Unclassified-Total (fund 2521, activity 096) at the close  
 4 of the fiscal year 2008 is hereby reappropriated for  
 5 expenditure during the fiscal year 2009.

*117-Office of Technology-  
 Chief Technology Officer Administration Fund*

(WV Code Chapter 5A)

Fund 2531 FY 2009 Org 0231

1 Unclassified-Total . . . . . 096 \$ 2,047,236

2 From the above fund, the provisions of West Virginia  
3 Code §11B-2-18 shall not operate to permit expenditures in  
4 excess of the funds authorized for expenditure herein.

**DEPARTMENT OF COMMERCE**

*118-Division of Forestry*

(WV Code Chapter 19)

Fund 3081 FY 2009 Org 0305

|   |                             |     |    |                |
|---|-----------------------------|-----|----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ | 366,741        |
| 2 | Annual Increment . . . . .  | 004 |    | 7,594          |
| 3 | Employee Benefits . . . . . | 010 |    | 120,665        |
| 4 | Unclassified . . . . .      | 099 |    | <u>363,374</u> |
| 5 | Total . . . . .             |     | \$ | 858,374        |

*119-Division of Forestry-  
Timbering Operations Enforcement Fund*

(WV Code Chapter 19)

Fund 3082 FY 2009 Org 0305

1 Unclassified-Total . . . . . 096 \$ 141,750

*120-Division of Forestry-  
Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2009 Org 0305

1 Unclassified-Total ..... 096      \$    2,248,548

*121-Geological and Economic Survey*

(WV Code Chapter 29)

Fund 3100 FY 2009 Org 0306

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 25,821         |
| 2 | Employee Benefits ..... | 010 |    | 2,547          |
| 3 | Unclassified .....      | 099 |    | <u>189,911</u> |
| 4 | Total .....             |     | \$ | 218,279        |

5        The above appropriation shall be used in accordance with  
6 section four, article two, chapter twenty-nine of the code.

*122-West Virginia Development Office-  
Department of Commerce  
Marketing and Communications Operating Fund*

(WV Code Chapter 5B)

Fund 3002 FY 2009 Org 0307

1 Unclassified-Total ..... 096      \$    3,018,485

*123-Division of Labor-  
Contractor Licensing Board Fund*

(WV Code Chapter 21)

Fund 3187 FY 2009 Org 0308

|   |                         |     |    |           |
|---|-------------------------|-----|----|-----------|
| 1 | Personal Services ..... | 001 | \$ | 1,095,009 |
| 2 | Annual Increment .....  | 004 |    | 15,928    |
| 3 | Employee Benefits ..... | 010 |    | 490,417   |

|     |                            |                |
|-----|----------------------------|----------------|
| 164 | APPROPRIATIONS             | [Ch. 10        |
| 4   | Unclassified . . . . . 099 | <u>517,773</u> |
| 5   | Total . . . . .            | \$ 2,119,127   |

*124-Division of Labor-  
Elevator Safety Act*

(WV Code Chapter 21)

Fund 3188 FY 2009 Org 0308

|   |                                 |               |
|---|---------------------------------|---------------|
| 1 | Personal Services . . . . . 001 | \$ 80,254     |
| 2 | Annual Increment . . . . . 004  | 1,418         |
| 3 | Employee Benefits . . . . . 010 | 32,329        |
| 4 | Unclassified . . . . . 099      | <u>69,841</u> |
| 5 | Total . . . . .                 | \$ 183,842    |

*125-Division of Labor-  
Crane Operator Certification Fund*

(WV Code Chapter 21)

Fund 3191 FY 2009 Org 0308

|   |                                  |            |
|---|----------------------------------|------------|
| 1 | Unclassified-Total . . . . . 096 | \$ 135,595 |
|---|----------------------------------|------------|

*126-Division of Labor-  
Amusement Rides and Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2009 Org 0308

|   |                                  |            |
|---|----------------------------------|------------|
| 1 | Unclassified-Total . . . . . 096 | \$ 106,142 |
|---|----------------------------------|------------|

*127-Division of Labor-  
State Manufactured Housing Administration Fund*

(WV Code Chapter 21)

Fund 3195 FY 2009 Org 0308

|   |                             |     |    |              |
|---|-----------------------------|-----|----|--------------|
| 1 | Personal Services . . . . . | 001 | \$ | 102,203      |
| 2 | Annual Increment . . . . .  | 004 |    | 1,654        |
| 3 | Employee Benefits . . . . . | 010 |    | 48,029       |
| 4 | Unclassified . . . . .      | 099 |    | 26,382       |
| 5 | BRIM Premium . . . . .      | 913 |    | <u>3,404</u> |
| 6 | Total . . . . .             |     | \$ | 181,672      |

*128-Division of Labor-  
Weights and Measures Fund*

(WV Code Chapter 47)

Fund 3196 FY 2009 Org 0308

|   |                              |     |    |        |
|---|------------------------------|-----|----|--------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 50,000 |
|---|------------------------------|-----|----|--------|

*129-Division of Natural Resources*

(WV Code Chapter 20)

Fund 3200 FY 2009 Org 0310

|   |                              |     |    |                  |
|---|------------------------------|-----|----|------------------|
| 1 | Wildlife Resources . . . . . | 023 | \$ | 5,788,830        |
| 2 | Administration . . . . .     | 155 |    | 1,427,228        |
| 3 | Capital Improvements and     |     |    |                  |
| 4 | Land Purchase (R) . . . . .  | 248 |    | 1,424,833        |
| 5 | Law Enforcement . . . . .    | 806 |    | <u>5,684,865</u> |
| 6 | Total . . . . .              |     | \$ | 14,325,756       |

7     The total amount of this appropriation shall be paid from  
8 a special revenue fund out of fees collected by the division of  
9 natural resources.

10    Any unexpended balances remaining in the  
11 appropriations for Point of Sales Licensing System (fund  
12 3200, activity 043), and Capital Improvements and Land

- 13 Purchase (fund 3200, activity 248) at the close of the fiscal  
 14 year 2008 are hereby reappropriated for expenditure during  
 15 the fiscal year 2009.

*130-Division of Natural Resources-  
 Game, Fish and Aquatic Life Fund*

(WV Code Chapter 20)

Fund 3202 FY 2009 Org 0310

|   |                          |     |    |        |
|---|--------------------------|-----|----|--------|
| 1 | Unclassified-Total ..... | 096 | \$ | 75,000 |
|---|--------------------------|-----|----|--------|

*131-Division of Natural Resources-  
 Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2009 Org 0310

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 754,478        |
| 2 | Annual Increment .....  | 004 |    | 12,152         |
| 3 | Employee Benefits ..... | 010 |    | 275,416        |
| 4 | Unclassified .....      | 099 |    | <u>325,380</u> |
| 5 | Total .....             |     | \$ | 1,367,426      |

*132-Division of Natural Resources-  
 Planning and Development Division*

(WV Code Chapter 20)

Fund 3205 FY 2009 Org 0310

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 128,043        |
| 2 | Annual Increment .....  | 004 |    | 2,194          |
| 3 | Employee Benefits ..... | 010 |    | 44,199         |
| 4 | Unclassified .....      | 099 |    | <u>226,500</u> |
| 5 | Total .....             |     | \$ | 400,936        |

*133-Division of Natural Resources-  
Whitewater Study and Improvement Fund*

(WV Code Chapter 20)

Fund 3253 FY 2009 Org 0310

1 Unclassified-Total . . . . . 096 \$ 211,660

*134-Division of Natural Resources-  
Whitewater Advertising and Promotion Fund*

(WV Code Chapter 20)

Fund 3256 FY 2009 Org 0310

1 Unclassified-Total . . . . . 096 \$ 20,000

*135-Miners' Health, Safety and Training Fund*

(WV Code Chapter 22A)

Fund 3355 FY 2009 Org 0314

|   |                                 |     |    |                  |
|---|---------------------------------|-----|----|------------------|
| 1 | Personal Services . . . . .     | 001 | \$ | 92,456           |
| 2 | Employee Benefits . . . . .     | 010 |    | 27,467           |
| 3 | WV Mining Extension Service . . | 026 |    | 150,000          |
| 4 | Unclassified . . . . .          | 099 |    | <u>1,048,000</u> |
| 5 | Total . . . . .                 |     |    | \$1,317,923      |

*136-Division of Energy-  
Energy Assistance*

(WV Code Chapter 5B)

Fund 3010 FY 2009 Org 0328

1 Energy Assistance—Total (R) . . . 647 \$ 300,000

2 Any unexpended balance remaining in the appropriation  
3 for Energy Assistance-Total (fund 3010, activity 647) at the  
4 close of the fiscal year 2008 is hereby reappropriated for  
5 expenditure during the fiscal year 2009.

*137-Division of Energy-  
Office of Coal Field Community Development*

(WV Code Chapter 5B)

Fund 3011 FY 2009 Org 0328

1 Unclassified-Total (R) . . . . . 096 \$ 835,111

2 Any unexpended balance remaining in the above  
3 appropriation for Unclassified-Total (fund 3011, activity 096)  
4 at the close of the fiscal year 2008 is hereby reappropriated  
5 for expenditure during the fiscal year 2009.

**DEPARTMENT OF EDUCATION**

*138-State Board of Education-  
Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2009 Org 0402

1 Unclassified-Total (R) . . . . . 096 \$ 807,545

2 Any unexpended balance remaining in the appropriation  
3 for Unclassified-Total (fund 3937, activity 096) at the close  
4 of the fiscal year 2008 is hereby reappropriated for  
5 expenditure during the fiscal year 2009.

*139-State Department of Education-*



*School Building Authority*

(WV Code Chapter 18)

Fund 3959 FY 2009 Org 0402

|   |                             |     |    |                |
|---|-----------------------------|-----|----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ | 705,024        |
| 2 | Annual Increment . . . . .  | 004 |    | 8,170          |
| 3 | Employee Benefits . . . . . | 010 |    | 244,215        |
| 4 | Unclassified . . . . .      | 099 |    | <u>266,715</u> |
| 5 | Total . . . . .             |     | \$ | 1,224,124      |

6 The above appropriation for the administrative expenses  
7 of the school building authority shall be paid from the interest  
8 earnings on debt service reserve accounts maintained on  
9 behalf of said authority.

*140-State Department of Education-  
FFA-FHA Camp and Conference Center*

(WV Code Chapter 18)

Fund 3960 FY 2009 Org 0402

|   |                             |     |    |                |
|---|-----------------------------|-----|----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ | 874,564        |
| 2 | Annual Increment . . . . .  | 004 |    | 13,302         |
| 3 | Employee Benefits . . . . . | 010 |    | 317,909        |
| 4 | Unclassified . . . . .      | 099 |    | <u>705,587</u> |
| 5 | Total . . . . .             |     | \$ | 1,911,362      |

**DEPARTMENT OF EDUCATION AND THE ARTS**

*141-Office of the Secretary-  
Lottery Education Fund Interest Earnings-  
Control Account*

(WV Code Chapter 29)

Fund 3508 FY 2009 Org 0431

|    |   |     |    |                |
|----|---|-----|----|----------------|
| 1  | Governor's Honor Academy . . . .                              | 478 | \$ | 100,000        |
| 2  | EPSCoR (R) . . . . .  | 571 |    | 359,368        |
| 3  | Educational Enhancements (R) . .                              | 695 |    | 100,000        |
| 4  | Literacy Project . . . . .                                    | 899 |    | <u>350,000</u> |
| 5  | Total . . . . .   |     | \$ | 909,368        |
| 6  | Any unexpended balance remaining in the appropriation         |     |    |                |
| 7  | for Unclassified-Total (fund 3508, activity 096), EPSCoR      |     |    |                |
| 8  | (fund 3508, activity 571), EPSCoR—Total (fund 3508,           |     |    |                |
| 9  | activity 651) and Educational Enhancements (fund 3508,        |     |    |                |
| 10 | activity 695) at the close of the fiscal year 2008 are hereby |     |    |                |
| 11 | reappropriated for expenditure during the fiscal year 2009.   |     |    |                |

*142-Division of Culture and History—  
Public Records and Preservation Revenue Account*

(WV Code Chapter 5A)

Fund 3542 FY 2009 Org 0432

|   |                              |     |    |           |
|---|------------------------------|-----|----|-----------|
| 1 | Unclassified—Total . . . . . | 096 | \$ | 1,938,101 |
|---|------------------------------|-----|----|-----------|

*143-State Board of Rehabilitation-  
Division of Rehabilitation Services-  
West Virginia Rehabilitation Center-  
Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2009 Org 0932

|   |                              |     |    |         |
|---|------------------------------|-----|----|---------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 905,360 |
|---|------------------------------|-----|----|---------|

**DEPARTMENT OF ENVIRONMENTAL PROTECTION***144-Solid Waste Management Board*

(WV Code Chapter 22C)

Fund 3288 FY 2009 Org 0312

|   |                         |     |    |                  |
|---|-------------------------|-----|----|------------------|
| 1 | Personal Services ..... | 001 | \$ | 591,154          |
| 2 | Annual Increment .....  | 004 |    | 4,960            |
| 3 | Employee Benefits ..... | 010 |    | 185,953          |
| 4 | Unclassified .....      | 099 |    | <u>1,792,680</u> |
|   | Total .....             |     | \$ | 2,574,747        |

*145-Division of Environmental Protection-  
Hazardous Waste Management Fund*

(WV Code Chapter 22)

Fund 3023 FY 2009 Org 0313

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 311,800        |
| 2 | Annual Increment .....  | 004 |    | 8,060          |
| 3 | Employee Benefits ..... | 010 |    | 118,984        |
| 4 | Unclassified .....      | 099 |    | <u>160,202</u> |
| 5 | Total .....             |     | \$ | 599,046        |

*146-Division of Environmental Protection-  
Air Pollution Education and Environment Fund*

(WV Code Chapter 22)

Fund 3024 FY 2009 Org 0313

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 314,004        |
| 2 | Annual Increment .....  | 004 |    | 3,670          |
| 3 | Employee Benefits ..... | 010 |    | 92,763         |
| 4 | Unclassified .....      | 099 |    | <u>594,510</u> |
| 5 | Total .....             |     | \$ | 1,004,947      |

*147-Division of Environmental Protection-  
Special Reclamation Fund*

(WV Code Chapter 22)

Fund 3321 FY 2009 Org 0313

|   |                         |     |    |                   |
|---|-------------------------|-----|----|-------------------|
| 1 | Personal Services ..... | 001 | \$ | 929,536           |
| 2 | Annual Increment .....  | 004 |    | 14,780            |
| 3 | Employee Benefits ..... | 010 |    | 351,585           |
| 4 | Unclassified .....      | 099 |    | <u>16,667,832</u> |
| 5 | Total .....             |     | \$ | 17,963,733        |

*148-Division of Environmental Protection-  
Oil and Gas Reclamation Fund*

(WV Code Chapter 22)

Fund 3322 FY 2009 Org 0313

|   |                          |     |    |         |
|---|--------------------------|-----|----|---------|
| 1 | Unclassified-Total ..... | 096 | \$ | 674,360 |
|---|--------------------------|-----|----|---------|

*149-Division of Environmental Protection-  
Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2009 Org 0313

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 866,798        |
| 2 | Annual Increment .....  | 004 |    | 4,885          |
| 3 | Employee Benefits ..... | 010 |    | 302,808        |
| 4 | Unclassified .....      | 099 |    | <u>801,653</u> |
| 5 | Total .....             |     | \$ | 1,976,144      |

*150-Division of Environmental Protection-  
Mining and Reclamation Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2009 Org 0313

|   |                         |     |    |                  |
|---|-------------------------|-----|----|------------------|
| 1 | Personal Services ..... | 001 | \$ | 3,979,202        |
| 2 | Annual Increment .....  | 004 |    | 69,222           |
| 3 | Employee Benefits ..... | 010 |    | 1,805,114        |
| 4 | Unclassified .....      | 099 |    | <u>3,262,525</u> |
| 5 | Total .....             |     | \$ | 9,116,063        |

*151-Division of Environmental Protection-  
Underground Storage Tank  
Administrative Fund*

(WV Code Chapter 22)

Fund 3325 FY 2009 Org 0313

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 260,084        |
| 2 | Annual Increment .....  | 004 |    | 8,635          |
| 3 | Employee Benefits ..... | 010 |    | 93,757         |
| 4 | Unclassified .....      | 099 |    | <u>196,796</u> |
| 5 | Total .....             |     | \$ | 559,272        |

*152-Division of Environmental Protection-  
Hazardous Waste Emergency Response Fund*

(WV Code Chapter 22)

Fund 3331 FY 2009 Org 0313

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 500,293        |
| 2 | Annual Increment .....  | 004 |    | 10,354         |
| 3 | Employee Benefits ..... | 010 |    | 191,983        |
| 4 | Unclassified .....      | 099 |    | <u>834,243</u> |
| 5 | Total .....             |     | \$ | 1,536,873      |

*153-Division of Environmental Protection-  
Solid Waste Reclamation and  
Environmental Response Fund*

(WV Code Chapter 22)

Fund 3332 FY 2009 Org 0313

|   |                             |     |    |                  |
|---|-----------------------------|-----|----|------------------|
| 1 | Personal Services . . . . . | 001 | \$ | 555,571          |
| 2 | Annual Increment . . . . .  | 004 |    | 6,002            |
| 3 | Employee Benefits . . . . . | 010 |    | 183,266          |
| 4 | Unclassified . . . . .      | 099 |    | <u>4,026,024</u> |
| 5 | Total . . . . .             |     | \$ | 4,770,863        |

*154-Division of Environmental Protection-  
Solid Waste Enforcement Fund*

(WV Code Chapter 22)

Fund 3333 FY 2009 Org 0313

|   |                             |     |    |                  |
|---|-----------------------------|-----|----|------------------|
| 1 | Personal Services . . . . . | 001 | \$ | 1,845,498        |
| 2 | Annual Increment . . . . .  | 004 |    | 31,730           |
| 3 | Employee Benefits . . . . . | 010 |    | 725,210          |
| 4 | Unclassified . . . . .      | 099 |    | <u>1,287,681</u> |
| 5 | Total . . . . .             |     | \$ | 3,890,119        |

*155-Division of Environmental Protection-  
Air Pollution Control Fund*

(WV Code Chapter 22)

Fund 3336 FY 2009 Org 0313

|   |                             |     |    |           |
|---|-----------------------------|-----|----|-----------|
| 1 | Personal Services . . . . . | 001 | \$ | 3,999,994 |
| 2 | Annual Increment . . . . .  | 004 |    | 55,329    |
| 3 | Employee Benefits . . . . . | 010 |    | 1,273,647 |

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|   |                        |     |    |                  |
|---|------------------------|-----|----|------------------|
| 4 | Unclassified . . . . . | 099 |    | <u>2,308,152</u> |
| 5 | Total . . . . .        |     | \$ | <u>7,637,122</u> |

*156-Division of Environmental Protection-  
Environmental Laboratory  
Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2009 Org 0313

|   |                             |     |    |                |
|---|-----------------------------|-----|----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ | 158,556        |
| 2 | Annual Increment . . . . .  | 004 |    | 3,410          |
| 3 | Employee Benefits . . . . . | 010 |    | 57,409         |
| 4 | Unclassified . . . . .      | 099 |    | <u>145,075</u> |
| 5 | Total . . . . .             |     | \$ | <u>364,450</u> |

*157-Division of Environmental Protection-  
Stream Restoration Fund*

(WV Code Chapter 22)

Fund 3349 FY 2009 Org 0313

|   |                              |     |    |         |
|---|------------------------------|-----|----|---------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 945,000 |
|---|------------------------------|-----|----|---------|

*158-Division of Environmental Protection-  
Litter Control Fund*

(WV Code Chapter 22)

Fund 3486 FY 2009 Org 0313

|   |                              |     |    |        |
|---|------------------------------|-----|----|--------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 40,000 |
|---|------------------------------|-----|----|--------|

*159-Division of Environmental Protection-  
Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2009 Org 0313

|   |                             |     |    |                  |
|---|-----------------------------|-----|----|------------------|
| 1 | Personal Services . . . . . | 001 | \$ | 377,564          |
| 2 | Annual Increment . . . . .  | 004 |    | 6,310            |
| 3 | Employee Benefits . . . . . | 010 |    | 132,289          |
| 4 | Unclassified (R) . . . . .  | 099 |    | <u>2,256,743</u> |
| 5 | Total . . . . .             |     | \$ | 2,772,906        |

6 Any unexpended balance remaining in Unclassified (fund  
 7 3487, activity 099) at the close of the fiscal year 2008 is  
 8 hereby reappropriated for expenditure during the fiscal year  
 9 2009.

*160-Division of Environmental Protection-  
 Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2009 Org 0313

|   |                             |     |    |                |
|---|-----------------------------|-----|----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ | 769,474        |
| 2 | Annual Increment . . . . .  | 004 |    | 10,633         |
| 3 | Employee Benefits . . . . . | 010 |    | 281,953        |
| 4 | Unclassified . . . . .      | 099 |    | <u>492,090</u> |
| 5 | Total . . . . .             |     | \$ | 1,554,150      |

*161-Oil and Gas Conservation Commission—  
 Special Oil and Gas Conservation Fund*

(WV Code Chapter 22C)

Fund 3371 FY 2009 Org 0315

|   |                             |     |    |         |
|---|-----------------------------|-----|----|---------|
| 1 | Personal Services . . . . . | 001 | \$ | 155,814 |
| 2 | Annual Increment . . . . .  | 004 |    | 2,976   |





1 Any unexpended balances remaining in the above  
 2 appropriations for Institutional Facilities Operations (fund  
 3 5124, activity 335) and Tobacco Education Program (fund  
 4 5124, activity 906) at the close of the fiscal year 2008 are  
 5 hereby reappropriated for expenditure during the fiscal year  
 6 2009, except for \$2,206,610.58 for fund 5124, activity 335,  
 7 fiscal year 2003; \$963,157.19 for fund 5124, activity 335,  
 8 fiscal year 2006; and \$962,749.96 for fund 5124, activity  
 9 335, fiscal year 2007, which shall expire on June 30, 2008.

*165-Division of Health-  
 Vital Statistics*

(WV Code Chapter 16)

Fund 5144 FY 2009 Org 0506

|   |                             |     |    |                |
|---|-----------------------------|-----|----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ | 342,687        |
| 2 | Annual Increment . . . . .  | 004 |    | 11,190         |
| 3 | Employee Benefits . . . . . | 010 |    | 152,411        |
| 4 | Unclassified. . . . .       | 099 |    | <u>633,288</u> |
| 5 | Total . . . . .             |     | \$ | 1,139,576      |

*166-Division of Health-  
 Hospital Services Revenue Account  
 (Special Fund)*

*(Capital Improvement, Renovation and Operations)*

(WV Code Chapter 16)

Fund 5156 FY 2009 Org 0506

|   |                              |     |    |                   |
|---|------------------------------|-----|----|-------------------|
| 1 | Debt Service (R) . . . . .   | 040 | \$ | 2,420,000         |
| 2 | Institutional Facilities     |     |    |                   |
| 3 | Operations (R) . . . . .     | 335 |    | 38,674,129        |
| 4 | Medical Services Trust Fund- |     |    |                   |
| 5 | Transfer (R) . . . . .       | 512 |    | <u>25,300,000</u> |

6 Total . . . . . \$ 66,394,129

7 Any unexpended balance remaining in the appropriation  
8 for hospital services revenue account at the close of the fiscal  
9 year 2008 is hereby reappropriated for expenditure during the  
10 fiscal year 2009, except for fund 5156, activity 040 (fiscal  
11 year 2007) which shall expire on June 30, 2008.

12 The total amount of this appropriation shall be paid from  
13 the hospital services revenue account special fund created by  
14 section thirteen, article one, chapter sixteen of the code, and  
15 shall be used for operating expenses and for improvements in  
16 connection with existing facilities and bond payments.

17 The secretary of the department of health and human  
18 resources is authorized to utilize up to ten percent of the  
19 funds from the appropriation for Institutional Facilities  
20 Operations line to facilitate cost effective and cost saving  
21 services at the community level.

22 Necessary funds from the above appropriation may be  
23 used for medical facilities operations, either in connection  
24 with this account or in connection with the line item  
25 designated Institutional Facilities Operations in the  
26 consolidated medical service fund (fund 0525, fiscal year  
27 2009, organization 0506).

28 From the above appropriation to Institutional Facilities  
29 Operations, together with available funds from the  
30 consolidated medical services fund (fund 0525, activity 335)  
31 on July 1, 2008, the sum of one hundred sixty thousand  
32 dollars shall be transferred to the department of agriculture-  
33 land division as advance payment for the purchase of food  
34 products; actual payments for such purchases shall not be  
35 required until such credits have been completely expended.

*167-Division of Health-  
Laboratory Services*

## (WV Code Chapter 16)

Fund 5163 FY 2009 Org 0506

|   |                             |     |    |                  |
|---|-----------------------------|-----|----|------------------|
| 1 | Personal Services . . . . . | 001 | \$ | 612,001          |
| 2 | Annual Increment . . . . .  | 004 |    | 13,774           |
| 3 | Employee Benefits . . . . . | 010 |    | 255,534          |
| 4 | Unclassified . . . . .      | 099 |    | <u>1,302,955</u> |
| 5 | Total . . . . .             |     | \$ | 2,184,264        |

*168-Division of Health-  
Health Facility Licensing*

## (WV Code Chapter 16)

Fund 5172 FY 2009 Org 0506

|   |                             |     |    |                |
|---|-----------------------------|-----|----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ | 423,536        |
| 2 | Annual Increment . . . . .  | 004 |    | 7,936          |
| 3 | Employee Benefits . . . . . | 010 |    | 154,620        |
| 4 | Unclassified . . . . .      | 099 |    | <u>186,626</u> |
| 5 | Total . . . . .             |     | \$ | 772,718        |

*169-Division of Health-  
Hepatitis B Vaccine*

## (WV Code Chapter 16)

Fund 5183 FY 2009 Org 0506

|   |                             |     |    |                  |
|---|-----------------------------|-----|----|------------------|
| 1 | Personal Services . . . . . | 001 | \$ | 61,199           |
| 2 | Annual Increment . . . . .  | 004 |    | 1,897            |
| 3 | Employee Benefits . . . . . | 010 |    | 22,722           |
| 4 | Unclassified. . . . .       | 099 |    | <u>2,996,007</u> |
| 5 | Total . . . . .             |     | \$ | 3,081,825        |

*170-Division of Health-  
Lead Abatement Fund*

(WV Code Chapter 16)

Fund 5204 FY 2009 Org 0506

1 Unclassified—Total . . . . . 096 \$ 40,000

*171-Division of Health-  
West Virginia Birth to Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2009 Org 0506

|   |                             |     |    |                   |
|---|-----------------------------|-----|----|-------------------|
| 1 | Personal Services . . . . . | 001 | \$ | 486,967           |
| 2 | Annual Increment . . . . .  | 004 |    | 5,890             |
| 3 | Employee Benefits . . . . . | 010 |    | 194,655           |
| 4 | Unclassified . . . . .      | 099 |    | <u>24,203,665</u> |
| 5 | Total . . . . .             |     | \$ | 24,891,177        |

*172-Division of Health-  
Tobacco Control Special Fund*

(WV Code Chapter 16)

Fund 5218 FY 2009 Org 0506

1 Unclassified—Total . . . . . 096 \$ 85,000

*173-West Virginia Health Care Authority—  
Health Care Cost Review Fund*

(WV Code Chapter 16)

Fund 5375 FY 2009 Org 0507

|   |                             |     |    |           |
|---|-----------------------------|-----|----|-----------|
| 1 | Personal Services . . . . . | 001 | \$ | 2,203,295 |
| 2 | Annual Increment . . . . .  | 004 |    | 31,072    |
| 3 | Employee Benefits . . . . . | 010 |    | 680,128   |

|     |                                   |                  |
|-----|-----------------------------------|------------------|
| 182 | APPROPRIATIONS                    | [Ch. 10          |
| 4   | Hospital Assistance . . . . . 025 | 600,000          |
| 5   | Unclassified . . . . . 099        | <u>3,214,545</u> |
| 6   | Total . . . . .                   | \$ 6,729,040     |

7 The above appropriation is to be expended in accordance  
8 with and pursuant to the provisions of article twenty-nine-b,  
9 chapter sixteen of the code and from the special revolving  
10 fund designated health care cost review fund.

11 The Health Care Authority is authorized to transfer up to  
12 \$1,500,000 from this fund to the West Virginia Health  
13 Information Network Account (fund 5380) as authorized per  
14 16-29G-4.

*174-West Virginia Health Care Authority-  
West Virginia Health Information Network Account*

(WV Code Chapter 16)

Fund 5380 FY 2009 Org 0507

|   |                            |                  |
|---|----------------------------|------------------|
| 1 | Unclassified . . . . . 099 | \$ 1,500,000     |
| 2 | Technology Infrastructure  |                  |
| 3 | Network . . . . . 351      | <u>3,500,000</u> |
| 4 | Total . . . . .            | \$ 5,000,000     |

*175-West Virginia Health Care Authority-  
Revolving Loan Fund*

(WV Code Chapter 16)

Fund 5382 FY 2009 Org 0507

|   |                                  |              |
|---|----------------------------------|--------------|
| 1 | Unclassified-Total . . . . . 096 | \$ 6,000,000 |
|---|----------------------------------|--------------|

*176-Division of Human Services-  
Health Care Provider Tax*

(WV Code Chapter 11)

Fund 5090 FY 2009 Org 0511

|   |                                       |     |                |
|---|---------------------------------------|-----|----------------|
| 1 | Medical Services . . . . .            | 189 | \$ 165,595,278 |
| 2 | Medical Services Administrative Costs |     | 789,409,869    |
| 3 | Total . . . . .                       |     | \$166,005,147  |

4 From the above appropriation, an amount not to exceed  
5 \$209,623 shall be transferred to a special revenue account in  
6 the treasury for use by the department of health and human  
7 resources for administrative purposes. The remainder of all  
8 moneys deposited in the fund shall be transferred to the West  
9 Virginia medical services fund (fund 5084).

*177-Division of Human Services-  
Child Support Enforcement*

(WV Code Chapter 48A)

Fund 5094 FY 2009 Org 0511

|   |                                  |     |               |
|---|----------------------------------|-----|---------------|
| 1 | Unclassified-Total (R) . . . . . | 096 | \$ 31,068,691 |
|---|----------------------------------|-----|---------------|

2 Any unexpended balance remaining in the appropriation  
3 for Unclassified-Total (fund 5094, activity 096) at the close  
4 of the fiscal year 2008 is hereby reappropriated for  
5 expenditure during the fiscal year 2009, except \$3,000,000  
6 for fund 5094, activity 096, fiscal year 2006 and \$2,315,968  
7 for fund 5094, activity 096, fiscal year 2007 which shall  
8 expire on June 30, 2008.

*178-Division of Human Services-  
Medical Services Trust Fund*

(WV Code Chapter 9)

Fund 5185 FY 2009 Org 0511

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|   |                                 |     |                |
|---|---------------------------------|-----|----------------|
| 1 | Medical Services .....          | 189 | \$ 30,556,594  |
| 2 | Medical Services Administrative |     |                |
| 3 | Costs .....                     | 789 | <u>528,691</u> |
| 4 | Total .....                     |     | \$ 31,085,285  |

5       The above appropriation to Medical Services shall be  
6 used to provide state match of Medicaid expenditures as  
7 defined and authorized in subsection (c) of Chapter 9-4A-2a.  
8 Expenditures from the fund are limited to the following:  
9 payment of backlogged billings, funding for services to  
10 future federally mandated population groups and payment of  
11 the required state match for medicaid disproportionate share  
12 payments. The remainder of all moneys deposited in the fund  
13 shall be transferred to the division of human services  
14 accounts.

*179-Division of Human Services-  
James "Tiger" Morton Catastrophic Illness Fund*

(WV Code Chapter 16)

Fund 5454 FY 2009 Org 0511

|   |                          |     |              |
|---|--------------------------|-----|--------------|
| 1 | Unclassified-Total ..... | 096 | \$ 1,609,076 |
|---|--------------------------|-----|--------------|

*180-Family Protection Services Board-  
Domestic Violence Legal Services Fund*

(WV Code Chapter 48)

Fund 5455 FY 2009 Org 0511

|   |                          |     |            |
|---|--------------------------|-----|------------|
| 1 | Unclassified-Total ..... | 096 | \$ 838,022 |
|---|--------------------------|-----|------------|

*181-Division of Human Services-  
West Virginia Works Separate State College Program Fund*

(WV Code Chapter 9)



Fund 5467 FY 2009 Org 0511

1 Unclassified-Total ..... 096 \$ 1,700,000

*182-Division of Human Services-  
West Virginia Works Separate State Two-Parent Program  
Fund*

(WV Code Chapter 9)

Fund 5468 FY 2009 Org 0511

1 Unclassified-Total ..... 096 \$ 3,300,000

**DEPARTMENT OF MILITARY AFFAIRS AND  
PUBLIC SAFETY**

*183-Department of Military Affairs and Public Safety-  
Office of the Secretary-  
Law-Enforcement, Safety and  
Emergency Worker Funeral  
Expense Payment Fund*

(WV Code Chapter 15)

Fund 6003 FY 2009 Org 0601

1 Unclassified-Total ..... 096 \$ 25,000

*184-State Armory Board-  
General Armory Fund*

(WV Code Chapter 15)

Fund 6057 FY 2009 Org 0603

1 Unclassified-Total ..... 096 \$ 1,459,901

*185-Division of Homeland Security and  
Emergency Management-  
West Virginia Interoperable Radio Project*

(WV Code Chapter 24)

Fund 6295 FY 2009 Org 0606

|   |   |     |  |    |           |
|---|---|-----|--|----|-----------|
| 1 | Unclassified-Total (R) . . . . .                              | 096 |  | \$ | 2,000,000 |
| 2 | Any unexpended balance remaining in the appropriation         |     |  |    |           |
| 3 | for Unclassified-Total (fund 6295, activity 096) at the close |     |  |    |           |
| 4 | of fiscal year 2008 is hereby reappropriated for expenditure  |     |  |    |           |
| 5 | during the fiscal year 2009.                                  |     |  |    |           |

*186-West Virginia Division of Corrections-  
Parolee Supervision Fees*

(WV Code Chapter 62)

Fund 6362 FY 2009 Org 0608

|   |                             |     |  |    |                |
|---|-----------------------------|-----|--|----|----------------|
| 1 | Personal Services . . . . . | 001 |  | \$ | 175,493        |
| 2 | Annual Increment . . . . .  | 004 |  |    | 2,071          |
| 3 | Employee Benefits . . . . . | 010 |  |    | 69,037         |
| 4 | Unclassified . . . . .      | 099 |  |    | <u>496,204</u> |
| 5 | Total . . . . .             |     |  | \$ | 742,805        |

*187-West Virginia State Police-  
Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 2009 Org 0612

|   |                             |     |  |    |         |
|---|-----------------------------|-----|--|----|---------|
| 1 | Personal Services . . . . . | 001 |  | \$ | 761,976 |
| 2 | Annual Increment . . . . .  | 004 |  |    | 31,880  |
| 3 | Employee Benefits . . . . . | 010 |  |    | 302,258 |

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|   |                        |     |    |                |
|---|------------------------|-----|----|----------------|
| 4 | Unclassified . . . . . | 099 |    | 364,815        |
| 5 | BRIM Premium . . . . . | 913 |    | <u>302,432</u> |
| 6 | Total . . . . .        |     | \$ | 1,763,361      |

7       The total amount of this appropriation shall be paid from  
8 the special revenue fund out of fees collected for inspection  
9 stickers as provided by law.

*188-West Virginia State Police-  
Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 2009 Org 0612

|   |                        |     |    |                |
|---|------------------------|-----|----|----------------|
| 1 | Unclassified . . . . . | 099 |    | \$ 1,327,000   |
| 2 | BRIM Premium . . . . . | 913 |    | <u>154,452</u> |
| 3 | Total . . . . .        |     | \$ | 1,481,452      |

4       The total amount of this appropriation shall be paid from  
5 the special revenue fund out of receipts collected pursuant to  
6 sections nine-a and sixteen, article fifteen, chapter eleven of  
7 the code and paid into a revolving fund account in the state  
8 treasury.

*189-West Virginia State Police-  
Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Fund 6516 FY 2009 Org 0612

|   |                        |     |    |               |
|---|------------------------|-----|----|---------------|
| 1 | Unclassified . . . . . | 099 |    | \$ 444,980    |
| 2 | BRIM Premium . . . . . | 913 |    | <u>77,222</u> |
| 3 | Total . . . . .        |     | \$ | 522,202       |

*190-West Virginia State Police-  
Surplus Transfer Account*

## (WV Code Chapter 15)

Fund 6519 FY 2009 Org 0612

|   |                            |     |    |               |
|---|----------------------------|-----|----|---------------|
| 1 | Unclassified (R) . . . . . | 099 | \$ | 312,002       |
| 2 | BRIM Premium . . . . .     | 913 |    | <u>54,063</u> |
| 3 | Total . . . . .            |     | \$ | 366,065       |

4 Any unexpended balance remaining in the appropriation  
 5 for Unclassified (fund 6519, fiscal year 2008, activity 099) at  
 6 the close of the fiscal year 2008 is hereby reappropriated for  
 7 expenditure during the fiscal year 2009.

*191-West Virginia State Police-  
 Central Abuse Registry Fund*

## (WV Code Chapter 15)

Fund 6527 FY 2009 Org 0612

|   |                        |     |    |               |
|---|------------------------|-----|----|---------------|
| 1 | Unclassified . . . . . | 099 | \$ | 240,984       |
| 2 | BRIM Premium . . . . . | 913 |    | <u>18,524</u> |
| 3 | Total . . . . .        |     | \$ | 259,508       |

*192-West Virginia State Police-  
 Bail Bond Enforcer Fund*

## (WV Code Chapter 15)

Fund 6532 FY 2009 Org 0612

|   |                              |     |    |       |
|---|------------------------------|-----|----|-------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 3,308 |
|---|------------------------------|-----|----|-------|

*193-Division of Veterans' Affairs-  
 Veterans' Facilities Support Fund*

## (WV Code Chapter 9A)

Fund 6703 FY 2009 Org 0613

|   |                          |     |    |           |
|---|--------------------------|-----|----|-----------|
| 1 | Unclassified-Total ..... | 096 | \$ | 3,000,000 |
|---|--------------------------|-----|----|-----------|

*194-Regional Jail and Correctional Facility Authority*

(WV Code Chapter 31)

Fund 6675 FY 2009 Org 0615

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 1,348,744      |
| 2 | Annual Increment .....  | 004 |    | 21,860         |
| 3 | Employee Benefits ..... | 010 |    | 433,097        |
| 4 | Debt Service .....      | 040 |    | 9,000,000      |
| 5 | Unclassified .....      | 099 |    | <u>545,235</u> |
| 6 | Total .....             |     | \$ | 11,348,936     |

*195-Division of Veterans' Affairs-  
Veterans' Home*

(WV Code Chapter 9A)

Fund 6754 FY 2009 Org 0618

|   |                          |     |    |         |
|---|--------------------------|-----|----|---------|
| 1 | Unclassified-Total ..... | 096 | \$ | 466,000 |
|---|--------------------------|-----|----|---------|

*196-Fire Commission-  
Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2009 Org 0619

|   |                         |     |    |                  |
|---|-------------------------|-----|----|------------------|
| 1 | Personal Services ..... | 001 | \$ | 1,850,929        |
| 2 | Annual Increment .....  | 004 |    | 31,024           |
| 3 | Employee Benefits ..... | 010 |    | 654,695          |
| 4 | Unclassified .....      | 099 |    | <u>1,505,575</u> |
| 5 | Total .....             |     | \$ | 4,042,223        |

6 Any unexpended cash balance remaining in fund 6152 at  
 7 the close of the fiscal year 2008 is hereby available for  
 8 expenditure as part of the fiscal year 2009 appropriation.

*197-Division of Criminal Justice Services-  
 WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2009 Org 0620

1 Unclassified-Total ..... 096 \$ 2,010,348

*198-Criminal Justice Services-  
 Court Security Fund*

(WV Code Chapter 51)

Fund 6804 FY 2009 Org 0620

1 Unclassified-Total ..... 096 \$ 2,544,773

**DEPARTMENT OF REVENUE**

*199-Division of Banking*

(WV Code Chapter 31A)

Fund 3041 FY 2009 Org 0303

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 1,751,407      |
| 2 | Annual Increment .....  | 004 |    | 22,320         |
| 3 | Employee Benefits ..... | 010 |    | 528,449        |
| 4 | Unclassified .....      | 099 |    | <u>692,658</u> |
| 5 | Total .....             |     | \$ | 2,994,834      |

*200—Office of the Secretary-  
State Debt Reduction Fund*

(WV Code Chapter 29)

Fund 7007 FY 2009 Org 0701

1 Unclassified-Total-Transfer . . . . . 402        \$ 13,700,000

2        The above appropriation for Unclassified-Total-Transfer  
3 shall be transferred to the Other Post-Employment  
4 Contribution Accumulation Fund (fund 2541, org 0232).

*201-Tax Division-  
Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 2009 Org 0702

|   |                             |     |    |              |
|---|-----------------------------|-----|----|--------------|
| 1 | Personal Services . . . . . | 001 | \$ | 17,274       |
| 2 | Annual Increment . . . . .  | 004 |    | 310          |
| 3 | Employee Benefits . . . . . | 010 |    | 5,845        |
| 4 | Unclassified . . . . .      | 099 |    | <u>7,747</u> |
| 5 | Total . . . . .             |     | \$ | 31,176       |

*202-Tax Division-  
Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 2009 Org 0702

|   |                             |     |    |                |
|---|-----------------------------|-----|----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ | 895,551        |
| 2 | Annual Increment . . . . .  | 004 |    | 23,100         |
| 3 | Employee Benefits . . . . . | 010 |    | 331,342        |
| 4 | Unclassified . . . . .      | 099 |    | <u>229,847</u> |

|     |                |              |
|-----|----------------|--------------|
| 192 | APPROPRIATIONS | [Ch. 10      |
| 5   | Total .....    | \$ 1,479,840 |

*203-Tax Division-  
Special District Excise Tax Administration Fund*

(WV Code Chapter 11)

Fund 7086 FY 2009 Org 0702

|   |                          |     |    |        |
|---|--------------------------|-----|----|--------|
| 1 | Unclassified-Total ..... | 096 | \$ | 51,372 |
|---|--------------------------|-----|----|--------|

*204-Tax Division-  
Wine Tax Administration Fund*

(WV Code Chapter 60)

Fund 7087 FY 2009 Org 0702

|   |                          |     |    |         |
|---|--------------------------|-----|----|---------|
| 1 | Unclassified-Total ..... | 096 | \$ | 255,734 |
|---|--------------------------|-----|----|---------|

*205-State Budget Office-  
Public Employees Insurance Reserve Fund*

(WV Code Chapter 11B)

Fund 7400 FY 2009 Org 0703

|   |                                    |     |    |           |
|---|------------------------------------|-----|----|-----------|
| 1 | Public Employees Insurance Reserve |     |    |           |
| 2 | Fund—Transfer .....                | 903 | \$ | 6,800,000 |

3 The above appropriation for Public Employees Insurance  
4 Reserve Fund—Transfer shall be transferred to the Medical  
5 Services Trust Fund (fund 5185, org 0511) for expenditure.

*206-Insurance Commissioner-  
Examination Revolving Fund*



## (WV Code Chapter 33)

Fund 7150 FY 2009 Org 0704

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 501,944        |
| 2 | Annual Increment .....  | 004 |    | 5,332          |
| 3 | Employee Benefits ..... | 010 |    | 143,081        |
| 4 | Unclassified .....      | 099 |    | <u>585,917</u> |
| 5 | Total .....             |     | \$ | 1,236,274      |

*207-Insurance Commissioner-  
Consumer Advocate*

## (WV Code Chapter 33)

Fund 7151 FY 2009 Org 0704

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 373,458        |
| 2 | Annual Increment .....  | 004 |    | 5,220          |
| 3 | Employee Benefits ..... | 010 |    | 125,186        |
| 4 | Unclassified .....      | 099 |    | <u>282,192</u> |
| 5 | Total .....             |     | \$ | 786,056        |

*208-Insurance Commissioner*

## (WV Code Chapter 33)

Fund 7152 FY 2009 Org 0704

|   |                             |     |    |                   |
|---|-----------------------------|-----|----|-------------------|
| 1 | Personal Services (R) ..... | 001 | \$ | 16,284,006        |
| 2 | Annual Increment (R) .....  | 004 |    | 330,596           |
| 3 | Employee Benefits (R) ..... | 010 |    | 6,513,611         |
| 4 | Unclassified (R) .....      | 099 |    | <u>14,320,190</u> |
| 5 | Total .....                 |     | \$ | 37,448,403        |

6 Any unexpended balances remaining in the  
7 appropriations at the close of the fiscal year 2008 are hereby  
8 reappropriated for expenditure during the fiscal year 2009.

9       The total amount of this appropriation shall be paid from  
 10 a special revenue fund out of collections of fees and charges  
 11 as provided by law.

*209-Insurance Commissioner–  
 Workers’ Compensation Old Fund*

(WV Code Chapter 23)

Fund 7162 FY 2009 Org 0704

1 Unclassified-Total . . . . . 096       \$550,000,000

*210-Insurance Commissioner–  
 Workers’ Compensation Uninsured Employers’ Fund*

(WV Code Chapter 23)

Fund 7163 FY 2009 Org 0704

1 Unclassified-Total . . . . . 096       \$ 27,000,000

*211-Insurance Commissioner–  
 Self-Insured Employer Guaranty Risk Pool*

(WV Code Chapter 23)

Fund 7164 FY 2009 Org 0704

1 Unclassified-Total . . . . . 096       \$ 5,000,000

*212-Insurance Commissioner–  
 Self-Insured Employer Security Risk Pool*

(WV Code Chapter 23)

Fund 7165 FY 2009 Org 0704

|         |                |     |
|---------|----------------|-----|
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|---------|----------------|-----|

|   |                          |     |    |            |
|---|--------------------------|-----|----|------------|
| 1 | Unclassified-Total ..... | 096 | \$ | 10,000,000 |
|---|--------------------------|-----|----|------------|

*213-Insurance Commissioner-  
Private Carrier Guaranty Fund* .

(WV Code Chapter 23)

Fund 7166 FY 2009 Org 0704

|   |                          |     |    |           |
|---|--------------------------|-----|----|-----------|
| 1 | Unclassified-Total ..... | 096 | \$ | 1,000,000 |
|---|--------------------------|-----|----|-----------|

*214-Insurance Commissioner-  
Assigned Risk Fund*

(WV Code Chapter 23)

Fund 7167 FY 2009 Org 0704

|   |                          |     |    |           |
|---|--------------------------|-----|----|-----------|
| 1 | Unclassified-Total ..... | 096 | \$ | 1,000,000 |
|---|--------------------------|-----|----|-----------|

*215-Lottery Commission-  
Revenue Center Construction Fund*

(WV Code Chapter 29)

Fund 7209 FY 2009 Org 0705

|   |                          |     |    |            |
|---|--------------------------|-----|----|------------|
| 1 | Unclassified-Total ..... | 096 | \$ | 60,000,000 |
|---|--------------------------|-----|----|------------|

*216-Municipal Bond Commission*

(WV Code Chapter 13)

Fund 7253 FY 2009 Org 0706

|   |                         |     |    |         |
|---|-------------------------|-----|----|---------|
| 1 | Personal Services ..... | 001 | \$ | 163,463 |
| 2 | Annual Increment .....  | 004 |    | 5,332   |
| 3 | Employee Benefits ..... | 010 |    | 67,128  |

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|   |                        |     |    |               |
|---|------------------------|-----|----|---------------|
| 4 | Unclassified . . . . . | 099 |    | <u>88,089</u> |
| 5 | Total . . . . .        |     | \$ | 324,012       |

*217-Racing Commission-  
Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 2009 Org 0707

|   |                                  |     |  |           |
|---|----------------------------------|-----|--|-----------|
| 1 | Medical Expenses-Total . . . . . | 245 |  | \$ 57,000 |
|---|----------------------------------|-----|--|-----------|

2       The total amount of this appropriation shall be paid from  
3 the special revenue fund out of collections of license fees and  
4 fines as provided by law.

5       No expenditures shall be made from this account except  
6 for hospitalization, medical care and/or funeral expenses for  
7 persons contributing to this fund.

*218-Racing Commission-  
Administration and Promotion*

(WV Code Chapter 19)

Fund 7304 FY 2009 Org 0707

|   |                             |     |    |               |
|---|-----------------------------|-----|----|---------------|
| 1 | Personal Services . . . . . | 001 |    | \$ 123,351    |
| 2 | Annual Increment . . . . .  | 004 |    | 2,170         |
| 3 | Employee Benefits . . . . . | 010 |    | 33,056        |
| 4 | Unclassified . . . . .      | 099 |    | <u>82,161</u> |
| 5 | Total . . . . .             |     | \$ | 240,738       |

*219-Racing Commission-  
General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2009 Org 0707

|   |                             |     |    |                |
|---|-----------------------------|-----|----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ | 1,822,625      |
| 2 | Annual Increment . . . . .  | 004 |    | 25,206         |
| 3 | Employee Benefits . . . . . | 010 |    | 433,993        |
| 4 | Unclassified . . . . .      | 099 |    | <u>755,728</u> |
| 5 | Total . . . . .             |     | \$ | 3,037,552      |

*220-Racing Commission-  
Administration, Promotion and Education Fund*

(WV Code Chapter 19)

Fund 7307 FY 2009 Org 0707

|   |                              |     |    |           |
|---|------------------------------|-----|----|-----------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 1,500,956 |
|---|------------------------------|-----|----|-----------|

*221-Alcohol Beverage Control Administration-  
Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2009 Org 0708

|   |                             |     |    |                |
|---|-----------------------------|-----|----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ | 112,338        |
| 2 | Annual Increment . . . . .  | 004 |    | 3,780          |
| 3 | Employee Benefits . . . . . | 010 |    | 50,468         |
| 4 | Unclassified . . . . .      | 099 |    | <u>140,324</u> |
| 5 | Total . . . . .             |     | \$ | 306,910        |

6 To the extent permitted by law, four classified exempt  
7 positions shall be provided from Personal Services line item  
8 for field auditors.

*222-Alcohol Beverage Control Administration*

(WV Code Chapter 60)

Fund 7352 FY 2009 Org 0708

|   |                             |     |    |                  |
|---|-----------------------------|-----|----|------------------|
| 1 | Personal Services . . . . . | 001 | \$ | 3,867,662        |
| 2 | Annual Increment . . . . .  | 004 |    | 98,092           |
| 3 | Employee Benefits . . . . . | 010 |    | 1,666,014        |
| 4 | Unclassified (R) . . . . .  | 099 |    | <u>3,362,948</u> |
| 5 | Total . . . . .             |     | \$ | 8,994,716        |

6 Any unexpended balance remaining in the appropriation  
 7 for Unclassified (fund 7352, activity 099) at the close of the  
 8 fiscal year 2008 is hereby reappropriated for expenditure  
 9 during the fiscal year 2009.

10 From the above appropriation an amount shall be used for  
 11 the Tobacco/Alcohol Education Program.

12 The total amount of this appropriation shall be paid from  
 13 a special revenue fund out of liquor revenues.

14 The above appropriation includes the salary of the  
 15 commissioner and the salaries, expenses and equipment of  
 16 administrative offices, warehouses and inspectors.

17 There is hereby appropriated from liquor revenues, in  
 18 addition to the above appropriation, the necessary amount for  
 19 the purchase of liquor as provided by law.

**DEPARTMENT OF TRANSPORTATION**

*223-Division of Motor Vehicles-  
 Dealer Recovery Fund*

(WV Code Chapter 17)

Fund 8220 FY 2009 Org 0802

|   |                              |     |    |         |
|---|------------------------------|-----|----|---------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 189,000 |
|---|------------------------------|-----|----|---------|

*224-Division of Motor Vehicles-  
 Motor Vehicle Fees Fund*

(WV Code Chapter 17B)

Fund 8223 FY 2009 Org 0802

1 Unclassified-Total ..... 096 \$ 3,935,499

*225-Division of Highways-  
A. James Manchin Fund*

(WV Code Chapter 17)

Fund 8319 FY 2009 Org 0803

1 Unclassified-Total ..... 096 \$ 3,276,000

*226-Public Port Authority-  
Special Railroad and Intermodal Enhancement Fund*

(WV Code Chapter 17)

Fund 8254 FY 2009 Org 0806

1 Unclassified-Total ..... 096 \$ 2,500,000

**BUREAU OF SENIOR SERVICES**

*227-Bureau of Senior Services-  
Community Based Service Fund*

(WV Code Chapter 22)

Fund 5409 FY 2009 Org 0508

1 Unclassified-Total ..... 096 \$ 5,000,000

**HIGHER EDUCATION**

*228-Higher Education Policy Commission-System-*

*Registration Fee Capital Improvement Fund  
(Capital Improvement and Bond Retirement Fund)  
Control Account*

(WV Code Chapters 18 and 18B)

Fund 4902 FY 2009 Org 0442

|   |                                  |     |                |
|---|----------------------------------|-----|----------------|
| 1 | Debt Service (R) . . . . .       | 040 | \$ 4,822,241   |
| 2 | General Capital Expenditures (R) | 306 | <u>500,000</u> |
| 3 | Total . . . . .                  |     | \$ 5,322,241   |

4 Any unexpended balances remaining in the  
5 appropriations at the close of fiscal year 2008 are hereby  
6 reappropriated for expenditure during the fiscal year 2009.

7 The total amount of this appropriation shall be paid from  
8 the special capital improvements fund created in section  
9 eight, article ten, chapter eighteen-b of the code. Projects are  
10 to be paid on a cash basis and made available on July 1 of  
11 each year.

12 The above appropriations, except for debt service, may be  
13 transferred to special revenue funds for capital improvement  
14 projects at the institutions.

*229-Higher Education Policy Commission-System-  
Tuition Fee Capital Improvement Fund  
(Capital Improvement and Bond Retirement Fund)  
Control Account*

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2009 Org 0442

|   |                                  |     |              |
|---|----------------------------------|-----|--------------|
| 1 | Debt Service (R) . . . . .       | 040 | \$23,470,321 |
| 2 | General Capital Expenditures (R) | 306 | 3,000,000    |



|   |                                      |                |
|---|--------------------------------------|----------------|
| 3 | Facilities Planning                  |                |
| 4 | and Administration (R) . . . . . 386 | <u>412,564</u> |
| 5 | Total . . . . .                      | \$26,882,885   |

6 Any unexpended balances remaining in the  
7 appropriations at the close of fiscal year 2008 are hereby  
8 reappropriated for expenditure during the fiscal year 2009.

9 The total amount of this appropriation shall be paid from  
10 the special capital improvement fund created in section eight,  
11 article ten, chapter eighteen-b of the code. Projects are to be  
12 paid on a cash basis and made available on July 1.

13 The above appropriations, except for debt service, may be  
14 transferred to special revenue funds for capital improvement  
15 projects at the institutions.

*230-Higher Education Policy Commission-  
Tuition Fee Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2009 Org 0442

1 Any unexpended balance remaining in the appropriation  
2 at the close of the fiscal year 2008 is hereby reappropriated  
3 for expenditure during the fiscal year 2009.

4 The appropriation shall be paid from available  
5 unexpended cash balances and interest earnings accruing to  
6 the fund. The appropriation shall be expended at the  
7 discretion of the Higher Education Policy Commission and  
8 the funds may be allocated to any institution within the  
9 system.

10 The total amount of this appropriation shall be paid from  
11 the unexpended proceeds of revenue bonds previously issued  
12 pursuant to section eight, article twelve-b, chapter eighteen  
13 of the code, which have since been refunded.

*231-Health Sciences-  
West Virginia University Health Sciences Center*

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2009 Org 0463

- 1 Unclassified-Total (R) . . . . . 096            \$15,812,292
- 2     Any unexpended balance remaining in the appropriation
- 3     at the close of fiscal year 2008 is hereby reappropriated for
- 4     expenditure during the fiscal year 2009.

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*232-Hospital Finance Authority*

(WV Code Chapter 16)

Fund 5475 FY 2009 Org 0509

|   |                             |     |    |               |
|---|-----------------------------|-----|----|---------------|
| 1 | Personal Services . . . . . | 001 | \$ | 48,520        |
| 2 | Annual Increment . . . . .  | 004 |    | 1,116         |
| 3 | Employee Benefits . . . . . | 010 |    | 18,567        |
| 4 | Unclassified. . . . .       | 099 |    | <u>30,572</u> |
| 5 | Total . . . . .             |     | \$ | 98,775        |

- 6     The total amount of this appropriation shall be paid from
- 7     the special revenue fund out of fees and collections as
- 8     provided by article twenty-nine-a, chapter sixteen of the
- 9     code.

*233-WV State Board of Examiners for  
Licensed Practical Nurses*

(WV Code Chapter 30)

Fund 8517 FY 2009 Org 0906

1 Unclassified-Total ..... 096      \$    381,443

*234-WV Board of Examiners for  
Registered Professional Nurses*

(WV Code Chapter 30)

Fund 8520 FY 2009 Org 0907

1 Unclassified-Total ..... 096      \$    927,146

*235-Public Service Commission*

(WV Code Chapter 24)

Fund 8623 FY 2009 Org 0926

|   |                                 |     |    |                   |
|---|---------------------------------|-----|----|-------------------|
| 1 | Personal Services .....         | 001 | \$ | 8,386,495         |
| 2 | Annual Increment .....          | 004 |    | 161,734           |
| 3 | Employee Benefits .....         | 010 |    | 2,726,792         |
| 4 | Unclassified .....              | 099 |    | 2,957,041         |
| 5 | PSC Weight Enforcement .....    | 345 |    | 4,369,725         |
| 6 | Debt Payment/Capital Outlay ... | 520 |    | 350,000           |
| 7 | BRIM Premium .....              | 913 |    | <u>114,609</u>    |
| 8 | Total .....                     |     | \$ | <u>19,066,396</u> |

9        The total amount of this appropriation shall be paid from  
10 a special revenue fund out of collection for special license  
11 fees from public service corporations as provided by law.

12        The Public Service Commission is authorized to spend up  
13 to \$500,000, from surplus funds in this account, to meet the  
14 expected deficiencies in the Motor Carrier Division (fund  
15 8625, org 0926) due to the amendment and reenactment of  
16 §24A-3-1 by Enrolled House Bill Number 2715, Regular  
17 Session, 1997.

*236-Public Service Commission-  
Gas Pipeline Division—  
Public Service Commission Pipeline Safety Fund*

(WV Code Chapter 24B)

Fund 8624 FY 2009 Org 0926

|   |                             |     |               |
|---|-----------------------------|-----|---------------|
| 1 | Personal Services . . . . . | 001 | \$ 163,509    |
| 2 | Annual Increment . . . . .  | 004 | 6,890         |
| 3 | Employee Benefits . . . . . | 010 | 54,843        |
| 4 | Unclassified . . . . .      | 099 | <u>85,966</u> |
| 5 | Total . . . . .             |     | \$ 311,208    |

6       The total amount of this appropriation shall be paid from  
7 a special revenue fund out of receipts collected for or by the  
8 public service commission pursuant to and in the exercise of  
9 regulatory authority over pipeline companies as provided by  
10 law.

*237-Public Service Commission-  
Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8625 FY 2009 Org 0926

|   |                             |     |                |
|---|-----------------------------|-----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ 1,601,822   |
| 2 | Annual Increment . . . . .  | 004 | 49,647         |
| 3 | Employee Benefits . . . . . | 010 | 542,177        |
| 4 | Unclassified . . . . .      | 099 | <u>679,790</u> |
| 5 | Total . . . . .             |     | \$ 2,873,436   |

6       The total amount of this appropriation shall be paid from  
7 a special revenue fund out of receipts collected for or by the  
8 public service commission pursuant to and in the exercise of  
9 regulatory authority over motor carriers as provided by law.

*238--Public Service Commission-  
Consumer Advocate*

(WV Code Chapter 24)

Fund 8627 FY 2009 Org 0926

|   |                         |     |    |              |
|---|-------------------------|-----|----|--------------|
| 1 | Personal Services ..... | 001 | \$ | 533,932      |
| 2 | Annual Increment .....  | 004 |    | 8,692        |
| 3 | Employee Benefits ..... | 010 |    | 165,481      |
| 4 | Unclassified .....      | 099 |    | 339,611      |
| 5 | BRIM Premium .....      | 913 |    | <u>3,978</u> |
| 6 | Total .....             |     | \$ | 1,051,694    |

7 The total amount of this appropriation shall be paid from  
8 a special revenue fund out of collections made by the public  
9 service commission.

*239--Real Estate Commission*

(WV Code Chapter 30)

Fund 8635 FY 2009 Org 0927

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 368,686        |
| 2 | Annual Increment .....  | 004 |    | 8,828          |
| 3 | Employee Benefits ..... | 010 |    | 121,671        |
| 4 | Unclassified .....      | 099 |    | <u>300,622</u> |
| 5 | Total .....             |     | \$ | 799,807        |

6 The total amount of this appropriation shall be paid out  
7 of collections of license fees as provided by law.

*240-WV Board of Examiners for Speech-Language  
Pathology and Audiology*

(WV Code Chapter 30)

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APPROPRIATIONS

[Ch. 10

Fund 8646 FY 2009 Org 0930

1 Unclassified-Total . . . . . 096 \$ 94,489

*241-WV Board of Respiratory Care*

(WV Code Chapter 30)

Fund 8676 FY 2009 Org 0935

1 Unclassified-Total . . . . . 096 \$ 109,877

*242-WV Board of Licensed Dietitians*

(WV Code Chapter 30)

Fund 8680 FY 2009 Org 0936

1 Unclassified-Total . . . . . 096 \$ 18,996

*243-Massage Therapy Licensure Board*

(WV Code Chapter 30)

Fund 8671 FY 2009 Org 0938

1 Unclassified-Total . . . . . 096 \$ 125,578

*244-Board of Treasury Investments*

(WV Code Chapter 12)

Fund 9152 FY 2009 Org 0950

1 Unclassified-Total . . . . . 096 \$ 1,266,707

2 There is hereby appropriated from this fund, in addition  
3 to the above appropriation, the amount of funds necessary for

4 the Board of Treasury Investments to pay the fees and  
5 expenses of custodians, fund advisors and fund managers for  
6 the Consolidated fund of the State as provided in Chapter 12,  
7 Article 6C of the West Virginia Code.

8 The total amount of the appropriation shall be paid from  
9 the special revenue fund out of fees and collections as  
10 provided by law.

|    |                            |                        |
|----|----------------------------|------------------------|
| 11 | Total TITLE II, Section 3- |                        |
| 12 | Other Funds .....          | <u>\$1,384,272,607</u> |

1 **Sec. 4. Appropriations from lottery net profits.**-Net  
2 profits of the lottery are to be deposited by the director of the  
3 lottery to the following accounts in the amounts indicated.  
4 The director of the lottery shall prorate each deposit of net  
5 profits in the proportion the appropriation for each account  
6 bears to the total of the appropriations for all accounts.

7 After first satisfying the requirements for Fund 2252,  
8 Fund 3963, and Fund 4908 pursuant to section eighteen,  
9 article twenty-two, chapter twenty-nine of the code, the  
10 director of the lottery shall make available from the  
11 remaining net profits of the lottery any amounts needed to  
12 pay debt service for which an appropriation is made for Fund  
13 9065, Fund 4297, and Fund 3514 and is authorized to transfer  
14 any such amounts to Fund 9065, Fund 4297, and Fund 3514  
15 for that purpose. Upon receipt of reimbursement of amounts  
16 so transferred, the director of the lottery shall deposit the  
17 reimbursement amounts to the following accounts as required  
18 by this section.

*245-Education, Arts, Sciences and Tourism-  
Debt Service Fund*

(WV Code Chapter 5)

Fund 2252 FY 2009 Org 0211

|                                | <b>Activity</b> | <b>Lottery<br/>Funds</b> |
|--------------------------------|-----------------|--------------------------|
| 1 Debt Service-Total . . . . . | 310             | \$ 10,000,000            |

*246-West Virginia Development Office-  
Division of Tourism*

(WV Code Chapter 5B)

Fund 3067 FY 2009 Org 0304

|                                      |     |                  |
|--------------------------------------|-----|------------------|
| 1 Tourism-Telemarketing Center . .   | 463 | \$ 90,000        |
| 2 WV Film Office . . . . .           | 498 | 360,680          |
| 3 Tourism-Advertising (R) . . . . .  | 618 | 3,151,519        |
| 4 Tourism-Unclassified (R) . . . . . | 662 | <u>4,358,529</u> |
| 5 Total . . . . .                    |     | \$ 7,960,728     |

6 Any unexpended balances remaining in the  
7 appropriations for Capitol Complex-Capital Outlay (fund  
8 3067, activity 417), Tourism-Advertising (fund 3067, activity  
9 618), Tourism-Unclassified (fund 3067, activity 662),  
10 Tourism-Unclassified-Lottery Surplus (fund 3067, activity  
11 773), and Tourism-Special Projects (fund 3067, activity 859)  
12 at the close of the fiscal year 2008 are hereby reappropriated  
13 for expenditure during the fiscal year 2009.

*247-Division of Natural Resources*

(WV Code Chapter 20)

Fund 3267 FY 2009 Org 0310

|                                   |     |           |
|-----------------------------------|-----|-----------|
| 1 Gypsy Moth Suppression          |     |           |
| 2 Program for State Parks (R) . . | 017 | \$ 42,997 |



|   |                                      |     |                |
|---|--------------------------------------|-----|----------------|
| 3 | Unclassified (R) . . . . .           | 099 | 2,304,163      |
| 4 | Pricketts Fort State Park . . . . .  | 324 | 120,000        |
| 5 | Non-Game Wildlife (R) . . . . .      | 527 | 435,683        |
| 6 | State Parks and                      |     |                |
| 7 | Recreation Advertising (R) . . . . . | 619 | <u>589,402</u> |
| 8 | Total . . . . .                      |     | \$3,492,245    |

9 Any unexpended balances remaining in the  
10 appropriations for Gypsy Moth Suppression Program for  
11 State Parks (fund 3267, activity 017), Unclassified (fund  
12 3267, activity 099), Capital Outlay-Parks (fund 3267, activity  
13 288), Non-Game Wildlife (fund 3267, activity 527), State  
14 Parks and Recreation Advertising (fund 3267, activity 619),  
15 and State Parks-Special Projects (fund 3267, activity 860) at  
16 the close of the fiscal year 2008 are hereby reappropriated for  
17 expenditure during the fiscal year 2009.

*248-State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2009 Org 0402

|    |  |     |                   |
|----|--|-----|-------------------|
| 1  | Unclassified . . . . .                     | 099 | \$ 4,200,000      |
| 2  | READS Program . . . . .                    | 365 | 300,000           |
| 3  | MATH Program . . . . .                     | 368 | 0                 |
| 4  | FBI Checks . . . . .                       | 372 | 111,546           |
| 5  | Vocational Education                       |     |                   |
| 6  | Equipment Replacement . . . . .            | 393 | 819,750           |
| 7  | Assessment Program (R) . . . . .           | 396 | 6,495,906         |
| 8  | 21 <sup>st</sup> Century Fellows . . . . . | 507 | 300,000           |
| 9  | SAS in Schools . . . . .                   | 613 | 125,000           |
| 10 | 21st Century Technology Infrastructure     |     |                   |
| 11 | Network Tools and Support (R) . . . . .    | 933 | <u>22,838,746</u> |
| 12 | Total . . . . .                            |     | \$ 35,190,948     |

13 Any unexpended balances remaining in the  
14 appropriations for Unclassified (fund 3951, activity 099),

15 Technology Infrastructure Network (fund 3951, activity 351),  
 16 Assessment Program (fund 3951, activity 396), Technology  
 17 Demonstration Project (fund 3951, activity 639), 21<sup>st</sup> Century  
 18 Technology Infrastructure Network Tools and Support (fund  
 19 3951, activity 933), and Computer Study (fund 3951, activity  
 20 998) at the close of the fiscal year 2008 are hereby  
 21 reappropriated for expenditure during the fiscal year 2009.

22 The above appropriation for Technology Infrastructure  
 23 Network shall be expended on the following programs and  
 24 technology: Computer Basic Skills, S.U.C.C.E.S.S., WVEIS,  
 25 Technology Repair and Modernization, Technology and  
 26 Telecommunications Initiative and other programs in the  
 27 field that will benefit the Counties.

*249-State Department of Education-  
 School Building Authority-  
 Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 2009 Org 0402

|   |                              |     |    |            |
|---|------------------------------|-----|----|------------|
| 1 | Debt Service-Total . . . . . | 310 | \$ | 18,000,000 |
|---|------------------------------|-----|----|------------|

*250-Department of Education and the Arts-  
 Office of the Secretary-  
 Control Account-  
 Lottery Education Fund*

(WV Code Chapter 5F)

Fund 3508 FY 2009 Org 0431

|   |                                 |     |    |         |
|---|---------------------------------|-----|----|---------|
| 1 | Unclassified (R) . . . . .      | 099 | \$ | 120,000 |
| 2 | WV Humanities Council . . . . . | 168 |    | 0       |
| 3 | Commission for National and     |     |    |         |
| 4 | Community Service . . . . .     | 193 |    | 435,050 |

|         |                                      |              |
|---------|--------------------------------------|--------------|
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| 5       | Arts Programs (R) . . . . .          | 500 80,000   |
| 6       | College Readiness (R) . . . . .      | 579 203,080  |
| 7       | Challenger Learning Center . . . . . | 862 125,000  |
| 8       | Statewide STEM 21 <sup>st</sup>      |              |
| 9       | Century Academy . . . . .            | 897 150,000  |
| 10      | Special Olympic Games . . . . .      | 966 <u>0</u> |
| 11      | Total . . . . .                      | \$ 1,113,130 |

12 Any unexpended balances remaining in the  
13 appropriations for Unclassified (fund 3508, activity 099),  
14 Arts Programs (fund 3508, activity 500), College Readiness  
15 (fund 3508, activity 579) and Literacy Project (fund 3508,  
16 activity 899) at the close of fiscal year 2008 are hereby  
17 reappropriated for expenditure during the fiscal year 2009.

*251-Division of Culture and History-  
Lottery Education Fund*

(WV Code Chapter 29)

Fund 3534 FY 2009 Org 0432

|    |                                      |                |
|----|--------------------------------------|----------------|
| 1  | Huntington Symphony . . . . .        | 027 \$ 100,000 |
| 2  | Martin Luther King, Jr.              |                |
| 3  | Holiday Celebration . . . . .        | 031 10,800     |
| 4  | Fairs and Festivals . . . . .        | 122 *2,686,000 |
| 5  | Archeological Curation/Capital       |                |
| 6  | Improvements (R) . . . . .           | 246 52,611     |
| 7  | Historic Preservation Grants (R) .   | 311 553,935    |
| 8  | West Virginia Public Theater . . . . | 312 200,000    |
| 9  | Tri-County Fair Association . . . .  | 343 *25,000    |
| 10 | George Tyler Moore Center for the    |                |
| 11 | Study of the Civil War . . . . .     | 397 60,000     |
| 12 | Theater Arts of West Virginia . . .  | 464 300,000    |

---

\*CLERK'S NOTE: The Governor reduced the amount on line 4 from \$2,990,000 to \$2,686,000; and on line 9 he reduced the amount from \$125,000 to \$25,000.

|    |                                      |     |    |                |
|----|--------------------------------------|-----|----|----------------|
| 13 | Greenbrier Valley Theater . . . . .  | 423 |    | 150,000        |
| 14 | Marshall Artists Series . . . . .    | 518 |    | 60,000         |
| 15 | Grants for Competitive               |     |    |                |
| 16 | Arts Program (R) . . . . .           | 624 |    | 1,000,000      |
| 17 | West Virginia State Fair . . . . .   | 657 |    | 50,000         |
| 18 | Contemporary American                |     |    |                |
| 19 | Theater Festival . . . . .           | 811 |    | 100,000        |
| 20 | Independence Hall . . . . .          | 812 |    | 50,000         |
| 21 | Mountain State Forest Festival . . . | 864 |    | 70,000         |
| 22 | WV Symphony . . . . .                | 907 |    | 100,000        |
| 23 | Wheeling Symphony . . . . .          | 908 |    | 100,000        |
| 24 | Appalachian Children's Chorus . .    | 916 |    | <u>100,000</u> |
| 25 | Total . . . . .                      |     | \$ | 6,172,346      |

26 Any unexpended balances remaining in the  
 27 appropriations for Archeological Curation/Capital  
 28 Improvements (fund 3534, activity 246), Historic  
 29 Preservation Grants (fund 3534, activity 311), Capital Outlay,  
 30 Repairs and Equipment (fund 3534, activity 589), Grants for  
 31 Competitive Arts Program (fund 3534, activity 624), and  
 32 Project ACCESS (fund 3534, activity 865) at the close of the  
 33 fiscal year 2008 are hereby reappropriated for expenditure  
 34 during the fiscal year 2009.

35 Included in the above appropriation for Fairs and  
 36 Festivals (fund 3534, activity 122) funding shall be provided  
 37 to the African-American Cultural Heritage Festival 5,000,  
 38 African-American Heritage Family Tree Museum 4,500,  
 39 African-American Jubilee (Ohio) 5,500, Alderson 4th of July  
 40 Celebration (Greenbrier) ~~\*5,000~~ 3,000, Allegheny Echo  
 41 (Pocahontas) 7,500, Alpine Festival/Leaf Peepers Festival  
 42 (Tucker) 11,250, American Legion Post 8, Veterans Day  
 43 Parade 2,000, Angus Beef and Cattle Show (Lewis) 1,500,  
 44 Annual Labor Day Observance (Randolph) 2,000, Antique  
 45 Market Fair (Lewis) 2,000, Apollo Theater-Summer Program  
 46 (Berkeley) 2,000, Appalachian Autumn Festival (Braxton)  
 47 3,500, Appalachian Mountain Bike Race (Calhoun) 1,500,

48 Apple Butter Festival (Morgan) 6,000, Aracoma Story  
 49 (Logan) 50,000, Arkansaw Homemaker's Heritage Weekend  
 50 (Hardy) 3,500, Armed Forces Day-South Charleston  
 51 (Kanawha) 3,000, Arthurdale Heritage New Deal Festival  
 52 (Preston) 5,000, Arts Monongahela (Monongalia) 20,000,  
 53 Athens Town Fair (Mercer) 2,000, Augusta Fair (Randolph)  
 54 5,000, Barbour County Arts & Humanities Council 1,500,  
 55 Barbour County Fair 25,000, Barboursville Octoberfest  
 56 (Cabell) 5,000, Bass Festival (Pleasants) 1,850, Battelle  
 57 District Fair (Monongalia) 5,000, Battle of Dry Creek  
 58 (Greenbrier) 1,500, ~~\*Battle of Lewisburg Civil War Days~~  
 59 ~~(Greenbrier) 3,000~~, Battle of Point Pleasant Memorial  
 60 Committee (Mason) 5,000, Beckley Main Street (Raleigh)  
 61 5,000, Belington VFD Community Fair (Barbour) 1,750,  
 62 Belle Boyd House (Berkeley) 2,000, Belle Town Fair  
 63 (Kanawha) 4,500, Bergoo Down Home Days (Webster)  
 64 2,500, Berkeley County Youth Fair 3,500, Birch River Days  
 65 Festival (Nicholas) 2,000, Black Bear 4K Mountain Bike  
 66 Race 1,000, Black Heritage Festival (Harrison) 6,000, Black  
 67 Walnut Festival (Roane) 10,000, Blue-Gray Reunion  
 68 (Barbour) 3,500, Boone County Fair ~~\*10,000~~ 6,500, Boone  
 69 County Labor Day Celebration 4,000, Bradshaw Fall Festival  
 70 (McDowell) 2,000, Bramwell Street Fair (Mercer) 1,500,  
 71 Braxton County Fairs and Festivals Association 11,500,  
 72 Brooke County Fair ~~\*3,500~~ 2,500, Bruceton Mills Good  
 73 Neighbor Days (Preston) 2,000, Buckwheat Festival  
 74 (Preston) 8,500, Buffalo 4th of July Celebration (Putnam)  
 75 500, Buffalo Creek Memorial (Logan) 5,000, Burlington  
 76 Apple Harvest Festival (Mineral) 30,000, Cabell County Fair  
 77 10,000, Calhoun County Wood Festival 2,000, Cape  
 78 Coalwood Festival Association (McDowell) 2,500, Capon  
 79 Bridge Annual VFD Celebration (Hampshire) 1,000, Capon  
 80 Springs Ruritan 4th of July (Hampshire) 1,000, Carnegie  
 81 Hall, Inc. (Greenbrier) 70,000, Cass Homecoming  
 82 (Pocahontas) 2,000, Cedarville Town Festival (Gilmer)  
 83 ~~\*1,000~~ 500, Celebration in the Park (Wood) 4,000,

84 Celebration of America (Monongalia) 6,000, Ceredo  
 85 Historical Society (Wayne) 2,000, Ceredo-Kenova Railroad  
 86 Museum (Wayne) 2,000, Chapmanville Apple Butter Festival  
 87 (Logan) 1,000, Chapmanville Fire Department 4th of July  
 88 3,000, Charles Town Christmas Festival (Jefferson) 5,000,  
 89 Charles Town Heritage Festival (Jefferson) 5,000, Charleston  
 90 Sternwheel Regatta (Kanawha) 20,000, Cherry River Festival  
 91 (Nicholas) 6,500, Chester Fireworks (Hancock) 1,500,  
 92 ~~\*Chester Fourth of July Festivities (Hancock) 5,000~~, Chief  
 93 Logan State Park-Civil War Celebration (Logan) 8,000,  
 94 Christmas in Shepherdstown (Jefferson) 4,000, ~~\*Christmas~~  
 95 ~~in the Park (Brooke) 5,000~~, Christmas in the Park (Logan)  
 96 25,000, City of Dunbar Critter Dinner (Kanawha) 10,000,  
 97 ~~\*City of Pinegrove Centennial Celebration (Wetzel) 5,000~~,  
 98 City of Pleasant Valley Celebration (Marion) 2,500, Civil  
 99 War Horse Cavalry Race (Barbour) 1,000, Clay County  
 100 Golden Delicious Apple Festival 5,000, Coal Field Jamboree  
 101 (Logan) 35,000, Coalton Days Fair (Randolph) 7,000, Collis  
 102 P. Huntington Railroad Historical Society 10,000, Country  
 103 Roads Festival (Fayette) 2,000, Cowen Railroad Festival  
 104 (Webster) 3,500, Craigsville Fall Festival (Nicholas) 3,500,  
 105 Delbarton Homecoming (Mingo) ~~\*3,500~~ 2,000, Doddridge  
 106 County Fair 5,200, Dunlow Fall Festival (Wayne) 2,000,  
 107 Durbin Days (Pocahontas) 5,000, Elbert/Filbert Reunion  
 108 Festival (McDowell) 1,500, Elizabethtown Festival  
 109 (Marshall) 4,000, Fairview 4th of July Celebration (Marion)  
 110 1,000, Farm Safety Day (Preston) 2,000, Fayette American  
 111 Legion 4th of July 1,000, FestivALL Charleston (Kanawha)  
 112 20,000, First Stage Children's Theater Company (Cabell)  
 113 2,000, Flanagan Murrell House (Summers) 10,000, Flatwood  
 114 Days (Braxton) 1,000, Flemington Day Fair and Festival  
 115 (Taylor) 3,500, Follansbee Community Days (Brooke)  
 116 ~~\*8,250~~ 7,250, Fort Ashby Fort (Mineral) 1,500, Fort Gay  
 117 Mountain Heritage Days (Wayne) 5,000, Fort New Salem  
 118 (Harrison) 3,700, Fort Randolph (Mason) 5,000, Frankford  
 119 Autumnfest (Greenbrier) ~~\*5,000~~ 3,000, Franklin Fishing

120 Derby (Pendleton) 7,500, \*~~Freshwater Folk Festival~~  
 121 ~~(Greenbrier) 5,000~~, Friends Auxiliary of W.R. Sharpe  
 122 Hospital 5,000, \*~~Frontier Days (Harrison) 3,000~~, Frontier  
 123 Fest/Canaan Valley (Taylor County) 5,000, Fund for the  
 124 Arts-Wine & All that Jazz Festival 2,500, Gassaway Days  
 125 Celebration (Braxton) 5,000, General Adam Stephen  
 126 Memorial Foundation 18,525, Gilbert Kiwanis Harvest  
 127 Festival (Mingo) \*~~4,000~~ 3,000, Gilbert Spring Fling (Mingo)  
 128 5,000, Gilmer County Farm Show \*~~4,000~~ 3,500, Grafton  
 129 Mother's Day Shrine Committee (Taylor) 8,500, Grant  
 130 County Arts Council 2,000, Grape Stomping Wine Festival  
 131 (Nicholas) 2,000, \*~~Great Greenbrier River Race (Pocahontas)~~  
 132 ~~50,000~~, Greater Quinwood Days (Greenbrier) 2,000, Green  
 133 Spring Days (Hampshire) 1,000, Guyandotte Civil War Days  
 134 (Cabell) 10,000, Hamlin 4th of July Celebration (Lincoln)  
 135 5,000, Hampshire Civil War Celebration Days 1,000,  
 136 \*~~Hampshire County 4th of July Celebration 20,000~~,  
 137 Hampshire County Fair 6,000, Hampshire County French &  
 138 Indian War Celebration 1,000, Hampshire Heritage Days  
 139 3,000, Hancock County Oldtime Fair 5,000, Hardy County  
 140 Commission - 4th of July 10,000, Hardy County Tour and  
 141 Crafts Association 20,000, Harts Community Celebration  
 142 (Lincoln) 1,000, \*~~Hatfield McCoy Matewan Reunion~~  
 143 ~~Festival (Mingo) 5,000~~, Hatfield McCoy Trail National ATV  
 144 and Dirt Bike Weekend (Wyoming) 5,000, Heritage Craft  
 145 Center of the Eastern Panhandle 7,000, \*~~Heritage Craft~~  
 146 ~~Festival (Monroe) 1,000~~, Heritage Days Festival (Roane)  
 147 1,500, Heritage Farm Museum & Village (Cabell) 50,000,  
 148 Hicks Festival (Tucker) 2,000, Hilltop Festival (Huntington)  
 149 1,000, Hinton Railroad Days (Summers) 5,500, Historic  
 150 Fayette Theater (Fayette) 5,500, Historic Middleway  
 151 Conservancy (Jefferson) 1,000, Holly River Festival  
 152 (Webster) 1,500, Hundred 4th of July (Wetzel) 7,250,  
 153 Hundred American Legion Earl Kiger Post Bluegrass  
 154 Festival (Wetzel) 2,000, Huntington Outdoor Theater  
 155 (Cabell) 2,000, \*~~Hurricane 4th of July Celebration (Putnam)~~

156 ~~5,000~~, Iaeger Lions Club Annual Golf Show (McDowell)  
 157 1,500, Iaeger Town Fair (McDowell) 1,500, Indian Mound  
 158 Cemetery (Hampshire) 2,000, International Ramp Cook-Off  
 159 (Randolph) 2,000, Irish Heritage Festival of WV (Raleigh)  
 160 5,000, Irish Spring Festival (Lewis) 1,000, Italian Heritage  
 161 Festival-Clarksburg (Harrison) ~~\*30,000~~ 25,000, Jackson  
 162 County Fair 5,000, Jacksonburg Homecoming (Wetzel)  
 163 1,000, Jane Lew Arts and Crafts Fair (Lewis) 1,000,  
 164 Jefferson Co. Black History Preservation Society 5,000,  
 165 Jefferson Co. Historical Landmark Commission 8,000,  
 166 Jefferson County African American Heritage Festival 5,000,  
 167 Jefferson County Fair Association 25,000, Jersey Mountain  
 168 Ruritan Pioneer Days (Hampshire) 1,000, John Henry Days  
 169 Festival (Monroe) 5,000, Johnnie Johnson Blues and Jazz  
 170 Festival (Marion) 5,000, Johnstown Community Fair  
 171 (Harrison) 2,500, Junior Heifer Preview Show (Lewis) 2,000,  
 172 Kanawha Coal Riverfest-St. Albans July 5,000, Kay Ford  
 173 Reunion (Kanawha) 2,500, Kenova Fall Festival (Wayne)  
 174 5,000, Kermit Fall Festival (Mingo) 3,000, Keyser Old  
 175 Fashioned 4th of July Celebration (Mineral) 1,000, King Coal  
 176 Festival (Mingo) ~~\*5,000~~ 4,000, Kingwood Downtown Street  
 177 Fair and Heritage Days (Preston) 2,000, ~~\*E.Z. Rainelle WV~~  
 178 ~~Veterans Reunion (Greenbrier) 5,000~~, Lady of Agriculture  
 179 (Preston) 1,000, Lamb and Steer Show 9,000, Larry Joe  
 180 Harless Center Octoberfest Hatfield McCoy Trail (Mingo)  
 181 ~~\*10,000~~ 5,000, Last Blast of Summer (McDowell) 5,000,  
 182 Laurel Mt. Re-enactment Committee (Barbour) 3,250, Levels  
 183 VFD Lawn Association (Hampshire) 1,000, Lewis County  
 184 Fair Association 3,500, Lewisburg Shanghai (Greenbrier)  
 185 2,000, Lincoln County Fall Festival 8,000, Lincoln County  
 186 Winterfest 5,000, Lincoln District Fair (Marion) 2,500,  
 187 Lindside 4th of July (Monroe) 500, Little Birch Days  
 188 Celebration (Braxton) 500, Little Levels Heritage Festival  
 189 2,000, Logan County Arts and Crafts Fair 4,000, Logan  
 190 Freedom Festival ~~\*15,000~~ 10,000, Lost Creek Community  
 191 Festival 6,000, Maddie Carroll House (Cabell) 7,500,



192 Mannington District Fair (Marion) 6,000, Maple Syrup  
193 Festival (Randolph) 1,000, Marion County FFA Farm Fest  
194 2,500, Marmet Annual Labor Day Celebration (Kanawha)  
195 2,000, Marshall County Antique Power Show 2,500,  
196 Marshall County Fair 7,500, Marshall County Historical  
197 Society 8,500, Mason County Fair 5,000, Mason Dixon  
198 Festival (Monongalia) 7,000, Matewan Massacre  
199 Reenactment (Mingo) \*6,000 5,000, Matewan-Magnolia Fair  
200 (Mingo) \*45,000 20,000, McARTS-McDowell County  
201 20,000, McCoy Theater (Hardy) 20,000, McDowell County  
202 Fair 2,500, McGrew House History Day 2,000, McNeill's  
203 Rangers (Mineral) 8,000, Meadow Bridge Hometown  
204 Festival (Fayette) 1,250, Meadow River Days Festival 3,000,  
205 Mercer Bluestone Valley Fair 2,000, Mercer County Fair  
206 2,000, Mid Ohio Valley Antique Engine Festival (Wood)  
207 3,000, Milton Christmas in the Park (Cabell) 2,500, Milton  
208 Fourth of July Celebration (Cabell) 2,500, Mineral County  
209 Fair 1,750, Mineral County Veterans Day Parade 1,500,  
210 Molasses Festival (Calhoun) 2,000, Moncove Lake Festival  
211 (Monroe) 2,000, Monroe County Farmer's Day - Union  
212 2,000, \*~~Monroe County Harvest Festival 2,000, Morgan~~  
213 ~~County Fair-History Wagon 1,500, Morgantown Theater~~  
214 Company 20,000, Mothers' Day Festival (Randolph) 2,500,  
215 Moundsville Bass Festival 4,000, Moundsville July 4th  
216 Celebration (Marshall) 5,000, Mount Liberty Fall Festival  
217 (Barbour) 2,500, Mountain Fest (Monongalia) 20,000,  
218 Mountain Festival (Mercer) 4,625, Mountain Heritage Arts  
219 and Crafts Festival 5,000, Mountain Music Festival 2,500,  
220 Mountain State Apple Harvest Festival (Berkeley) 7,500,  
221 Mountain State Arts Crafts Fair Cedar Lakes (Jackson) 5,000,  
222 Mountaineer Boys' State (Lewis) 10,000, Mountaineer Hot  
223 Air Balloon Festival (Monongalia) 4,000, Mud River Festival  
224 (Lincoln) 8,000, Mullens Dogwood Festival (Wyoming)  
225 6,000, Multi-Cultural Festival of West Virginia 20,000,  
226 Museum in the Community (Putnam) 45,000, Music Hall of  
227 Fame (Marion) 5,000, \*~~New Cumberland Christmas Parade~~

228 ~~(Hancock) 3,000~~, New Cumberland Fourth of July Fireworks  
 229 (Hancock) 5,000, New River Bridge Day Festival (Fayette)  
 230 ~~\*40,000~~ 35,000, Newburg Volunteer Fireman's Field Day  
 231 (Preston) 1,000, Newell Annual Clay Festival (Hancock)  
 232 3,000, ~~\*Nicholas County Fair 5,000~~, Nicholas County Potato  
 233 Festival 3,500, Nicholas Old Main Foundation (Nicholas)  
 234 2,000, Norman Dillon Farm Museum (Berkeley) 10,000,  
 235 North Preston Farmers Club - Civil War Times 1,000, North  
 236 River Valley Festival (Hampshire) 1,000, Northern Preston  
 237 Mule Pull and Farmers Days 4,000, Oak Leaf Festival  
 238 (Fayette) 4,000, Oceana Heritage Festival (Wyoming) 6,000,  
 239 Oglebay City Park - Festival of Lights (Ohio) ~~\*80,000~~  
 240 75,000, Oglebay Festival (Ohio) ~~\*10,000~~ 5,000, Ohio County  
 241 Fair 8,500, Ohio Valley Beef Association (Wood) 2,500, Old  
 242 Central City Fair (Huntington) 5,000, Old Opera House  
 243 Theater Company (Jefferson) 15,000, Old Tyme Christmas  
 244 (Jefferson) 2,400, Paden City Labor Day Festival (Wetzel)  
 245 6,500, Parkersburg Arts Center 20,000, Parkersburg  
 246 Homecoming (Wood) 12,000, Patty Fest 2,000, Paw Paw  
 247 District Fair (Marion) 3,500, Pax Reunion Committee  
 248 (Fayette) 5,000, Pendleton County 4-H Weekend 2,000,  
 249 Pendleton County Committee for Arts 15,000, Pendleton  
 250 County Fair 25,000, Pennsboro Country Road Festival  
 251 (Ritchie) 2,000, Petersburg Fourth of July Celebration  
 252 (Grant) 20,000, Petersburg HS Celebration (Grant) 10,000,  
 253 Peterstown 4th of July Horse Show (Grant) 1,000, Piedmont-  
 254 Annual Back Street Festival (Mineral) 4,000, Pinch Reunion  
 255 (Kanawha) 1,500, Pine Bluff Fall Festival (Harrison) 4,000,  
 256 Pine Grove 4th of July Festival (Wetzel) 5,000, Pineville  
 257 Festival (Wyoming) 6,000, Pleasants County Agriculture  
 258 Youth Fair 5,000, Poca Heritage Days (Putnam) 3,000,  
 259 Pocahontas County Pioneer Days 7,000, Pocahontas Historic  
 260 Opera House 6,000, Point Pleasant Stern Wheel Regatta  
 261 (Mason) 5,000, Potomac Highlands Maple Festival (Grant)  
 262 6,000, Princeton Street Fair (Mercer) 5,000, Putnam County  
 263 Fair 5,000, Quartets on Parade (Hardy) 4,000, Rainelle Fall

264 Festival (Greenbrier) 3,000, Raleigh County All Wars  
265 Museum 10,000, Randolph County Community Arts Council  
266 3,000, Randolph County Fair 7,000, Ranson Christmas  
267 Festival (Jefferson) 5,000, Ranson Festival (Jefferson) 5,000,  
268 Ravenswood Octoberfest (Jackson) 5,000, Ravenswood Ohio  
269 River Festival (Jackson) 3,000, Reedsville VFD Fair  
270 (Preston) 2,000, Renick Liberty Festival (Greenbrier) 1,000,  
271 Rhododendron Girls' State (Ohio) 10,000, Riders of the  
272 Flood (Greenbrier) 3,000, Ripley 4th of July (Jackson)  
273 15,000, Ritchie County Fair and Exposition \*~~5,000~~ 2,000,  
274 Ritchie County Pioneer Days 1,000, Ritter Park Days  
275 (Cabell) 3,000, River Heritage Days - Speed Boat Race  
276 (Wetzel) 5,000, River Heritage Days Festival (Wetzel) 6,000,  
277 Riverfest (Marion) 2,000, Roane Co. 4-H and FFA Youth  
278 Livestock Program 5,000, Roane County Agriculture Field  
279 Day 3,000, Ronceverte River Festival (Greenbrier) \*~~5,000~~  
280 3,000, Rowlesburg Labor Day Festival (Preston) 1,000,  
281 Rupert Country Fling (Greenbrier) 3,000, Salem Apple  
282 Butter Festival (Harrison) 4,000, Scottish Heritage Society/N.  
283 Central WV Central 5,000, Sistersville 4th of July Fireworks  
284 (Tyler) 5,500, Smoke on the Water (Kanawha) 2,000, Smoke  
285 on the Water (Wetzel) 3,000, \*Society for the Preservation of  
286 ~~McGrew House (Preston) 3,500~~; Soldiers' Memorial Theater  
287 (Raleigh) 10,000, Southern Wayne County Fall Festival  
288 1,000, Southern WV Veterans' Museum (Summers) 4,500,  
289 Spirit of Grafton Celebration (Taylor) 7,000, Spring  
290 Mountain Festival (Grant) 4,000, Springfield Peach Festival  
291 (Hampshire) 1,200, St. Albans City of Lights - December  
292 5,000, \*~~St. Spyridon Greek Festival (Harrison) 2,500~~; Stoco  
293 Reunion (Raleigh) 2,500, Stonewall Jackson Heritage Arts  
294 and Crafts 11,000, Storytelling Festival (Lewis) 500,  
295 Strawberry Festival (Upshur) \*~~30,000~~ 20,000, Summers  
296 County Historic Landmark Commission 5,000, \*~~Taste of~~  
297 ~~Parkersburg (Wood) 5,000~~; Taylor County Fair 5,500, Terra  
298 Alta VFD 4th of July Celebration (Preston) 1,000, Those  
299 Who Served War Museum (Mercer) 4,000, Three Rivers

300 Avian Center (Summers) 15,000, Three Rivers Coal Festival  
301 (Marion) 7,750, Thunder on the Tygart - Mothers' Day  
302 Celebration \*~~15,000~~ 5,000, Town of Delbarton 4th of July  
303 Celebration 3,000, \*~~Town of Fayetteville Heritage Festival~~  
304 ~~(Fayette)~~ 7,500, Town of Matoka-annual Hog Roast (Mercer)  
305 1,000, Treasure Mountain Festival (Pendleton) 25,000, Tri-  
306 County Fair (Grant) 15,000, Tucker County Arts Festival and  
307 Celebration 18,000, Tucker County Fair 4,750, Tucker  
308 County Health Fair 2,000, Tug Valley Arts Council (Mingo)  
309 5,000, Tug Valley Chamber of Commerce Coal House  
310 (Mingo) 2,000, Tunnelton Depot Days (Preston) 1,000,  
311 Tunnelton Historical Society (Preston) 2,000, Turkey Festival  
312 (Hardy) 3,000, Tyler County Fair 5,200, Tyler County Fourth  
313 of July 500, Uniquely West Virginia Festival (Morgan)  
314 2,000, Upper Ohio Valley Italian Festival (Ohio) 7,000,  
315 Upper West Fork Blue Grass Festival (Calhoun) 500, Upshur  
316 County Fair 7,000, Valley District Fair- Reedsville (Preston)  
317 3,500, \*~~Veterans Welcome Home Celebration (Cabell)~~ 3,000,  
318 Volcano Days at Mountwood Park (Wood) 5,000, War  
319 Homecoming Fall Festival 1,500, Wardensville Fall Festival  
320 (Hardy) 5,000, Wayne County Fair 5,000, Wayne County  
321 Fall Festival 5,000, Webb Chapel Cemetery Association  
322 Event (Preston) 2,000, Webster County Wood Chopping  
323 Festival \*~~15,000~~ 4,500, Webster Wild Water Weekend 2,000,  
324 Weirton July 4th Celebration (Hancock) \*~~20,000~~ 3,000,  
325 Wellsburg 4th of July Celebration (Brooke) 7,500, Wellsburg  
326 Apple Festival of Brooke County 5,000, West Virginia  
327 Autumn Festival (Braxton) 2,500, West Virginia Blackberry  
328 Festival (Harrison) 5,000, West Virginia Coal Festival  
329 (Boone) \*~~10,000~~ 7,000, West Virginia Dairy Cattle Show  
330 10,000, \*~~West Virginia Dandelion Festival (Greenbrier)~~  
331 ~~5,000~~, West Virginia Fair and Exposition (Wood) 8,100,  
332 West Virginia Fireman's Rodeo (Fayette) 2,500, West  
333 Virginia Highland Games & Celtic Festival 3,000, West  
334 Virginia Honey Festival (Wood) 2,000, West Virginia  
335 Museum of Glass (Lewis) 5,000, West Virginia Oil and Gas

336 Festival (Tyler) 11,000, West Virginia Polled Hereford  
337 Assoc. 1,500, West Virginia Poultry Festival (Hardy) 5,000,  
338 West Virginia Pumpkin Festival (Cabell) ~~\*10,000~~ 7,500,  
339 West Virginia Roundhouse Rail Days (Berkeley) 25,000,  
340 West Virginia State Folk Festival (Gilmer) ~~\*5,000~~ 4,500,  
341 West Virginia Water Festival - City of Hinton (Summers)  
342 16,000, West Virginia Wine & Jazz Festival (Monongalia)  
343 9,000, West Virginia Wine and Arts Festival (Berkeley)  
344 5,000, Weston VFD 4th of July Firemen Festival (Lewis)  
345 2,000, Wetzel County Autumnfest 5,500, Wetzel County  
346 Town and Country Days 17,000, Wheeling Celtic Festival  
347 (Ohio) 2,000, Wheeling City of Lights (Ohio) 8,000,  
348 Wheeling Sternwheel Regatta (Ohio) 10,000, Wheeling  
349 Vintage Raceboat Regatta (Ohio) 20,000, Whipple  
350 Community Action (Fayette) 2,500, Whitesville - Big Coal  
351 River Festival (Boone) 4,000, Widen Days Festival  
352 (Calhoun) 2,000, Wileyville Homecoming (Wetzel) 4,000,  
353 Wine Festival and Mountain Music Event (Harrison) 5,000,  
354 Winter Festival of the Waters (Berkeley) 5,000, Wirt County  
355 Fair 2,500, Wirt County Pioneer Days 2,000, WV Music  
356 Hall Fame (Kanawha) 3,000, WV State Monarch Butterfly  
357 Festival (Brooke) 5,000, WV Strawberry Festival (horse pull)  
358 2,500, YMCA Camp Horseshoe (Ohio) 100,000, Youth  
359 Museum of Southern WV (Raleigh) 12,000, Youth Stockman  
360 Beef Expo. (Lewis) 2,000, Z.D. Ramsdell House (Wayne)  
361 4,500.

362 Any Fairs & Festival awards shall be funded in addition  
363 to, and not in lieu of, individual grant allocations derived  
364 from the Arts Council and the Cultural Grant Program  
365 allocations.

*252-Library Commission-  
Lottery Education Fund*

(WV Code Chapter 10)

Fund 3559 FY 2009 Org 0433

|   |                                      |     |    |                  |
|---|--------------------------------------|-----|----|------------------|
| 1 | Books and Films . . . . .            | 179 | \$ | 450,000          |
| 2 | Services to Libraries . . . . .      | 180 |    | 550,000          |
| 3 | Grants to Public Libraries . . . . . | 182 |    | *8,348,884       |
| 4 | Digital Resources . . . . .          | 309 |    | 219,992          |
| 5 | Libraries-Special Projects . . . . . | 625 |    | 800,000          |
| 6 | Infomine Network . . . . .           | 884 |    | <u>1,184,686</u> |
| 7 | Total . . . . .                      |     | \$ | 12,553,562       |

*253-Bureau of Senior Services-  
Lottery Senior Citizens Fund*

(WV Code Chapter 29)

Fund 5405 FY 2009 Org 0508

|    |  |     |    |            |
|----|--|-----|----|------------|
| 1  | Personal Services . . . . .            | 001 | \$ | 137,542    |
| 2  | Annual Increment . . . . .             | 004 |    | 2,600      |
| 3  | Employee Benefits . . . . .            | 010 |    | 59,675     |
| 4  | Unclassified . . . . .                 | 099 |    | 348,881    |
| 5  | Local Programs Service                 |     |    |            |
| 6  | Delivery Costs . . . . .               | 200 |    | 2,475,250  |
| 7  | Silver Haired Legislature . . . . .    | 202 |    | 15,000     |
| 8  | Area Agencies Administration . . . . . | 203 |    | 78,685     |
| 9  | Senior Citizen Centers and             |     |    |            |
| 10 | Programs (R) . . . . .                 | 462 |    | *2,600,000 |
| 11 | Transfer to Division of Human          |     |    |            |
| 12 | Services for Health Care and           |     |    |            |
| 13 | Title XIX Waiver for                   |     |    |            |
| 14 | Senior Citizens . . . . .              | 539 |    | 23,822,578 |
| 15 | Roger Tompkins Alzheimers              |     |    |            |
| 16 | Respite Care . . . . .                 | 643 |    | 1,795,864  |

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\***CLERK'S NOTE:** The Governor reduced the amount on line 3 from \$9,348,884 to \$8,348,884; and he reduced the amount on line 10 from \$3,100,000 to \$2,600,000.

|    |                                     |     |                |
|----|-------------------------------------|-----|----------------|
| 17 | Regional Aged and Disabled          |     |                |
| 18 | Resource Center . . . . .           | 767 | 1,000,000      |
| 19 | Senior Services Medicaid            |     |                |
| 20 | Transfer . . . . .                  | 871 | 10,300,000     |
| 21 | Legislative Initiatives for the     |     |                |
| 22 | Elderly . . . . .                   | 904 | 10,000,000     |
| 23 | Long Term Care Ombudsman . . .      | 905 | 321,325        |
| 24 | BRIM Premium . . . . .              | 913 | 7,243          |
| 25 | West Virginia Elder Watch . . . . . | 934 | 150,000        |
| 26 | In-Home Services and Nutrition      |     |                |
| 27 | for Senior Citizens . . . . .       | 917 | 5,700,000      |
| 28 | WV Senior Corps . . . . .           | 493 | <u>250,000</u> |
| 29 | Total . . . . .                     |     | \$ 59,564,643  |

30 Any unexpended balance remaining in the appropriation  
 31 for Senior Citizen Centers and Programs (fund 5405, activity  
 32 462) at the close of the fiscal year 2008 is hereby  
 33 reappropriated for expenditure during the fiscal year 2009.

34 ~~\*From the above appropriation for Senior Citizen Centers~~  
 35 ~~and Programs (fund 5405, activity 462) \$500,000 is for~~  
 36 ~~emergency needs as determined by the Commissioner of~~  
 37 ~~Senior Services.~~

38 The above appropriation for Transfer to Division of  
 39 Human Services for Health Care and Title XIX Waiver for  
 40 Senior Citizens along with the federal moneys generated  
 41 thereby shall be used for reimbursement for services  
 42 provided under the program. Further, the program shall be  
 43 preserved within the aggregate of these funds.

*254-Community and Technical College  
 Capital Improvement Fund*

(WV Code Chapter 18B)

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\*CLERK’S NOTE: The Governor struck language on lines 34 through 37.

Fund 4908 FY 2009 Org 0442

|   |                              |     |  |              |
|---|------------------------------|-----|--|--------------|
| 1 | Debt Service-Total . . . . . | 310 |  | \$ 5,000,000 |
|---|------------------------------|-----|--|--------------|

*255-Higher Education Policy Commission-  
Lottery Education-  
Higher Education Policy Commission-  
Control Account*

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2009 Org 0441

|    |                                    |     |    |           |
|----|------------------------------------|-----|----|-----------|
| 1  | Marshall Medical School-           |     |    |           |
| 2  | RHI Program and                    |     |    |           |
| 3  | Site Support (R) . . . . .         | 033 | \$ | 464,080   |
| 4  | WVU Health Sciences-               |     |    |           |
| 5  | RHI Program and                    |     |    |           |
| 6  | Site Support (R) . . . . .         | 035 |    | 1,276,388 |
| 7  | RHI Program and Site Support-      |     |    |           |
| 8  | District Consortia (R) . . . . .   | 036 |    | 2,410,172 |
| 9  | RHI Program and Site Support-      |     |    |           |
| 10 | RHEP Program                       |     |    |           |
| 11 | Administration (R) . . . . .       | 037 |    | 183,058   |
| 12 | RHI Program and Site Support-      |     |    |           |
| 13 | Grad Med Ed and Fiscal             |     |    |           |
| 14 | Oversight (R) . . . . .            | 038 |    | 104,915   |
| 15 | Debt Service (R) . . . . .         | 040 |    | 0         |
| 16 | Higher Education Grant             |     |    |           |
| 17 | Program (R) . . . . .              | 164 |    | 0         |
| 18 | Tuition Contract Program (R) . . . | 165 |    | 1,020,809 |
| 19 | Minority Doctoral                  |     |    |           |
| 20 | Fellowship (R) . . . . .           | 166 |    | 150,000   |
| 21 | Underwood—Smith Scholarship        |     |    |           |
| 22 | Program-Student Awards (R) .       | 167 |    | 141,142   |
| 23 | Health Sciences Scholarship (R) .  | 176 |    | 250,787   |



|    |                                   |                                    |
|----|-----------------------------------|------------------------------------|
| 24 | Vice Chancellor for Health        |                                    |
| 25 | Sciences—Rural Health             |                                    |
| 26 | Residency Program (R) . . . . .   | 601                      271,346   |
| 27 | MA Public Health Program and      |                                    |
| 28 | Health Science Technology (R) .   | 623                      61,786    |
| 29 | Marshall University Graduate      |                                    |
| 30 | College Writing Project (R) . .   | 807                      25,000    |
| 31 | HEAPS Grant Program (R) . . . . . | 867                      0         |
| 32 | WV Engineering, Science, and      |                                    |
| 33 | Technology Scholarship            |                                    |
| 34 | Program (R) . . . . .             | 868                      470,473   |
| 35 | Health Sciences Career            |                                    |
| 36 | Opportunities Program (R) . .     | 869                      372,059   |
| 37 | HSTA Program (R) . . . . .        | 870                      1,521,156 |
| 38 | WV Autism Training Center (R) .   | 932                      2,075,739 |
| 39 | Center for Excellence in          |                                    |
| 40 | Disabilities (R) . . . . .        | 967 <u>250,000</u>                 |
| 41 | Total . . . . .                   | \$ 11,048,910                      |

42 Any unexpended balances remaining in the  
43 appropriations at the close of fiscal year 2008 are hereby  
44 reappropriated for expenditure during the fiscal year 2009.

45 The above appropriation for Underwood-Smith  
46 Scholarship Program-Student Awards (activity 167) shall be  
47 transferred to the Underwood-Smith Teacher Scholarship  
48 Fund (fund 4922, org 0441) established by chapter eighteen-  
49 c, article four, section one.

50 The above appropriation for WV Engineering, Science,  
51 and Technology Scholarship Program (activity 868) shall be  
52 transferred to the West Virginia Engineering, Science and  
53 Technology Scholarship Fund (fund 4928, org 0441)  
54 established by chapter eighteen-c, article six, section one.

|    |                            |                       |
|----|----------------------------|-----------------------|
| 55 | Total TITLE II, Section 4- |                       |
| 56 | Lottery Revenue . . . . .  | \$ <u>170,096,512</u> |

1       **Sec. 5. Appropriations from state excess lottery**  
 2 **revenue fund.**- In accordance with section eighteen-a, article  
 3 twenty-two, chapter twenty nine of the code, the following  
 4 appropriations shall be deposited and disbursed by the  
 5 director of the lottery to the following accounts in this section  
 6 in the amounts indicated.

*256-Lottery Commission-  
Refundable Credit*

Fund 7207 FY 2009 Org 0705

|   | <b>Activity</b> | <b>Lottery<br/>Funds</b> |
|---|-----------------|--------------------------|
| 1   Unclassified-Total-Transfer . . . . . | 402             | \$ 10,000,000            |

2       The above appropriation for Unclassified-Total-Transfer  
 3 (activity 402) shall be transferred to the General Revenue  
 4 Fund to provide reimbursement for the refundable credit  
 5 allowable under chapter eleven, article twenty-one, section  
 6 twenty-one of the code. The amount of the required transfer  
 7 shall be determined solely by the state tax commissioner and  
 8 shall be completed by the director of the lottery upon the  
 9 commissioner's request.

*257-Lottery Commission-  
General Purpose Account*

Fund 7206 FY 2009 Org 0705

|   |     |               |
|---|-----|---------------|
| 1   Unclassified-Total-Transfer . . . . . | 402 | \$ 65,000,000 |
|---|-----|---------------|

2       The above appropriation for Unclassified-Total-Transfer  
 3 (activity 402) shall be transferred to the General Revenue  
 4 Fund as determined by the director of the lottery.

*258-Education Improvement Fund*

Fund 4295 FY 2009 Org 0441

1 Unclassified-Total-Transfer . . . . . 402      \$ 27,000,000

2        The above appropriation for Unclassified-Total-Transfer  
3 (activity 402) shall be transferred to the PROMISE  
4 Scholarship Fund (fund 4296, org 0441) established by  
5 chapter eighteen-c, article seven, section seven.

6        The Legislature has explicitly set a finite amount of  
7 available appropriations and directed the administrators of  
8 the Program to provide for the award of scholarships within  
9 the limits of available appropriations.

*259-Economic Development Authority-  
Economic Development Project Fund*

Fund 9065 FY 2009 Org 0944

1 Debt Service-Total . . . . . 310      \$ 19,000,000

2        Pursuant to subsection (f), section eighteen-a, article  
3 twenty-two, chapter twenty-nine of the code, excess lottery  
4 revenues are authorized to be transferred to the lottery fund  
5 as reimbursement of amounts transferred to the economic  
6 development project fund pursuant to section four of this title  
7 and subsection (f), section eighteen, article twenty-two,  
8 chapter twenty-nine of the code.

*260-School Building Authority*

Fund 3514 FY 2009 Org 0402

1 Unclassified-Total . . . . . 096      \$ 19,000,000

2 Any unexpended balance remaining in the appropriation  
 3 for Unclassified-Total-Transfer (fund 3514, activity 402) at  
 4 the close of the fiscal year 2008 is hereby reappropriated for  
 5 expenditure during the fiscal year 2009.

*261-West Virginia Infrastructure Council*

Fund 3390 FY 2009 Org 0316

1 Unclassified-Total-Transfer . . . . . 402 \$ 40,000,000

2 The above appropriation for Unclassified-Total-Transfer  
 3 (activity 402) shall be transferred to the West Virginia  
 4 Infrastructure Fund (fund 3384, org 0316) created by chapter  
 5 thirty-one, article fifteen-a, section nine of the code.

*262-Higher Education Improvement Fund*

Fund 4297 FY 2009 Org 0441

1 Unclassified-Total . . . . . 096 \$ 10,000,000

*263-State Park Improvement Fund*

Fund 3277 FY 2009 Org 0310

1 Unclassified-Total (R) . . . . . 096 \$ 5,000,000

2 Any unexpended balance remaining in the appropriation  
 3 at the close of the fiscal year 2008 is hereby reappropriated  
 4 for expenditure during the fiscal year 2009.

5 Appropriations to the State Park Improvement Fund are  
 6 not to be expended on personal services or employee  
 7 benefits.

*264-Lottery Commission-  
 Excess Lottery Revenue Fund Surplus*

Fund 7208 FY 2009 Org 0705

|   |                                  |     |    |                  |
|---|----------------------------------|-----|----|------------------|
| 1 | Capital Outlay-Parks . . . . .   | 288 | \$ | 0                |
| 2 | Other Post Employee Benefits-    |     |    |                  |
| 3 | Transfer . . . . .               | 289 |    | 46,600,000       |
| 4 | Capitol Complex-Capital Outlay . | 417 |    | 18,200,000       |
| 5 | Unclassified-Transfer . . . . .  | 482 |    | 62,900,000       |
| 6 | School Access Safety . . . . .   | 978 |    | <u>8,000,000</u> |
| 7 | Total . . . . .                  |     |    | \$135,700,000    |

8       The above appropriation for Unclassified-Transfer  
9 (activity 482) shall be transferred to the General Revenue  
10 Fund only after all funding required by chapter twenty-nine,  
11 article twenty-two, section eighteen-a of the code has been  
12 satisfied as determined by the director of the lottery.

13       The above appropriation for School Access Safety (fund  
14 7208, activity 978), shall be transferred to the School Access  
15 Safety Fund (fund 3516) only after all funding required by  
16 chapter twenty-nine, article twenty-two, section eighteen-a of  
17 the code and the transfer to the General Revenue Fund (fund  
18 7208, org 0705, activity 482) has been satisfied as  
19 determined by the director of the lottery.

20       The above appropriation for Capitol Complex-Capital  
21 Outlay (fund 7208, activity 417), shall be transferred to the  
22 Capitol Dome and Capital Improvements Fund (fund 2257)  
23 only after all the appropriations for activities 482 and 978  
24 have been satisfied.

25       The above appropriation for Other Post-Employee  
26 Benefits-Transfer (fund 7208, activity 289) shall be  
27 transferred to the Other Post-Employment Contribution  
28 Accumulation Fund (fund 2541, org 0232) only after the  
29 above appropriations for activities 482, 978, and 417 have  
30 been satisfied.

31       Should the actual revenues accruing to the total Excess  
32 Lottery Fund be insufficient to fully fund all appropriations,  
33 the appropriation to the Other Post-Employee Benefits-  
34 Transfer (activity 289) shall be reduced to the extent funds  
35 are available and the appropriation made in the reduced  
36 amount and thereafter transferred to the Other Post-  
37 Employment Contribution Accumulation Fund (fund 2541).

*265—Joint Expenses*

(WV Code Chapter 4)

Fund 1736 FY 2009 Org 2300

1       Any unexpended balance remaining in the appropriation  
2 for Tax Reduction and Federal Funding Increased  
3 Compliance (TRAFFIC)-Lottery Surplus (fund 1736, activity  
4 929) at the close of the fiscal year 2008 is hereby  
5 reappropriated for expenditure during the fiscal year 2009.

*266—Governor's Office*

(WV Code Chapter 5)

Fund 1046 FY 2009 Org 0100

1       Any unexpended balance remaining in the appropriation  
2 for Publication of Papers and Transition Expenses—Lottery  
3 Surplus (fund 1046, activity 066) at the close of the fiscal  
4 year 2008 is hereby reappropriated for expenditure during the  
5 fiscal year 2009.

*267—Office of Technology*

(WV Code Chapter 5A)

Fund 2532 FY 2009 Org 0231

1 Any unexpended balances remaining in the  
2 appropriations for Network Monitoring-Lottery Surplus (fund  
3 2532, activity 919) and Unclassified-Lottery Surplus (fund  
4 2532, activity 928) at the close of the fiscal year 2008 are  
5 hereby reappropriated for expenditure during the fiscal year  
6 2009.

*268—West Virginia Development Office*

(WV Code Chapter 5B)

Fund 3170 FY 2009 Org 0307

1 Any unexpended balance remaining in the appropriation  
2 for Connectivity Research and Development-Lottery Surplus  
3 (fund 3170, activity 923) at the close of the fiscal year 2008  
4 is hereby reappropriated for expenditure during the fiscal  
5 year 2009.

6 The above appropriation to Connectivity Research and  
7 Development-Lottery Surplus shall be used by the West  
8 Virginia Development Office for the coordinated  
9 development of technical infrastructure in areas where  
10 expanded resources and technical infrastructure may be  
11 expected or required pursuant to the provisions of 5A-6-4 of  
12 the code.

*269-Division of Health—  
Central Office*

(WV Code Chapter 16)

Fund 5219 FY 2009 Org 0506

1 Any unexpended balance remaining in the appropriation  
2 for Chief Medical Examiner—Capital Improvements—Lottery

3 Surplus (fund 5219, activity 051) at the close of the fiscal  
4 year 2008 is hereby reappropriated for expenditure during the  
5 fiscal year 2009.

*270—Tax Division*

(WV Code Chapter 11)

Fund 7082 FY 2009 Org 0702

1 Any unexpended balance remaining in the appropriation  
2 for Remittance Processor—Lottery Surplus (fund 7082,  
3 activity 054) at the close of the fiscal year 2008 is hereby  
4 reappropriated for expenditure during the fiscal year 2009.

5 Total TITLE II, Section 5-

6 Excess Lottery Funds \$ 330,700,000

1 **Sec. 6. Appropriations of federal funds.**-In accordance  
2 with article eleven, chapter four of the code, from federal  
3 funds there are hereby appropriated conditionally upon the  
4 fulfillment of the provisions set forth in article two, eleven-b  
5 of the code the following amounts, as itemized, for  
6 expenditure during the fiscal year two thousand nine.

**LEGISLATIVE**

*271-Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 8738 FY 2009 Org 2300

|                                | <b>Activity</b> | <b>Federal<br/>Funds</b> |
|--------------------------------|-----------------|--------------------------|
| 1 Unclassified-Total . . . . . | 096             | \$ 1,314,969             |



**JUDICIAL**

*272-Supreme Court*

Fund 8867 FY 2009 Org 2400

1 Unclassified-Total ..... 096      \$    1,500,000

**EXECUTIVE**

*273-Governor's Office-  
Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8797 FY 2009 Org 0100

1 Unclassified-Total ..... 096      \$    7,272,541

*274-Governor's Office-  
Commission for National and Community Service*

(WV Code Chapter 5)

Fund 8800 FY 2009 Org 0100

1 Unclassified-Total ..... 096      \$    5,668,195

*275-Auditor's Office-  
National White Collar Crime Center*

(WV Code Chapter 12)

Fund 8807 FY 2009 Org 1200

1 Unclassified-Total ..... 096      \$  14,006,826

*276-Department of Agriculture*

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(WV Code Chapter 19)

Fund 8736 FY 2009 Org 1400

1 Unclassified-Total ..... 096 \$ 4,303,826

*277-Department of Agriculture-  
Meat Inspection*

(WV Code Chapter 19)

Fund 8737 FY 2009 Org 1400

1 Unclassified-Total ..... 096 \$ 852,868

*278-Department of Agriculture-  
State Conservation Committee*

(WV Code Chapter 19)

Fund 8783 FY 2009 Org 1400

1 Unclassified-Total ..... 096 \$ 1,814,314

*279-Secretary of State-  
State Election Fund*

(WV Code Chapter 3)

Fund 8854 FY 2009 Org 1600

1 Unclassified-Total ..... 096 \$ 832,108

**DEPARTMENT OF ADMINISTRATION**

*280-West Virginia Prosecuting Attorney's Institute*

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(WV Code Chapter 7)

Fund 8834 FY 2009 Org 0228

1 Unclassified-Total ..... 096 \$ 81,343

*281-Children's Health Insurance Agency*

(WV Code Chapter 5)

Fund 8838 FY 2009 Org 0230

1 Unclassified-Total ..... 096 \$ 37,948,479

**DEPARTMENT OF COMMERCE**

*282-Division of Forestry*

(WV Code Chapter 19)

Fund 8703 FY 2009 Org 0305

1 Unclassified-Total ..... 096 \$ 4,162,433

*283-Geological and Economic Survey*

(WV Code Chapter 29)

Fund 8704 FY 2009 Org 0306

1 Unclassified-Total ..... 096 \$ 486,072

*284-West Virginia Development Office*

(WV Code Chapter 5B)

Fund 8705 FY 2009 Org 0307

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1 Unclassified-Total ..... 096 \$ 9,684,681

*285-Division of Labor*

(WV Code Chapters 21 and 47)

Fund 8706 FY 2009 Org 0308

1 Unclassified-Total ..... 096 \$ 566,143

*286-Division of Natural Resources*

(WV Code Chapter 20)

Fund 8707 FY 2009 Org 0310

1 Unclassified-Total ..... 096 \$ 8,568,663

*287-Division of Miners' Health,  
Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 2009 Org 0314

1 Unclassified-Total ..... 096 \$ 784,352

*288-Workforce West Virginia*

(WV Code Chapter 23)

Fund 8835 FY 2009 Org 0323

|   |                            |     |    |                  |
|---|----------------------------|-----|----|------------------|
| 1 | Unclassified .....         | 099 | \$ | 512,657          |
| 2 | Reed Act 2002—Unemployment |     |    |                  |
| 3 | Compensation .....         | 622 |    | 2,850,000        |
| 4 | Reed Act 2002—Employment   |     |    |                  |
| 5 | Services .....             | 630 |    | <u>1,650,000</u> |

6 Total ..... \$ 5,012,657

7 Pursuant to the requirements of 42 U.S.C. 1103, Section  
8 903 of the Social Security Act, as amended, and the  
9 provisions of section nine, article nine, chapter twenty-one-a  
10 of the code of West Virginia, one thousand nine hundred  
11 thirty-one, as amended, the above appropriation to  
12 Unclassified shall be used by the Workforce West Virginia  
13 for the specific purpose of administration of the state's  
14 unemployment insurance program or job service activities,  
15 subject to each and every restriction, limitation or obligation  
16 imposed on the use of the funds by those federal and state  
17 statutes.

*289-Division of Energy*

(WV Code Chapter 5B)

Fund 8892 FY 2009 Org 0328

1 Unclassified-Total ..... 096 \$ 1,505,435

**DEPARTMENT OF EDUCATION**

*290-State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2009 Org 0402

1 Unclassified-Total ..... 096 \$ 230,320,468

*291-State Department of Education-  
School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2009 Org 0402

1 Unclassified-Total . . . . . 096 \$ 114,028,264

*292-State Board of Education-  
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2009 Org 0402

1 Unclassified-Total . . . . . 096 \$ 16,536,946

*293-State Department of Education-  
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2009 Org 0402

1 Unclassified-Total . . . . . 096 \$ 103,764,986

**DEPARTMENT OF EDUCATION AND THE ARTS**

*294-Department of Education and the Arts-  
Office of the Secretary*

(WV Code Chapter 5F)

Fund 8841 FY 2009 Org 0431

1 Unclassified-Total . . . . . 096 \$ 325,000

*295-Division of Culture and History*

(WV Code Chapter 29)

Fund 8718 FY 2009 Org 0432



**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*300-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2009 Org 0313

1 Unclassified-Total ..... 096      \$ 139,010,466

**DEPARTMENT OF HEALTH  
AND HUMAN RESOURCES**

*301-Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 8723 FY 2009 Org 0506

1 Unclassified-Total ..... 096      \$ 7,325,557

*302-Division of Health-  
Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2009 Org 0506

1 Unclassified-Total ..... 096      \$ 86,579,129

*303-Division of Health-  
West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2009 Org 0506

1 Unclassified-Total ..... 096      \$ 16,000,000



*304-West Virginia Health Care Authority*

(WV Code Chapter 16)

Fund 8851 FY 2009 Org 0507

1 Unclassified-Total ..... 096 \$ 2,577,112

*305-Human Rights Commission*

(WV Code Chapter 5)

Fund 8725 FY 2009 Org 0510

1 Unclassified-Total ..... 096 \$ 438,899

*306-Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2009 Org 0511

|   |                                 |           |    |                   |
|---|---------------------------------|-----------|----|-------------------|
| 1 | Unclassified                    | ..... 099 | \$ | 155,854,516       |
| 2 | Medical Services                | ..... 189 |    | 1,806,784,280     |
| 3 | Medical Services Administrative |           |    |                   |
| 4 | Costs                           | ..... 789 |    | <u>53,282,651</u> |
| 5 | Total                           | .....     | \$ | 2,015,921,447     |

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

*307-Office of the Secretary*

(WV Code Chapter 5F)

Fund 8876 FY 2009 Org 0601

1 Unclassified-Total ..... 096 \$ 20,002,304

*308-Adjutant General-State Militia*

(WV Code Chapter 15)

Fund 8726 FY 2009 Org 0603

1 Unclassified-Total ..... 096 \$ 96,633,010

*309-Division of Homeland Security and  
Emergency Management*

(WV Code Chapter 15)

Fund 8727 FY 2009 Org 0606

1 Unclassified-Total ..... 096 \$ 32,060,431

*310-Division of Corrections*

(WV Code Chapters 25, 28, 49 and 62)

Fund 8836 FY 2009 Org 0608

1 Unclassified-Total ..... 096 \$ 650,000

*311-West Virginia State Police*

(WV Code Chapter 15)

Fund 8741 FY 2009 Org 0612

1 Unclassified-Total ..... 096 \$ 1,655,945

*312-Division of Veterans' Affairs*

(WV Code Chapter 9A)

Fund 8858 FY 2009 Org 0613

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1 Unclassified-Total . . . . . 096    \$    2,750,000

*313-Division of Veterans' Affairs-  
Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 2009 Org 0618

1 Unclassified-Total . . . . . 096    \$    1,774,230

*314-Fire Commission*

(WV Code Chapter 29)

Fund 8819 FY 2009 Org 0619

1 Unclassified-Total . . . . . 099    \$        80,000

*315-Division of Criminal Justice Services*

(WV Code Chapter 15)

Fund 8803 FY 2009 Org 0620

1 Unclassified-Total . . . . . 096    \$    12,896,131

*316-Division of Juvenile Services*

(WV Code Chapter 49)

Fund 8855 FY 2009 Org 0621

1 Unclassified-Total . . . . . 096    \$        386,875

**DEPARTMENT OF REVENUE**

*317-Insurance Commissioner*

(WV Code Chapter 33)

Fund 8883 FY 2009 Org 0704

1 Unclassified-Total ..... 096 \$ 200,000

**DEPARTMENT OF TRANSPORTATION***318-Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2009 Org 0802

1 Unclassified-Total ..... 096 \$ 18,167,668

*319-Division of Public Transit*

(WV Code Chapter 17)

Fund 8745 FY 2009 Org 0805

1 Unclassified-Total ..... 096 \$ 16,377,478

*320-Public Port Authority*

(WV Code Chapter 17)

Fund 8830 FY 2009 Org 0806

1 Unclassified-Total ..... 096 \$ 100,000

**BUREAU OF SENIOR SERVICES***321-Bureau of Senior Services*

(WV Code Chapter 29)

Fund 8724 FY 2009 Org 0508

1 Unclassified-Total . . . . . 096 \$ 14,515,250

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*322-Board of Pharmacy*

(WV Code Chapter 30)

Fund 8857 FY 2009 Org 0913

1 Unclassified-Total . . . . . 096 \$ 155,122

*323-Public Service Commission-  
Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2009 Org 0926

1 Unclassified-Total . . . . . 096 \$ 1,562,171

*324-Public Service Commission-  
Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2009 Org 0926

1 Unclassified-Total . . . . . 096 \$ 282,370

*325-WV Statewide Addressing and Mapping Board*

(WV Code Chapter 24E)

Fund 8868 FY 2009 Org 0940

|     |                              |     |            |
|-----|------------------------------|-----|------------|
| 246 | APPROPRIATIONS               |     | [Ch. 10    |
| 1   | Unclassified-Total . . . . . | 096 | \$ 100,000 |

*326-National Coal Heritage Area Authority*

(WV Code Chapter 29)

Fund 8869 FY 2009 Org 0941

|   |                              |     |            |
|---|------------------------------|-----|------------|
| 1 | Unclassified-Total . . . . . | 096 | \$ 600,000 |
|---|------------------------------|-----|------------|

*327-Coal Heritage Highway Authority*

(WV Code Chapter 29)

Fund 8861 FY 2009 Org 0942

|   |                              |     |                  |
|---|------------------------------|-----|------------------|
| 1 | Unclassified-Total . . . . . | 096 | \$ <u>50,000</u> |
|---|------------------------------|-----|------------------|

2 Total TITLE II, Section 6-

|   |               |                         |
|---|---------------|-------------------------|
| 3 | Federal Funds | \$ <u>3,114,682,336</u> |
|---|---------------|-------------------------|

1     **Sec. 7. Appropriations from federal block grants.**-The  
2 following items are hereby appropriated from federal block  
3 grants to be available for expenditure during the fiscal year  
4 2009.

*328-Governor's Office-  
Office of Economic Opportunity  
Community Services*

Fund 8799 FY 2009 Org 0100

|   |                              |     |              |
|---|------------------------------|-----|--------------|
| 1 | Unclassified-Total . . . . . | 096 | \$ 9,521,284 |
|---|------------------------------|-----|--------------|

*329-West Virginia Development Office-  
Community Development*

Fund 8746 FY 2009 Org 0307

1 Unclassified-Total . . . . . 096 \$ 28,351,067

*330-Workforce West Virginia-  
Workforce Investment Act*

Fund 8749 FY 2009 Org 0323

1 Unclassified-Total . . . . . 096 \$ 25,030,749

*331-Division of Health-  
Maternal and Child Health*

Fund 8750 FY 2009 Org 0506

1 Unclassified-Total . . . . . 096 \$ 10,974,424

*332-Division of Health-  
Preventive Health*

Fund 8753 FY 2009 Org 0506

1 Unclassified-Total . . . . . 096 \$ 2,244,387

*333-Division of Health-  
Substance Abuse Prevention and Treatment*

Fund 8793 FY 2009 Org 0506

1 Unclassified-Total . . . . . 096 \$ 11,586,339

*334-Division of Health-  
Community Mental Health Services*

Fund 8794 FY 2009 Org 0506

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1 Unclassified-Total . . . . . 096 \$ 3,345,285

*335-Division of Health-  
Abstinence Education Program*

Fund 8825 FY 2009 Org 0506

1 Unclassified-Total . . . . . 096 \$ 1,691,522

*336-Division of Human Services-  
Energy Assistance*

Fund 8755 FY 2009 Org 0511

1 Unclassified-Total . . . . . 096 \$ 25,000,000

*337-Division of Human Services-  
Social Services*

Fund 8757 FY 2009 Org 0511

1 Unclassified-Total . . . . . 096 \$ 16,007,529

*338-Division of Human Services-  
Temporary Assistance for Needy Families*

Fund 8816 FY 2009 Org 0511

1 Unclassified-Total . . . . . 096 \$ 130,250,890

*339-Division of Human Services-  
Child Care and Development*

Fund 8817 FY 2009 Org 0511

1 Unclassified-Total . . . . . 096 \$ 40,022,445

*340-Division of Criminal Justice Services-*



*Juvenile Accountability Incentive*

Fund 8829 FY 2009 Org 0620

|   |                                  |    |                      |
|---|----------------------------------|----|----------------------|
| 1 | Unclassified-Total . . . . . 096 | \$ | <u>500,395</u>       |
| 2 | Total TITLE II, Section 7-       |    |                      |
| 3 | Federal Block Grants             |    | <u>\$304,526,316</u> |

1       **Sec. 8. Awards for claims against the state.**—There are  
2 hereby appropriated for fiscal year 2009, from the fund as  
3 designated, in the amounts as specified, general revenue  
4 funds in the amount of \$1,886,796, special revenue funds in  
5 the amount of \$558,413, and state road funds in the amount  
6 of \$713,890 for payment of claims against the state.

1       **Sec. 9. Special revenue appropriations.**—There are  
2 hereby appropriated for expenditure during the fiscal year  
3 two thousand nine appropriations made by general law from  
4 special revenues which are not paid into the state fund as  
5 general revenue under the provisions of section two, article  
6 two, chapter twelve of the code: *Provided*, That none of the  
7 money so appropriated by this section shall be available for  
8 expenditure except in compliance with and in conformity to  
9 the provisions of articles two and three, chapter twelve and  
10 article two, chapter eleven-b of the code, unless the spending  
11 unit has filed with the director of the budget and the  
12 legislative auditor prior to the beginning of each fiscal year:

13       (a) An estimate of the amount and sources of all revenues  
14 accruing to such fund;

15       (b) A detailed expenditure schedule showing for what  
16 purposes the fund is to be expended.

1       **Sec. 10. State improvement fund appropriations.**—  
2 Bequests or donations of nonpublic funds, received by the

3 governor on behalf of the state during the fiscal year two  
4 thousand nine, for the purpose of making studies and  
5 recommendations relative to improvements of the  
6 administration and management of spending units in the  
7 executive branch of state government, shall be deposited in  
8 the state treasury in a separate account therein designated  
9 state improvement fund.

10 There are hereby appropriated all moneys so deposited  
11 during the fiscal year two thousand nine to be expended as  
12 authorized by the governor, for such studies and  
13 recommendations which may encompass any problems of  
14 organization, procedures, systems, functions, powers or  
15 duties of a state spending unit in the executive branch, or the  
16 betterment of the economic, social, educational, health and  
17 general welfare of the state or its citizens.

1 **Sec. 11. Specific funds and collection accounts.**-A fund  
2 or collection account which by law is dedicated to a specific  
3 use is hereby appropriated in sufficient amount to meet all  
4 lawful demands upon the fund or collection account and shall  
5 be expended according to the provisions of article three,  
6 chapter twelve of the code.

1 **Sec. 12. Appropriations for refunding erroneous**  
2 **payment.**-Money that has been erroneously paid into the  
3 state treasury is hereby appropriated out of the fund into  
4 which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money for  
6 the state finds that a sum has been erroneously paid, he or she  
7 shall issue his or her requisition upon the auditor for the  
8 refunding of the proper amount. The auditor shall issue his  
9 or her warrant to the treasurer and the treasurer shall pay the  
10 warrant out of the fund into which the amount was originally  
11 paid.

12       **Sec. 13. Sinking fund deficiencies.**-There is hereby  
13 appropriated to the governor a sufficient amount to meet any  
14 deficiencies that may arise in the mortgage finance bond  
15 insurance fund of the West Virginia housing development  
16 fund which is under the supervision and control of the  
17 municipal bond commission as provided by section twenty-b,  
18 article eighteen, chapter thirty-one of the code, or in the funds  
19 of the municipal bond commission because of the failure of  
20 any state agency for either general obligation or revenue  
21 bonds or any local taxing district for general obligation bonds  
22 to remit funds necessary for the payment of interest and  
23 sinking fund requirements. The governor is authorized to  
24 transfer from time to time such amounts to the municipal  
25 bond commission as may be necessary for these purposes.

26       The municipal bond commission shall reimburse the state  
27 of West Virginia through the governor from the first  
28 remittance collected from the West Virginia housing  
29 development fund or from any state agency or local taxing  
30 district for which the governor advanced funds, with interest  
31 at the rate carried by the bonds for security or payment of  
32 which the advance was made.

1       **Sec. 14. Appropriations for local governments.**-There  
2 are hereby appropriated for payment to counties, districts and  
3 municipal corporations such amounts as will be necessary to  
4 pay taxes due counties, districts and municipal corporations  
5 and which have been paid into the treasury:

- 6       (a) For redemption of lands;
- 7       (b) By public service corporations;
- 8       (c) For tax forfeitures.

1       **Sec. 15. Total appropriations.**-Where only a total sum  
2 is appropriated to a spending unit, the total sum shall include  
3 personal services, annual increment, employee benefits,  
4 current expenses, repairs and alterations, equipment and

5 capital outlay, where not otherwise specifically provided and  
6 except as otherwise provided in TITLE I-GENERAL  
7 PROVISIONS, Sec. 3.

1       **Sec. 16. General school fund.**-The balance of the  
2 proceeds of the general school fund remaining after the  
3 payment of the appropriations made by this act is  
4 appropriated for expenditure in accordance with section  
5 sixteen, article nine-a, chapter eighteen of the code.

### TITLE III-ADMINISTRATION.

#### TITLE III--ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1       **Section 1. Appropriations conditional.**-The expenditure  
2 of the appropriations made by this act, except those  
3 appropriations made to the legislative and judicial branches  
4 of the state government, are conditioned upon the compliance  
5 by the spending unit with the requirements of article two,  
6 chapter eleven-b of the code.

7       Where spending units or parts of spending units have  
8 been absorbed by or combined with other spending units, it  
9 is the intent of this act that appropriations and  
10 reappropriations shall be to the succeeding or later spending  
11 unit created, unless otherwise indicated.

1       **Sec. 2. Constitutionality.**-If any part of this act is  
2 declared unconstitutional by a court of competent  
3 jurisdiction, its decision shall not affect any portion of this  
4 act which remains, but the remaining portion shall be in full  
5 force and effect as if the portion declared unconstitutional  
6 had never been a part of the act.

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## CHAPTER 11

**(H.B. 4712 - By Delegates White, Boggs, Kominar,  
M. Poling, Iaquina, Perdue, Klempa, Marshall,  
Ashley, Border and Carmichael)**

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[Passed March 4, 2008; in effect from passage.]  
[Approved by the Governor on March 13, 2008.]

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AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand eight, to the Department of Transportation - Division of Motor Vehicles, fund 8787, fiscal year 2008, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

*Be it enacted by the Legislature of West Virginia:*

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 8787, fiscal year 2008, organization 0802, be supplemented and amended by increasing the total appropriation as follows:

TITLE II - APPROPRIATIONS.

**Sec. 6. Appropriations of federal funds.**

**DEPARTMENT OF TRANSPORTATION**

*311–Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2008 Org 0802

|   |  | <b>Act-<br/>ivity</b> | <b>Federal<br/>Funds</b> |
|---|--|-----------------------|--------------------------|
| 1 | Unclassified - Total . . . . .                             | 096                   | \$ 1,000,000             |
| 2 | The purpose of this supplementary appropriation bill is to |                       |                          |
| 3 | supplement and increase an item of appropriation in the    |                       |                          |
| 4 | aforesaid account for the designated spending unit for     |                       |                          |
| 5 | expenditure during the fiscal year two thousand eight.     |                       |                          |



**CHAPTER 12**

**(H.B. 4713 - By Delegates White, Boggs, M. Poling,  
M. Poling, Campbell, Klempa, Iaquina, Stalnaker and Border)**

[Passed March 4, 2008; in effect from passage.]  
[Approved by the Governor on March 13, 2008.]

AN ACT expiring funds to the balance of the Department of Health and Human Resources, West Virginia Health Care Authority -

West Virginia Health Information Network Account, fund 5380, fiscal year 2008, organization 0507, for the fiscal year ending the thirtieth day of June, two thousand eight, in the amount of three million five hundred thousand dollars from the Board of Risk and Insurance Management - Premium Tax Savings Fund, fund 2367, fiscal year 2008, organization 0218.

WHEREAS, The Governor finds that the account balance in the Board of Risk and Insurance Management - Premium Tax Savings Fund, fund 2367, fiscal year 2008, organization 0218, exceeds that which is necessary for the purpose for which the account was established; therefore

*Be it enacted by the Legislature of West Virginia:*

That the balance of the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Information Network Account, fund 5380, fiscal year 2008, organization 0507, be increased by expiring to that fund three million five hundred thousand dollars from the Board of Risk and Insurance Management - Premium Tax Savings Fund, fund 2367, fiscal year 2008, organization 0218.

The purpose of this bill is to expire three million five hundred thousand dollars from the Board of Risk and Insurance Management - Premium Tax Savings Fund, fund 2367, fiscal year 2008, organization 0218 to the balance of the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Information Network Account, fund 5380, fiscal year 2008, organization 0507, for the fiscal year ending the thirtieth day of June, two thousand eight.

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## CHAPTER 13

**(H.B. 4714 - By Delegates White, Boggs, Barker, Campbell,  
Klempa, Manchin, Marshall, Tucker, Yost, Blair and Evans)**

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[Passed March 4, 2008; in effect from passage.]

[Approved by the Governor on March 13, 2008.]

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AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand eight, to the Department of Commerce - Division of Labor - Crane Operator Certification Fund, fund 3191, fiscal year 2008, organization 0308, to the Department of Commerce - Miners' Health, Safety and Training Fund, fund 3355, fiscal year 2008, organization 0314, to the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services - West Virginia Rehabilitation Center - Special Account, fund 8664, fiscal year 2008, organization 0932, and to the Department of Military Affairs and Public Safety - Fire Commission - Fire Marshal Fees, fund 6152, fiscal year 2008, organization 0619, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Commerce - Division of Labor - Crane Operator Certification Fund, fund 3191, fiscal year 2008, organization 0308, the Department of Commerce - Miners' Health, Safety and Training Fund, fund 3355, fiscal year 2008, organization 0314, the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services - West Virginia Rehabilitation Center - Special Account, fund 8664,



fiscal year 2008, organization 0932, and the Department of Military Affairs and Public Safety - Fire Commission - Fire Marshal Fees, fund 6152, fiscal year 2008, organization 0619, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand eight, therefore

*Be it enacted by the Legislature of West Virginia:*

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 3191, fiscal year 2008, organization 0308, be supplemented and amended by increasing the total appropriation as follows:

TITLE II - APPROPRIATIONS.

**Sec. 3. Appropriations from other funds.**

**DEPARTMENT OF COMMERCE**

*126-Division of Labor-*

*Crane Operator Certification Fund*

(WV Code Chapter 21)

Fund 3191 FY 2008 Org 0308

|                                | <b>Act-<br/>ivity</b> | <b>Other<br/>Funds</b> |
|--------------------------------|-----------------------|------------------------|
| 1   Unclassified - Total ..... | 095                   | \$ 20,000              |

2       And, That the total appropriation for fiscal year ending  
3 the thirtieth day of June, two thousand eight, to fund 3355,  
4 fiscal year 2008, organization 0314, be supplemented and  
5 amended by adding a new item of appropriation as follows:

TITLE II - APPROPRIATIONS.

**Sec. 3. Appropriations from other funds.**

**DEPARTMENT OF COMMERCE**

*136–Miners’ Health, Safety, and Training Fund*

(WV Code Chapter 22A)

Fund 3355 FY 2008 Org 0314

|                                     | <b>Act-<br/>ivity</b> | <b>Other<br/>Funds</b> |
|-------------------------------------|-----------------------|------------------------|
| 1 Disaster Mitigation (R) . . . . . | 952                   | \$ 500,000             |

2 Any unexpended balance remaining in the appropriation  
 3 for Disaster Mitigation (fund 3355, activity 952) at the close  
 4 of fiscal year 2008 is hereby reappropriated for expenditure  
 5 during the fiscal year 2009.

6 And, That the total appropriation for fiscal year ending  
 7 the thirtieth day of June, two thousand eight, to fund 8664,  
 8 fiscal year 2008, organization 0932, be supplemented and  
 9 amended by increasing the total appropriation as follows:

TITLE II - APPROPRIATIONS.

**Sec. 3. Appropriations from other funds.**

**DEPARTMENT OF EDUCATION AND THE ARTS**

*142–State Board of Rehabilitation-  
 Division of Rehabilitation Services-  
 West Virginia Rehabilitation Center-  
 Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2008 Org 0932

|                                    | <b>Act-<br/>ivity</b> | <b>Other<br/>Funds</b> |
|------------------------------------|-----------------------|------------------------|
| 1   Unclassified - Total . . . . . | 096                   | \$ 1,000,000           |

2       And, That the total appropriation for fiscal year ending  
3 the thirtieth day of June, two thousand eight, to fund 6152,  
4 fiscal year 2008, organization 0619, be supplemented and  
5 amended by increasing the total appropriation as follows:

TITLE II - APPROPRIATIONS.

**Sec. 3. Appropriations from other funds.**

**DEPARTMENT OF MILITARY AFFAIRS AND**

**PUBLIC SAFETY**

*193–Fire Commission-  
Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2008 Org 0619

|                            | <b>Act-<br/>ivity</b> | <b>Other<br/>Funds</b> |
|----------------------------|-----------------------|------------------------|
| 1   Unclassified . . . . . | 099                   | \$ 800,000             |

2       The purpose of this supplementary appropriation bill is  
3 to supplement, amend, increase and add items of  
4 appropriation in the aforesaid accounts for the designated  
5 spending units for expenditure during the fiscal year two  
6 thousand eight.

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## CHAPTER 14

**(H.B. 4715 - By Delegates White, Boggs, Craig, Kominar,  
Perdue, M. Poling, Stalnaker, Yost, Ashley, Border and Evans)**

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[Passed March 8, 2008; in effect from passage.]

[Approved by the Governor on March 14, 2008.]

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AN ACT supplementing, amending and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2008, organization 0803, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document on January 9, 2007 that contains a Statement of the State Road Fund, setting forth therein the cash balances and investments as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight; and

WHEREAS, It thus appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

*Be it enacted by the Legislature of West Virginia:*

That the items of the total appropriation from the State Road Fund, to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2008, organization 0803, be amended and increased in the line items as follows:

## TITLE II - APPROPRIATIONS.

**Sec. 2. Appropriations from State Road Fund.***94-Division of Highways*Fund 9017 FY 2008 Org 0803

|   |  | <b>Act-<br/>ivity</b> | <b>State<br/>Road<br/>Fund</b> |
|---|--|-----------------------|--------------------------------|
| 1 | 3 Maintenance, Contract Paving and         |                       |                                |
| 2 | 4    4    Secondary Road Maintenance . . . | 272                   | \$ 25,000,000                  |

3       The purpose of this supplementary appropriation bill is to  
 4 supplement, amend and increase an existing item in the  
 5 aforesaid account for the designated spending unit for  
 6 expenditure during the fiscal year ending the thirtieth day of  
 7 June, two thousand eight.

**CHAPTER 15**

**(S.B. 673 - By Senators Helmick, Sharpe, Plymale,  
 Chafin, Prezioso, Edgell, Love, McCabe, Sypolt,  
 Facemyer, Boley, Sprouse and Guills)**

[Passed March 8, 2008; in effect from passage.]  
 [Approved by the Governor on March 21, 2008.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources -

Division of Human Services, fund 0403, fiscal year 2008, organization 0511, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of the first day of July, two thousand seven; and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight; and

WHEREAS, It appears from the statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

*Be it enacted by the Legislature of West Virginia:*

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0403, fiscal year 2008, organization 0511, be supplemented and amended by adding a new item of appropriation as follows:

## TITLE II--APPROPRIATIONS.

### **Section 1. Appropriations of General Revenue.**

#### **DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*65--Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2008 Org 0511

|   |  | <b>Act-<br/>ivity</b> | <b>State<br/>Road<br/>Fund</b> |
|---|--|-----------------------|--------------------------------|
| 1 | 10 Social Services - Surplus . . . . .                       | 082                   | \$ 5,000,000                   |
| 2 | The purpose of this supplemental appropriation bill is to    |                       |                                |
| 3 | supplement, amend and increase items of appropriation in the |                       |                                |
| 4 | aforesaid account for the designated spending unit for       |                       |                                |
| 5 | expenditure during the fiscal year two thousand eight.       |                       |                                |



## CHAPTER 16

**(S.B. 674 - By Senators Helmick, Sharpe, Plymale,  
Chafin, Prezioso, Edgell, Love, McCabe, Sypolt,  
Facemyer, Boley, Sprouse and Guills)**

[Passed March 8, 2008; in effect from passage.]  
[Approved by the Governor on March 21, 2008.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Administration - Office of the Secretary, fund 0186, fiscal year 2008, organization 0201, and to the Department of Military Affairs and Public Safety - Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2008, organization 0601, by supplementing and amending chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a statement of the State Fund, General

Revenue, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight; and

WHEREAS, It appears from the Governor’s statement of the State Fund, General Revenue, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

*Be it enacted by the Legislature of West Virginia:*

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0186, fiscal year 2008, organization 0201, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

**Section 1. Appropriations of General Revenue.**

**DEPARTMENT OF ADMINISTRATION**

*18–Department of Administration-  
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2008 Org 0201

|   |                                   | <b>Act-<br/>ivity</b> | <b>State<br/>Road<br/>Fund</b> |
|---|-----------------------------------|-----------------------|--------------------------------|
| 1 | 5 Lease Rental Payments . . . . . | 516                   | \$ 775,769                     |



2 And that the total appropriation for the fiscal year ending  
 3 the thirtieth day of June, two thousand eight, to fund 0186,  
 4 fiscal year 2008, organization 0201, be supplemented and  
 5 amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

**Section 1. Appropriations of General Revenue.**

**DEPARTMENT OF ADMINISTRATION**

*18--Department of Administration-  
 Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2008 Org 0201

|   |                           | <b>Act-<br/>ivity</b> | <b>State<br/>Road<br/>Fund</b> |
|---|---------------------------|-----------------------|--------------------------------|
| 1 | 3a Debt Service . . . . . | 040 \$                | 775,769                        |

2 And that the total appropriation for the fiscal year ending  
 3 the thirtieth day of June, two thousand eight, to fund 0430,  
 4 fiscal year 2008, organization 0601, be supplemented and  
 5 amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

**Section 1. Appropriations of General Revenue.**

**DEPARTMENT OF MILITARY AFFAIRS**

**AND PUBLIC SAFETY**

*66--Department of Military Affairs and Public Safety-  
 Office of the Secretary*

(WV Code Chapter 5F)

Fund 0430 FY 2008 Org 0601

|   |    | <b>Act-<br/>ivity</b>                    | <b>State<br/>Road<br/>Fund</b> |
|---|----|--|--------------------------------|
| 1 | 1a | Unclassified - Transfer . . . . . 482 \$ | 25,000                         |

2     The above appropriation for Unclassified - Transfer (fund  
3     0430, activity 482) shall be transferred to the Department of  
4     Military Affairs and Public Safety - Office of the Secretary -  
5     Law Enforcement and Safety and Emergency Worker  
6     Funeral Expense Payment Fund (fund 6003).

7     The purpose of this supplemental appropriation bill is to  
8     supplement, amend, decrease, increase and add items of  
9     appropriations in the aforesaid accounts for the designated  
10    spending units for expenditure during the fiscal year two  
11    thousand eight.



## CHAPTER 17

**(Com. Sub. for S.B. 292 - By Senators Minard,  
Jenkins and Plymale)**

[Passed March 6, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §31-17-4 of the Code of West Virginia, 1931, as amended, relating to permitting bond claims by the Commissioner of Banking to collect unpaid civil administrative penalties and unpaid examination invoices while allowing priority for pending consumer claims.

*Be it enacted by the Legislature of West Virginia:*

That §31-17-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE  
LENDER, BROKER AND SERVICER ACT.**

**§31-17-4. Applications for licenses; requirements; bonds; fees;  
renewals; waivers and reductions; per loan fee.**

1           (a) Application for a lender's or broker's license shall  
2 each year be submitted in writing under oath, in the form  
3 prescribed by the commissioner, and shall contain the full  
4 name and address of the applicant and, if the applicant is a  
5 partnership, limited liability company or association, of every  
6 member thereof, and, if a corporation, of each officer,  
7 director and owner of ten percent or more of the capital stock  
8 thereof and further information as the commissioner may  
9 reasonably require. Any application shall also disclose the  
10 location at which the business of lender or broker is to be  
11 conducted. Application for a loan originator's license shall  
12 be initially submitted prior to the first day of September, two  
13 thousand two, and thereafter in every fifth year beginning in  
14 two thousand five. If the loan originator changes sponsoring  
15 mortgage brokers, a new application must be submitted in  
16 accordance with this article.

17           (b) At the time of making application for a lender's  
18 license, the applicant therefor shall:

19           (1) If a foreign corporation, submit a certificate from the  
20 Secretary of State certifying that the applicant is registered  
21 with the Secretary of State to transact business in this state;

22           (2) Submit proof that he or she has available for the  
23 operation of the business at the location specified in the

24 application net worth of at least two hundred fifty thousand  
25 dollars;

26 (3) File with the commissioner a bond in favor of the  
27 state for the benefit of consumers or for a claim by the  
28 commissioner for an unpaid civil administrative penalty or an  
29 unpaid examination invoice in the amount of one hundred  
30 thousand dollars, in a form and with conditions as the  
31 commissioner may prescribe, and executed by a surety  
32 company authorized to do business in this state;

33 (4) Pay to the commissioner a license fee of one  
34 thousand two hundred fifty dollars plus the actual cost of  
35 fingerprint processing. If the commissioner shall determine  
36 that an investigation outside this state is required to ascertain  
37 facts or information relative to the applicant or information  
38 set forth in the application, the applicant may be required to  
39 advance sufficient funds to pay the estimated cost of the  
40 investigation. An itemized statement of the actual cost of the  
41 investigation outside this state shall be furnished to the  
42 applicant by the commissioner and the applicant shall pay or  
43 shall have returned to him or her, as the case may be, the  
44 difference between his or her payment in advance of the  
45 estimated cost and the actual cost of the investigation; and

46 (5) Submit proof that the applicant is a business in good  
47 standing in its state of incorporation, or if not a corporation,  
48 its state of business registration, and a full and complete  
49 disclosure of any litigation or unresolved complaint filed by  
50 a governmental authority or class action lawsuit on behalf of  
51 consumers relating to the operation of the license applicant.

52 (c) At the time of making application for a broker's  
53 license, the applicant therefor shall:

54 (1) If a foreign corporation, submit a certificate from the  
55 Secretary of State certifying that the applicant is registered  
56 with the Secretary of State to transact business in this state;

57           (2) Submit proof that he or she has available for the  
58 operation of the business at the location specified in the  
59 application net worth of at least ten thousand dollars;

60           (3) File with the commissioner a bond in favor of the  
61 state for the benefit of consumers or for a claim by the  
62 commissioner for an unpaid civil administrative penalty or an  
63 unpaid examination invoice in the amount of fifty thousand  
64 dollars, in a form and with conditions as the commissioner  
65 may prescribe, and executed by a surety company authorized  
66 to do business in this state: *Provided*, That the bond must be  
67 in the amount of one hundred thousand dollars before a  
68 broker may participate in a table-funded residential mortgage  
69 loan;

70           (4) Pay to the commissioner a license fee of three  
71 hundred fifty dollars plus the actual cost of fingerprint  
72 processing; and

73           (5) Submit proof that the applicant is a business in good  
74 standing in its state of incorporation, or if not a corporation,  
75 its state of business registration, and a full and complete  
76 disclosure of any litigation or unresolved complaint filed by  
77 a governmental authority or class action lawsuit on behalf of  
78 consumers relating to the operation of the license applicant.  
79

80           (d) Application for a loan originator license shall be  
81 submitted by the sponsoring mortgage broker prior to the  
82 loan originator engaging in mortgage activity, in writing  
83 under oath, on a form prescribed by the commissioner. At  
84 the time of making application for a loan originator license,  
85 the loan originator therefor shall:

86           (1) Submit a statement under oath that he or she  
87 originates loans exclusively for one broker, together with an  
88 acknowledgment of employment by the sponsoring mortgage  
89 broker;

90       (2) Pay to the commissioner a license fee of one hundred  
91 fifty dollars plus the actual cost of fingerprint processing;

92       (3) Disclose the location at which the business of the  
93 sponsoring mortgage broker is to be conducted by the  
94 licensed loan originator; and

95       (4) If at any time a loan originator ceases working for  
96 the sponsoring mortgage broker indicated on the license  
97 application, such loan originator and sponsoring mortgage  
98 broker shall notify the commissioner within fifteen business  
99 days and return the original loan originator license to the  
100 Division of Banking. The license of a loan originator is not  
101 effective during any period when that person is not employed  
102 by a sponsoring mortgage broker licensed under this article  
103 and a loan originator shall not be employed simultaneously  
104 by more than one sponsoring mortgage broker.

105       (e) The aggregate liability of the surety on any bond  
106 given pursuant to the provisions of this section shall in no  
107 event exceed the amount of the bond.

108       (f) Nonresident lenders and brokers licensed under this  
109 article by their acceptance of the license acknowledge that  
110 they are subject to the jurisdiction of the courts of West  
111 Virginia and the service of process pursuant to section one  
112 hundred thirty-seven, article two, chapter forty-six-a of this  
113 code and section thirty-three, article three, chapter fifty-six of  
114 this code.

115       (g) The commissioner may elect to reduce or waive the  
116 application fees, bond amounts and net worth requirements  
117 imposed by this section for nonprofit corporations whose  
118 residential mortgage lending or brokering activities provide  
119 housing primarily to households or persons below the HUD-  
120 established median income for their area of residence.

121 (h) Every broker and lender licensee shall pay a fee of  
122 five dollars for each residential mortgage loan originated,  
123 made or brokered in a calendar year. This fee shall be paid  
124 semiannually to the Division of Banking and remitted with  
125 the report required pursuant to subsection (b), section eleven  
126 of this article for loans made, brokered or originated during  
127 the last six months of the previous calendar year and with the  
128 lender or broker license renewal application required  
129 pursuant to subsection (b), section seven of this article for the  
130 loans made, brokered or originated in the first six months of  
131 that calendar year. In the event a licensee ceases operation,  
132 it shall remit any fees due since the last reporting period  
133 when it relinquishes its license.

134 (i) If a claim for a consumer restitution is pending on a  
135 bond required pursuant to this section when the  
136 commissioner makes a claim for a civil administrative  
137 penalty or an unpaid examination invoice, the consumer  
138 claim shall be resolved before any payments may be made for  
139 an unpaid penalty or examination invoice.



## CHAPTER 18

**(H.B. 2517 - By Delegates Moore, Kominar, Perry,  
Barker, Carmichael and Ashley)**

[Passed February 6, 2008; in effect ninety days from passage.]

[Approved by the Governor on February 14, 2008.]

AN ACT to amend and reenact §31A-8A-2 and §31A-8A-3 of the Code of West Virginia, 1931, as amended, relating to establishing requirements for a West Virginia state bank or a

West Virginia state bank holding company in control of a West Virginia state bank to acquire an out-of-state bank or bank holding company; requiring that the application for the acquisition filed with the appropriate federal regulator be filed with the commissioner of banking prior to the acquisition; exceptions for certain acquisitions involving a merger and establishment of branches.

*Be it enacted by the Legislature of West Virginia:*

That §31A-8A-2 and §31A-8A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 8A. ACQUISITION OF BANKS BY BANK HOLDING COMPANIES.**

§31A-8A-2. Scope and statement of legislative intent.

§31A-8A-3. Permitted acquisitions.

**§31A-8A-2. Scope and statement of legislative intent.**

1 This article sets forth the conditions under which a  
 2 company may acquire a West Virginia state bank may form  
 3 or acquire a West Virginia bank holding company, or may  
 4 acquire an out-of-state bank or out-of-state bank holding  
 5 company. This article is intended not to discriminate against  
 6 out-of-state bank holding companies or against foreign bank  
 7 holding companies in any manner that would violate Section  
 8 3(d) of the Bank Holding Company Act, 12 U.S.C. §1842(d),  
 9 as amended, effective September 29, 1995, by Section 101 of  
 10 the Riegle-Neal Interstate Banking and Branching Efficiency  
 11 Act of 1994, Public Law No. 103-328.

**§31A-8A-3 Permitted acquisitions.**

1 (a) Except as otherwise expressly permitted by federal  
 2 law, a company may not form a West Virginia bank holding  
 3 company or acquire a West Virginia state bank or a bank



4 holding company controlling a West Virginia state bank  
5 without the prior application and approval upon order of the  
6 board. A West Virginia state bank or West Virginia state  
7 bank holding company which controls, directly or indirectly,  
8 a West Virginia state bank may not acquire an out-of-state  
9 bank or out-of-state bank holding company without first  
10 filing with the commissioner a copy of the application it files  
11 with the appropriate federal regulator unless the acquisition  
12 involves a merger and establishment of branches pursuant to  
13 article eight-d of this chapter.

14 (b) The prohibition in subsection (a) of this section shall  
15 not apply where the acquisition is made:

16 (1) Solely for the purpose of facilitating an acquisition  
17 otherwise permitted under this article;

18 (2) In a transaction arranged by the commissioner with  
19 the consent of the West Virginia board of banking and  
20 financial institutions with another state or federal bank  
21 supervisory agency to prevent the insolvency or closing of  
22 the acquired bank; or

23 (3) In a transaction in which a national bank or out-of-  
24 state state bank forms its own bank holding company, if the  
25 ownership rights of the former bank shareholders are  
26 substantially similar to those of the shareholders of the new  
27 bank holding company.

28 (c) In any transaction involving the acquisition or change  
29 in control of a West Virginia bank, West Virginia bank  
30 holding company, bank branch located in West Virginia by  
31 a bank holding company, the formation of a West Virginia  
32 bank holding company or the acquisition of a thrift institution  
33 in West Virginia by a bank holding company for which an  
34 application to the board for approval is not initially required  
35 under subsection (a) of this section, the party seeking the  
36 action shall give written notice to the commissioner at the

37 time the application or notice is filed with the responsible  
38 federal bank supervisory agency and at least forty-five days  
39 before the effective date of the acquisition, unless a shorter  
40 period of notice is required under applicable federal law. In  
41 addition, the parties shall give the commissioner copies of all  
42 final federal and state applications filed in connection with  
43 the transaction together with a two hundred fifty dollar filing  
44 fee. Unless preempted by federal law, the commissioner has  
45 thirty days from receipt of the written notice to object to any  
46 proposed transaction, require an application and request a  
47 hearing before the board on the basis that the transaction is  
48 contrary to applicable West Virginia law. The failure to  
49 object within thirty days shall be construed as consent by the  
50 commissioner, or, in his or her discretion, the commissioner  
51 may, at any time, consent in writing.

52 (d) To the extent that any acquisition under this section  
53 involves the merger of a bank with and into a West Virginia  
54 state bank, the merger transaction remains subject to the  
55 jurisdiction and approval of the board pursuant to section  
56 seven, article seven of this chapter or article eight-d of this  
57 chapter, as applicable.

58 (e) An acquisition shall not be permitted under this article  
59 or otherwise if upon consummation of the transaction, the  
60 resulting bank or bank holding company, including any  
61 depository institutions affiliated with the applicant, would  
62 assume sufficient additional deposits to cause it to control  
63 deposits in this state in excess of that allowed by section  
64 twelve-a, article two of this chapter: *Provided*, That the  
65 commissioner may by rule adopt a procedure whereby the  
66 acquisition deposit limitation as set forth in this code may be  
67 waived for good cause shown. The commissioner shall  
68 calculate the acquisition deposit limitation based upon the  
69 most recently available reports containing the deposit  
70 information filed with state or federal authorities.



## CHAPTER 19

**(Com. Sub. for H.B. 4423 - By Delegates DeLong, Fragale,  
Varner, Yost, Caputo and Webster)**

[Passed March 6, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 15, 2008.]

AN ACT to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended, relating to providing that beer kegs are not considered scrap metal unless the purchaser received the keg or keg parts directly from a beer manufacturer or its authorized representative.

*Be it enacted by the Legislature of West Virginia:*

That §61-3-49 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.**

1 (a) For the purposes of this section, the following terms  
2 have the following meanings:

3 (1) "Business registration certificate" has the same  
4 meaning ascribed to it in section two, article twelve, chapter  
5 eleven of this code.

6       (2) "Purchaser" means any person in the business of  
7 purchasing scrap metal, any salvage yard owner or operator,  
8 or any public or commercial recycling facility owner or  
9 operator, or any agent or employee thereof, who purchases  
10 any form of scrap metal.

11       (3) "Scrap metal" means any form of copper, aluminum,  
12 brass, lead or other nonferrous metal of any kind, or steel  
13 railroad track and track material.

14       (b) Any purchaser of scrap metal shall make a record of  
15 such purchase that shall contain the following information for  
16 each transaction:

17       (1) The full name, permanent home and business  
18 addresses, and telephone number, if available, of the seller;

19       (2) A description and the motor vehicle license number  
20 of any vehicle used to transport the purchased scrap metal to  
21 the place of purchase;

22       (3) The time and date of the transaction;

23       (4) A complete description of the kind, character and  
24 weight of the scrap metal purchased; and

25       (5) A statement of whether the scrap metal was  
26 purchased, taken as collateral for a loan, or taken on  
27 consignment.

28       (c) A purchaser also shall require and retain from the  
29 seller of the scrap metal the following:

30       (1) A signed certificate of ownership of the scrap metal  
31 being sold or a signed authorization from the owner of the  
32 scrap metal to sell said scrap metal; and

33 (2) A photocopy of a valid driver's license or  
34 identification card issued by the West Virginia Division of  
35 Motor Vehicles of the person delivering the scrap metal, or  
36 in lieu thereof, any other valid photo identification of the  
37 seller issued by any other state or the federal government:  
38 *Provided, That, if the purchaser has a copy of the seller's*  
39 *valid photo identification on file, the purchaser may reference*  
40 *the identification that is on file, without making a separate*  
41 *photocopy for each transaction.*

42 (d) It shall be unlawful for any purchaser to purchase any  
43 scrap metal without obtaining and recording the information  
44 required under subsections (b) and (c) of this section. The  
45 provisions of this subsection do not apply to purchases made  
46 at wholesale under contract or as a result of a bidding  
47 process: *Provided, That the purchaser retains and makes*  
48 *available for review consistent with subsection (f) of this*  
49 *section the contract, bill of sale, or similar documentation of*  
50 *the purchase made at wholesale under contract or as a result*  
51 *of a bidding process: Provided, however, That the purchaser*  
52 *may redact any pricing or other commercially sensitive*  
53 *information from said contract, bill of sale, or similar*  
54 *documentation before making it available for inspection.*

55 (e) No purchaser of scrap metal shall knowingly purchase  
56 or possess a stainless steel or aluminum beer keg, whether  
57 damaged or undamaged, or any reasonably recognizable part  
58 thereof, for the intended purpose of reselling as scrap metal  
59 unless the purchaser receives the keg or keg parts from the  
60 beer manufacturer or its authorized representative.

61 (f) Within thirty days of the effective date of the  
62 amendment and reenactment of this section during the second  
63 extraordinary session of the Legislature in two thousand  
64 seven, the West Virginia State Police shall make available a  
65 standard form purchasers of scrap metal may use to record all  
66 the information required under subsections (b) and (c) of this  
67 section.

68 (g) Using the form authorized under subsection (f) above,  
69 or his or her own form, a purchaser of scrap metal shall retain  
70 the records required by this section at his or her place of  
71 business for not less than three years after the date of the  
72 purchase. Upon completion of a purchase, the records  
73 required to be retained at a purchaser's place of business shall  
74 be available for inspection by any law-enforcement officer  
75 or, upon written request and during the purchaser's regular  
76 business hours, by any investigator employed by a public  
77 utility or railroad to investigate the theft of public utility or  
78 railroad property: *Provided*, That in lieu of the purchaser  
79 keeping the records at their place of business, the purchaser  
80 shall file the records with the local detachment of the State  
81 Police and with the chief of police of the municipality or the  
82 sheriff of the county wherein he or she is transacting business  
83 within seventy-two hours of completion of the purchase. The  
84 records shall be retained by the State Police and the chief of  
85 police of the municipality or the sheriff for a period of not  
86 less than three years.

87 (h) To the extent otherwise permitted by law, any  
88 investigator employed by a public utility or railroad to  
89 investigate the theft of public utility or railroad property may  
90 accompany a law-enforcement officer upon the premises of  
91 a purchaser in the execution of valid warrant or assist law  
92 enforcement in the review of records required to be retained  
93 pursuant to this section.

94 (i) Upon the entry of a final determination and order by  
95 a court of competent jurisdiction, scrap metal found to have  
96 been misappropriated, stolen or taken under false pretenses  
97 may be returned to the proper owner of such material.

98 (j) Nothing in this section applies to scrap purchases by  
99 manufacturing facilities that melt, or otherwise alter the form  
100 of scrap metal and transform it into a new product or to the  
101 purchase or transportation of food and beverage containers or  
102 other nonindustrial materials having a marginal value per  
103 individual unit.

104 (k) Any person who knowingly or with fraudulent intent  
105 violates any provision of this section, including the knowing  
106 failure to make a report or the knowing falsification of any  
107 required information, is guilty of a misdemeanor and, upon  
108 conviction of a first offense thereof, shall be fined not less  
109 than one thousand dollars nor more than three thousand  
110 dollars; upon conviction of a second offense thereof, shall be  
111 fined not less than two thousand dollars and not more than  
112 four thousand dollars and, notwithstanding the provisions of  
113 section five, article twelve, chapter eleven of this code, the  
114 court in which the conviction occurred shall issue an order  
115 directing the tax commissioner to suspend for a period of six  
116 months any business registration certificate held by that  
117 person; and upon conviction of a third or subsequent offense  
118 thereof shall be fined not less than three thousand dollars and  
119 not more than five thousand dollars and, notwithstanding the  
120 provisions of section five, article twelve, chapter eleven of  
121 this code, the court in which the conviction occurred shall  
122 issue an order directing the tax commissioner to cancel any  
123 business registration certificate held by that person and state  
124 the date said cancellation shall take effect.

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## CHAPTER 20

**(H.B. 4078 - By Delegates Morgan, Martin, Argento, Beach,  
Eldridge, Hartman, D. Poling, Staggers, Andes, Porter and Rowan)**

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[Passed March 7, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to repeal §29-8-2, §29-8-3, §29-8-4 and §29-8-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §20-5-3 of said code; to amend and reenact §29-8-1, all relating to the termination of the Blennerhassett Island Historical State

Park Commission; exempting the termination of the commission from the wind down provisions of §4-10-12; and providing for the transfer of all remaining property and authority of the commission to the Division of Natural Resources parks and recreation section.

*Be it enacted by the Legislature of West Virginia:*

That §29-8-2, §29-8-3, §29-8-4 and §29-8-5 of the Code of West Virginia, 1931, as amended be repealed; that §20-5-3 of said code be amended and reenacted; and that §29-8-1 of said code be amended and reenacted, all to read as follows:

**Chapter**

**20. Natural Resources.**

**29. Miscellaneous Boards and Officers.**

**CHAPTER 20. NATURAL RESOURCES.**

**ARTICLE 5. PARKS AND RECREATION.**

**§20-5-3. Section of parks and recreation; purpose; powers and duties generally.**

1       The purposes of the section of parks and recreation shall be  
 2 to promote conservation by preserving and protecting natural  
 3 areas of unique or exceptional scenic, scientific, cultural,  
 4 archaeological or historic significance and to provide outdoor  
 5 recreational opportunities for the citizens of this state and its  
 6 visitors. It shall be the duty of the section of parks and  
 7 recreation to have within its jurisdiction and supervision:

8       (a) All state parks and recreation areas, including all lodges,  
 9 cabins, swimming pools, motorboating and all other recreational  
 10 facilities therein, except the roads heretofore transferred  
 11 pursuant to section one, article four, chapter seventeen of this  
 12 code to the state road system and to the responsibility of the  
 13 commissioner of highways with respect to the construction,  
 14 reconstruction and maintenance of the roads or any future roads



15 for public usage on publicly owned lands for future state parks,  
16 state forests and public hunting and fishing areas;

17 (b) The authority and responsibility to do the necessary  
18 cutting and planting of vegetation along road rights-of-way in  
19 state parks and recreational areas;

20 (c) The administration of all laws and regulations relating to  
21 the establishment, development, protection, use and enjoyment  
22 of all state parks and state recreational facilities consistent with  
23 the provisions of this article;

24 (d) The continued operation and maintenance of the  
25 Berkeley Springs historical state park, in Morgan County, as a  
26 state recreational facility, designated the Berkeley Springs  
27 sanitarium under prior enactment of this code;

28 (e) The continued operation and maintenance of that portion  
29 of Washington Carver camp in Fayette County formerly  
30 incorporated within the boundaries of Babcock state park;

31 (f) The continued operation and maintenance of Camp  
32 Creek state park as a state recreational facility, formerly  
33 delineated according to section three, article one-a, chapter  
34 nineteen of this code;

35 (g) The continued operation and maintenance of Moncove  
36 Lake state park as a state recreational facility, formerly  
37 delineated pursuant to enactment of section thirteen, article one,  
38 chapter five-b of this code in the year one thousand nine  
39 hundred ninety;

40 (h) The continued protection, operation and maintenance of  
41 approximately seventy-five miles of right-of-way along the  
42 former Greenbrier subdivision of the Chessie railroad system  
43 between Caldwell in Greenbrier County and Cass in Pocahontas  
44 County, designated the Greenbrier river trail, including the  
45 protection of the trail from motorized vehicular traffic and

46 operation for the protection of adjacent public and private  
47 property;

48 (i) The continued protection, operation and maintenance of  
49 approximately sixty and fifty-seven one-hundredths miles of  
50 right-of-way of the CSX railway system between Walker in  
51 Wood County and Wilsonburg in Harrison County, designated  
52 the North Bend rail trail, including the protection of the trail  
53 from motorized vehicular traffic and operation for the protection  
54 of adjacent public and private property; and

55 (j) The continued development, operation and maintenance  
56 of Blennerhassett Island Historical State park, including all the  
57 property, powers and authority previously held by the  
58 Blennerhassett Island Historical State Park Commission  
59 formerly delineated pursuant to article eight, chapter twenty-  
60 nine of this code.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 8. BLENNERHASSETT ISLAND HISTORICAL STATE PARK COMMISSION.**

#### **§29-8-1. Blennerhassett Island Historical State Park Commission termination.**

1 The Blennerhassett Island Historical State Park  
2 Commission shall cease to exist on the first day of July, two  
3 thousand eight. The termination of the commission is exempt  
4 from the wind down provisions of section twelve, article ten,  
5 chapter four of this code. All members of the commission duly  
6 appointed and serving shall cease to hold the office or perform  
7 the duties that the office may provide. All property, real or  
8 tangible, all powers, expressed or implied, and all authority  
9 granted to the commission transfers to the Division of Natural  
10 Resources effective upon passage of this section.

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## CHAPTER 21

**(Com. Sub. for S.B. 88 - By Senators Oliverio and Unger)**

[Passed March 6, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 20, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-6a, relating to the creation of brownfield economic development districts; providing eligibility criteria; exempting brownfield economic development districts from land-use planning provisions; and requiring the development office to promulgate emergency rules by the first day of July, two thousand eight, to implement this new section.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5B-2-6a, to read as follows:

### **ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

#### **§5B-2-6a. Brownfield economic development districts; applications; fees; rules.**

- 1 (a) Any property owner of a tract of land that is a
- 2 brownfield or voluntary remediated site pursuant to article
- 3 twenty-two, chapter twenty-two of this code may, if the site
- 4 and surrounding area were involved in the extraction and
- 5 processing of coal, limestone or other natural resources,

6 apply to the development office to become a brownfield  
7 economic development district.

8 (1) Applicants for a brownfield economic development  
9 district must demonstrate that the district when designated  
10 will create significant economic development activity;

11 (2) Applicants shall submit a development plan that  
12 provides specific details on proposed financial investment,  
13 direct and indirect jobs to be created and the viability of the  
14 district;

15 (3) Brownfield economic development districts:

16 (A) May not contain single-family housing;

17 (B) Shall provide all the infrastructure within the district  
18 without cost to the state, county, public service district or  
19 local municipal government;

20 (4) Applicants shall demonstrate that were it not for this  
21 designation, the contemplated development would not be  
22 possible and that the development is in the best interest of the  
23 state;

24 (5) The applicant shall own or control the property within  
25 the district;

26 (6) All costs for the application process shall be borne by  
27 the applicant;

28 (7) An applicant shall demonstrate that the applicant has  
29 attempted to work in good faith with local officials in regard  
30 to land-use issues;

31 (8) Brownfield economic development districts are not  
32 subject to the provisions of chapter eight-a of this code;

33 (9) Prior to granting a designation of brownfield  
34 economic development district, the applicant shall provide  
35 documentation that the applicant has met all the requirements  
36 set forth in article twenty-two, chapter twenty-two of this  
37 code to be designated as a brownfield site or voluntary  
38 remediated site and is in compliance with the remediation  
39 plan;

40 (10) Nothing may be construed by this section to exempt  
41 brownfield economic districts from environmental regulation  
42 that would pertain to the development;

43 (11) The decision of the development office in regard to  
44 an application is final; and

45 (12) Once designated, the district shall work in  
46 conjunction with the regional brownfield assistance centers  
47 of Marshall University and West Virginia University as  
48 specified in section seven, article eleven, chapter eighteen-b  
49 of this code.

50 (b) The development office shall propose rules for  
51 legislative approval in accordance with the provisions of  
52 article three, chapter twenty-nine-a of this code to implement  
53 this section and the rules shall include, but not be limited to,  
54 the application and time line process, notice provisions,  
55 additional application consideration criteria and application  
56 fees sufficient to cover the costs of the consideration of an  
57 application. The development office shall promulgate  
58 emergency rules pursuant to the provisions of section fifteen,  
59 article three, chapter twenty-nine-a of this code by the first  
60 day of October, two thousand eight, to facilitate the initial  
61 implementation of this section.

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**CHAPTER 22**

**(H.B. 4464 - By Delegates Webster, Proudfoot,  
Stemple, Hrutkay, Guthrie, Sobonya, Longstreth,  
Varner, Burdiss, Azinger and Schadler)**

[Passed March 6, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 13, 2008.]

AN ACT to amend and reenact §31B-10-1003 of the Code of West Virginia, 1931, as amended; to amend and reenact §31D-15-1501 of said code; and to amend and reenact §31E-14-1401 of said code, all relating to conducting certain activities that do not constitute conducting affairs or transacting business within the state.

*Be it enacted by the Legislature of West Virginia:*

That §31B-10-1003 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31D-15-1501 of said code be amended and reenacted; and that §31E-14-1401 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 31B. Uniform Limited Liability Company Act.**
- 31D. West Virginia Business Corporation Act.**
- 31E. West Virginia Nonprofit Corporation Act.**

**CHAPTER 31B. UNIFORM LIMITED  
LIABILITY COMPANY ACT.**

**ARTICLE 10. FOREIGN LIMITED LIABILITY.**

**§31B-10-1003. Activities not constituting transacting business.**

1 (a) Activities of a foreign limited liability company that  
2 do not constitute transacting business in this state within the  
3 meaning of this article include:

4 (1) Maintaining, defending or settling an action or  
5 proceeding;

6 (2) Holding meetings of its members or managers or  
7 carrying on any other activity concerning its internal affairs;

8 (3) Maintaining bank accounts;

9 (4) Maintaining offices or agencies for the transfer,  
10 exchange and registration of the foreign company's own  
11 securities or maintaining trustees or depositories with respect  
12 to those securities;

13 (5) Selling through independent contractors;

14 (6) Soliciting or obtaining orders, whether by mail or  
15 through employees or agents or otherwise, if the orders  
16 require acceptance outside this state before they become  
17 contracts;

18 (7) Creating or acquiring indebtedness, mortgages or  
19 security interests in real or personal property;

20 (8) Securing or collecting debts or enforcing mortgages  
21 or other security interests in property securing the debts, and  
22 holding, protecting and maintaining property so acquired;

23 (9) Conducting an isolated transaction that is completed  
24 within thirty days and is not one in the course of similar  
25 transactions of a like manner;

26 (10) Transacting business in interstate commerce;

27 (11) Applying for withholding tax on an employee  
28 residing in the State of West Virginia who works for the  
29 foreign limited liability company in another state; and

30 (12) Holding all, or a portion thereof, of the outstanding  
31 stock of another corporation authorized to transact business  
32 in the State of West Virginia: *Provided*, That the foreign  
33 limited liability company does not produce goods, services or  
34 otherwise conduct business in the State of West Virginia.

35 (b) For purposes of this article, the ownership in this state  
36 of income-producing real property or tangible personal  
37 property, other than property excluded under subsection (a)  
38 of this section, constitutes transacting business in this state.

39 (c) This section does not apply in determining the  
40 contacts or activities that may subject a foreign limited  
41 liability company to service of process, taxation or regulation  
42 under any other law of this state.

## **CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.**

### **ARTICLE 15. FOREIGN CORPORATIONS.**

#### **PART 1. CERTIFICATE OF AUTHORITY.**

#### **§31D-15-1501. Authority to transact business and jurisdiction over foreign corporations.**

1 (a) A foreign corporation may not conduct affairs in this  
2 state until it obtains a certificate of authority from the  
3 Secretary of State.

4 (b) The following activities, among others, do not  
5 constitute conducting affairs within the meaning of  
6 subsection (a) of this section:



- 7 (1) Maintaining, defending or settling any proceeding;
- 8 (2) Holding meetings of the board of directors or  
9 shareholders or carrying on other activities concerning  
10 internal corporate affairs;
- 11 (3) Maintaining bank accounts;
- 12 (4) Selling through independent contractors;
- 13 (5) Soliciting or obtaining orders, whether by mail or  
14 through employees or agents or otherwise, if the orders  
15 require acceptance outside this state before they become  
16 contracts;
- 17 (6) Creating or acquiring indebtedness, mortgages and  
18 security interests in real or personal property;
- 19 (7) Securing or collecting debts or enforcing mortgages  
20 and security interests in property securing the debts:  
21 *Provided*, That this exemption does not include debts  
22 collected by collection agencies as defined in subdivision (b),  
23 section two, article sixteen, chapter forty-seven of this code;
- 24 (8) Owning, without more, real or personal property;
- 25 (9) Conducting an isolated transaction that is completed  
26 within thirty days and that is not one in the course of repeated  
27 transactions of a like nature;
- 28 (10) Conducting affairs in interstate commerce;
- 29 (11) Granting funds or other gifts;
- 30 (12) Distributing information to its shareholders or  
31 members;

32 (13) Effecting sales through independent contractors;

33 (14) The acquisition by purchase of lands secured by  
34 mortgage or deeds;

35 (15) Physical inspection and appraisal of property in  
36 West Virginia as security for deeds of trust, or mortgages and  
37 negotiations for the purchase of loans secured by property in  
38 West Virginia;

39 (16) The management, rental, maintenance and sale or the  
40 operating, maintaining, renting or otherwise dealing with  
41 selling or disposing of property acquired under foreclosure  
42 sale or by agreement in lieu of foreclosure sale;

43 (17) Applying for withholding tax on an employee  
44 residing in the State of West Virginia who works for the  
45 foreign corporation in another state; and

46 (18) Holding all, or a portion thereof, of the outstanding  
47 stock of another corporation authorized to transact business  
48 in the State of West Virginia. *Provided*, That the foreign  
49 corporation does not produce goods, services or otherwise  
50 conduct business in the State of West Virginia.

51 (c) The list of activities in subsection (b) of this section  
52 is not exhaustive.

53 (d) A foreign corporation is deemed to be transacting  
54 business in this state if:

55 (1) The corporation makes a contract to be performed, in  
56 whole or in part, by any party thereto in this state;

57 (2) The corporation commits a tort, in whole or in part, in  
58 this state; or

59 (3) The corporation manufactures, sells, offers for sale or  
60 supplies any product in a defective condition and that product  
61 causes injury to any person or property within this state  
62 notwithstanding the fact that the corporation had no agents,  
63 servants or employees or contacts within this state at the time  
64 of the injury.

65 (e) A foreign corporation's making of a contract, the  
66 committing of a manufacture or sale, offer of sale or supply  
67 of defective product as described in subsection (d) of this  
68 section is deemed to be the agreement of that foreign  
69 corporation that any notice or process served upon, or  
70 accepted by, the Secretary of State in a proceeding against  
71 that foreign corporation arising from, or growing out of,  
72 contract, tort or manufacture or sale, offer of sale or supply  
73 of the defective product has the same legal force and validity  
74 as process duly served on that corporation in this state.

## **CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.**

### **ARTICLE 14. FOREIGN CORPORATIONS.**

#### **PART 1. CERTIFICATE OF AUTHORITY.**

#### **§31E-14-1401. Authority to conduct affairs required.**

1 (a) A foreign corporation may not conduct affairs in this  
2 state until it obtains a certificate of authority from the  
3 Secretary of State.

4 (b) The following activities, among others, do not  
5 constitute conducting affairs within the meaning of  
6 subsection (a) of this section:

7 (1) Maintaining, defending, or settling any proceeding;

- 8       (2) Holding meetings of the board of directors or  
9 members or carrying on other activities concerning internal  
10 corporate affairs;
- 11       (3) Maintaining bank accounts;
- 12       (4) Selling through independent contractors;
- 13       (5) Soliciting or obtaining orders, whether by mail or  
14 through employees or agents or otherwise, if the orders  
15 require acceptance outside this state before they become  
16 contracts;
- 17       (6) Creating or acquiring indebtedness, mortgages, and  
18 security interests in real or personal property: *Provided*, That  
19 this exemption does not include debts collected by collection  
20 agencies as defined in subdivision (b), section two, article  
21 sixteen, chapter forty-seven of this code;
- 22       (7) Securing or collecting debts or enforcing mortgages  
23 and security interests in property securing the debts;
- 24       (8) Owning, without more, real or personal property;
- 25       (9) Conducting an isolated transaction that is completed  
26 within thirty days and that is not one in the course of repeated  
27 transactions of a like nature;
- 28       (10) Conducting affairs in interstate commerce;
- 29       (11) Granting funds or other gifts;
- 30       (12) Distributing information to its shareholders or  
31 members;
- 32       (13) Effecting sales through independent contractors;

33 (14) The acquisition by purchase of lands secured by  
34 mortgage or deeds;

35 (15) Physical inspection and appraisal of property in  
36 West Virginia as security for deeds of trust, or mortgages and  
37 negotiations for the purchase of loans secured by property in  
38 West Virginia;

39 (16) The management, rental, maintenance and sale; or  
40 the operating, maintaining, renting or otherwise, dealing with  
41 selling or disposing of property acquired under foreclosure  
42 sale or by agreement in lieu of foreclosure sale; and

43 (17) Applying for withholding tax on an employee  
44 residing in the State of West Virginia who works for the  
45 foreign corporation in another state.

46 (c) The list of activities in subsection (b) of this section  
47 is not exhaustive.

48 (d) A foreign corporation is to be deemed to be  
49 conducting affairs in this state if:

50 (1) The corporation makes a contract to be performed, in  
51 whole or in part, by any party thereto, in this state;

52 (2) The corporation commits a tort, in whole or in part, in  
53 this state; or

54 (3) The corporation manufactures, sells, offers for sale or  
55 supplies any product in a defective condition and that product  
56 causes injury to any person or property within this state  
57 notwithstanding the fact that the corporation had no agents,  
58 servants or employees or contacts within this state at the time  
59 of the injury.

60 (e) A foreign corporation's making of a contract, the  
61 committing of a manufacture or sale, offer of sale or supply  
62 of defective product as described in subsection (d) of this  
63 section is deemed to be the agreement of that foreign  
64 corporation that any notice or process served upon, or  
65 accepted by, the Secretary of State in a proceeding against  
66 that foreign corporation arising from, or growing out of,  
67 contract, tort, or manufacture or sale, offer of sale or supply  
68 of the defective product has the same legal force and validity  
69 as process duly served on that corporation in this state.



## CHAPTER 23

**(Com. Sub. for S.B. 145 - By Senators Love, Green, Prezioso, Sypolt, Boley, Unger, Jenkins, Bowman, Tomblin, Mr. President, Plymale, Kessler, Chafin, Wells, Oliverio, Guills, Facemyer, McKenzie, Edgell, Foster, Deem, Fanning, Barnes, McCabe, Caruth, Hunter, Helmick, Bailey, Yoder, Sharpe, Minard, White, Stollings, Hall and Sprouse)**

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[Passed February 28, 2008; in effect from passage.]

[Approved by the Governor on March 12, 2008.]

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AN ACT to amend and reenact §55-7-22 of the Code of West Virginia, 1931, as amended, relating to clarifying that reasonable and proportionate force may be used to protect one's self or another from an intruder or attacker while lawfully in one's residence or that of another; codifying the common law doctrine that a lawful occupant within a home or residence has no duty to retreat from an intruder or attacker; clarifying that the use of reasonable and proportionate force, including deadly force, may be used against an intruder or attacker by one not

engaged in unlawful activity in any place other than a home or residence where the person reasonably believes the intruder or attacker intends to kill or inflict serious bodily harm; establishing that use of reasonable and proportionate force to defend oneself is a full and complete defense civilly to an action brought by an intruder or attacker based upon the use of such force; and exceptions.

*Be it enacted by the Legislature of West Virginia:*

That §55-7-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 7. ACTIONS FOR INJURIES.**

##### **§55-7-22. Civil relief for persons resisting certain criminal activities.**

1 (a) A lawful occupant within a home or other place of  
2 residence is justified in using reasonable and proportionate  
3 force, including deadly force, against an intruder or attacker  
4 to prevent a forcible entry into the home or residence or to  
5 terminate the intruder's or attacker's unlawful entry if the  
6 occupant reasonably apprehends that the intruder or attacker  
7 may kill or inflict serious bodily harm upon the occupant or  
8 others in the home or residence or if the occupant reasonably  
9 believes that the intruder or attacker intends to commit a  
10 felony in the home or residence and the occupant reasonably  
11 believes deadly force is necessary.

12 (b) A lawful occupant within a home or other place of  
13 residence does not have a duty to retreat from an intruder or  
14 attacker in the circumstances described in subsection (a) of  
15 this section.

16 (c) A person not engaged in unlawful activity who is  
17 attacked in any place he or she has a legal right to be outside

18 of his or her home or residence may use reasonable and  
19 proportionate force against an intruder or attacker: *Provided*,  
20 That such person may use deadly force against an intruder or  
21 attacker in a place that is not his or her residence without a  
22 duty to retreat if the person reasonably believes that he or she  
23 or another is in imminent danger of death or serious bodily  
24 harm from which he or she or another can only be saved by  
25 the use of deadly force against the intruder or attacker.

26 (d) The justified use of reasonable and proportionate  
27 force under this section shall constitute a full and complete  
28 defense to any civil action brought by an intruder or attacker  
29 against a person using such force.

30 (e) The full and complete civil defense created by the  
31 provisions of this section is not available to a person who:

32 (1) Is attempting to commit, committing or escaping from  
33 the commission of a felony;

34 (2) Initially provokes the use of force against himself,  
35 herself or another with the intent to use such force as an  
36 excuse to inflict bodily harm upon the assailant; or

37 (3) Otherwise initially provokes the use of force against  
38 himself, herself or another, unless he or she withdraws from  
39 physical contact with the assailant and indicates clearly to the  
40 assailant that he or she desires to withdraw and terminate the  
41 use of force, but the assailant continues or resumes the use of  
42 force.

43 (f) The provisions of this section do not apply to the  
44 creation of a hazardous or dangerous condition on or in any  
45 real or personal property designed to prevent criminal  
46 conduct or cause injury to a person engaging in criminal conduct.



47 (g) Nothing in this section shall authorize or justify a  
48 person to resist or obstruct a law-enforcement officer acting  
49 in the course of his or her duty.

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## CHAPTER 24

**(Com. Sub. for H.B. 4500 - By Delegates Webster, Mahan,  
Long, Campbell, Iaquina, Staggers, Yost, Varner and Ennis)**

[Passed March 5, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 12, 2008.]

AN ACT to amend and reenact §15-2C-1 and §15-2C-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding a new section, designated §15-2C-9, all relating to providing qualified entities access to the West Virginia Central Abuse Registry; amending and adding definitions; defining the responsibilities of qualified entities; charging fees for requests by qualified entities; and keeping records of security audits.

*Be it enacted by the Legislature of West Virginia:*

That §15-2C-1 and §15-2C-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding a new section, designated §15-2C-9, to read as follows:

### **ARTICLE 2C. CENTRAL ABUSE REGISTRY.**

§15-2C-1. Definitions.

§15-2C-6. Fees.

§15-2C-9. Responsibilities of a Qualified Entity.

**§15-2C-1. Definitions.**

1       The following words when used in this article have  
2 meanings ascribed to them in this section, except in those  
3 instances where the context clearly indicates a different  
4 meaning:

5       (a) "Central abuse registry" or "registry" means the  
6 registry created by this article which shall contain the names  
7 of individuals who have been convicted of a felony or a  
8 misdemeanor offense constituting abuse, neglect or  
9 misappropriation of the property of a child or an  
10 incapacitated adult or an adult receiving behavioral health  
11 services.

12       (b) "Child abuse and neglect" or "child abuse or neglect"  
13 means those terms as defined in section three, article one,  
14 chapter forty-nine of this code, and shall include any act with  
15 respect to a child which is a crime against the person  
16 pursuant to article two, chapter sixty-one of this code, any act  
17 which is unlawful pursuant to article eight-d of said chapter  
18 sixty-one, and any offense with respect to a child which is  
19 enumerated in section three of this article.

20       (c) "Abuse or neglect of an incapacitated adult" means  
21 "abuse," "neglect" and "incapacitated adult" as those terms  
22 are defined in section one, article six, chapter nine, and shall  
23 include any act with respect to an incapacitated adult which  
24 is a crime against the person pursuant to article two, chapter  
25 sixty-one of this code, and any offense with respect to an  
26 incapacitated adult which is enumerated in section three of  
27 this article.

28       (d) "Adult receiving behavioral health services" means a  
29 person over the age of eighteen years who is receiving any  
30 behavioral health service from a licensed behavioral health

31 provider or any behavioral health provider whose services are  
32 paid for, in whole or in part, by medicaid or medicare.

33 (e) "Conviction" of a felony or a misdemeanor means an  
34 adjudication of guilt by a court or jury following a hearing on  
35 the merits, or entry of a plea of guilty or nolo contendere.

36 (f) "Residential care facility" means any facility where a  
37 child or an incapacitated adult or an adult receiving  
38 behavioral health services resides which is subject to  
39 registration, licensure or certification by the Department of  
40 Health and Human Resources, and shall include nursing  
41 homes, personal care homes, residential board and care  
42 homes, adult family care homes, group homes, legally  
43 unlicensed service providers, residential child care facilities,  
44 family based foster care homes, specialized family care  
45 homes and intermediate care facilities for the mentally  
46 retarded.

47 (g) "Misappropriation of property" means any act which  
48 is a crime against property under article three, chapter sixty-  
49 one of this code with respect to a child in a residential care  
50 facility or an incapacitated adult or an adult receiving  
51 behavioral health services in a residential care facility or a  
52 child or an incapacitated adult or an adult receiving  
53 behavioral health services who is a recipient of home care  
54 services.

55 (h) "Home care" or "home care services" means services  
56 provided to children or incapacitated adults or adults  
57 receiving behavioral health services in the home through a  
58 hospice provider, a community care provider, a home health  
59 agency, through the medicaid waiver program, or through  
60 any person when that service is reimbursable under the state  
61 medicaid program.

62 (i) "Requester" means the West Virginia Department of  
63 Education, any residential care facility, any state licensed day  
64 care center, any qualified entity as defined in this section or  
65 any provider of home care services or an adult receiving  
66 behavioral health services providing to the Central Abuse  
67 Registry the name of an individual and other information  
68 necessary to identify that individual, and either: (1)  
69 Certifying that the individual is being considered for  
70 employment or service as a volunteer by the requester or for  
71 a contractual relationship with the requester wherein the  
72 individual will provide services to a child or an incapacitated  
73 adult or an adult receiving behavioral health services for  
74 compensation; or contractors and vendors who have or may  
75 have unsupervised access to the child, disabled or elderly  
76 person for whom the qualified entity provides care; or (2)  
77 certifying that an allegation of abuse, neglect or  
78 misappropriation of property has been made against the  
79 individual.

80 (j) "Qualified entity" means any business, agency or  
81 organization that provides care, treatment, education,  
82 training, instruction, supervision or recreation for children,  
83 the elderly or individuals with disabilities and is a public,  
84 private or not-for-profit entity within the State of West  
85 Virginia and meets the definition of qualified entity under the  
86 federal National Child Protection Act of 1993; P.L. 103-209  
87 as amended by the Volunteers for Children Act; P.L. 105-  
88 251.

#### **§15-2C-6. Fees.**

1 The criminal identification bureau may charge, and any  
2 requester shall pay a user charge of ten dollars for each  
3 request for information made by a requester to the central  
4 abuse registry. In order to expedite requests by requesters, the  
5 criminal identification bureau may establish a procedure  
6 permitting service providers or qualified entities as defined  
7 in section one of this article to deposit funds with the bureau

8 in anticipation of requests. Fees pursuant to this section shall  
9 be paid into a special account in the State Treasury to be  
10 expended for registry purposes and criminal record keeping:  
11 *Provided*, That for and after the fiscal year ending the  
12 thirtieth day of June, one thousand nine hundred ninety-eight,  
13 all expenditures shall be made in accordance with  
14 appropriation by the Legislature. Amounts collected which  
15 are found from time to time to exceed the funds needed for  
16 Central Abuse Registry and criminal record keeping purposes  
17 may be transferred to other accounts or funds and  
18 redesignated for other purposes by appropriation of the  
19 Legislature. For purposes of this section, the term "criminal  
20 record keeping" means the compiling of fingerprints,  
21 photographs, criminal disposition reports, uniform crime  
22 report statistics and other relevant data regarding the arrest,  
23 conviction, incarceration and post-conviction status of  
24 criminal violators and sex offenders. "Criminal record  
25 keeping" does not include the creation of any data.

### **§15-2C-9 Responsibilities of a Qualified Entity.**

1 (a) Any business, agency or organization that provides  
2 care, treatment, education, training, instruction, supervision  
3 or recreation for children, the elderly or individuals with  
4 disabilities and is a public, private or not-for-profit entity  
5 within the State of West Virginia and is a qualified entity as  
6 defined in section one of this article may utilize the Central  
7 Abuse Registry for part of its screening process for its current  
8 and/or prospective employees. Prospective employees and  
9 volunteers, for the purposes of this section, include  
10 contractors and vendors who have or may have unsupervised  
11 access to children or disabled or elderly persons for whom  
12 the qualified entity provides care.

13 (b) In order to verify eligibility as a qualified entity, the  
14 business, agency or organization shall apply to the West  
15 Virginia State Police on a form prescribed by the  
16 Superintendent.

17 (c) Once verified as a qualified entity by the West  
18 Virginia State Police, the entity shall keep all records  
19 necessary to facilitate a security audit by the West Virginia  
20 State Police and shall cooperate in such audits as the West  
21 Virginia State Police or other authorities may deem  
22 necessary. Such records include, but are not limited to,  
23 criminal history records; notification that an individual has no  
24 criminal history; internal policies and procedures articulating  
25 the provisions for physical security; records of all  
26 disseminations of criminal history information; and a current,  
27 executed qualified entity user agreement with the West  
28 Virginia State Police.



## CHAPTER 25

**(Com Sub. for H.B. 4327 - By Delegates Fragale and laquinta)**

\_\_\_\_\_  
[Passed February 20, 2008; in effect ninety days from passage.]

[Approved by the Governor on February 28, 2008.]  
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AN ACT to amend and reenact §47-20-12a of the Code of West Virginia, 1931, as amended; and to amend and reenact §47-21-12 of said code, all relating to charitable bingo and charitable raffles; amending the range of compensation which may be paid to operators of charitable bingo and charitable raffles; and amending the range of compensation which may be paid to concession workers.

*Be it enacted by the Legislature of West Virginia:*

That §47-20-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §47-21-12 of said code be amended and reenacted, all to read as follows:

**Article**

**20. Charitable Bingo.**

**21. Charitable Raffles.**

**ARTICLE 20. CHARITABLE BINGO.**

**§47-20-12a. Compensation of bingo operator; number of employees.**

1 (a) Within the guidelines set forth in subsections (b), (c)  
2 and (d) of this section, a licensee may pay a salary, the  
3 minimum of which is the federal minimum wage and the  
4 maximum of which is not more than one hundred and twenty  
5 percent of the state minimum wage to operators of bingo  
6 games who are either:

7 (1) Active members of the licensee organization and who  
8 have been active members in good standing for at least two  
9 years prior to the date of filing of the application for a  
10 charitable bingo license or the most recent filing of an  
11 application for renewal of the license; or

12 (2) Employees of the licensee organization or its authorized  
13 auxiliary organization who are:

14 (A) Residents of this state;

15 (B) Residents of a state bordering this state if the county of  
16 his or her residence is contiguous to the county in this state  
17 in which the bingo operation is conducted; or

18 (C) Residents of a bordering state who reside within  
19 thirty-five miles of the county in which the bingo operation  
20 is conducted.

21 (b) If the licensee's gross receipts from bingo occasions  
22 equal or exceed one hundred thousand dollars for the  
23 licensee's most recently filed annual financial report, a salary  
24 may be paid to not more than eight operators.

25 (c) If the licensee's gross receipts from bingo occasions are  
26 less than one hundred thousand dollars, but equal or exceed  
27 fifty thousand dollars for the licensee's most recently filed  
28 annual financial report, a salary may be paid to not more than  
29 five operators.

30 (d) If the licensee's gross receipts from bingo occasions are  
31 less than fifty thousand dollars for the licensee's most  
32 recently filed annual financial report, a salary may be paid to  
33 not more than three operators.

34 (e) If the licensee also possesses a super bingo license, it  
35 may pay a salary to not more than fifteen operators during the  
36 super bingo occasion.

37 (f) In the case of a licensee lawfully holding a charitable  
38 bingo occasion simultaneously with a charitable raffle  
39 occasion, the number of paid charitable bingo operator  
40 employees allowed under this limitation for bingo licensees  
41 is in addition to the number of charitable raffle operator  
42 employees allowed under section fifteen, article twenty-one  
43 of this chapter. Licensees holding simultaneous occasions  
44 shall pay bingo operators from the proceeds of bingo  
45 operations and shall pay raffle operators from the proceeds of  
46 raffle operations and the charitable bingo fund and the  
47 charitable raffle fund and payments from the funds may not  
48 be commingled.

49 (g) For purposes of the limitations set forth in this section,  
50 the term "operator" or "bingo operator" or "raffle operator"  
51 does not include concession stand workers. Wages paid to  
52 concession workers may not exceed more than one hundred  
53 and twenty percent of the state minimum wage.



**ARTICLE 21. CHARITABLE RAFFLES.****§47-21-12. Compensation.**

1 (a) A licensee may pay a salary, the minimum of which is  
2 the federal minimum wage and the maximum of which is not  
3 more than one hundred and twenty percent of the state  
4 minimum wage to operators of charitable raffle games who  
5 are either:

6 (1) Active members of the licensee organization and who  
7 have been active members in good standing for at least two  
8 years prior to the date of filing of the application for a  
9 charitable raffle license or the most recent filing of an  
10 application for renewal of the license; or

11 (2) Employees of the licensee organization or its authorized  
12 auxiliary organization who are:

13 (A) Residents of this state;

14 (B) Residents of a state bordering this state if the county of  
15 his or her residence is contiguous to the county in this state  
16 in which the raffle operation is conducted; or

17 (C) Residents of a bordering state who reside within  
18 thirty-five miles of the county in which the raffle operation  
19 is conducted.

20 (b) If the licensee's gross receipts from raffle occasions  
21 equal or exceed one hundred thousand dollars for the  
22 licensee's most recently filed annual financial report, a salary  
23 may be paid to not more than eight operators.

24 (c) If the licensee's gross receipts from charitable raffle  
25 occasions are less than one hundred thousand dollars, but  
26 equal or exceed fifty thousand dollars for the licensee's most

27 recently filed annual financial report, a salary may be paid to not  
28 more than five operators.

29 (d) If the licensee's gross receipts from charitable raffle  
30 occasions are less than fifty thousand dollars for the licensee's  
31 most recently filed annual financial report, a salary may be paid  
32 to no more than three operators.

33 (e) In the case of a licensee lawfully holding a charitable  
34 bingo occasion simultaneously with a charitable raffle occasion,  
35 the number of paid charitable raffle operator employees allowed  
36 under this limitation for charitable raffle licensees is in addition  
37 to the number of charitable bingo operator employees allowed  
38 under section twelve-a, article twenty of this chapter. Licensees  
39 holding simultaneous occasions shall pay bingo operators from  
40 the proceeds of bingo operations and shall pay raffle operators  
41 from the proceeds of raffle operations and the charitable bingo  
42 fund and the charitable raffle fund and payments from the funds  
43 may not be commingled.

44 (f) For purposes of the limitations set forth in this section, the  
45 term "operator" or "bingo operator" or "raffle operator" do not  
46 include concession stand workers. Wages paid to concession  
47 workers may not exceed more than one hundred and twenty  
48 percent of the state minimum wage.



## CHAPTER 26

**(Com Sub. for S.B. 504 - By Senators Bowman and Unger)**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §38-3-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-1-205,

§48-1-225, §48-1-230 and §48-1-302 of said code; to amend and reenact §48-11-103 and §48-11-105 of said code; to amend said code by adding thereto a new section, designated §48-13-804; to amend and reenact §48-14-102, §48-14-106, §48-14-203, §48-14-302, §48-14-404, §48-14-407, §48-14-408, §48-14-502, §48-14-503, §48-14-701 and §48-14-801 of said code; to amend said code by adding thereto a new section, designated §48-14-108; to amend and reenact §48-15-201 of said code; to amend and reenact §48-17-101, §48-17-102, §48-17-103, §48-17-105, §48-17-106, §48-17-107 and §48-17-109 of said code; to amend and reenact §48-18-102, §48-18-118, §48-18-120, §48-18-202, §48-18-205 and §48-18-206 of said code; and to amend said code by adding thereto a new section, designated §48-18-118a, all relating generally to child support enforcement; providing for extension of statute of limitations for child support in certain instances; clarifying findings of fact in court orders when income is attributed for purposes of setting child support; clarifying that prescription drugs are included in medical support; providing that inmate concession accounts are income for withholding purposes; reducing the interest rate on unpaid child support from ten percent per annum to five percent per annum; providing for support to continue past age eighteen by operation of law under certain circumstances; establishing a procedure for refunding of properly withheld amounts when a support order is modified; requiring copy of modification order be sent to Bureau for Child Support Enforcement within five days; requiring family court judges enter default orders setting child support; allowing the Bureau for Child Support Enforcement to bring an action for medical support; providing refund procedures when a party to a support order is deceased; clarifying that an affidavit of accrued support may be filed in the court where the original order was entered; allowing the collection through income withholding of court-ordered fees; clarifying that withholding limitations do not apply to bonuses; creating consistency among civil contempt penalties; authorizing the Bureau for Child Support Enforcement to collect an additional two hundred dollars when arrearage triggers are met; eliminating

the requirement that the Bureau for Child Support Enforcement attorney meet with the parties prior to the posting of a bond; authorizing the Tax Commissioner to deny issuance or reissuance of a business license; reconstituting the Child Support Enforcement Commission to allow for review of the child support formula by the commission; clarifying the duties of the Bureau for Child Support Enforcement Commissioner with respect to review of the child support formula; requiring report to the Legislative Oversight Commission on Health and Human Resources Accountability; allowing the Tax Commissioner to supply names and addresses of an obligor's employer to the Bureau for Child Support Enforcement for enforcement of support obligations; allowing collection of overpayments to support obligees from state tax refunds; requiring that parties receive monthly statements of child support accounts; requiring Bureau for Child Support Enforcement determine when person owing child support will be incarcerated more than six months and modify child support; requiring Bureau for Child Support Enforcement send notice to obligors in arrears one thousand dollars or more of modification options; requiring petition for contempt in certain cases; requiring motion for modification in certain cases; providing Bureau for Child Support Enforcement one year to send notification of modification options to obligors currently in arrears one thousand dollars or more; clarifying that when attorneys for the Bureau for Child Support Enforcement enter a proposed order to modify a child support obligation without objection, a modification order will be entered; and making technical corrections.

*Be it enacted by the Legislature of West Virginia:*

That §38-3-18 of the Code of West Virginia, 1931, as amended, be amended andw reenacted; that §48-1-205, §48-1-225, §48-1-230 and §48-1-302 of said code be amended and reenacted; that §48-11-103 and §48-11-105 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated

§48-13-804; that §48-14-102, §48-14-106, §48-14-203, §48-14-302, §48-14-404, §48-14-407, §48-14-408, §48-14-502, §48-14-503, §48-14-701 and §48-14-801 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §48-14-108; that §48-15-201 of said code be amended and reenacted; that §48-17-101, §48-17-102, §48-17-103, §48-17-105, §48-17-106, §48-17-107 and §48-17-109 of said code be amended and reenacted; that §48-18-102, §48-18-118, §48-18-120, §48-18-202, §48-18-205 and §48-18-206 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §48-18-118a, all to read as follows:

**Chapter**

**38. Liens.**

**48. Domestic Relations.**

**CHAPTER 38. LIENS.**

**ARTICLE 3. JUDGMENT LIENS.**

**§38-3-18. Limitations on enforcement of judgments.**

1 (a) On a judgment, execution may be issued within ten  
2 years after the date thereof. Where execution issues within  
3 ten years as aforesaid, other executions may be issued on  
4 such judgment within ten years from the return day of the last  
5 execution issued thereon, on which there is no return by an  
6 officer, or which has been returned unsatisfied.

7 (b) For any order for child support in an action filed on  
8 and after the amendment and reenactment of this section  
9 during the legislative session of two thousand eight, an  
10 execution may be issued upon a judgment for child support,  
11 as those terms are defined in chapter forty-eight of this code,  
12 within ten years after the emancipation of the child:  
13 *Provided*, That in cases where the support order is for more  
14 than one child, the limitations set forth in subsection (a) of  
15 this section commence when the youngest child who is the

16 subject of the order on which the execution is based reaches  
17 the age of eighteen or is otherwise legally emancipated.

18 (c) An action, suit or scire facias may be brought upon a  
19 judgment where there has been a change of parties by death  
20 or otherwise at any time within ten years next after the date  
21 of the judgment; or within ten years from the return day of  
22 the last execution issued thereon on which there is no return  
23 by an officer or which has been returned unsatisfied. But if  
24 such action, suit or scire facias be against the personal  
25 representative of a decedent, it shall be brought within five  
26 years from the qualification of such representative.

## CHAPTER 48. DOMESTIC RELATIONS.

### Article.

1. General Provisions; Definitions.
11. Support of Children.
13. Guidelines for Child Support Awards.
14. Remedies for the Enforcement of Support Obligations.
15. Enforcement of Support Order Through Action Against License.
17. West Virginia Support Enforcement Commission.
18. Bureau for Child Support Enforcement.

## ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

- §48-1-205. Attributed income defined.  
§48-1-225. Extraordinary medical expenses defined.  
§48-1-230. Income defined.  
§48-1-302. Calculation of interest.

### §48-1-205. Attributed income defined.

1 (a) "Attributed income" means income not actually earned  
2 by a parent but which may be attributed to the parent because  
3 he or she is unemployed, is not working full time or is  
4 working below full earning capacity or has nonperforming or  
5 underperforming assets. Income may be attributed to a  
6 parent if the court evaluates the parent's earning capacity in  
7 the local economy (giving consideration to relevant evidence

8 that pertains to the parent's work history, qualifications,  
9 education and physical or mental condition) and determines  
10 that the parent is unemployed, is not working full time or is  
11 working below full earning capacity. Income may also be  
12 attributed to a parent if the court finds that the obligor has  
13 nonperforming or underperforming assets.

14 (b) If an obligor: (1) Voluntarily leaves employment or  
15 voluntarily alters his or her pattern of employment so as to be  
16 unemployed, underemployed or employed below full earning  
17 capacity; (2) is able to work and is available for full-time  
18 work for which he or she is fitted by prior training or  
19 experience; and (3) is not seeking employment in the manner  
20 that a reasonably prudent person in his or her circumstances  
21 would do, then an alternative method for the court to  
22 determine gross income is to attribute to the person an  
23 earning capacity based on his or her previous income. If the  
24 obligor's work history, qualifications, education or physical  
25 or mental condition cannot be determined, or if there is an  
26 inadequate record of the obligor's previous income, the court  
27 may, as a minimum, base attributed income on full-time  
28 employment (at forty hours per week) at the federal  
29 minimum wage in effect at the time the support obligation is  
30 established. In order for the court to consider attribution of  
31 income, it is not necessary for the court to find that the  
32 obligor's termination or alteration of employment was for the  
33 purpose of evading a support obligation.

34 (c) Income shall not be attributed to an obligor who is  
35 unemployed or underemployed or is otherwise working  
36 below full earning capacity if any of the following conditions  
37 exist:

38 (1) The parent is providing care required by the children  
39 to whom both of the parties owe a legal responsibility for  
40 support and such children are of preschool age or are

41 handicapped or otherwise in a situation requiring particular  
42 care by the parent;

43 (2) The parent is pursuing a plan of economic  
44 self-improvement which will result, within a reasonable time,  
45 in an economic benefit to the children to whom the support  
46 obligation is owed, including, but not limited to,  
47 self-employment or education: *Provided*, That if the parent is  
48 involved in an educational program, the court shall ascertain  
49 that the person is making substantial progress toward  
50 completion of the program;

51 (3) The parent is, for valid medical reasons, earning an  
52 income in an amount less than previously earned; or

53 (4) The court makes a written finding that other  
54 circumstances exist which would make the attribution of  
55 income inequitable: *Provided*, That in such case the court  
56 may decrease the amount of attributed income to an extent  
57 required to remove such inequity.

58 (d) The court may attribute income to a parent's  
59 nonperforming or underperforming assets, other than the  
60 parent's primary residence. Assets may be considered to be  
61 nonperforming or underperforming to the extent that they do  
62 not produce income at a rate equivalent to the current  
63 six-month certificate of deposit rate or such other rate that the  
64 court determines is reasonable.

**§48-1-225. Extraordinary medical expenses defined.**

1 "Extraordinary medical expenses" means uninsured  
2 medical expenses in excess of two hundred fifty dollars per  
3 year per child which are recurring and can reasonably be  
4 predicted by the court at the time of establishment or  
5 modification of a child support order. Such expenses shall  
6 include, but not be limited to, insurance copayments and



7 deductibles, reasonable costs for necessary orthodontia,  
8 dental treatment, asthma treatments, physical therapy,  
9 prescription pharmaceuticals, vision therapy and eye care and  
10 any uninsured chronic health problem.

**§48-1-230. Income defined.**

1 "Income" includes, but is not limited to, the following:

2 (1) Commissions, earnings, salaries, wages and other  
3 income due or to be due in the future to an individual from  
4 his or her employer and successor employers;

5 (2) Any payment due or to be due in the future to an  
6 individual from a profit-sharing plan, a pension plan, an  
7 insurance contract, an annuity, Social Security,  
8 unemployment compensation, supplemental employment  
9 benefits, workers' compensation benefits, state lottery  
10 winnings and prizes and overtime pay;

11 (3) Any amount of money which is owing to an individual  
12 as a debt from an individual, partnership, association, public  
13 or private corporation, the United States or any federal  
14 agency, this state or any political subdivision of this state,  
15 any other state or a political subdivision of another state or  
16 any other legal entity which is indebted to the obligor;

17 (4) Any amount of money which is held by the Regional  
18 Jail Authority for an inmate in an inmate's concession  
19 account.

**§48-1-302. Calculation of interest.**

1 (a) Notwithstanding any other provisions of the code, if an  
2 obligation to pay interest arises under this chapter, the rate of  
3 interest is five percent per annum and proportionate thereto  
4 for a greater or lesser sum, or for a longer or shorter time.

5 Interest awarded shall only be simple interest and nothing in  
6 this section may be construed to permit awarding of  
7 compound interest. Interest accrues only upon the  
8 outstanding principal of such obligation.

9 (b) Notwithstanding any other provision of law, no court  
10 may award or approve prejudgment interest in a domestic  
11 relations action against a party unless the court finds, in  
12 writing, that the party engaged in conduct that would violate  
13 subsection (b), Rule 11 of the West Virginia Rules of Civil  
14 Procedure. If prejudgment interest is awarded, the court shall  
15 calculate prejudgment interest from the date the offending  
16 representation was presented to the court pursuant to  
17 subsection (a) of this section.

18 (c) Upon written agreement by both parties, an obligor  
19 may petition the court to enter an order conditionally  
20 suspending the collection of all or part of the interest that has  
21 accrued on past-due child support prior to the date of the  
22 agreement: *Provided*, That said agreement shall also establish  
23 a reasonable payment plan which is calculated to fully  
24 discharge all arrearages within twenty-four months. Upon  
25 successful completion of the payment plan, the court shall  
26 enter an order which permanently relieves the obligor of the  
27 obligation to pay the accrued interest. If the obligor fails to  
28 comply with the terms of the written agreement, then the  
29 court shall enter an order which reinstates the accrued  
30 interest.

31 (d) Amendments to this section enacted by the Legislature  
32 during the two thousand six regular session shall become  
33 effective the first day of January, two thousand seven.

## ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-103. Child support beyond age eighteen.

§48-11-105. Modification of child support order.

**§48-11-103. Child support beyond age eighteen.**

1 (a) An order for child support shall provide that payments  
2 of such support continue beyond the date when the child  
3 reaches the age of eighteen, so long as the child is unmarried  
4 and residing with a parent, guardian or custodian and is  
5 enrolled as a full-time student in a secondary educational or  
6 vocational program and making substantial progress towards  
7 a diploma: *Provided*, That such payments may not extend  
8 past the date that the child reaches the age of twenty.

9 (b) Nothing herein shall be construed to abrogate or  
10 modify existing case law regarding the eligibility of  
11 handicapped or disabled children to receive child support  
12 beyond the age of eighteen.

13 (c) The reenactment of this section during the regular  
14 session of the Legislature in the year one thousand nine  
15 hundred ninety-four shall not, by operation of law, have any  
16 effect upon or vacate any order or portion thereof entered  
17 under the prior enactment of this section which awarded  
18 educational and related expenses for an adult child accepted  
19 or enrolled and making satisfactory progress in an  
20 educational program at a certified or accredited college. Any  
21 such order or portion thereof shall continue in full force and  
22 effect until the court, upon motion of a party, modifies or  
23 vacates the order upon a finding that:

24 (1) The facts and circumstances which supported the entry  
25 of the original order have changed, in which case the order  
26 may be modified;

27 (2) The facts and circumstances which supported the entry  
28 of the original order no longer exist because the child has not  
29 been accepted or is not enrolled in and making satisfactory  
30 progress in an educational program at a certified or  
31 accredited college or the parent ordered to pay such

32 educational and related expenses is no longer able to make  
33 such payments, in which case the order shall be vacated;

34 (3) The child, at the time the order was entered, was under  
35 the age of sixteen years, in which case the order shall be  
36 vacated;

37 (4) The amount ordered to be paid was determined by an  
38 application of child support guidelines in accordance with the  
39 provisions of section one hundred one, article thirteen, *et*  
40 *seq.*, of this chapter, or legislative rules promulgated  
41 thereunder, in which case the order may be modified or  
42 vacated; or

43 (5) The order was entered after the fourteenth day of  
44 March, one thousand nine hundred ninety-four, in which case  
45 the order shall be vacated.

#### **§48-11-105. Modification of child support order.**

1 (a) The court may modify a child support order, for the  
2 benefit of the child, when a motion is made that alleges a  
3 change in the circumstances of a parent or another proper  
4 person or persons. A motion for modification of a child  
5 support order may be brought by a custodial parent or any  
6 other lawful custodian or guardian of the child, by a parent or  
7 other person obligated to pay child support for the child or by  
8 the Bureau for Child Support Enforcement of the Department  
9 of Health and Human Resources of this state.

10 (b) The provisions of the order may be modified if there  
11 is a substantial change in circumstances. If application of the  
12 guideline would result in a new order that is more than fifteen  
13 percent different, then the circumstances are considered a  
14 substantial change.

15 (c) An order that modifies the amount of child support to  
16 be paid shall conform to the support guidelines set forth in  
17 section one hundred one, article thirteen, *et seq.*, of this  
18 chapter unless the court disregards the guidelines or adjusts  
19 the award as provided in section seven hundred two of said  
20 article.

21 (d) The Supreme Court of Appeals shall make available to  
22 the courts a standard form for a petition for modification of  
23 an order for support, which form will allege that the existing  
24 order should be altered or revised because of a loss or change  
25 of employment or other substantial change affecting income  
26 or that the amount of support required to be aid is not within  
27 fifteen percent of the child support guidelines. The clerk of  
28 the circuit court and the secretary-clerk of the family court  
29 shall make the forms available to persons desiring to  
30 represent themselves in filing a motion for modification of  
31 the support award.

32 (e) Upon entry of an order modifying a child support  
33 amount the court shall, no later than five days from entry of  
34 the order, provide a copy of the modified order to the Bureau  
35 for Child Support Enforcement. If an overpayment to one of  
36 the parties occurs as a result of the modified terms of the  
37 order, funds properly withheld by the Bureau for Child  
38 Support Enforcement pursuant the terms of the original order  
39 shall not be returned until such time as the Bureau for Child  
40 Support Enforcement receives repayment from the party in  
41 possession of the overpayment.

## **ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.**

### **§48-13-804. Default orders.**

1 (a) In any proceeding in which support is to be  
2 established, if a party has been served with proper pleadings  
3 and notified of the date, time and place of a hearing before a

4 family court judge and does not enter an appearance or file a  
5 response, the family court judge shall prepare a default order  
6 for entry establishing the defaulting party's child support  
7 obligation consistent with the child support guidelines  
8 contained in this article.

9 (1) When applying the child support guidelines, the court  
10 may accept financial information from the other party as  
11 accurate, pursuant to rule 13(b) of the Rules of Practice and  
12 Procedure for Family Court; or

13 (2) If financial information is not available, the court may  
14 attribute income to the party based upon either:

15 (i) The party's work history;

16 (ii) Minimum wage, if appropriate; or

17 (iii) At a minimum, enter a child support order in a  
18 nominal amount unless, in the court's discretion, a zero  
19 support order should be entered.

20 (b) All orders shall provide for automatic withholding  
21 from income of the obligor pursuant to part 4, article fourteen  
22 of this chapter.

#### **ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.**

§48-14-102. Who may bring action for child support order.

§48-14-106. Modification of support order.

§48-14-108. Deceased parties in support cases.

§48-14-203. Affidavit of accrued support.

§48-14-302. Affidavit of accrued support.

§48-14-404. Enforcement of withholding by Bureau for Child Support Enforcement.

§48-14-407. Contents of notice to source of income.

§48-14-408. Determination of amounts to be withheld.

§48-14-502. Willful failure or refusal to comply with order to pay support.

§48-14-503. Limitation on length of commitment.

§48-14-701. Posting of bonds or giving security to guarantee payment of overdue support.

§48-14-801. When monthly payments may be increased to satisfy overdue support.

**§48-14-102. Who may bring action for child support order.**

1 An action may be brought under the provisions of section  
2 one hundred one of this article by:

3 (1) A custodial parent of a child when the divorce order  
4 or other order which granted custody did not make provision  
5 for the support of the child by the obligor;

6 (2) A primary caretaker of a child;

7 (3) A guardian of the property of a child or the committee  
8 for a child; or

9 (4) The Bureau for Child Support Enforcement, on behalf  
10 of the state, when the Department of Health and Human  
11 Resources is providing assistance on behalf of the child or  
12 the person to whom a duty of support is owed, in the form of  
13 temporary assistance to needy families or medical assistance,  
14 and any right to support has been assigned to the department  
15 or in any other case wherein a party has applied for child  
16 support enforcement services from the Bureau for Child  
17 Support Enforcement.

**§48-14-106. Modification of support order.**

1 (a) At any time after the entry of an order for support, the  
2 court may, upon the verified petition of an obligee or the  
3 obligor, revise or alter such order and make a new order as  
4 the altered circumstances or needs of a child, an obligee or  
5 the obligor may render necessary to meet the ends of justice.

6 (b) The Supreme Court of Appeals shall make available  
7 to the family courts a standard form for a petition for  
8 modification of an order for support, which form will allege  
9 that the existing order should be altered or revised because of  
10 a loss or change of employment or other substantial change

11 affecting income or that the amount of support required to be  
12 paid is not within fifteen percent of the child support  
13 guidelines. The clerk of the circuit court and the  
14 secretary-clerk of the family court shall make such forms  
15 available to persons desiring to petition the court pro se for  
16 a modification of the support award.

17 (c) Upon entry of an order modifying a child support  
18 amount the court shall, no later than five days from entry of  
19 the order, provide a copy of the modified order to the Bureau  
20 for Child Support Enforcement. If an overpayment to one of  
21 the parties occurs as a result of the modified terms of the  
22 order, funds properly withheld by the Bureau for Child  
23 Support Enforcement pursuant the terms of the original order  
24 shall not be returned until such time as the Bureau for Child  
25 Support Enforcement receives repayment from the party in  
26 possession of the overpayment.

**§48-14-108. Deceased parties in support cases.**

1 (a) In the event of the death of any party to a domestic  
2 relations support action, support payments or a refund of  
3 support payments due to the party by the obligee, obligor or  
4 the Bureau for Child Support Enforcement, not in excess of  
5 one thousand dollars, may, upon proper demand, be paid, in  
6 the absence of actual notice of the pendency of probate  
7 proceedings, without requiring letters testamentary or of  
8 administration in the following order of preference to  
9 decedent's:

10 (1) Surviving spouse;

11 (2) Children eighteen years of age and over in equal  
12 shares;

13 (3) Father and mother, or survivor; and

14 (4) Sisters and brothers.



15 (b) Payments under this section shall release and  
16 discharge the obligee, obligor or the Bureau for Child  
17 Support Enforcement to the amount of such payment.

**§48-14-203. Affidavit of accrued support.**

1 (a) The affidavit of accrued support may be filed with the  
2 clerk of the circuit court in the county in which the obligee or  
3 the obligor resides, in the county where the order originated  
4 or where the obligor's source of income is located.

5 The affidavit may be filed when a payment required by  
6 such order has been delinquent, in whole or in part, for a  
7 period of fourteen days.

8 (b) The affidavit shall:

9 (1) Identify the obligee and obligor by name and address,  
10 and shall list the last four digits of the obligor's Social  
11 Security number or numbers, if known;

12 (2) Name the court which entered the support order and  
13 set forth the date of such entry;

14 (3) State the total amount of accrued support which has  
15 not been paid by the obligor; and

16 (4) State the name and address of the obligor's source of  
17 income, if known.

**§48-14-302. Affidavit of accrued support.**

1 The affidavit and abstract as provided in section four,  
2 article three, chapter thirty-eight of this code shall be filed  
3 with the clerk of the county commission in which the real  
4 property is located or in the county where the order  
5 originated. The affidavit shall:

6 (1) Identify the obligee and obligor by name and address,  
7 and shall list the last four digits of the obligor's Social  
8 Security number or numbers, if known;

9 (2) Name the court which entered the support order and  
10 set forth the date of such entry;

11 (3) Allege that the support obligor is at least thirty days  
12 in arrears in the payment of child support; and

13 (4) State the total amount of accrued support which has  
14 not been paid by the obligor.

**§48-14-404. Enforcement of withholding by Bureau for Child  
Support Enforcement.**

1 The withholding from an obligor's income of amounts  
2 payable as spousal or child support or fees awarded by a  
3 court of competent jurisdiction to the state in connection with  
4 the establishment of paternity and support or the enforcement  
5 of a support order shall be enforced by the Bureau for Child  
6 Support Enforcement in accordance with the provisions of  
7 part 4 of this article. If an overpayment of spousal or child  
8 support occurs and an arrearage exists, the Bureau for Child  
9 Support Enforcement shall first offset the overpayment of  
10 spousal or child support against the arrearage. If no arrearage  
11 exists with which to offset the overpayment or the arrearage  
12 is not sufficient to offset the overpayment and the obligee  
13 does not enter into a repayment agreement with the Bureau  
14 for Child Support Enforcement, the Bureau for Child Support  
15 Enforcement may issue an income withholding to the  
16 obligee's employer to recoup the amount of the overpayment.  
17 The income withholding shall be in the same manner as  
18 provided in this article: *Provided*, That in no circumstances  
19 may the amount withheld exceed thirty-five percent of the  
20 disposable earnings for the period, regardless of the length of  
21 time that the overpayment has been owed.

**§48-14-407. Contents of notice to source of income.**

1 (a) The source of income of any obligor who is subject to  
2 withholding, upon being given notice of withholding, shall  
3 withhold from such obligor's income the amount specified by  
4 the notice and pay such amount to the Bureau for Child  
5 Support Enforcement for distribution. The notice given to  
6 the source of income shall contain only such information as  
7 may be necessary for the source of income to comply with  
8 the withholding order and no source of income may require  
9 additional information or documentation. Such notice to the  
10 source of income shall include, at a minimum, the following:

11 (1) The amount to be withheld from the obligor's  
12 disposable earnings and a statement that the amount to be  
13 withheld for support and other purposes, including the fee  
14 specified under subdivision (3) of this subsection, may not be  
15 in excess of the maximum amounts permitted under Section  
16 303(b) of the federal Consumer Credit Protection Act or  
17 limitations imposed under the provisions of this code;

18 (2) That the source of income shall send the amount to be  
19 withheld from the obligor's income to the Bureau for Child  
20 Support Enforcement, along with such identifying  
21 information as may be required by the bureau, the same day  
22 that the obligor is paid;

23 (3) That, in addition to the amount withheld under the  
24 provisions of subdivision (1) of this subsection, the source of  
25 income may deduct a fee, not to exceed one dollar, for  
26 administrative costs incurred by the source of income for  
27 each withholding;

28 (4) That withholding is binding on the source of income  
29 until further notice by the Bureau for Child Support  
30 Enforcement or until the source of income notifies the  
31 Bureau for Child Support Enforcement of a termination of

32 the obligor's employment in accordance with the provisions  
33 of section four hundred twelve of this article;

34 (5) That the source of income is subject to a fine for  
35 discharging an obligor from employment, refusing to employ  
36 or taking disciplinary action against any obligor because of  
37 the withholding;

38 (6) That when the source of income fails to withhold  
39 income in accordance with the provisions of the notice, the  
40 source of income is liable for the accumulated amount the  
41 source of income should have withheld from the obligor's  
42 income;

43 (7) That the withholding under the provisions of this part  
44 shall have priority over any other legal process under the  
45 laws of this state against the same income and shall be  
46 effective despite any exemption that might otherwise be  
47 applicable to the same income;

48 (8) That when an employer has more than one employee  
49 who is an obligor who is subject to wage withholding from  
50 income under the provisions of this code, the employer may  
51 combine all withheld payments to the Bureau for Child  
52 Support Enforcement when the employer properly identifies  
53 each payment with the information listed in this part. A  
54 source of income is liable to an obligee, including the State  
55 of West Virginia or the Department of Health and Human  
56 Resources where appropriate, for any amount which the  
57 source of income fails to identify with the information  
58 required by this part and is therefore not received by the  
59 obligee;

60 (9) That the source of income shall implement  
61 withholding no later than the first pay period or first date for  
62 payment of income that occurs after fourteen days following  
63 the date the notice to the source of income was mailed; and

64 (10) That the source of income shall notify the Bureau for  
65 Child Support Enforcement promptly when the obligor  
66 terminates his or her employment or otherwise ceases  
67 receiving income from the source of income and shall  
68 provide the obligor's last known address and the name and  
69 address of the obligor's new source of income, if known.

70 (b) The Bureau for Child Support Enforcement shall, by  
71 administrative rule, establish procedures for promptly  
72 refunding to obligors amounts which have been improperly  
73 withheld under the provisions of this part. When a court  
74 reduces an order of support, the Bureau for Child Support  
75 Enforcement is not liable for refunding amounts which have  
76 been withheld pursuant to a court order enforceable at the  
77 time that the bureau received the funds unless the funds were  
78 kept by the state. The obligee or obligor who received the  
79 benefit of the withheld amounts shall be liable for promptly  
80 refunding any amounts which would constitute an  
81 overpayment of the support obligation.

**§48-14-408. Determination of amounts to be withheld.**

1 Notwithstanding any other provision of this code to the  
2 contrary which provides for a limitation upon the amount  
3 which may be withheld from earnings through legal process,  
4 the amount of an obligor's aggregate disposable earnings for  
5 any given workweek which may be withheld as support  
6 payments is to be determined in accordance with the  
7 provisions of this subsection, as follows:

8 (1) After ascertaining the status of the payment record of  
9 the obligor under the terms of the support order, the payment  
10 record shall be examined to determine whether any arrearage  
11 is due for amounts which should have been paid prior to a  
12 twelve-week period which ends with the workweek for which  
13 withholding is sought to be enforced.

14 (2) Prior to the first day of January, two thousand one,  
15 when none of the withholding is for amounts which came due  
16 prior to such twelve-week period, then:

17 (A) When the obligor is supporting another spouse or  
18 dependent child other than the spouse or child for whom the  
19 proposed withholding is being sought, the amount withheld  
20 may not exceed fifty percent of the obligor's disposable  
21 earnings for that week; and

22 (B) When the obligor is not supporting another spouse or  
23 dependent child as described in paragraph (A) of this  
24 subdivision, the amount withheld may not exceed sixty  
25 percent of the obligor's disposable earnings for that week.

26 (3) Prior to the first day of January, two thousand one,  
27 when a part of the withholding is for amounts which came  
28 due prior to such twelve-week period, then:

29 (A) Where the obligor is supporting another spouse or  
30 dependent child other than the spouse or child for whom the  
31 proposed withholding is being sought, the amount withheld  
32 may not exceed fifty-five percent of the obligor's disposable  
33 earnings for that week; and

34 (B) Where the obligor is not supporting another spouse  
35 or dependent child as described in paragraph (A) of this  
36 subdivision, the amount withheld may not exceed sixty-five  
37 percent of the obligor's disposable earnings for that week.

38 (4) Beginning the first day of January, two thousand one,  
39 when none of the withholding is for amounts which came due  
40 prior to such twelve-week period, then:

41 (A) When the obligor is supporting another spouse or  
42 dependent child other than the spouse or child for whom the  
43 proposed withholding is being sought, the amount withheld

44 may not exceed forty percent of the obligor's disposable  
45 earnings for that week; and

46 (B) When the obligor is not supporting another spouse or  
47 dependent child as described in paragraph (A) of this  
48 subdivision, the amount withheld may not exceed fifty  
49 percent of the obligor's disposable earnings for that week.

50 (5) Beginning the first day of January, two thousand one,  
51 when a part of the withholding is for amounts which came  
52 due prior to such twelve-week period, then:

53 (A) When the obligor is supporting another spouse or  
54 dependent child other than the spouse or child for whom the  
55 proposed withholding is being sought, the amount withheld  
56 may not exceed forty-five percent of the obligor's disposable  
57 earnings for that week; and

58 (B) Where the obligor is not supporting another spouse  
59 or dependent child as described in paragraph (A) of this  
60 subdivision, the amount withheld may not exceed fifty-five  
61 percent of the obligor's disposable earnings for that week.

62 (6) In addition to the percentage limitations set forth in  
63 subdivisions (2) and (3) of this section, it shall be a further  
64 limitation that when the current month's obligation plus  
65 arrearages are being withheld from salaries or wages in no  
66 case shall the total amounts withheld for the current month's  
67 obligation plus arrearage exceed the amounts withheld for the  
68 current obligation by an amount greater than twenty-five  
69 percent of the current monthly support obligation.

70 (7) The provisions of this section shall apply directly to  
71 the withholding of disposable earnings of an obligor  
72 regardless of whether the obligor is paid on a weekly,  
73 biweekly, monthly or other basis.

74 (8) The Bureau for Child Support Enforcement has the  
75 authority to prorate the current support obligation in  
76 accordance with the pay cycle of the source of income. This  
77 prorated current support obligation shall be known as the  
78 "adjusted support obligation". The current support obligation  
79 or the adjusted support obligation is the amount, if unpaid, on  
80 which interest will be charged.

81 (9) When an obligor acts so as to purposefully minimize  
82 his or her income and to thereby circumvent the provisions of  
83 part 4 of this article which provide for withholding from  
84 income of amounts payable as support, the amount to be  
85 withheld as support payments may be based upon the  
86 obligor's potential earnings rather than his or her actual  
87 earnings, and such obligor may not rely upon the percentage  
88 limitations set forth in this subsection which limit the amount  
89 to be withheld from disposable earnings.

90 (10) Notwithstanding any other provision of this section,  
91 the Bureau for Child Support Enforcement may withhold not  
92 more than fifty percent of any earnings denominated as an  
93 employment-related bonus to satisfy an outstanding child  
94 support arrearage.

**§48-14-502. Willful failure or refusal to comply with order to  
pay support.**

1 If the court finds that the obligor willfully failed or  
2 refused to comply with an order requiring the payment of  
3 support, the court shall find the obligor in contempt and may  
4 do one or more of the following:

5 (1) Require additional terms and conditions consistent  
6 with the court's support order.

7 (2) After notice to both parties and a hearing, if requested  
8 by a party, on any proposed modification of the order,  
9 modify the order in the same manner and under the same



10 requirements as an order requiring the payment of support  
11 may be modified under the provisions of Part 5-701, *et seq.*  
12 A modification sought by an obligor, if otherwise justified,  
13 shall not be denied solely because the obligor is found to be  
14 in contempt.

15 (3) Order that all accrued support and interest thereon be  
16 paid under such terms and conditions as the court, in its  
17 discretion, may deem proper.

18 (4) Order the contemnor to pay support in accordance  
19 with a plan approved by the Bureau for Child Support  
20 Enforcement or to participate in such work activities as the  
21 court deems appropriate.

22 (5) If appropriate under the provisions of section 1-304:

23 (A) Commit the contemnor to the regional jail; or

24 (B) Commit the contemnor to the regional jail with the  
25 privilege of leaving the jail, during such hours as the court  
26 determines and under such supervision as the court considers  
27 necessary, for the purpose of allowing the contemnor to go to  
28 and return from his or her place of employment.

**§48-14-503. Limitation on length of commitment.**

1 (a) In a commitment under subdivision (5) of section 14-  
2 502 the court shall confine the contemnor for an  
3 indeterminate period not to exceed six months or until such  
4 time as the contemnor has purged himself or herself,  
5 whichever shall first occur.

6 (b) An obligor committed under subdivision (5), section  
7 five hundred two of this article shall be released by court  
8 order if the court has reasonable cause to believe that the  
9 obligor will comply with the court's order.

**§48-14-701. Posting of bonds or giving security to guarantee payment of overdue support.**

1 An obligor with a pattern of overdue support may be  
2 required by order of the court to post bond, give security or  
3 some other guarantee to secure payment of overdue support.  
4 The guarantee may include an order requiring that stocks,  
5 bonds or other assets of the obligor be held in escrow by the  
6 court until the obligor pays the support.

**§48-14-801. When monthly payments may be increased to satisfy overdue support.**

1 (a) For the purpose of securing overdue support, the  
2 Bureau for Child Support Enforcement has the authority to  
3 increase the monthly support payments of an obligor by as  
4 much as one hundred dollars per month to satisfy the  
5 arrearage when:

6 (1) An obligor has failed to make payments as required  
7 by a support order and arrears are equal to an amount of  
8 support payable for six months if the order requires support  
9 to be paid in monthly installments; or

10 (2) An obligor has failed to make payments as required  
11 by a support order and arrears are equal to an amount of  
12 support payable for twenty-seven weeks if the order requires  
13 support to be paid in weekly or biweekly installments.

14 (b) For the purpose of securing overdue support, the  
15 Bureau for Child Support Enforcement has the authority to  
16 increase the monthly support payments of an obligor by as  
17 much as two hundred dollars per month to satisfy the  
18 arrearage when:

19 (1) An obligor's gross income equals or exceeds  
20 sixty-five thousand dollars; and

21 (2) An obligor has failed to make payments as required  
22 by a support order and arrears are equal to an amount of  
23 support payable for twelve months if the order requires  
24 support to be paid in monthly installments; or

25 (3) An obligor has failed to make payments as required  
26 by a support order and arrears are equal to an amount of  
27 support payable for fifty-four weeks if the order requires  
28 support to be paid in weekly or biweekly installments.

29 (c) An increase in monthly support under this section will  
30 be in addition to any amounts withheld from income pursuant  
31 to this article.

32 (d) This increase in monthly support may be enforced  
33 through the withholding process.

## **ARTICLE 15. ENFORCEMENT OF SUPPORT ORDER THROUGH ACTION AGAINST LICENSE.**

### **PART 2. ACTION AGAINST LICENSE.**

#### **§48-15-201. Licenses subject to action.**

1 The following licenses are subject to an action against a  
2 license as provided for in this article:

3 (1) A business registration certificate issued under article  
4 twelve, chapter eleven of this code authorizing a person to  
5 transact business in the State of West Virginia;

6 (2) A permit or license issued under chapter seventeen-b  
7 of this code authorizing a person to drive a motor vehicle;

8 (3) A commercial driver's license issued under chapter  
9 seventeen-e of this code authorizing a person to drive a class  
10 of commercial vehicle;

11 (4) A permit, license or stamp issued under article two or  
12 two-b, chapter twenty of this code regulating a person's  
13 activities for wildlife management purposes, authorizing a  
14 person to serve as an outfitter or guide or authorizing a  
15 person to hunt or fish;

16 (5) A license or registration issued under chapter thirty of  
17 this code authorizing a person to practice or engage in a  
18 profession or occupation;

19 (6) A license issued under article twelve, chapter  
20 forty-seven of this code authorizing a person to transact  
21 business as a real estate broker or real estate salesperson;

22 (7) A license or certification issued under article fourteen,  
23 chapter thirty-seven of this code authorizing a person to  
24 transact business as a real estate appraiser;

25 (8) A license issued under article twelve, chapter  
26 thirty-three of this code authorizing a person to transact  
27 insurance business as an agent, broker or solicitor;

28 (9) A registration made under article two, chapter  
29 thirty-two of this code authorizing a person to transact  
30 securities business as a broker-dealer, agent or investment  
31 advisor;

32 (10) A license issued under article twenty-two, chapter  
33 twenty-nine of this code authorizing a person to transact  
34 business as a lottery sales agent;

35 (11) A license issued under article thirty-two or  
36 thirty-four, chapter sixteen of this code authorizing persons  
37 to pursue a trade or vocation in asbestos abatement or radon  
38 mitigation;

39       (12) A license issued under article eleven, chapter  
40 twenty-one of this code authorizing a person to act as a  
41 contractor;

42       (13) A license issued under article two-c, chapter  
43 nineteen of this code authorizing a person to act as an  
44 auctioneer; and

45       (14) A license, permit or certificate issued under chapter  
46 nineteen of this code authorizing a person to sell, market or  
47 distribute agricultural products or livestock.

## **ARTICLE 17. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION.**

§48-17-101. Creation of Support Enforcement Commission; number of members.

§48-17-102. Appointment of members of Support Enforcement Commission; qualifications and eligibility.

§48-17-103. Terms of commission members; conditions of membership.

§48-17-105. Commission chairman.

§48-17-106. Compensation of members; reimbursement for expenses.

§48-17-107. Meeting requirements.

§48-17-109. General duties of support enforcement commission.

### **§48-17-101. Creation of Support Enforcement Commission; number of members.**

1       The West Virginia Support Enforcement Commission,  
2 consisting of nine members, is hereby created in the  
3 Department of Health and Human Resources and may use the  
4 administrative support and services of that department. The  
5 commission is not subject to control, supervision or direction  
6 by the Department of Health and Human Resources, but is an  
7 independent, self-sustaining commission that shall have the  
8 powers and duties specified in this chapter.

9       The commission is a part-time commission whose  
10 members perform such duties as specified in this chapter.  
11 The ministerial duties of the commission shall be

12 administered and carried out by the Commissioner of the  
13 Bureau for Child Support Enforcement, with the assistance  
14 of such staff of the Department of Health and Human  
15 Resources as the secretary may assign.

16 Each member of the commission shall devote the time  
17 necessary to carry out the duties and obligations of the office  
18 and the seven members appointed by the Governor may  
19 pursue and engage in another business, occupation or gainful  
20 employment that is not in conflict with the duties of the  
21 commission.

22 While the commission is self-sustaining and independent,  
23 it, its members, its employees and the commissioner are  
24 subject to article nine-a, chapter six of this code, chapter six-  
25 b of this code, chapter twenty-nine-a of this code and chapter  
26 twenty-nine-b of this code.

**§48-17-102. Appointment of members of Support Enforcement  
Commission; qualifications and eligibility.**

1 (a) Of the nine members of the commission, seven  
2 members are to be appointed by the Governor: *Provided,*  
3 That no more than five members of the commission may  
4 belong to the same political party.

5 (1) One member is to be a lawyer licensed by, and in  
6 good standing with, the West Virginia State Bar, with at least  
7 five years of professional experience in domestic relations  
8 law and the establishment and enforcement of support  
9 obligations;

10 (2) One member is to be a person experienced as a public  
11 administrator in the supervision and regulation of a  
12 governmental agency;

13 (3) One member is to be an employer experienced in  
14 withholding support payments from the earnings of obligors;

15 (4) One member is to be a practicing family court judge,  
16 as an ex officio member, who will serve in an advisory  
17 capacity, without compensation or voting rights; and

18 (5) Three members are to be representatives of the public  
19 at large, with at least one being an obligor and one being an  
20 obligee.

21 (b) One member is to be the Commissioner of the Bureau  
22 for Children and Families, Department of Health and Human  
23 Resources or his or her designee.

24 (c) The Commissioner of the Bureau for Child Support  
25 Enforcement, or his or her designee, is an ex officio  
26 nonvoting member of the commission.

27 (d) Each member of the commission is to be a citizen of  
28 the United States, a resident of the State of West Virginia and  
29 at least twenty-one years of age.

**§48-17-103. Terms of commission members; conditions of  
membership.**

1 (a) Beginning the first day of June, two thousand eight,  
2 and every four years thereafter, the Governor shall convene  
3 the commission to review the child support guidelines, in  
4 accordance with the Code of Federal Regulations, Part 45,  
5 Section 302.56(C)(3)(e).

6 (b) The Governor shall make appointments by the first  
7 day of June, two thousand eight, and on the first day of June  
8 every four years thereafter.

9 (c) The commissioner shall report the commission's  
10 findings and recommendations to the Legislative Oversight  
11 Commission on Health and Human Resources Accountability  
12 by the first day of July, two thousand nine, and by the first  
13 day of July every four years thereafter.

14 (d) The commissioners' terms shall expire on the first day  
15 of July in the year in which they submit the required report to  
16 the Legislature as set forth in subsection (c) of this section.

**§48-17-105. Commission chairman.**

1 The Commissioner of the Bureau for Child Support  
2 Enforcement shall serve as the chair of the commission.

**§48-17-106. Compensation of members; reimbursement for expenses.**

1 (a) Each voting member of the commission shall receive  
2 one hundred dollars for each day or portion thereof spent in  
3 the discharge of his or her official duties.

4 (b) Each member of the commission shall be reimbursed  
5 for all actual and necessary expenses and disbursements  
6 involved in the execution of official duties.

**§48-17-107. Meeting requirements.**

1 (a) The commission shall meet at least twice during the  
2 one-year term for the sole purpose of reviewing the child  
3 support guidelines set forth in article thirteen of this chapter.  
4 The commission may determine if it needs to convene more  
5 frequently to effectively study the guidelines, but shall not  
6 meet more than eight times during the one-year term.



7 (b) Four voting members of the commission are a quorum  
8 for the transaction of any business and for the performance of  
9 any duty.

10 (c) A majority vote of the voting members present is  
11 required for any final determination by the commission.

12 (d) The commission may elect to meet in executive  
13 session after an affirmative vote of a majority of its members  
14 present according to section four, article nine-a, chapter six  
15 of this code.

16 (e) The commission shall keep a complete and accurate  
17 record of all its meetings according to section five, article  
18 nine-a, chapter six of this code.

**§48-17-109. General duties of support enforcement commission.**

1 (a) Federal law requires that each state periodically  
2 review the formula used to set child support obligations to  
3 determine appropriate awards for the support of children.  
4 States are required to consider current research and data on  
5 the costs of and expenditures necessary for rearing children.  
6 A process for review of the guidelines should be established  
7 to ensure the integrity of the formula and reviews undertaken  
8 to comply with federal law.

9 (b) The commission shall review and analyze:

10 (1) The current child support guidelines;

11 (2) Relevant research and data regarding the cost of child  
12 rearing;

13 (3) Research and data on the application of, and  
14 deviations from, the child support guidelines;

15 (4) Current law, administrative rules and practices  
16 regarding child support; and

17 (5) Any other data the commission deems relevant to the  
18 review of the current child support guidelines.

#### **ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.**

§48-18-102. Appointment of commissioner; duties; compensation.

§48-18-118. Obtaining support from state income tax refunds.

§48-18-118a. Obtaining refunds of overpaid support from state income tax refunds.

§48-18-120. Statements of account.

§48-18-202. Request for assistance by party.

§48-18-205. Bureau action on request of recalculation and presentation of proposed order.

§48-18-206. Family court action on petition and proposed order prepared by Bureau for Child Support Enforcement.

#### **§48-18-102. Appointment of commissioner; duties; compensation.**

1 (a) There is hereby created the position of commissioner.  
2 The commissioner shall:

3 (1) Be appointed by the secretary;

4 (2) Serve at the will and pleasure of the secretary;

5 (3) Serve on a full-time basis and shall not engage in any  
6 other profession or occupation, including the holding of a  
7 political office in the state either by election or appointment,  
8 while serving as commissioner;

9 (4) Be a lawyer licensed by, and in good standing with,  
10 the West Virginia State Bar; and

11 (5) Have responsible administrative experience, possess  
12 management skills and have knowledge of the law as it  
13 relates to domestic relations and the establishment and  
14 enforcement of support obligations.

15 Before entering upon the discharge of the duties as  
16 commissioner, the commissioner shall take and subscribe to  
17 the oath of office prescribed in section five, article IV of the  
18 Constitution of West Virginia.

19 (b) The duties of the commissioner shall include the  
20 following:

21 (1) To direct and administer the daily operations of the  
22 Bureau for Child Support Enforcement;

23 (2) To administer the Child Support Enforcement Fund  
24 created pursuant to section one hundred seven of this article;

25 (3) To chair the commission set forth in article seventeen  
26 of this chapter for the purpose of conducting the federally  
27 required review of the child support formula every four years  
28 and make a report to the Legislative Oversight Commission  
29 on Health and Human Resources Accountability of the  
30 commission's findings;

31 (4) To keep the records and papers of the commission,  
32 including a record of each proceeding; and

33 (5) To prepare, issue and submit reports of the  
34 commission.

35 (c) All payments to the commissioner as compensation  
36 shall be made from the Child Support Enforcement Fund.  
37 The commissioner is entitled to:

38 (1) A reasonable and competitive compensation package  
39 to be established by the secretary; and

40 (2) Reimbursement for expenses under the standard state  
41 travel regulations.

**§48-18-118. Obtaining support from state income tax refunds.**

1 (a) The Tax Commissioner shall establish procedures  
2 necessary for the Bureau for Child Support Enforcement to  
3 obtain payment of past-due support from state income tax  
4 refunds from overpayment made to the Tax Commissioner  
5 pursuant to the provisions of article twenty-one, chapter  
6 eleven of this code.

7 (b) The Commissioner for the Bureau for Child Support  
8 Enforcement shall establish procedures necessary to enforce  
9 a support order through a notice to the Tax Commissioner  
10 which will cause any refund of state income tax which would  
11 otherwise be payable to an obligor to be reduced by the  
12 amount of overdue support owed by such obligor.

13 (1) The procedures shall, at a minimum, prescribe:

14 (A) The time or times at which the Bureau for Child  
15 Support Enforcement shall serve on the obligor or submit to  
16 the Tax Commissioner notices of past-due support;

17 (B) The manner in which such notices shall be served on  
18 the obligor or submitted to the Tax Commissioner;

19 (C) The necessary information which shall be contained  
20 in or accompany the notices;

21 (D) The amount of the fee to be paid to the Tax  
22 Commissioner for the full cost of applying the procedure  
23 whereby past-due support is obtained from state income tax  
24 refunds; and

25 (E) Circumstances when the Bureau for Child Support  
26 Enforcement may deduct a twenty-five dollar fee from the  
27 obligor's state income tax refund. This procedure may not  
28 require a deduction from the state income tax refund of an

29 applicant who is a recipient of assistance from the Bureau for  
30 Children and Families in the form of temporary assistance for  
31 needy families.

32 (2) Withholding from state income tax refunds may not  
33 be pursued unless the Bureau for Child Support Enforcement  
34 has examined the obligor's pattern of payment of support and  
35 the obligee's likelihood of successfully pursuing other  
36 enforcement actions, and has determined that the amount of  
37 past-due support which will be owed, at the time the  
38 withholding is to be made, will be one hundred dollars or  
39 more. In determining whether the amount of past-due  
40 support will be one hundred dollars or more, the Bureau for  
41 Child Support Enforcement shall consider the amount of all  
42 unpaid past-due support, including that which may have  
43 accrued prior to the time that the Bureau for Child Support  
44 Enforcement first agreed to enforce the support order.

45 (c) The Commissioner of the Bureau for Child Support  
46 Enforcement shall enter into agreements with the Secretary  
47 of the Treasury and the Tax Commissioner, and other  
48 appropriate governmental agencies, to secure information  
49 relating to the Social Security number or numbers and the  
50 address or addresses of any obligor, and the name or names  
51 and address or addresses of any employer or employers, in  
52 order to provide notice between such agencies to aid the  
53 Bureau for Child Support Enforcement in requesting state  
54 income tax deductions and to aid the Tax Commissioner in  
55 enforcing such deductions. In each such case, the Tax  
56 Commissioner, in processing the state income tax deduction,  
57 shall notify the Bureau for Child Support Enforcement of the  
58 obligor's home address and Social Security number or  
59 numbers. The Bureau for Child Support Enforcement shall  
60 provide this information to any other state involved in  
61 processing the support order;

62 (d) For the purposes of this section, "past-due support"  
63 means the amount of unpaid past-due support owed under the  
64 terms of a support order to or on behalf of a child, or to or on  
65 behalf of a minor child and the parent with whom the child is  
66 living; regardless of whether the amount has been reduced to  
67 a judgment or not.

68 (e) The Bureau for Child Support Enforcement may,  
69 under the provisions of this section, enforce the collection of  
70 past-due support on behalf of a child who has reached the age  
71 of majority.

72 (f) The procedure shall, at a minimum, provide that prior  
73 to notifying the Tax Commissioner of past-due support, a  
74 notice to the obligor as prescribed under subsection (a) of this  
75 section shall:

76 (1) Notify the obligor that a withholding will be made  
77 from any refund otherwise payable to such obligor;

78 (2) Instruct the obligor of the steps which may be taken  
79 to contest the determination of the Bureau for Child Support  
80 Enforcement that past-due support is owed or the amount of  
81 the past-due support; and

82 (3) Provide information with respect to the procedures to  
83 be followed, in the case of a joint return, to protect the share  
84 of the refund which may be payable to another person.

85 (g) If the Bureau for Child Support Enforcement is  
86 notified by the Tax Commissioner that the refund from which  
87 withholding is proposed to be made is based upon a joint  
88 return, and if the past-due support which is involved has not  
89 been assigned to the Department of Health and Human  
90 Resources, the Bureau for Child Support Enforcement may  
91 delay distribution of the amount withheld until such time as  
92 the Tax Commissioner notifies the Bureau for Child Support

93 Enforcement that the other person filing the joint return has  
94 received his or her proper share of the refund, but such delay  
95 shall not exceed six months.

96 (h) In any case in which an amount is withheld by the  
97 Tax Commissioner under the provisions of this section and  
98 paid to the Bureau for Child Support Enforcement, if the  
99 Bureau for Child Support Enforcement subsequently  
100 determines that the amount certified as past due was in excess  
101 of the amount actually owed at the time the amount withheld  
102 is to be distributed, the agency shall pay the excess amount  
103 withheld to the obligor thought to have owed the past due  
104 support or, in the case of amounts withheld on the basis of a  
105 joint return, jointly to the parties filing the return.

106 (i) The amounts received by the Bureau for Child Support  
107 Enforcement shall be distributed in accordance with the  
108 provisions for distribution set forth in 42 U. S. C. §657.

**§48-18-118a. Obtaining refunds of overpaid support from state  
income tax refunds.**

1 (a) Definitions.

2 (1) "Obligee" means the same as that term is defined in  
3 section two hundred thirty-four, article one of this chapter.

4 (2) "Obligor" means the same as that term is defined in  
5 section two hundred thirty-five, article one of this chapter.

6 (3) "Overpaid support" means the same as that term is  
7 defined in section two hundred thirty-five, article one of this  
8 chapter.

9 (b) The Tax Commissioner shall cooperate with the  
10 Commissioner of the Bureau for Child Support Enforcement  
11 in establishing and implementing procedures for the

12 collection of overpaid child support from state income tax  
13 refunds that are payable to obligees. The Tax Commissioner  
14 shall collect the refunds and send the amounts to the Bureau  
15 for Child Support Enforcement for distribution to obligors  
16 who made the overpayment.

**§48-18-120. Statements of account.**

1 The Bureau for Child Support enforcement shall provide  
2 monthly statements of their account to each obligor and  
3 obligee without charge. The commissioner shall establish  
4 procedures whereby an obligor or obligee can contest or  
5 correct a statement of account.

**§48-18-202. Request for assistance by party.**

1 (a) To make a request for assistance under this article, a  
2 party shall submit the request in writing to the Bureau for  
3 Child Support Enforcement on a form provided by the  
4 bureau. The written request form shall include all of the  
5 requesting party's information known to the party that is  
6 relevant to determine the child support amount. The request  
7 shall be accompanied by:

8 (1) A copy of the order being modified or, in the  
9 discretion of the bureau, information sufficient to permit the  
10 bureau to retrieve or identify the order;

11 (2) A form containing a statement of all of the requesting  
12 party's information known to the party that is relevant to  
13 determining the amount of child support, including a general  
14 statement or argument advancing the reason the request is  
15 being made;

16 (3) Copies of documentation reasonably available to the  
17 requesting party setting forth all of the requesting party's



18 information that is relevant to determine the amount of child  
19 support;

20 (4) A statement setting forth the relevant information  
21 pertaining to the responding party's earnings and child  
22 support that is known or believed to be true by the requesting  
23 party;

24 (5) Copies of any relevant documentation which the  
25 requesting party may have in its possession which would be  
26 relevant to determining the responding party's child support  
27 obligations; and

28 (6) A statement of all other known proceedings, pending  
29 court proceedings or other pending requests for assistance  
30 involving the parties or related to the child or children whose  
31 support is being reevaluated.

32 (b) Upon receipt of notification that an obligor is  
33 incarcerated in a regional jail or a state or federal correctional  
34 facility, the Bureau for Child Support Enforcement shall  
35 determine whether the expected incarceration will exceed six  
36 months. If the incarceration will exceed six months, the  
37 bureau shall file a petition to modify child support.

**§48-18-205. Bureau action on request of recalculation and  
presentation of proposed order.**

1 (a) If the bureau determines that no credible information  
2 exists to establish finding of a substantial change in  
3 circumstances as required by section one hundred five, article  
4 eleven of this chapter or section one hundred six, article  
5 fourteen of this chapter, the Bureau for Child Support  
6 Enforcement shall notify the parties of that fact and notify the  
7 parties that the Bureau for Child Support Enforcement will  
8 not be preparing a petition of proposed order seeking  
9 modification of the parties' child support obligation. Under

10 those circumstances, if the parties disagree with the Bureau  
11 for Child Support Enforcement's assessment and wish to  
12 independently file a petition for modification, the parties may  
13 still seek modification of child support by filing a petition for  
14 modification of an order for support with the family court  
15 under the provisions of section one hundred five or one  
16 hundred six, article eleven of this chapter or under the  
17 provisions of section one hundred six, article fourteen of this  
18 chapter.

19 (b) If the Bureau for Child Support Enforcement  
20 determines that there has been a substantial change of  
21 circumstances as required by section one hundred five, article  
22 eleven of this chapter or by section one hundred six, article  
23 fourteen of this chapter, then the Bureau for Child Support  
24 Enforcement shall prepare a petition and proposed order  
25 modifying the child support order to be filed with the clerk of  
26 the family court.

27 (c) Any such petition filed by the Bureau for Child  
28 Support Enforcement filed pursuant to this article shall  
29 include the following:

30 (1) A copy of the proposed order;

31 (2) A print-out of the child support guidelines  
32 calculations;

33 (3) A notice of the bureau's action;

34 (4) The documents and statements relied upon;

35 (5) Any statement of findings or justification the bureau  
36 is required or determines to include; and

37       (6) A form and instructions for filing an objection to the  
38 proposed order, should a party wish to do so, which form  
39 shall require a statement of the ground or grounds for filing  
40 the objection.

41       (d) The Bureau for Child Support Enforcement's  
42 proposed order shall be based on the child support guidelines:  
43 *Provided*, That the bureau may disregard the child support  
44 guidelines or adjust the amount as allowed by section seven  
45 hundred two, article thirteen of this chapter in the following  
46 instances:

47       (1) When the previous child support order disregarded  
48 the child support guidelines, the grounds for the disregarding  
49 or adjusting the guidelines are stated in the worksheet or  
50 previous order or are agreed upon by the parties, or are  
51 otherwise clear, and those grounds continue to exist and can  
52 be applied to the current circumstances; or

53       (2) If new grounds for the disregard or adjustment are  
54 fully explained in the proposed order.

55       (e) Within six months of the time that a child support  
56 obligation becomes one thousand dollars in arrears the  
57 Bureau for Child Support Enforcement shall notify the  
58 obligor that he or she may be in violation of section twenty-  
59 nine, article five, chapter sixty-one of this code, felony  
60 nonsupport, should the arrearage increase to eight thousand  
61 dollars. The notice shall also advise the obligor of the  
62 availability of child support modification, the amnesty  
63 program established in section three hundred two, article one  
64 of this chapter and the possibility of establishing a payment  
65 plan with the bureau: *Provided*, That where the monthly child  
66 support obligation is greater than one thousand dollars, the  
67 notice shall be sent when the arrearage equals to or greater  
68 than three months child support obligation.

69 (1) If the obligor fails to respond within thirty days, the  
70 Bureau for Child Support Enforcement shall file a petition for  
71 contempt pursuant to section five hundred three, article  
72 fourteen of this chapter.

73 (2) If the obligor responds within thirty days, the Bureau  
74 for Child Support Enforcement shall review the response and  
75 file appropriate pleadings which may include a motion for  
76 modification of child support.

77 (3) The Bureau for Child Support Enforcement will have  
78 one year from the amendment and reenactment of this section  
79 during the two thousand eight legislative session to notify  
80 obligors who currently owe one thousand dollars or more in  
81 child support arrearages or, where the monthly child support  
82 obligation is greater than one thousand dollars, the arrearage  
83 is equal to or greater than three months child support  
84 obligation, of the child support modification options available  
85 to them.

**§48-18-206. Family court action on petition and proposed order  
prepared by Bureau for Child Support  
Enforcement.**

1 (a) Upon receipt of petition for modification and  
2 proposed order prepared by the Bureau for Child Support  
3 Enforcement in accordance with the provisions of this article,  
4 the circuit clerk shall serve a copy of the petition and the  
5 proposed order upon all parties to the proceeding by personal  
6 service or by United States certified mail, return receipt  
7 requested, and direct the parties to file any objections to the  
8 proposed modified child support order within twenty days of  
9 the date of receiving such notice.

10       (b) Within five days of the filing of a petition for  
11 modification and proposed order, the circuit clerk shall notify  
12 the family court.

13       (c) If no party files timely objection to the proposed order  
14 or timely requests a hearing on the petition after receiving  
15 such notice, then the family court shall proceed to review the  
16 petition and proposed order sua sponte, and shall issue the  
17 proposed order. If the family court receives no objection, but  
18 the family court concludes that the proposed order should not  
19 be entered or should be changed, it shall set the matter for  
20 hearing.

21       (d) If the family court receives an objection to the petition  
22 or proposed order, the family court shall set a date and time  
23 for hearing.

24       (e) At any hearing on the proposed order, the family court  
25 shall treat the proposed order as a motion for modification  
26 made by the party requesting the bureau to initiate the  
27 modification. The actions of the family court at a hearing  
28 shall be de novo and shall not be an appeal from the bureau's  
29 recommended order. The family court shall notify the parties  
30 of the hearing and of the parties' rights and the procedures to  
31 be followed.

32       (f) The fees to be assessed for filing and service of the  
33 petition and the disbursement of the fee for petitions filed  
34 pursuant to this section shall be the same as the fee charged  
35 by the clerk for petitioning for an expedited modification of  
36 a child support order, as set forth in section eleven, article  
37 one, chapter fifty-nine of this code.



## CHAPTER 27

**(Com. Sub. for S.B. 286 - By Senators Prezioso, Bailey, Edgell,  
Foster, Hunter, Kessler, Minard, Unger, Deem, Guills,  
Yoder, Love, McCabe, Plymale and Jenkins)**

[Passed March 6, 2008; in effect from passage.]  
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §9-6-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-6A-9 of said code, all relating to personal immunity from civil liability for adult protective services workers and child protective services workers performing employment-related duties and responsibilities within their official capacity.

*Be it enacted by the Legislature of West Virginia:*

That §9-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-6A-9 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 9. Human Services.**
- 49. Child Welfare.**

### **CHAPTER 9. HUMAN SERVICES.**

#### **ARTICLE 6. SOCIAL SERVICES FOR ADULTS.**

**§9-6-2. Adult protective services; immunity from civil liability; rules; organization and duties.**

1 (a) There is hereby established and continued within the  
2 Department of Health and Human Resources the system of  
3 adult protective services heretofore existing.

4 (b) The secretary shall propose rules for legislative  
5 approval in accordance with the provisions of article three,  
6 chapter twenty-nine-a of this code regarding the organization  
7 and duties of the adult protective services system and the  
8 procedures to be used by the department to effectuate the  
9 purposes of this article. The rules may be amended and  
10 supplemented from time to time.

11 (c) The secretary shall design and arrange such rules to  
12 attain, or move toward the attainment, of the following goals  
13 to the extent that the secretary believes feasible under the  
14 provisions of this article within the state appropriations and  
15 other funds available:

16 (1) Assisting adults who are abused, neglected or  
17 incapacitated in achieving or maintaining self-sufficiency and  
18 self-support and preventing, reducing and eliminating their  
19 dependency on the state;

20 (2) Preventing, reducing and eliminating neglect and  
21 abuse of adults who are unable to protect their own interests;

22 (3) Preventing and reducing institutional care of adults by  
23 providing less intensive forms of care, preferably in the  
24 home;

25 (4) Referring and admitting abused, neglected or  
26 incapacitated adults to institutional care only where other  
27 available services are inappropriate;

28 (5) Providing services and monitoring to adults in  
29 institutions designed to assist adults in returning to  
30 community settings;

31 (6) Preventing, reducing and eliminating the exploitation  
32 of incapacitated adults and facility residents through the joint  
33 efforts of the various agencies of the Department of Health  
34 and Human Resources, the adult protective services system,  
35 the state and regional long-term care ombudsmen,  
36 administrators of nursing homes or other residential facilities  
37 and county prosecutors;

38 (7) Preventing, reducing and eliminating abuse and  
39 neglect of residents in nursing homes or facilities; and

40 (8) Coordinating investigation activities for complaints of  
41 abuse and neglect of incapacitated adults and facility  
42 residents among the various agencies of the Department of  
43 Health and Human Resources, the adult protective services  
44 system, the state and regional long-term care ombudsmen,  
45 administrators of nursing homes or other residential facilities,  
46 county prosecutors, if necessary, and other state or federal  
47 agencies or officials, as appropriate.

48 (d) No adult protective services caseworker may be held  
49 personally liable for any professional decision or action  
50 thereupon arrived at in the performance of his or her official  
51 duties as set forth in this section or agency rules promulgated  
52 thereupon: *Provided*, That nothing in this subsection protects  
53 any adult protective services worker from any liability arising  
54 from the operation of a motor vehicle or for any loss caused  
55 by gross negligence, willful and wanton misconduct or  
56 intentional misconduct.

57 (e) The rules proposed by the secretary shall provide for  
58 the means by which the department shall cooperate with  
59 federal, state and other agencies to fulfill the objectives of the  
60 system of adult protective services.



**CHAPTER 49. CHILD WELFARE.****ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO  
BE ABUSED OR NEGLECTED.****§49-6A-9. Establishment of child protective services; general  
duties and powers; immunity from civil liability;  
cooperation of other state agencies.**

1 (a) The state department shall establish or designate in  
2 every county a local child protective services office to  
3 perform the duties and functions set forth in this article.

4 (b) The local child protective services office shall  
5 investigate all reports of child abuse or neglect: *Provided,*  
6 That under no circumstances shall investigating personnel be  
7 relatives of the accused, the child or the families involved. In  
8 accordance with the local plan for child protective services,  
9 it shall provide protective services to prevent further abuse or  
10 neglect of children and provide for or arrange for and  
11 coordinate and monitor the provision of those services  
12 necessary to ensure the safety of children. The local child  
13 protective services office shall be organized to maximize the  
14 continuity of responsibility, care and service of individual  
15 workers for individual children and families: *Provided,*  
16 *however,* That under no circumstances may the secretary or  
17 his or her designee promulgate rules or establish any policy  
18 which restricts the scope or types of alleged abuse or neglect  
19 of minor children which are to be investigated or the  
20 provision of appropriate and available services.

21 Each local child protective services office shall:

22 (1) Receive or arrange for the receipt of all reports of  
23 children known or suspected to be abused or neglected on a  
24 24-hour, seven-day-a-week basis and cross-file all such  
25 reports under the names of the children, the family and any  
26 person substantiated as being an abuser or neglecter by

27 investigation of the Department of Health and Human  
28 Resources, with use of such cross-filing of such person's  
29 name limited to the internal use of the department;

30 (2) Provide or arrange for emergency children's services  
31 to be available at all times;

32 (3) Upon notification of suspected child abuse or neglect,  
33 commence or cause to be commenced a thorough  
34 investigation of the report and the child's environment. As a  
35 part of this response, within fourteen days there shall be a  
36 face-to-face interview with the child or children and the  
37 development of a protection plan, if necessary for the safety  
38 or health of the child, which may involve law-enforcement  
39 officers or the court;

40 (4) Respond immediately to all allegations of imminent  
41 danger to the physical well-being of the child or of serious  
42 physical abuse. As a part of this response, within  
43 seventy-two hours there shall be a face-to-face interview with  
44 the child or children and the development of a protection  
45 plan, which may involve law-enforcement officers or the  
46 court; and

47 (5) In addition to any other requirements imposed by this  
48 section, when any matter regarding child custody is pending,  
49 the circuit court or family law master may refer allegations of  
50 child abuse and neglect to the local child protective services  
51 office for investigation of the allegations as defined by this  
52 chapter and require the local child protective services office  
53 to submit a written report of the investigation to the referring  
54 circuit court or family law master within the time frames set  
55 forth by the circuit court or family law master.

56 (c) In those cases in which the local child protective  
57 services office determines that the best interests of the child  
58 require court action, the local child protective services office  
59 shall initiate the appropriate legal proceeding.

60 (d) The local child protective services office shall be  
61 responsible for providing, directing or coordinating the  
62 appropriate and timely delivery of services to any child  
63 suspected or known to be abused or neglected, including  
64 services to the child's family and those responsible for the  
65 child's care.

66 (e) To carry out the purposes of this article, all  
67 departments, boards, bureaus and other agencies of the state  
68 or any of its political subdivisions and all agencies providing  
69 services under the local child protective services plan shall,  
70 upon request, provide to the local child protective services  
71 office such assistance and information as will enable it to  
72 fulfill its responsibilities.

73 (f)(1) In order to obtain information regarding the  
74 location of a child who is the subject of an allegation of abuse  
75 or neglect, the Secretary of the Department of Health and  
76 Human Resources may serve, by certified mail or personal  
77 service, an administrative subpoena on any corporation,  
78 partnership, business or organization for the production of  
79 information leading to determining the location of the child.

80 (2) In case of disobedience to the subpoena, in  
81 compelling the production of documents, the secretary may  
82 invoke the aid of: (A) The circuit court with jurisdiction over  
83 the served party if the person served is a resident; or (B) the  
84 circuit court of the county in which the local child protective  
85 services office conducting the investigation is located if the  
86 person served is a nonresident.

87 (3) A circuit court shall not enforce an administrative  
88 subpoena unless it finds that: (A) The investigation is one the  
89 Division of Child Protective Services is authorized to make  
90 and is being conducted pursuant to a legitimate purpose; (B)  
91 the inquiry is relevant to that purpose; (C) the inquiry is not  
92 too broad or indefinite; (D) the information sought is not

93 already in the possession of the Division of Child Protective  
94 Services; and (E) any administrative steps required by law  
95 have been followed.

96 (4) If circumstances arise where the secretary, or his or  
97 her designee, determines it necessary to compel an individual  
98 to provide information regarding the location of a child who  
99 is the subject of an allegation of abuse or neglect, the  
100 secretary, or his or her designee, may seek a subpoena from  
101 the circuit court with jurisdiction over the individual from  
102 whom the information is sought.

103 (g) No child protective services caseworker may be held  
104 personally liable for any professional decision or action  
105 thereupon: arrived at in the performance of his or her official  
106 duties as set forth in this section or agency rules promulgated  
107 thereupon: *Provided*, That nothing in this subsection protects  
108 any child protective services worker from any liability arising  
109 from the operation of a motor vehicle or for any loss caused  
110 by gross negligence, willful and wanton misconduct or  
111 intentional misconduct.

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## CHAPTER 28

**(H.B. 4490 - By Delegates Stalnaker, Tucker,  
Craig, Manchin, Anderson and Evans)**

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[Passed March 5, 2008; in effect from passage.]  
[Approved by the Governor on March 12, 2008.]

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AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

*Be it enacted by the Legislature of West Virginia:*

**CLAIMS AGAINST THE STATE.**

**§1. Finding and declaring certain claims against the Division of Corrections to be moral obligations of the state and directing payments thereof.**

1       The Legislature has heretofore made findings of fact that  
 2 the state has received the benefit of the commodities received  
 3 and/or services rendered by certain claimants herein and has  
 4 considered these claims against the state, and agencies  
 5 thereof, which have arisen due to overexpenditures of the  
 6 departmental appropriations by officers of the state spending  
 7 units, the claims having been previously considered by the  
 8 Court of Claims which also found that the state has received  
 9 the benefit of the commodities received and/or services  
 10 rendered by the claimants, but were denied by the Court of  
 11 Claims on the purely statutory grounds that to allow the  
 12 claims would be condoning illegal acts contrary to the laws  
 13 of the state. The Legislature, pursuant to its findings of fact  
 14 and also by the adoption of the findings of fact by the Court  
 15 of Claims as its own, while not condoning such illegal acts,  
 16 hereby declares it to be the moral obligation of the state to  
 17 pay these claims in the amounts specified below and directs  
 18 the Auditor to issue warrants upon receipt of properly  
 19 executed requisitions supported by itemized invoices,  
 20 statements or other satisfactory documents as required by  
 21 section ten, article three, chapter twelve of the Code of West  
 22 Virginia, one thousand nine hundred thirty-one, as amended,  
 23 for the payments thereof out of any fund appropriated and  
 24 available for the purpose.

25       (a) *Claims against the Division of Corrections:*  
 26            (TO BE PAID FROM GENERAL REVENUE FUND)  
 27        (1) Correctional Medical Services . . . . . \$ 439,922.81  
 28        (2) Monongalia General Hospital . . . . . \$ 80,299.30

|    |  |               |
|----|--|---------------|
| 29 | (3) Montgomery General Hospital . . . . .    | \$ 34,180.62  |
| 30 | (4) Professional Anesthesia Services Inc. \$ | 3,472.26      |
| 31 | (5) WVU Medical Corporation, dba             |               |
| 32 | University Health Associates . . . . .       | \$ 26,520.00  |
| 33 | (6) WVU Physicians of Charleston . . . . .   | \$ 17,077.00  |
| 34 | (7) West Virginia University Hospitals .     | \$ 294,535.34 |

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## CHAPTER 29

**(S.B. 654 - By Senators Love, Edgell, Unger and Sypolt)**

[Passed March 4, 2008; in effect from passage.]  
 [Approved by the Governor on March 20, 2008.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

*Be it enacted by the Legislature of West Virginia:*

### **CLAIMS AGAINST THE STATE.**

**§1. Finding and declaring certain claims against the Attorney General; Department of Administration; Department of Education; Division of Corrections; Division of Highways; Division of Motor Vehicles; Insurance Commission; Marshall University; Public Service Commission; Regional Jail and Correctional Facility Authority; West Virginia State Police and West Virginia University to be moral obligations of the state and directing payment thereof.**

1 The Legislature has considered the findings of fact and  
 2 recommendations reported to it by the Court of Claims  
 3 concerning various claims against the state and agencies  
 4 thereof and in respect to each of the following claims, the  
 5 Legislature adopts those findings of fact as its own and in  
 6 respect of certain claims herein, the Legislature has  
 7 independently made findings of fact and determinations of  
 8 award and hereby declares it to be the moral obligation of the  
 9 state to pay each such claim in the amount specified below  
 10 and directs the Auditor to issue warrants for the payment  
 11 thereof out of any fund appropriated and available for the  
 12 purpose.

13 (a) *Claim against the Attorney General:*

14 (TO BE PAID FROM GENERAL REVENUE FUND)

15 (1) Christopher C. McClung . . . . \$ 1,858.20

16 (b) *Claims against the Department of Administration:*

17 (TO BE PAID FROM GENERAL REVENUE FUND)

18 (1) CAS Structural  
 19 Engineering, Inc. . . . . \$ 38,326.03

20 (2) Stefaney A. Williams . . . . . \$ 64.80

21 (c) *Claims against the Department of Education:*

22 (TO BE PAID FROM GENERAL REVENUE FUND)

23 (1) Adelphoi Village, Inc. . . . . \$ 31,270.00

24 (2) Pomeroy IT Solutions  
 25 Sales Company . . . . . \$ 38,541.00

26 (d) *Claims against the Division of Corrections:*

27 (TO BE PAID FROM GENERAL REVENUE FUND)

28 (1) Gary Baker ..... \$ 69.00

29 (2) Kevin A. Boxley ..... \$ 50.00

30 (3) John Boyce ..... \$ 28.62

31 (4) Lucy N. Culver ..... \$ 13.48

32 (5) Roger E. Hedrick ..... \$ 54.36

33 (6) Regional Jail and Correctional  
34 Facility Authority ..... \$ 877,753.00

35 (7) Michael E. Smith, Jr. .... \$ 257.73

36 (8) Thomas S. Talbert ..... \$ 20.00

37 (9) Melinda K. Zirbs ..... \$ 7.45

38 (e) *Claims against the Division of Highways:*

39 (TO BE PAID FROM STATE ROAD FUND)

40 (1) Betty Sue Adkins ..... \$ 53.00

41 (2) Randy B. Amos ..... \$ 408.08

42 (3) Linda Arehart ..... \$ 137.75

43 (4) James W. Ayers and  
44 Lisa A. Ayers ..... \$ 500.00

45 (5) Annabelle Bailey, as  
46 Administrator of the Estate  
47 of Roger E. Bailey ..... \$ 13,000.00



| Ch. 29] | CLAIMS                              | 361           |
|---------|-------------------------------------|---------------|
| 48      | (6) Lonnie A. Bays . . . . .        | \$ 58.30      |
| 49      | (7) Ronald Beasley . . . . .        | \$ 464.49     |
| 50      | (8) Roy L. Beckett . . . . .        | \$ 285.28     |
| 51      | (9) Larry Ray Bennett, as           |               |
| 52      | Administrator of the Estate         |               |
| 53      | of Barbara Rosclea Bennett          | \$ 37,000.00  |
| 54      | (10) Brian W. Bethel . . . . .      | \$ 203.13     |
| 55      | (11) Isaiah Bledsoe and Judy        |               |
| 56      | Bledsoe . . . . .                   | \$ 201.79     |
| 57      | (12) Crystal D. Brown . . . . .     | \$ 3,500.00   |
| 58      | (13) Jami Bryant . . . . .          | \$ 5,000.00   |
| 59      | (14) Connie Buckbee, individually   |               |
| 60      | and as Administratrix of the        |               |
| 61      | Estate of Julia Carolyn             |               |
| 62      | Strickland, deceased . . . . .      | \$ 500,000.00 |
| 63      | (15) Dennis L. Burgess and          |               |
| 64      | Jennifer W. Burgess . . . . .       | \$ 294.87     |
| 65      | (16) Gary Bush . . . . .            | \$ 246.98     |
| 66      | (17) Jeffery E. Carr . . . . .      | \$ 500.00     |
| 67      | (18) Scott Chapman and              |               |
| 68      | Susan Chapman . . . . .             | \$ 500.00     |
| 69      | (19) Michelle D. Clarkson . . . . . | \$ 219.12     |
| 70      | (20) Michael A. Cochran . . . . .   | \$ 263.20     |

| 362 | CLAIMS                                | [Ch. 29     |
|-----|---------------------------------------|-------------|
| 71  | (21) William David Collins . . . . .  | \$ 6,000.00 |
| 72  | (22) Louie Constantino and            |             |
| 73  | Daphne Constantino . . . . .          | \$ 500.00   |
| 74  | (23) Jennifer Copley and              |             |
| 75  | Billy Joe Copley . . . . .            | \$ 9,850.00 |
| 76  | (24) Coy Cumberledge . . . . .        | \$ 300.00   |
| 77  | (25) Glenda S. Davis . . . . .        | \$ 62.16    |
| 78  | (26) Cathy E. Dotson and              |             |
| 79  | Paul K. Dotson . . . . .              | \$ 355.05   |
| 80  | (27) David A. Dove . . . . .          | \$ 1,000.00 |
| 81  | (28) Jeffrey A. Dye and               |             |
| 82  | Nancy A. Dye . . . . .                | \$ 460.33   |
| 83  | (29) Earl D. Ferguson . . . . .       | \$ 288.58   |
| 84  | (30) Lois Mildred Gallagher . . . . . | \$ 62.56    |
| 85  | (31) Allen G. Gibbs and               |             |
| 86  | Esther L. Gibbs . . . . .             | \$ 252.32   |
| 87  | (32) David W. Greear . . . . .        | \$ 197.36   |
| 88  | (33) Earl W. Grove, Jr. . . . .       | \$ 262.12   |
| 89  | (34) Donald D. Hall, Jr. . . . .      | \$ 801.00   |
| 90  | (35) Cheri Hamilton . . . . .         | \$ 476.02   |
| 91  | (36) Brandie M. Harrison . . . . .    | \$ 295.67   |
| 92  | (37) Michael L. Haslam . . . . .      | \$ 105.28   |

| Ch. 29] | CLAIMS                              | 363         |
|---------|-------------------------------------|-------------|
| 93      | (38) Stella M. Hawkins . . . . .    | \$ 1,250.00 |
| 94      | (39) Tracy Haynes and               |             |
| 95      | Chad Haynes . . . . .               | \$ 2,045.90 |
| 96      | (40) Steve Hendrick . . . . .       | \$ 256.76   |
| 97      | (41) Judy A. Hillberry . . . . .    | \$ 62.16    |
| 98      | (42) Elmer Mickey Hodge and         |             |
| 99      | Shirley Ann Hodge . . . . .         | \$ 125.08   |
| 100     | (43) Diane L. Huffman . . . . .     | \$ 415.30   |
| 101     | (44) Sheila Ann Hunt and            |             |
| 102     | Glenn Hunt . . . . .                | \$ 419.77   |
| 103     | (45) Todd D. Jarrett . . . . .      | \$ 677.28   |
| 104     | (46) Fred Jefferson, Jr., and       |             |
| 105     | Diani Jefferson . . . . .           | \$ 351.77   |
| 106     | (47) Jeremy Johnson . . . . .       | \$ 252.18   |
| 107     | (48) Robert Ray Johnson . . . . .   | \$ 500.00   |
| 108     | (49) Ronald C. Jordan . . . . .     | \$ 57.24    |
| 109     | (50) Kimberly Ann Kent . . . . .    | \$ 242.20   |
| 110     | (51) Melvin R. Kessler . . . . .    | \$ 490.43   |
| 111     | (52) Jeffrey D. Kidwell and         |             |
| 112     | Vickie Kidwell . . . . .            | \$ 120.23   |
| 113     | (53) James H. Kilgore III . . . . . | \$ 500.00   |
| 114     | (54) John W. Lacy and               |             |

|     |      |                             |    |          |
|-----|------|-----------------------------|----|----------|
| 364 |      | CLAIMS                      |    | [Ch. 29  |
| 115 |      | Kristi R. Lacy . . . . .    | \$ | 500.00   |
| 116 | (55) | Jennifer E. Larck . . . . . | \$ | 150.00   |
| 117 | (56) | Julia E. Legrand . . . . .  | \$ | 250.00   |
| 118 | (57) | Regina Lott and             |    |          |
| 119 |      | Harry M. Lott . . . . .     | \$ | 231.91   |
| 120 | (58) | Julia Marion and            |    |          |
| 121 |      | Larry Marion . . . . .      | \$ | 500.00   |
| 122 | (59) | Lona R. McCoy . . . . .     | \$ | 408.33   |
| 123 | (60) | Tana B. McCraw . . . . .    | \$ | 8,412.73 |
| 124 | (61) | Adam N. Mendez . . . . .    | \$ | 378.46   |
| 125 | (62) | John W. Morrow and          |    |          |
| 126 |      | Devonna Morrow . . . . .    | \$ | 500.00   |
| 127 |      |                             |    |          |
| 128 | (63) | Willis Mullins . . . . .    | \$ | 483.64   |
| 129 | (64) | Cathy I. Neel and           |    |          |
| 130 |      | Michael Neel . . . . .      | \$ | 132.50   |
| 131 | (65) | Robert Nuckolls . . . . .   | \$ | 3,550.00 |
| 132 | (66) | John D. Outward . . . . .   | \$ | 90.95    |
| 133 | (67) | George Parnicza . . . . .   | \$ | 387.34   |
| 134 | (68) | Carol A. Pascucci . . . . . | \$ | 357.15   |
| 135 | (69) | Donna A. Pastorius and      |    |          |
| 136 |      | John M. Pastorius . . . . . | \$ | 275.49   |
| 137 | (70) | Arthur T. Petty . . . . .   | \$ | 89.09    |

|     |                                 |    |          |
|-----|---------------------------------|----|----------|
| 138 | (71) Henry M. Pooler .....      | \$ | 2,580.00 |
| 139 | (72) Linda A. Porter and        |    |          |
| 140 | Thomas E. Porter .....          | \$ | 288.73   |
| 141 | (73) Bonnie M. Prisk .....      | \$ | 903.87   |
| 142 | (74) Charlena Ramey .....       | \$ | 332.41   |
| 143 | (75) Daisy E. Robertson .....   | \$ | 221.60   |
| 144 | (76) Michael Shawver and        |    |          |
| 145 | Zellamae Shawver .....          | \$ | 500.00   |
| 146 | (77) Sharon L. Shunk and        |    |          |
| 147 | Richard L. Shunk .....          | \$ | 250.00   |
| 148 | (78) Frank O. Sirianni .....    | \$ | 500.00   |
| 149 | (79) Patricia Sisson and        |    |          |
| 150 | Tanya Sisson .....              | \$ | 613.14   |
| 151 | (80) Cruz Soto and              |    |          |
| 152 | Wilma L. Soto .....             | \$ | 7,302.01 |
| 153 | (81) Steven A. Taylor and       |    |          |
| 154 | Tracy L. Taylor .....           | \$ | 100.70   |
| 155 | (82) Patsy Tenpenny .....       | \$ | 297.01   |
| 156 | (83) Sandra J. Thames .....     | \$ | 200.50   |
| 157 | (84) William E. Thayer II ..... | \$ | 305.40   |
| 158 | (85) Chandra C. Toney .....     | \$ | 500.00   |
| 159 | (86) Jessica Townsend .....     | \$ | 500.00   |

|     |      |   |    |           |
|-----|------|---|----|-----------|
| 366 |      | CLAIMS  |    | [Ch. 29   |
| 160 | (87) | Trustees of the Saulsville                                |    |           |
| 161 |      | Baptist Church . . . . .                                  | \$ | 81,800.00 |
| 162 | (88) | Donald Lee Underwood and                                  |    |           |
| 163 |      | Vicki Lynn Underwood . . .                                | \$ | 867.00    |
| 164 | (89) | John Wagner and   |    |           |
| 165 |      | Jeanine Wagner . . . . .                                  | \$ | 500.00    |
| 166 | (90) | Janet Marie Walker . . . . .                              | \$ | 272.76    |
| 167 | (91) | Eugene Wilfong and  |    |           |
| 168 |      | Dreama Wilfong . . . . .                                  | \$ | 4,000.00  |
| 169 | (92) | Kimberly Wilson . . . . .                                 | \$ | 200.54    |
| 170 | (93) | L. Marie Wolfe . . . . .                                  | \$ | 167.48    |
| 171 | (94) | Lora J. Woomer and  |    |           |
| 172 |      | Bobby Woomer . . . . .                                    | \$ | 1,742.00  |
| 173 | (95) | Samuel Zavatsky . . . . .                                 | \$ | 124.00    |
| 174 |      | <i>(f) Claims against the Division of Motor Vehicles:</i> |    |           |
| 175 |      | (TO BE PAID FROM STATE ROAD FUND)                         |    |           |
| 176 | (1)  | Donna E. Graziani . . . . .                               | \$ | 162.50    |
| 177 | (2)  | Lucy Rutherford . . . . .                                 | \$ | 90.00     |
| 178 |      | <i>(g) Claim against the Insurance Commission:</i>        |    |           |
| 179 |      | (TO BE PAID FROM SPECIAL REVENUE FUND)                    |    |           |
| 180 | (1)  | Morris Square Associates, LP .                            | \$ | 4,634.00  |
| 181 |      | <i>(h) Claim against Marshall University:</i>             |    |           |

|     |   |    |           |
|-----|---|----|-----------|
| 182 | (TO BE PAID FROM SPECIAL REVENUE FUND)                            |    |           |
| 183 | (1) Manpower . . . . .  | \$ | 20,000.00 |
| 184 | (i) <i>Claim against the Public Service Commission:</i>           |    |           |
| 185 | (TO BE PAID FROM SPECIAL REVENUE FUND)                            |    |           |
| 186 | (1) Pomeroy IT Solutions Sales                                    |    |           |
| 187 | Company Inc. . . . .  | \$ | 373.30    |
| 188 | (j) <i>Claims against Regional Jail and Correctional Facility</i> |    |           |
| 189 | <i>Authority:</i>   |    |           |
| 190 | (TO BE PAID FROM SPECIAL REVENUE FUND)                            |    |           |
| 191 | (1) Medhanic C. Berhane . . . . .                                 | \$ | 83.44     |
| 192 | (2) Andy Ryan Boggess . . . . .                                   | \$ | 625.39    |
| 193 | (3) Michael P. Burns . . . . .                                    | \$ | 892.00    |
| 194 | (4) David Jeffrey Edwards . . . . .                               | \$ | 374.95    |
| 195 | (5) Robert England . . . . .                                      | \$ | 120.00    |
| 196 | (6) Charles W. Hall . . . . .                                     | \$ | 659.05    |
| 197 | (7) David Huffman . . . . .                                       | \$ | 31.31     |
| 198 | (8) Billy E. Hughes, Jr. . . . .                                  | \$ | 15.00     |
| 199 | (9) Stephen Hutchins . . . . .                                    | \$ | 130.00    |
| 200 | (10) Keith Wesley Johnson . . . . .                               | \$ | 179.00    |
| 201 | (11) Dayton S. Lister . . . . .                                   | \$ | 20.06     |

|     |      |  |    |            |
|-----|------|--|----|------------|
| 368 |      | CLAIMS   |    | [Ch. 29    |
| 202 | (12) | Jeremiah David Mongold . . .                   | \$ | 20.69      |
| 203 | (13) | Ransom Parris . . . . .                        | \$ | 604.00     |
| 204 | (14) | Donna J. Snyder . . . . .                      | \$ | 500.00     |
| 205 | (15) | Stephen F. Tlumach . . . . .                   | \$ | 6.66       |
| 206 | (16) | Stephen Valkos . . . . .                       | \$ | 56.95      |
| 207 | (k)  | <i>Claim against the WV State Police:</i>      |    |            |
| 208 |      | (TO BE PAID FROM GENERAL REVENUE FUND)         |    |            |
| 209 | (1)  | James W. Dickens . . . . .                     | \$ | 2,475.00   |
| 210 | (l)  | <i>Claim against West Virginia University:</i> |    |            |
| 211 |      | (TO BE PAID FROM SPECIAL REVENUE FUND)         |    |            |
| 212 | (1)  | American Vending                               |    |            |
| 213 |      | Company, Inc. . . . .                          | \$ | 529,087.48 |

214       The Legislature finds that the above moral obligations and  
215 the appropriations made in satisfaction thereof shall be the  
216 full compensation for all claimants and that, prior to the  
217 payments to any claimant provided in this bill, the Court of  
218 Claims shall receive a release from said claimant releasing  
219 any and all claims for moral obligations arising from the  
220 matters considered by the Legislature in the finding of the  
221 moral obligations and the making of the appropriations for  
222 said claimant. The Court of Claims shall deliver all releases  
223 obtained from claimants to the department against which the  
224 claim was allowed.



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## CHAPTER 30

**(H.B. 4348 - By Delegates Caputo, White, M. Poling,  
Manchin, DeLong, Webster and Fragale)**

[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §22A-1-4 of the Code of West Virginia, 1931, as amended, clarifying and affirming the practice of the Office of Miners' Health, Safety and Training to charge reasonable fees for providing certain tests, certificates and publications.

*Be it enacted by the Legislature of West Virginia:*

That §22A-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY  
AND TRAINING; ADMINISTRATION;  
ENFORCEMENT.**

**§22A-1-4. Powers and duties of the director of the Office of  
Miners' Health, Safety and Training.**

- 1 (a) The Director of the Office of Miners' Health, Safety
- 2 and Training is hereby empowered and it is his or her duty to
- 3 administer and enforce such provisions of this chapter
- 4 relating to health and safety inspections and enforcement and
- 5 training in surface and underground coal mines, underground

6 clay mines, open pit mines, cement manufacturing plants and  
7 underground limestone and sandstone mines.

8 (b) The Director of the Office of Miners' Health, Safety  
9 and Training has full charge of the division. The director has  
10 the power and duty to:

11 (1) Supervise and direct the execution and enforcement  
12 of the provisions of this article.

13 (2) Employ such assistants, clerks, stenographers and  
14 other employees as may be necessary to fully and effectively  
15 carry out his or her responsibilities and fix their  
16 compensation, except as otherwise provided in this article.

17 (3) Assign mine inspectors to divisions or districts in  
18 accordance with the provisions of section eight of this article  
19 as may be necessary to fully and effectively carry out the  
20 provisions of this law, including the training of inspectors for  
21 the specialized requirements of surface mining, shaft and  
22 slope sinking and surface installations and to supervise and  
23 direct such mine inspectors in the performance of their duties.

24 (4) Suspend, for good cause, any such mine inspector  
25 without compensation for a period not exceeding thirty days  
26 in any calendar year.

27 (5) Prepare report forms to be used by mine inspectors in  
28 making their findings, orders and notices, upon inspections  
29 made in accordance with this article.

30 (6) Hear and determine applications made by mine  
31 operators for the annulment or revision of orders made by  
32 mine inspectors, and to make inspections of mines, in  
33 accordance with the provisions of this article.

34       (7) Cause a properly indexed permanent and public  
35 record to be kept of all inspections made by himself or by  
36 mine inspectors.

37       (8) Make annually a full and complete written report of  
38 the administration of the office to the Governor and the  
39 Legislature of the state for the year ending the thirtieth day of  
40 June. The report shall include the number of visits and  
41 inspections of mines in the state by mine inspectors, the  
42 quantity of coal, coke and other minerals (excluding oil and  
43 gas) produced in the state, the number of individuals  
44 employed, number of mines in operation, statistics with  
45 regard to health and safety of persons working in the mines  
46 including the causes of injuries and deaths, improvements  
47 made, prosecutions, the total funds of the office from all  
48 sources identifying each source of such funds, the  
49 expenditures of the office, the surplus or deficit of the office  
50 at the beginning and end of the year, the amount of fines  
51 collected, the amount of fines imposed, the value of fines  
52 pending, the number and type of violations found, the amount  
53 of fines imposed, levied and turned over for collection, the  
54 total amount of fines levied but not paid during the prior year,  
55 the titles and salaries of all inspectors and other officials of  
56 the office, the number of inspections made by each inspector,  
57 the number and type of violations found by each inspector:  
58 *Provided*, That no inspector is identified by name in this  
59 report. Such reports shall be filed with the Governor and the  
60 Legislature on or before the thirty-first day of December of  
61 the same year for which it was made, and shall upon proper  
62 authority be printed and distributed to interested persons.

63       (9) Call or subpoena witnesses, for the purpose of  
64 conducting hearings into mine fires, mine explosions or any  
65 mine accident; to administer oaths and to require production  
66 of any books, papers, records or other documents relevant or  
67 material to any hearing, investigation or examination of any

68 mine permitted by this chapter. Any witness so called or  
69 subpoenaed shall receive forty dollars per diem and shall  
70 receive mileage at the rate of fifteen cents for each mile  
71 actually traveled, which shall be paid out of the State  
72 Treasury upon a requisition upon the State Auditor, properly  
73 certified by such witness.

74 (10) Institute civil actions for relief, including permanent  
75 or temporary injunctions, restraining orders, or any other  
76 appropriate action in the appropriate federal or state court  
77 whenever any operator or the operator's agent violates or fails  
78 or refuses to comply with any lawful order, notice or decision  
79 issued by the director or his or her representative.

80 (11) Perform all other duties which are expressly imposed  
81 upon him or her by the provisions of this chapter.

82 (12) Impose reasonable fees upon applicants taking tests  
83 administered pursuant to the requirements of this chapter.

84 (13) Impose reasonable fees for the issuance of  
85 certifications required under this chapter.

86 (14) Prepare study guides and other forms of publications  
87 relating to mine safety and charge a reasonable fee for the  
88 sale of the publications.

89 (15) Make all records of the office open for inspection of  
90 interested persons and the public.

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**CHAPTER 31**

**(Com. Sub. for H.B. 4021 - By Mr. Speaker, Mr. Thompson,  
and Delegate Armstead)  
[By Request of the Executive]**

[Passed March 8, 2008; in effect April 1, 2008.]  
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §22A-2-6 and §22A-2-55 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3-12 and §61-3-29 of said code, all relating generally to coal mine health and safety; clarifying currency of rules and policies relating to transportation of miners and supplies; directing the West Virginia Mine Safety Task Force study possible improvements in transportation of miners and supplies in underground coal mines; eliminating requirement that strobe lights be affixed to caches of self-contained self-rescue devices; expanding criminal penalties for theft of certain coal mine equipment; establishing criminal penalties for illegal entry into underground coal mines; creating a criminal penalty for damage or destruction of coal mine equipment and property; and creating a criminal penalty for damage or destruction of coal mine equipment and property when a serious bodily injury results.

*Be it enacted by the Legislature of West Virginia:*

That §22A-2-6 and §22A-2-55 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-3-12 and §61-3-29 of said code be amended and reenacted, all to read as follows:

**Chapter****22A. Miner's Health, Safety and Training.****61. Crimes and Their Punishment.**

## CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

### ARTICLE 2. UNDERGROUND MINES.

§22A-2-6. Movement of mining equipment.

§22A-2-55. Protective equipment and clothing.

#### §22A-2-6. Movement of mining equipment.

1 (a) Mining equipment being transported or trammed  
2 underground, other than ordinary sectional movements, shall be  
3 transported or trammed by qualified personnel under the  
4 supervision of a certified foreman. When equipment is being  
5 transported or trammed, no person shall be permitted to be in by  
6 the equipment in the ventilating split that is passing over such  
7 equipment. To avoid accidental contact with power lines, face  
8 equipment shall be insulated and assemblies removed, if  
9 necessary, so as to provide clearance.

10 (b) The task force shall, upon the effective date of the  
11 amendments to this section made during the two-thousand eight  
12 Regular Session of the West Virginia Legislature, undertake a  
13 study of methods and technologies available related to  
14 transporting miners, mining equipment and supplies in  
15 underground mines.

16 (c) Upon completion of the study directed by the provisions  
17 of subsection (b) of this section, the task force may present  
18 recommendations to the West Virginia Board of Coal Mine  
19 Health and Safety designed to improve the safety and efficiency  
20 of underground mines transportation systems. The board may  
21 upon the consideration of any such task force recommendations,  
22 promulgate rules governing the movement of mining equipment  
23 within coal mines in the State of West Virginia.

24 (d) The current legislative rule 36CSR4, effective the  
25 nineteenth day of July, one thousand nine hundred seventy-nine,  
26 relating to "Rules and Regulations Governing the Movement of  
27 Mining Equipment within Coal Mines in the State of West  
28 Virginia", is hereby limited and qualified as to its force and

29 effect and shall only be read to be effective to the extent  
30 provided as follows:

31 To the extent that the rule permits the movement of major  
32 pieces of heavy mining equipment with men inby the equipment  
33 in the ventilating split that is passing over such equipment, to-  
34 wit, Section 4: applying the prohibition only to “transporting”  
35 and only “where energized D.C. powered trolley or feeder wires  
36 are present”; Sections 5.1, 9.1, 10.1, 12.1 and 13.1 to the extent  
37 that they involve transporting or tramping such equipment with  
38 men inby; Sections 6.1 and 6.2 only to the extent that such  
39 equipment is not designed by the manufacturer to operate on  
40 track; Section 7.1 only to the extent that such equipment  
41 exceeds the length or width of the mine car; and Section 11.1  
42 only to the extent that such equipment in said section exceeds  
43 the length, width or cargo carrying capacity of the unit being  
44 used to transport such equipment. Construction work and  
45 rehabilitation work are not prohibited except to the extent that  
46 such would involve the movement of major pieces of heavy  
47 mining equipment into the precise area where such work is to be  
48 performed, with men inby.

49 (e) The provisions of subsection (d) of this section, as  
50 enforced upon the first day of February, two thousand eight,  
51 shall remain in full force and effect until modified by any rules  
52 promulgated pursuant to subsection (c) of this section.

#### **§22A-2-55. Protective equipment and clothing.**

1 (a) Welders and helpers shall use proper shields or goggles  
2 to protect their eyes. All employees shall have approved  
3 goggles or shields and use the same where there is a hazard  
4 from flying particles or other eye hazards.

5 (b) Employees engaged in haulage operations and all other  
6 persons employed around moving equipment on the surface and  
7 underground shall wear snug-fitting clothing.

8 (c) Protective gloves shall be worn when material which  
9 may injure hands is handled, but gloves with gauntleted cuffs  
10 shall not be worn around moving equipment.

11 (d) Safety hats and safety-toed shoes shall be worn by all  
12 persons while in or around a mine: *Provided*, That metatarsal  
13 guards are not required to be worn by persons when working in  
14 those areas of underground mine workings which average less  
15 than forty-eight inches in height as measured from the floor to  
16 the roof of the underground mine workings.

17 (e) Approved eye protection shall be worn by all persons  
18 while being transported in open-type man trips.

19 (f)(1) A self-contained self-rescue device approved by the  
20 director shall be worn by each person underground or kept  
21 within his immediate reach and the device shall be provided by  
22 the operator. The self-contained self-rescue device shall be  
23 adequate to protect a miner for one hour or longer. Each  
24 operator shall train each miner in the use of such device and  
25 refresher training courses for all underground employees shall  
26 be held during each calendar year.

27 (2) In addition to the requirements of subdivision (1) of this  
28 subsection, the operator shall also provide caches of additional  
29 self-contained self-rescue devices throughout the mine in  
30 accordance with a plan approved by the director. Each  
31 additional self-contained self-rescue device shall be adequate to  
32 protect a miner for one hour or longer. The total number of  
33 additional self-contained self-rescue devices, the total number  
34 of storage caches and the placement of each cache throughout  
35 the mine shall be established by rule pursuant to subsection (i)  
36 of this section. A luminescent sign with the words  
37 "SELF-CONTAINED SELF-RESCUER" or "SELF-  
38 CONTAINED SELF-RESCUERS" shall be conspicuously  
39 posted at each cache and luminescent direction signs shall be  
40 posted leading to each cache. Lifeline cords or other similar  
41 device, with reflective material at twenty-five foot intervals,  
42 shall be attached to each cache from the last open crosscut to the  
43 surface. The operator shall conduct weekly inspections of each  
44 cache and each lifeline cord or other similar device to ensure  
45 operability.

46 (3) Any person that, without the authorization of the  
47 operator or the director, knowingly removes or attempts to



48 remove any self-contained self-rescue device or lifeline cord  
49 from the mine or mine site with the intent to permanently  
50 deprive the operator of the device or lifeline cord or knowingly  
51 tampers with or attempts to tamper with such device or lifeline  
52 cord shall be guilty of a felony and, upon conviction thereof,  
53 shall be imprisoned in a state correctional facility for not less  
54 than one year nor more than ten years or fined not less than ten  
55 thousand dollars nor more than one hundred thousand dollars,  
56 or both.

57 (g)(1) A wireless emergency communication device  
58 approved by the director and provided by the operator shall be  
59 worn by each person underground. The wireless emergency  
60 communication device shall, at a minimum, be capable of  
61 receiving emergency communications from the surface at any  
62 location throughout the mine. Each operator shall train each  
63 miner in the use of the device and provide refresher training  
64 courses for all underground employees during each calendar  
65 year. The operator shall install in or around the mine any and  
66 all equipment necessary to transmit emergency communications  
67 from the surface to each wireless emergency communication  
68 device at any location throughout the mine.

69 (2) Any person that, without the authorization of the operator  
70 or the director, knowingly removes or attempts to remove any  
71 wireless emergency communication device or related equipment,  
72 from the mine or mine site with the intent to permanently deprive  
73 the operator of the device or equipment or knowingly tampers with  
74 or attempts to tamper with the device or equipment shall be guilty  
75 of a felony and, upon conviction thereof, shall be imprisoned in a  
76 state correctional facility for not less than one year nor more than  
77 ten years or fined not less than ten thousand dollars nor more than  
78 one hundred thousand dollars, or both.

79 (h)(1) A wireless tracking device approved by the director  
80 and provided by the operator shall be worn by each person  
81 underground. In the event of an accident or other emergency,  
82 the tracking device shall, at a minimum, be capable of providing  
83 real-time monitoring of the physical location of each person

84 underground: *Provided*, That no person shall discharge or  
85 discriminate against any miner based on information gathered  
86 by a wireless tracking device during nonemergency monitoring.  
87 Each operator shall train each miner in the use of the device and  
88 provide refresher training courses for all underground  
89 employees during each calendar year. The operator shall install  
90 in or around the mine all equipment necessary to provide real-  
91 time emergency monitoring of the physical location of each  
92 person underground.

93 (2) Any person that, without the authorization of the  
94 operator or the director, knowingly removes or attempts to  
95 remove any wireless tracking device or related equipment,  
96 approved by the director, from a mine or mine site with the  
97 intent to permanently deprive the operator of the device or  
98 equipment or knowingly tampers with or attempts to tamper  
99 with the device or equipment shall be guilty of a felony and,  
100 upon conviction thereof, shall be imprisoned in a state  
101 correctional facility for not less than one year nor more than ten  
102 years or fined not less than ten thousand dollars nor more than  
103 one hundred thousand dollars, or both.

104 (i) The director may promulgate emergency and legislative  
105 rules to implement and enforce this section pursuant to the  
106 provisions of article three, chapter twenty-nine-a of this code.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 3. CRIMES AGAINST PROPERTY.**

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat or other vessel; penalties; counts in indictment.

§61-3-29. Damage or destruction of railroad or public utility company property, or real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; penalties; restitution.

**§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat or other vessel; penalties; counts in indictment.**

1        If any person shall, at any time, break and enter, or shall  
2 enter without breaking, any office, shop, underground coal  
3 mine, storehouse, warehouse, banking house, or any house or  
4 building, other than a dwelling house or outhouse adjoining  
5 thereto or occupied therewith, or any railroad or traction car,  
6 propelled by steam, electricity or otherwise, or any steamboat  
7 or other boat or vessel, within the jurisdiction of any county  
8 in this state, with intent to commit a felony or any larceny, he  
9 or she shall be deemed guilty of a felony, and, upon  
10 conviction, shall be confined in a state correctional facility  
11 not less than one nor more than ten years. And if any person  
12 shall, at any time, break and enter, or shall enter without  
13 breaking, any automobile, motorcar or bus, with like intent,  
14 within the jurisdiction of any county in this state, he shall be  
15 guilty of a misdemeanor, and, upon conviction, shall be  
16 confined in jail not less than two nor more than twelve  
17 months and be fined not exceeding one hundred dollars.

18        An indictment for burglary may contain one or more  
19 counts for breaking and entering, or for entering without  
20 breaking, the house or building mentioned in the count for  
21 burglary under the provisions of this and the preceding  
22 section.

**§61-3-29. Damage or destruction of railroad or public utility  
company property, or real or personal property  
used for producing, generating, transmitting,  
distributing, treating or collecting electricity,  
natural gas, coal, water, wastewater, stormwater,  
telecommunications or cable service; penalties;  
restitution.**

1        (a) Any person who knowingly and willfully damages or  
2 destroys any real or personal property owned by a railroad  
3 company, or public utility company, or any real or personal  
4 property used for producing, generating, transmitting,  
5 distributing, treating or collecting electricity, natural gas,

6 coal, water, wastewater, stormwater, telecommunications or  
7 cable service, is guilty of a misdemeanor and, upon  
8 conviction thereof, shall be fined not more than two thousand  
9 dollars, or confined in jail not more than one year, or both.

10 (b) Any person who knowingly and willfully: (1)  
11 damages or destroys any real or personal property owned by  
12 a railroad company, or public utility company, or any real or  
13 personal property used for producing, generating,  
14 transmitting, distributing, treating or collecting electricity,  
15 natural gas, coal, water, wastewater, stormwater,  
16 telecommunications or cable service; and, (2) causes serious  
17 bodily injury to another is guilty of a felony and, upon  
18 conviction thereof, shall be fined not less than five thousand  
19 dollars nor more than fifty thousand dollars, or confined in a  
20 state correctional facility not less than one nor more than five  
21 years, or both.

22 (c) Nothing in this section may be construed to limit or  
23 restrict the ability of an entity referred to in subsection (a) or  
24 (b) of this section or a property owner or other person who  
25 has been damaged or injured as a result of a violation of this  
26 section from seeking recovery for damages arising from  
27 violation of this section.



## CHAPTER 32

**(S.B. 237 - By Senators Kessler, Hunter, White and Plymale)**

[Passed March 5, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to repeal §7-7-17 of the Code of West Virginia, 1931, as amended, relating to requiring county officers to file annual reports of certain expenditures.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.**

**§1. Repeal of section relating to requiring county officers to file annual reports for expenditures for assistants, deputies and employees.**

- 1 Section seventeen, article seven, chapter seven of the
- 2 Code of West Virginia, one thousand nine hundred thirty-
- 3 one, as amended, is hereby repealed.



**CHAPTER 33**

**(S.B. 257 - By Senators Love, Hunter, White,  
McKenzie and Minard)**

[Passed February 15, 2008; in effect ninety days from passage.]  
[Approved by the Governor on February 27, 2008.]

AN ACT to repeal §28-5-2, §28-5-10, §28-5-11, §28-5-12, §28-5-13, §28-5-14, §28-5-15, §28-5-16, §28-5-17, §28-5-18, §28-5-19, §28-5-20 and §28-5-21 of the Code of West Virginia, 1931, as amended, relating to outdated provisions addressing the operation of the penitentiary by the Commissioner of Public Institutions, the hiring of inmates as domestics and the hiring out of inmates by contract.

*Be it enacted by the Legislature of West Virginia:*

**§1. Repeal of sections relating to the operation of the penitentiary by the Commissioner of Public Institutions, the hiring of inmates as domestics and the hiring out of inmates by contract.**

1 Sections two, ten, eleven, twelve, thirteen, fourteen,  
2 fifteen, sixteen, seventeen, eighteen, nineteen, twenty and  
3 twenty-one, article five, chapter twenty-eight of the Code of  
4 West Virginia, one thousand nine hundred thirty-one, as  
5 amended, are hereby repealed.



## CHAPTER 34

**(S.B. 258 - By Senators Love, Hunter, White,  
McKenzie and Minard)**

[Passed February 14, 2008; in effect ninety days from passage.]  
[Approved by the Governor on February 27, 2008.]

AN ACT to repeal §28-5A-1, §28-5A-2, §28-5A-3, §28-5A-4 and  
§28-5A-5 of the Code of West Virginia, 1931, as amended,  
relating to the Huttonsville Correctional Center.

*Be it enacted by the Legislature of West Virginia:*

**§1. Repeal of article relating to Huttonsville Correctional  
Center.**

1 Sections one, two, three, four and five, article five-a,  
2 chapter twenty-eight of the Code of West Virginia, one  
3 thousand nine hundred thirty-one, as amended, are hereby  
4 repealed.

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CHAPTER 35

**(S.B. 262 - By Senators Love, Hunter, White,  
McKenzie and Minard)**

[Passed February 14, 2008; in effect ninety days from passage.]  
[Approved by the Governor on February 27, 2008.]

AN ACT to repeal §26-6-1 and §26-6-2 of the Code of West Virginia, 1931, as amended, relating to Denmark State Hospital.

*Be it enacted by the Legislature of West Virginia:*

**§1. Repeal of article relating to Denmark State Hospital.**

1 Sections one and two, article six, chapter twenty-six of  
2 the Code of West Virginia, one thousand nine hundred thirty-  
3 one, as amended, are hereby repealed.

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CHAPTER 36

**(Com. Sub. for H.B. 4637 - By Mr. Speaker, Mr. Thompson,  
and Delegate Armstead)  
[By Request of the Executive]**

[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-6, §31-15C-7, §31-15C-8, §31-15C-9, §31-15C-10, §31-15C-11, §31-15C-12, §31-15C-13 and §31-15C-14, all relating to the

deployment of broadband to the remaining unserved areas of the state; setting forth legislative findings and purpose; providing definitions; establishing the Broadband Deployment Council; establishing procedures for the council, and providing for administrative support; prescribing the powers, duties and responsibilities of the council generally; creating the Broadband Development Fund; categorizing areas of the state according to broadband access; authorizing the retention of an outside expert consultant or consultants to assist in categorization and other functions; providing for the stimulation of demand through public outreach and education; providing funding guidelines; granting emergency rulemaking authority; establishing project requirements for funding assistance; describing the procedures for submitting applications and reviewing applications; requiring public notice; requiring the submission of written reports by certain state agencies or officers; placing limits on liability for membership or participation in the council; protecting confidentiality of trade secrets and proprietary business information; creating the misdemeanor offense of making any unauthorized disclosure of confidential information and establishing the penalties therefor; and providing for the expiration of the council.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-6, §31-15C-7, §31-15C-8, §31-15C-9, §31-15C-10, §31-15C-11, §31-15C-12, §31-15C-13 and §31-15C-14, all to read as follows:

## **ARTICLE 15C. BROADBAND DEPLOYMENT.**

§31-15C-1. Legislative findings and purpose.

§31-15C-2. Definitions.

§31-15C-3. Broadband Deployment Council established; members of council; administrative support.



- §31-15C-4. Powers and duties of the council generally.
- §31-15C-5. Creation of the Broadband Deployment Fund.
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### **§31-15C-1. Legislative findings and purpose.**

1       The Legislature finds as follows:

2       (1) That it is a primary goal of the Governor, the  
3       Legislature and the citizens of this state, by the year two  
4       thousand ten, to make every municipality, community, and  
5       rural area in this state, border to border, accessible to internet  
6       communications through the expansion, extension and  
7       general availability of broadband services and technology.

8       (2) That although market-driven deployment has  
9       extended broadband access to most of West Virginia's cities,  
10      towns, and other concentrated population areas, some areas  
11      of the state, mostly rural, remain unserved.

12      (3) That based upon the same network principles that  
13      providers of telephony services have faced since the  
14      inception of the telecommunications industry, rising fixed  
15      costs and technological limitations prohibit broadband  
16      networks from being extended into rural areas where the  
17      level of demand in sparsely populated areas may not justify  
18      the required costs of construction.

19      (4) That the unique topography and demography of this  
20      state that hinders the provision of broadband access to rural  
21      areas of the state specifically disadvantages the elderly and

22 low-income households that are the least likely to own  
23 computers or subscribe to internet service. In light of these  
24 topographical and demographic challenges, any attempt to fill  
25 the gaps in West Virginia's broadband availability must be  
26 organized according to the levels of demand in the various  
27 unserved areas to which service is sought to be extended.

28 (5) That, in particular, fair and equitable access to  
29 twenty-first century technology that will maximize the  
30 functionality of educational resources and educational  
31 facilities that are conducive to enabling our children to be  
32 exposed to and to receive the best of future teaching and  
33 learning is absolutely essential to this state. A quality  
34 educational system of the twenty-first century should have  
35 access to the best technology tools and processes.  
36 Administrators should have, among other things, the  
37 electronic resources to monitor student performance, to  
38 manage data, and to communicate effectively. In the  
39 classroom, every teacher in every school should be provided  
40 with online access to educational technology resources and  
41 the ability to deliver content standard and objectives to the  
42 students of West Virginia. Schools of the twenty-first  
43 century require facilities that accommodate changing  
44 technologies and twenty-first century instructional processes.

45 (6) Accordingly, it is the purpose of the Legislature to  
46 provide for the development of plans, processes and  
47 procedures to be employed and dedicated to extending  
48 broadband access to West Virginians, and to their families,  
49 by stimulating demand for those services and for encouraging  
50 and facilitating the construction of the necessary  
51 infrastructure to meet their needs and demands.

52 (7) In implementing this initiative, progress by market  
53 forces and industry is to be respected, and the Legislature  
54 intends that governmental assistance and funding is to be  
55 used only in those areas without broadband service and not  
56 to duplicate or displace broadband service in areas already

57 served or where industry feasibly can be expected to offer  
58 services in the reasonably foreseeable future.

**§31-15C-2. Definitions.**

1 (a) For the purposes of this article,

2 (1) "Broadband" or "broadband service" means any  
3 service providing advanced telecommunications capability  
4 with either a downstream data rate or upstream data rate of at  
5 least 200 kilobits per second, that does not require the end-  
6 user to dial up a connection that has the capacity to always be  
7 on, and for which the transmission speeds are based on  
8 regular available bandwidth rates, not sporadic or burstable  
9 rates, with a minimum downstream-to-upstream data ratio of  
10 10:1 for services with a downstream data rate of up to five  
11 megabits per second, and with a minimum upstream data rate  
12 of 500 kilobits per second for services with a downstream  
13 data rate of five megabits per second or greater.

14 (2) "Broadband deployment project" means either (A) a  
15 project to provide broadband services to a type 2 and/or type  
16 3 unserved area, as defined in section six of this article; or  
17 (B) a project to undertake activities to promote demand for  
18 broadband services and broadband applications.

19 (3) "Downstream data rate" means the transmission speed  
20 from the service provider source to the end-user.

21 (4) "Upstream data rate" means the transmission speed  
22 from the end-user to the service provider source.

23 (5) "Unserved area" means a community that has no  
24 access to broadband service.

25 (b) The definition of the term "broadband," the  
26 designation of areas that are "unserved", and the level of  
27 service required to qualify for funding of state programs and

28 projects, are based on the Federal Communications  
29 Commission's current definition of broadband, which is  
30 stated in terms of the number of Kilobits (Kbps) per second,  
31 either upstream or downstream. It is the intention of the  
32 Legislature that the definition of broadband in this article and  
33 the level of service requirements for state funding be  
34 promptly updated by future Legislatures to conform with any  
35 revisions enacted by Congress or any rule or regulation  
36 promulgated by the Federal Communications Commission or  
37 other federal agencies involved with deploying and  
38 enhancing broadband services.

**§31-15C-3. Broadband Deployment Council established;  
members of council; administrative support.**

1 (a) The Broadband Deployment Council is hereby  
2 established. The council is a governmental instrumentality of  
3 the state. The exercise by the council of the powers conferred  
4 by this article and the carrying out of its purpose and duties  
5 shall be considered and held to be, and are hereby determined  
6 to be, essential governmental functions and for a public  
7 purpose. The council is created under the Department of  
8 Commerce for administrative, personnel and technical  
9 support services only.

10 (b) The council shall consist of eleven voting members,  
11 designated as follows:

12 (1) The Governor or his or her designee;

13 (2) The Secretary of Commerce or his or her designee;

14 (3) The Secretary of Administration or his or her  
15 designee;

16 (4) The Director of Homeland Security and Emergency  
17 Management or his or her designee; and

18 (5) Seven public members that serve at the will and  
19 pleasure of the Governor and are appointed by the Governor  
20 with the advice and consent of the Senate, as follows:

21 (i) One member representing employees of  
22 communications and cable providers, who shall be a member  
23 or representative of a union representing communications  
24 workers;

25 (ii) One member representing telecommunications  
26 providers who provide broadband services in this state;

27 (iii) One member representing cable operators who  
28 provide broadband services in this state;

29 (iv) One member representing broadband equipment or  
30 device manufacturers;

31 (v) One member representing higher education or  
32 secondary education; and

33 (vi) Two members representing the general public who  
34 are residents of the state: *Provided*, That one member  
35 represent rural communities: *Provided, however*, That both  
36 members may not reside in the same congressional district.

37 (6) In addition to the eleven voting members of the  
38 council, the President of the Senate shall name two senators  
39 from the West Virginia Senate and the Speaker of the House  
40 shall name two delegates from the West Virginia House of  
41 Delegates, each to serve in the capacity of an ex officio, non-  
42 voting advisory member of the council.

43 (c) The Governor or his or her designee shall chair the  
44 council and appoint one of the other council members to  
45 serve as vice chair. In the absence of the Governor or his or  
46 her designee, the vice chair shall serve as chair. The council  
47 shall appoint a secretary-treasurer who need not be a member

48 of the council and who, among other tasks or functions  
49 designated by the council, shall keep records of its  
50 proceedings.

51 (d) The council may appoint committees or  
52 subcommittees to investigate and make recommendations to  
53 the full council. Members of these committees or  
54 subcommittees need not be members of the council.

55 (e) Six voting members of the council shall constitute a  
56 quorum and the affirmative vote of at least the majority of  
57 those members present shall be necessary for any action  
58 taken by vote of the council.

59 (f) The council is part-time. Public members appointed  
60 by the Governor may pursue and engage in another business  
61 or occupation or gainful employment. Any person employed  
62 by, owning an interest in, or otherwise associated with a  
63 broadband deployment project, project sponsor or project  
64 participant may serve as a council member and shall not be  
65 disqualified from serving as a council member because of a  
66 conflict of interest prohibited under section five, article two,  
67 chapter six-b of this code and shall not be subject to  
68 prosecution for violation of said section when the violation  
69 is created solely as a result of his or her relationship with the  
70 broadband deployment project, project sponsor or project  
71 participant: *Provided*, That the member recuses himself or  
72 herself from board participation regarding the conflicting  
73 issue in the manner set forth in legislative rules promulgated  
74 by the West Virginia Ethics Commission.

75 (g) No member of the council who serves by virtue of his  
76 or her office shall receive any compensation or  
77 reimbursement of expenses for serving as a member. The  
78 public members and members of any committees or  
79 subcommittees are entitled to be reimbursed for actual and  
80 necessary expenses incurred for each day or portion thereof  
81 engaged in the discharge of his or her official duties in a

82 manner consistent with the guidelines of the Travel  
83 Management Office of the Department of Administration.

**§31-15C-4. Powers and duties of the council generally.**

1 (a) In addition to the powers set forth elsewhere in this  
2 article, the council is hereby granted, has and may exercise  
3 all powers necessary or appropriate to carry out and  
4 effectuate the purpose and intent of this article. The council  
5 shall have the power and capacity to:

6 (1) Provide consultation services to project sponsors in  
7 connection with the planning, acquisition, improvement,  
8 construction or development of any broadband deployment  
9 project;

10 (2) To make and execute contracts, commitments and  
11 other agreements necessary or convenient for the exercise of  
12 its powers, including, but not limited to, the hiring of  
13 consultants to assist in the mapping of the state,  
14 categorization of areas within the state, and evaluation of  
15 project applications: *Provided*, That the provisions of article  
16 three, chapter five-a of this code do not apply to the  
17 agreements and contracts executed under the provisions of  
18 this article;

19 (3) Acquire by gift or purchase, hold or dispose of real  
20 property and personal property in the exercise of its powers  
21 and performance of its duties as set forth in this article;

22 (4) Receive and dispense funds appropriated for its use  
23 by the Legislature or other funding sources or solicit, apply  
24 for and receive any funds, property or services from any  
25 person, governmental agency or organization to carry out its  
26 statutory duties; and

27 (5) Perform any and all other activities in furtherance of  
28 its purpose.

29 (b) The council shall exercise its powers and authority to  
30 bring broadband service to unserved areas. The council may  
31 not duplicate or displace broadband service in areas already  
32 served or where private industry feasibly can be expected to  
33 offer services in the reasonably foreseeable future.

**§31-15C-5. Creation of the Broadband Deployment Fund.**

1 All moneys collected by the council, which may, in  
2 addition to appropriations, include gifts, bequests or  
3 donations, shall be deposited in a special revenue account in  
4 the State Treasury known as the Broadband Deployment  
5 Fund. The fund shall be administered by and under the  
6 control of the council. Expenditures from the fund shall be  
7 for the purposes set forth in this article and are not authorized  
8 from collections but are to be made only in accordance with  
9 appropriation by the Legislature and in accordance with the  
10 provisions of article two, chapter eleven-b of this code:  
11 *Provided*, That for the fiscal year ending the thirtieth day of  
12 June, two thousand nine, expenditures are authorized from  
13 collections rather than pursuant to appropriations by the  
14 Legislature.

**§31-15C-6. Categorization of areas within state for broadband deployment purposes.**

1 Based on its analysis of mapping, broadband demand,  
2 and other relevant data, the council shall designate unserved  
3 areas of the state as being one of three distinct types. These  
4 types are as follows:

5 (1) Type 1 unserved area: an area in which broadband  
6 may be deployed by service providers in an economically  
7 feasible manner;

8 (2) Type 2 unserved area: an unserved area in which  
9 broadband may be deployed by broadband service providers



10 and other entities in an economically feasible manner,  
11 provided some form of public moneys is made available; and

12 (3) Type 3 unserved area: an unserved area in which, at  
13 present, cable or wireline broadband cannot be deployed in  
14 an economically feasible manner and an intermodal approach  
15 employing other technologies, such as satellite and wireless,  
16 is required to provide that area with high-speed internet  
17 access.

### **§31-15C-7. Retention of outside expert consultant.**

1 In order to assist the council with the highly technical  
2 task of categorizing the areas of the state and evaluating and  
3 prioritizing projects, the council may retain an outside expert  
4 consultant or consultants qualified to map the state on the  
5 basis of broadband availability, to evaluate, categorize and  
6 prioritize projects, to assist in public outreach and education  
7 in order to stimulate demand, to advise the council on the  
8 granting or denying of funding to projects, and to provide  
9 other support and assistance as necessary to accomplish the  
10 purposes of this article. The provisions of article three,  
11 chapter five-a of this code, shall not apply to the retention of  
12 an outside expert consultant pursuant to this section:  
13 *Provided*, That the council shall select the expert or experts  
14 by a competitive selection process.

### **§31-15C-8. Stimulation of demand through public outreach and education.**

1 In order to implement and carry out the intent of this  
2 article, the council may take such actions as it deems  
3 necessary or advisable in order to stimulate demand through  
4 public outreach and education in unserved areas. The council  
5 shall consider the views, if offered, of affected members of  
6 the public, including private industry.

**§31-15C-9. Development of guidelines and application for funding assistance; emergency rule-making authority.**

1 (a) In order to implement and carry out the intent of this  
2 article in type 2 and type 3 unserved areas, the council shall  
3 promulgate emergency rules pursuant to the provisions of  
4 section fifteen, article three, chapter twenty-nine-a of this  
5 code to develop comprehensive, uniform guidelines for use  
6 by the council in evaluating any request by a project sponsor  
7 for funding assistance to plan, acquire, construct, improve or  
8 otherwise develop a broadband deployment project in a type  
9 2 or type 3 unserved area. The guidelines shall include the  
10 following factors: (1) The cost-effectiveness of the project;  
11 (2) the economic development benefits of the project; (3) the  
12 availability of alternative sources of funding that could help  
13 finance the project, including, but not limited to, private  
14 grants or federal funding and the efforts undertaken to obtain  
15 such funding; (4) if the project requires the construction of a  
16 network, the applicant's ability to operate and maintain such  
17 network; (5) the degree to which the project advances  
18 statewide broadband access and other state broadband  
19 planning goals; (6) the proposed technologies, bandwidths,  
20 upstream data rates and downstream data rates; (7) the  
21 estimated date the project would commence and be  
22 completed; (8) how the proposed project compares to  
23 alternative proposals for the same unserved area with regard  
24 to the number of people served, the amount of financial  
25 assistance sought, and the long-term viability of the proposed  
26 project; and (9) any other consideration the council deems  
27 pertinent.

28 (b) Under no circumstances may the council's guidelines  
29 allow for the approval of any project for broadband service  
30 that does not include a minimum downstream transmission  
31 rate of 600 kilobits per second (Kbps) and a minimum  
32 downstream-to-upstream ratio of 8.5:1 for services with a

33 downstream rate of up to five megabits per second (Mbps).  
34 In those cases where a project's broadband service's  
35 downstream rate is five Mbps or greater, the council's  
36 guidelines must require a minimum upstream data rate of 588  
37 Kbps and allow information applications and market  
38 demands to dictate acceptable downstream-to-upstream data  
39 ratios.

40 (c) The council shall create an application form that shall  
41 be used by all project sponsors requesting funding assistance  
42 from the council to plan, acquire, construct, improve or  
43 otherwise develop broadband deployment projects in type 2  
44 or type 3 unserved areas. The application form shall contain  
45 all information required by all state agencies that will be  
46 required to issue permits and certificates regarding the  
47 project. The application shall require the project sponsor to  
48 set forth the proposed location of the project; the type(s) of  
49 unserved area(s) the project proposes to address, the  
50 estimated total cost of the project; the amount of funding  
51 assistance required and the specific uses of the funding; other  
52 sources of funding available or potentially available for the  
53 project; information demonstrating the need for the project;  
54 that the proposed funding of the project is the most  
55 economically feasible and viable alternative to completing  
56 the project; and such other information as the council  
57 considers necessary.

**§31-15C-10. Requirements for project funding assistance;  
review of project application by council;  
competitive applications.**

1 (a) Once the council has categorized unserved areas  
2 pursuant to section six of this article, project sponsors may  
3 submit applications for funding assistance for projects in  
4 those unserved areas. Upon receiving its first completed  
5 application for a categorized unserved area, the council shall  
6 post notice of such application with the Secretary of State for

7 sixty days so as to allow for competing applications to be  
8 submitted to the council. Within thirty days of the close of  
9 the aforementioned sixty-day notice period, the council shall  
10 review all applications timely received during the sixty-day  
11 period and either: (i) Approve funding for one or more  
12 projects after determining that the funding would constitute  
13 an appropriate investment of public funds, or (ii) if the  
14 council determines that the application does not contain all of  
15 the required information or otherwise is incomplete, or that  
16 a proposed project is not eligible for funding assistance, or  
17 that the proposed project is otherwise not an appropriate or  
18 prudent investment of state funds, the council shall deny the  
19 project funding request. Prior to approving or denying any  
20 funding request, the council may seek the advice of any  
21 expert consultant retained pursuant to section seven of this  
22 article, but the council is not bound by that advice. The  
23 council shall also consider the views, if offered, of affected  
24 members of the public, including private industry.

25 (b) To apply for or receive any funding assistance for a  
26 broadband deployment project from the council pursuant to  
27 subsection (a) of this section, the project sponsor seeking the  
28 funding assistance shall submit a completed application to the  
29 council on the form prepared for such purpose by the council  
30 pursuant to section nine of this article.

31 (c) In reviewing each application, the council may use the  
32 engineering, financial and technical expertise of outside  
33 consultants in addition to the respective staffs of the  
34 government agencies and private-sector entities represented  
35 on the council or other government agencies.

36 (d) Notwithstanding any provision of article fifteen-a,  
37 chapter thirty-one or any other provision of this code,  
38 broadband deployment project proposals submitted to the  
39 council for its consideration pursuant to this article and the  
40 council's decisions with regard to such projects shall not be

41 subject to review by the West Virginia Infrastructure and  
42 Jobs Development Council.

**§31-15C-11. Required reporting by state entities.**

1 (a) The Secretary of Administration shall submit a written  
2 report to the council by the thirty-first day of October of each  
3 year describing in detail the existing broadband infrastructure  
4 owned, leased, used, or operated by the state; broadband  
5 infrastructure purchased by the state; the demand for the  
6 infrastructure in the state; and whether or not that  
7 infrastructure is available to the public. If significant changes  
8 to any of the information submitted to the council occur, the  
9 secretary of administration shall submit a written update to  
10 the council within sixty days of the change or in the next  
11 report, whichever date is sooner.

12 (b) The Secretary of Administration shall submit a  
13 written report to the council by the thirty-first day of October  
14 of each year describing in detail the state portal, any state  
15 services or programs that are available to the public on the  
16 state portal; the amount of usage of the portal; and efforts to  
17 create demand for the portal. If significant changes to any of  
18 the information submitted to the council occur, the secretary  
19 of administration shall submit a written update to the council  
20 within sixty days of the change or in the next report,  
21 whichever date is sooner.

22 (c) The chancellor of the higher education policy  
23 commission shall submit a written report to the council by the  
24 thirty-first day of October of each year describing in detail  
25 the existing broadband infrastructure owned, leased, used,  
26 operated, or purchased by all public baccalaureate and  
27 graduate institutions in the state; all programs or initiatives  
28 designed to increase the usage of broadband and broadband  
29 based educational applications in the public baccalaureate

30 and graduate institutions; and all training provided to  
31 instructors in the use of broadband and broadband based  
32 educational applications. If significant changes to any of the  
33 information submitted to the council occur, the chancellor of  
34 the higher education policy commission shall submit a  
35 written update to the council within sixty days of the change  
36 or in the next report, whichever date is sooner.

37 (d) The chancellor of the West Virginia Council for  
38 Community and Technical College Education shall submit a  
39 written report to the council by the thirty-first day of October  
40 of each year describing in detail the existing broadband  
41 infrastructure owned, leased, used, operated, or purchased by  
42 all public baccalaureate and graduate institutions in the state;  
43 all programs or initiatives designed to increase the usage of  
44 broadband and broadband based educational applications in  
45 the public baccalaureate and graduate institutions; and all  
46 training provided to instructors in the use of broadband and  
47 broadband based educational applications. If significant  
48 changes to any of the information submitted to the council  
49 occur, the chancellor of the West Virginia Council for  
50 Community and Technical College Education shall submit a  
51 written update the council within sixty days of the change or  
52 in the next report, whichever date is sooner.

53 (e) The State Superintendent of schools shall submit a  
54 written report to the council by the thirty-first day of October  
55 of each year describing in detail the existing broadband  
56 infrastructure owned, leased, used, operated, or purchased by  
57 all state schools; all programs or initiatives designed to  
58 increase the usage of broadband and broadband based  
59 educational applications in the schools and in Pre-K and early  
60 childhood education programs; all training provided to  
61 teachers in the use of broadband and broadband based  
62 educational applications; the availability of an access to  
63 broadband in homes and families with children aged four

64 years to eight years; estimates of the number of families with  
65 children aged four years to eight years who are using  
66 broadband in the homes; estimates of the ownership of  
67 computers in families with children aged four years to eight  
68 years; and any unmet demand for broadband infrastructure in  
69 state schools. If significant changes to any of the information  
70 submitted to the council occur, the state superintendent of  
71 schools shall submit a written update to the council within  
72 sixty days of the change or in the next report, whichever date  
73 is sooner.

74 (f) The chair of the West Virginia healthcare authority  
75 shall submit a written report to the council by the thirty-first  
76 day of October of each year describing in detail the existing  
77 broadband infrastructure owned, leased, used, operated, or  
78 purchased by all hospitals, medical facilities, clinics, or  
79 healthcare providers; all programs, initiatives, or applications  
80 utilizing broadband that are promoted by hospitals, medical  
81 facilities, clinics, or healthcare providers; and any unmet  
82 demand for broadband by hospitals, medical facilities,  
83 clinics, or healthcare providers.

#### **§31-15C-12. Limitation of liability.**

1 No person is subject to antitrust or unfair competition  
2 liability based on membership or participation in the council,  
3 which provides an essential governmental function and  
4 enjoys state action immunity.

#### **§31-15C-13. Protection of proprietary business information.**

1 (a) Broadband deployment information provided to the  
2 council or its consultants and other agents, including, but not  
3 limited to, physical plant locations, subscriber levels, and  
4 market penetration data, constitutes proprietary business  
5 information and, along with any other information that

6 constitutes trade secrets, shall be exempt from disclosure  
7 under the provisions of chapter twenty-nine-b of this code:  
8 *Provided*, That the information is identified as confidential  
9 information when submitted to the council.

10 (b) Trade secrets or proprietary business information  
11 obtained by the council from broadband providers and other  
12 persons or entities shall be secured and safeguarded by the  
13 state. Such information or data shall not be disclosed to the  
14 public or to any firm, individual or agency other than  
15 officials or authorized employees of the state. Any person  
16 who makes any unauthorized disclosure of such confidential  
17 information or data is guilty of a misdemeanor and, upon  
18 conviction thereof, may be fined not more than five thousand  
19 dollars or confined in a correctional facility for not more than  
20 one year, or both.

21 (c) The official charged with securing and safeguarding  
22 trade secrets and proprietary data for the council is the  
23 Secretary of Administration, who is authorized to establish  
24 and administer appropriate security measures. The council  
25 chair shall designate two additional persons to share the  
26 responsibility of securing trade secrets or proprietary  
27 information. No person will be allowed access to trade  
28 secrets or proprietary information without written approval of  
29 a minimum of two of the three authorized persons specified  
30 above.

#### **§31-15C-14. Expiration of council.**

1 The council shall continue to exist until the thirty-first  
2 day of December, two thousand eleven, unless sooner  
3 terminated, continued or reestablished pursuant to an Act of  
4 the Legislature.



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**CHAPTER 37**

**(Com. Sub. for S.B. 340 - By Senators Kessler, Chafin, Oliverio, Barnes, White, Foster, Hunter, Green, Minard, Wells, Jenkins, Yoder, Love, Guills, Unger and McKenzie)**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-2A-101, §46A-2A-102, §46A-2A-103, §46A-2A-104 and §46A-2A-105, all relating to the unauthorized access or acquisition of certain computerized data which compromises the security, confidentiality or integrity of personal information; requiring notification of a breach of the security of a system compromising personal information; permitting internal notification procedures; noncompliance; enforcement by the Attorney General; civil penalties; violations by a licensed financial institutions; and applicability.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §46A-2A-101, §46A-2A-102, §46A-2A-103, §46A-2A-104 and §46A-2A-105, all to read as follows:

**ARTICLE 2A. BREACH OF SECURITY OF CONSUMER INFORMATION.**

§46A-2A-101. Definitions.

§46A-2A-102. Notice of breach of security of computerized personal information.

§46A-2A-103. Procedures deemed in compliance with security breach notice requirements.

§46-2A-104. Violations.

§46A-2A-105. Applicability.

### **§46A-2A-101. Definitions.**

1 As used in this article:

2 (1) "Breach of the security of a system" means the  
3 unauthorized access and acquisition of unencrypted and  
4 unredacted computerized data that compromises the security  
5 or confidentiality of personal information maintained by an  
6 individual or entity as part of a database of personal  
7 information regarding multiple individuals and that causes  
8 the individual or entity to reasonably believe that the breach  
9 of security has caused or will cause identity theft or other  
10 fraud to any resident of this state. Good faith acquisition of  
11 personal information by an employee or agent of an  
12 individual or entity for the purposes of the individual or the  
13 entity is not a breach of the security of the system, provided  
14 that the personal information is not used for a purpose other  
15 than a lawful purpose of the individual or entity or subject to  
16 further unauthorized disclosure.

17 (2) "Entity" includes corporations, business trusts,  
18 estates, partnerships, limited partnerships, limited liability  
19 partnerships, limited liability companies, associations,  
20 organizations, joint ventures, governments, governmental  
21 subdivisions, agencies or instrumentalities, or any other legal  
22 entity, whether for profit or not for profit.

23 (3) "Encrypted" means transformation of data through the  
24 use of an algorithmic process to into a form in which there is a  
25 low probability of assigning meaning without use of a  
26 confidential process or key or securing the information by  
27 another method that renders the data elements unreadable or  
28 unusable.

29 (4) "Financial institution" has the meaning given that  
30 term in Section 6809(3), United States Code Title 15, as  
31 amended.

32 (5) "Individual" means a natural person.

33 (6) "Personal information" means the first name or first  
34 initial and last name linked to any one or more of the  
35 following data elements that relate to a resident of this state,  
36 when the data elements are neither encrypted nor redacted:

37 (A) Social security number;

38 (B) Driver's license number or state identification card  
39 number issued in lieu of a driver's license; or

40 (C) Financial account number, or credit card, or debit  
41 card number in combination with any required security code,  
42 access code or password that would permit access to a  
43 resident's financial accounts.

44 The term does not include information that is lawfully  
45 obtained from publicly available information, or from  
46 federal, state or local government records lawfully made  
47 available to the general public.

48 (7) "Notice" means:

49 (A) Written notice to the postal address in the records of  
50 the individual or entity;

51 (B) Telephonic notice;

52 (C) Electronic notice, if the notice provided is consistent  
53 with the provisions regarding electronic records and  
54 signatures, set forth in Section 7001, United States Code Title

55 15, Electronic Signatures in Global and National Commerce  
56 Act.

57 (D) Substitute notice, if the individual or the entity  
58 required to provide notice demonstrates that the cost of  
59 providing notice will exceed fifty thousand dollars or that the  
60 affected class of residents to be notified exceeds one hundred  
61 thousand persons or that the individual or the entity does not  
62 have sufficient contact information or to provide notice as  
63 described in paragraph (A), (B) or (C). Substitute notice  
64 consists of any two of the following:

65 (i) E-mail notice if the individual or the entity has e-mail  
66 addresses for the members of the affected class of residents;

67 (ii) Conspicuous posting of the notice on the website of  
68 the individual or the entity if the individual or the entity  
69 maintains a website; or

70 (iii) Notice to major statewide media.

71 (8) "Redact" means alteration or truncation of data such  
72 that no more than the last four digits of a social security  
73 number, driver's license number, state identification card  
74 number or account number is accessible as part of the  
75 personal information.

**§46A-2A-102. Notice of breach of security of computerized  
personal information.**

1 (a) An individual or entity that owns or licenses  
2 computerized data that includes personal information shall  
3 give notice of any breach of the security of the system  
4 following discovery or notification of the breach of the  
5 security of the system to any resident of this state whose  
6 unencrypted and unredacted personal information was or is

7 reasonably believed to have been accessed and acquired by  
8 an unauthorized person and that causes, or the individual or  
9 entity reasonably believes has caused or will cause, identity  
10 theft or other fraud to any resident of this state. Except as  
11 provided in subsection (e) of this section or in order to take  
12 any measures necessary to determine the scope of the breach  
13 and to restore the reasonable integrity of the system, the  
14 notice shall be made without unreasonable delay.

15 (b) An individual or entity must give notice of the breach  
16 of the security of the system if encrypted information is  
17 accessed and acquired in an unencrypted form or if the  
18 security breach involves a person with access to the  
19 encryption key and the individual or entity reasonably  
20 believes that such breach has caused or will cause identity  
21 theft or other fraud to any resident of this state.

22 (c) An individual or entity that maintains computerized  
23 data that includes personal information that the individual or  
24 entity does not own or license shall give notice to the owner  
25 or licensee of the information of any breach of the security of  
26 the system as soon as practicable following discovery, if the  
27 personal information was or the entity reasonably believes  
28 was accessed and acquired by an unauthorized person.

29 (d) The notice shall include:

30 (1) To the extent possible, a description of the categories  
31 of information that were reasonably believed to have been  
32 accessed or acquired by an unauthorized person, including  
33 social security numbers, driver's licenses or state  
34 identification numbers and financial data;

35 (2) A telephone number or website address that the  
36 individual may use to contact the entity or the agent of the  
37 entity and from whom the individual may learn:

38 (A) What types of information the entity maintained  
39 about that individual or about individuals in general; and

40 (B) Whether or not the entity maintained information  
41 about that individual.

42 (3) The toll-free contact telephone numbers and addresses  
43 for the major credit reporting agencies and information on  
44 how to place a fraud alert or security freeze.

45 (e) Notice required by this section may be delayed if a  
46 law-enforcement agency determines and advises the  
47 individual or entity that the notice will impede a criminal or  
48 civil investigation or homeland or national security. Notice  
49 required by this section must be made without unreasonable  
50 delay after the law-enforcement agency determines that  
51 notification will no longer impede the investigation or  
52 jeopardize national or homeland security.

53 (f) If an entity is required to notify more than one  
54 thousand persons of a breach of security pursuant to this  
55 article, the entity shall also notify, without unreasonable  
56 delay, all consumer reporting agencies that compile and  
57 maintain files on a nationwide basis, as defined by 15 U. S.  
58 C. §1681a (p), of the timing, distribution and content of the  
59 notices. Nothing in this subsection shall be construed to  
60 require the entity to provide to the consumer reporting  
61 agency the names or other personal identifying information  
62 of breach notice recipients. This subsection shall not apply  
63 to an entity who is subject to Title V of the Gramm Leach  
64 Bliley Act, 15 U. S. C. 6801, *et seq.*

65 (g) The notice required by this section shall not be  
66 considered a debt communication as defined by the Fair Debt  
67 Collection Practice Act in 15 U. S. C. §1692a.

**§46A-2A-103. Procedures deemed in compliance with security breach notice requirements.**

1 (a) An entity that maintains its own notification  
2 procedures as part of an information privacy or security  
3 policy for the treatment of personal information and that are  
4 consistent with the timing requirements of this article shall be  
5 deemed to be in compliance with the notification  
6 requirements of this article if it notifies residents of this state  
7 in accordance with its procedures in the event of a breach of  
8 security of the system.

9 (b) A financial institution that responds in accordance  
10 with the notification guidelines prescribed by the Federal  
11 Interagency Guidance on Response Programs for  
12 Unauthorized Access to Customer Information and Customer  
13 Notice is deemed to be in compliance with this article.

14 (c) An entity that complies with the notification  
15 requirements or procedures pursuant to the rules, regulation,  
16 procedures or guidelines established by the entity's primary  
17 or functional regulator shall be in compliance with this  
18 article.

**§46-2A-104. Violations.**

1 (a) Except as provided by subsection (c) of this section,  
2 failure to comply with the notice provisions of this article  
3 constitutes an unfair or deceptive act of practice in violation  
4 of section one hundred four, article six, chapter forty-six-a of  
5 this code, which may be enforced by the Attorney General  
6 pursuant to the enforcement provisions of this chapter.

7 (b) Except as provided by subsection (c) of this section,  
8 the Attorney General shall have exclusive authority to bring  
9 action. No civil penalty may be assessed in an action unless

10 the court finds that the defendant has engaged in a course of  
 11 repeated and willful violations of this article. No civil  
 12 penalty shall exceed one hundred fifty thousand dollars per  
 13 breach of security of the system or series of breaches of a  
 14 similar nature that are discovered in a single investigation.

15 (c) A violation of this article by a licensed financial  
 16 institution shall be enforceable exclusively by the financial  
 17 institution's primary functional regulator.

#### **§46A-2A-105. Applicability.**

1 This article shall apply to the discovery or notification of  
 2 a breach of the security of the system that occurs on or after  
 3 the effective date of this article.

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## CHAPTER 38

**(Com. Sub. for S.B. 622 - By Senators McCabe,  
 Foster, Hunter, Kessler, Barnes and Oliverio)**

[Passed March 8, 2008; in effect ninety days from passage.]  
 [Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2G-1, §5B-2G-2, §5B-2G-3, §5B-2G-4, §5B-2G-5, §5B-2G-6, §5B-2G-7, §5B-2G-8 and §5B-2G-9; and to amend and reenact §59-1-10 of said code, all relating generally to the Voluntary Rural and Outdoor Heritage Conservation Act; establishing Outdoor Heritage Conservation Fund; board of trustees created; findings; definitions; duties; authorizing issuance of bonds; increasing certain recording fees; and dedicating a portion of the increase to the Outdoor Heritage Conservation Fund.



*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5B-2G-1, §5B-2G-2, §5B-2G-3, §5B-2G-4, §5B-2G-5, §5B-2G-6, §5B-2G-7, §5B-2G-8 and §5B-2G-9; and that §59-1-10 of said code be amended and reenacted, all to read as follows:

**Chapter**

**5B. Economic Development Act of 1985.**

**59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.**

**CHAPTER 5B. ECONOMIC DEVELOPMENT  
ACT OF 1985.**

**ARTICLE 2G. LAND CONSERVATION.**

§5B-2G-1. Short title.

§5B-2G-2. Legislative findings and purpose.

§5B-2G-3. West Virginia Outdoor Heritage Conservation Fund - Established.

§5B-2G-4. West Virginia Outdoor Heritage Conservation Fund - Board of trustees.

§5B-2G-5. West Virginia Outdoor Heritage Conservation Fund - Powers.

§5B-2G-6. West Virginia Outdoor Heritage Conservation Fund - Duties.

§5B-2G-7. Definitions.

§5B-2G-8. Funding of land conservation; issuance of revenue bonds.

§5B-2G-9. Grants for land conservation; application; criteria.

**§5B-2G-1. Short title.**

- 1 This article shall be known as the Voluntary Rural and
- 2 Outdoor Heritage Conservation Act.

**§5B-2G-2. Legislative findings and purpose.**

- 1 Legislative findings and purpose:
- 2 (a) The Legislature hereby finds and declares that:
  - 3 (1) The State of West Virginia's rural character, natural
  - 4 wonders, scenic beauty and recreational opportunities combine
  - 5 to create an exceptional quality of life for its citizens;

6 (2) West Virginia's landscapes serve as an economic engine  
7 supporting vibrant forest products, agricultural, hunting and  
8 fishing and tourism industries;

9 (3) West Virginia's unique and important lands are key to  
10 attracting new businesses and knowledge workers who are  
11 mobile and capable of doing business anywhere and critical to  
12 diversifying the economy of the State of West Virginia;

13 (4) West Virginia's unique and important lands provide all  
14 West Virginians hunting, fishing, rafting, hiking and other  
15 recreational opportunities important to their health and  
16 well-being;

17 (5) West Virginia's unique and important lands are critical  
18 to the continued health of the state's wildlife habitats and West  
19 Virginia's Wildlife Conservation Action Plan, mandated by the  
20 United States Congress, recognizes that habitat loss is a key  
21 issue confronting conservation of the state's valuable fish and  
22 wildlife resources;

23 (6) The conversion of rural land to developed land in West  
24 Virginia doubled between 1982 and 1997;

25 (7) There is a critical need to invest in the conservation of  
26 unique and important wildlife habitat, natural areas, forest lands,  
27 farmland and lands for hunting, fishing and recreation; and

28 (8) It is critical to encourage cooperation and innovative  
29 public partnerships among landowners, state agencies, nonprofit  
30 organizations and others which must work together in order to  
31 conserve West Virginia's most important unique and rural  
32 lands.

33 (b) It is the intent of the Legislature to provide persons and  
34 other entities an opportunity to voluntarily conserve land.

35 (c) Further, it is the intent of the Legislature to establish a  
36 West Virginia Outdoor Heritage Conservation Fund, hereinafter

37 "fund", to establish an ongoing funding source to conserve  
38 unique and important wildlife habitat, natural areas, forests,  
39 working lands, lands for hunting, fishing and recreation and  
40 other lands important to West Virginians.

41 (d) The Legislature finds that an ongoing funding source to  
42 conserve unique and important lands will help to ensure that  
43 present and future generations of West Virginians are able to  
44 enjoy the economic, quality of life, health, recreational, scenic  
45 and other benefits of conserved lands.

**§5B-2G-3. West Virginia Outdoor Heritage Conservation Fund -  
Established.**

1 The West Virginia Outdoor Heritage Conservation Fund is  
2 established within the Department of Commerce. The fund has  
3 the powers and duties provided in this article.

**§5B-2G-4. West Virginia Outdoor Heritage Conservation Fund -  
Board of trustees.**

1 (a) *Composition; chairman; quorum; qualifications.* -- The  
2 fund shall be governed and administered by a board of trustees  
3 composed of the Director of the Division of Natural Resources  
4 and the Director of the Division of Forestry, who shall serve as  
5 voting ex officio members, and nine voting members to be  
6 appointed by the Governor, by and with the advice and consent  
7 of the Senate. The ex officio members may appoint designees  
8 to serve on the board of trustees. One of the appointed members  
9 shall be a representative of the West Virginia Agricultural Land  
10 Protection Authority; one of the appointed members shall be a  
11 registered forester; three of the appointed members shall be  
12 representatives of independent IRC 501(c)(3) land trusts; two of  
13 the appointed members shall be recognized professional experts  
14 in biology or ecology nominated by the West Virginia Academy  
15 of Sciences; one of the appointed members shall have  
16 demonstrated expertise in public health or public recreation; and  
17 one of the appointed members shall be a representative of

18 sportsmen and sportswomen. A concerted effort shall be made  
19 to appoint members who represent a cross-section of the state.

20 The board shall elect the chair and other officers as  
21 necessary from among the nine appointed members. A majority  
22 of the members of the board serving at any one time constitutes  
23 a quorum for the transaction of business.

24 If any of the entities to be represented on the board under  
25 this section ceases to exist, the Governor shall appoint a  
26 representative with similar expertise from an entity with a  
27 similar mission.

28 (b) *Terms.* --

29 (1) The Governor, with the advice and consent of the  
30 Senate, shall appoint the nine members for the following terms:

31 (A) Three for a term of four years;

32 (B) Three for a term of three years; and

33 (C) Three for a term of two years.

34 (2) Successors to appointed members whose terms expire  
35 shall be appointed for terms of four years. Vacancies shall be  
36 filled for the unexpired term. An appointed member may not  
37 serve more than two successive terms. Appointment to fill a  
38 vacancy may not be considered as one of two terms.

39 (c) *Oath.* --

40 Appointed members shall take the oath of office as  
41 prescribed by law.

42 (d) *Recusal.* --

43 A board member shall recuse himself or herself from any  
44 vote in which he or she has a conflict of interest. The provisions

45 of this subsection is in addition to any other provisions of law or  
46 applicable rules relating to the ethics of public officers or  
47 employees.

48 (e) *Compensation and expenses.* --

49 Members shall not receive compensation. Each member of  
50 the board shall receive expense reimbursement from the fund  
51 for actual reasonable and necessary expenses incurred while  
52 engaged in the discharge of official duties, the actual expenses  
53 not to exceed the amount paid for similar reimbursement to  
54 members of the Legislature.

**§5B-2G-5. West Virginia Outdoor Heritage Conservation Fund -  
Powers.**

1 The board has the following general powers on behalf of the  
2 fund:

3 (a) *Power to sue.* -- To sue and be sued in contractual  
4 matters in its own name.

5 (b) *Power to contract.* -- To enter into contracts generally  
6 and to execute all instruments necessary or appropriate to carry  
7 out its purposes.

8 (c) *Power to conserve land.* -- To acquire interests in real  
9 property for conservation purposes.

10 (d) *Power to transfer.* -- To transfer interests in real  
11 property for conservation purposes.

12 (e) *Power to disburse grants.* -- To act as a granting  
13 authority to award grants to eligible grant recipients in  
14 accordance with section nine of this article.

15 (f) *Power to seek funding.* -- To apply for and receive  
16 funding from any and all state, federal and private sources to be  
17 used as provided in this chapter.

18 (g) *Power to authorize bond issuance.* -- To direct the  
19 Economic Development Authority to issue revenue bonds  
20 payable from the portion of the recording fee imposed in section  
21 ten, article one, chapter fifty-nine of this code to be allocated to  
22 the fund and any other special revenue made against to the fund  
23 for this purpose in accordance with section eight of this article  
24 or other provisions of this code.

**§5B-2G-6. West Virginia Outdoor Heritage Conservation Fund  
- Duties.**

1 The board shall, on behalf of the fund:

2 (a) Disseminate information regarding land conservation  
3 and promote the conservation of land.

4 (b) Develop and implement additional guidelines and  
5 procedures, consistent with the purposes of this chapter, as  
6 necessary to implement this chapter.

7 (c) Seek and apply for funds from federal, state and private  
8 sources to carry out its purpose as provided in this chapter.

9 (d) From moneys received from the recording fee in  
10 accordance with section ten, article one, chapter fifty-nine of  
11 this code, to:

12 (1) Make available to the West Virginia Division of Natural  
13 Resources fifty percent of the moneys so received by the fund,  
14 for the division to acquire interests in real property for  
15 conservation purposes in perpetuity in keeping with the West  
16 Virginia Wildlife Conservation Action Plan or other  
17 conservation plans developed by the division, provided that the  
18 board approves any acquisitions. The division may agree to  
19 permit the fund to retain any or all of this fifty percent to remain  
20 in the fund to be used as payment of debt service and other costs  
21 associated with revenue bonds on the fund's behalf by the  
22 Economic Development Authority in accordance with the  
23 provisions of this article;

24 (2) Ensure that the remaining fifty percent of the moneys so  
25 received by the fund are used for competitive grants in  
26 accordance with this article or used as payment of debt service  
27 and other costs associated with revenue bonds on the fund's  
28 behalf by the Economic Development Authority in accordance  
29 with the provisions of this article, the proceeds of which shall  
30 also be used for competitive grants.

31 (e) Prepare and file electronically with the Governor's office  
32 and with the Legislature by the thirty-first day of August of each  
33 year a report that accounts for fund receipts and disbursements and  
34 sets forth a list and description of all grants approved and all  
35 acquisitions of interests in real property obtained with moneys  
36 from the fund during the current year, including the recipients  
37 of the grants, the amounts and the public benefits of the interests  
38 in real property acquired.

39 (f) Propose legislative rules in accordance with the  
40 provisions of article three, chapter twenty-nine-a of this code to  
41 carry out its purposes and programs, to include specifically the  
42 qualifications and procedures relating to its awarding of grants.

### §5B-2G-7. Definitions.

1 For purposes of this article, the following terms have the  
2 meanings set forth in this section.

3 (a) "Board" means the board of trustees established in  
4 section three of this article.

5 (b) "Conservation easement" means a nonpossessory  
6 interest in real property as defined in section three, article  
7 twelve, chapter twenty of this code, except that a conservation  
8 easement acquired pursuant to this article shall be held in  
9 perpetuity.

10 (c) "Conservation purposes" means the conservation of land  
11 for outdoor recreation by the public, for conservation of natural  
12 plant and wildlife habitat or similar ecosystem, for conservation

13 of forestland and other open spaces, for conservation of land of  
14 historical or cultural significance or as further defined under  
15 conservation criteria developed in this article.

16 (d) "Eligible grant recipient" means:

17 (1) The following state agencies:

18 (A) Division of Natural Resources;

19 (B) Division of Forestry; or

20 (2) A charitable corporation, charitable association or  
21 charitable trust registered with the Secretary of State and exempt  
22 from taxation pursuant to Section 501(c)(3) of the Internal  
23 Revenue Code of 1986 [Public Law 99-514, 26 U. S. C.  
24 §501(c)(3)] or other federal or state statutes or rules, the  
25 purposes or powers of which include retaining or protecting the  
26 natural, scenic, agricultural or open-space values of real  
27 property; assuring the availability of real property for  
28 agricultural, forest, recreational or open-space use; protecting  
29 natural resources and wildlife; maintaining or enhancing land,  
30 air or water quality; or preserving the historical, architectural,  
31 archaeological or cultural aspects of real property, as defined in  
32 section three, article twelve, chapter twenty of this code, and  
33 that has a primary part of its mission to acquire interests in real  
34 property for conservation purposes.

35 (e) "Fund" means the West Virginia Outdoor Heritage  
36 Conservation Fund established in this article.

37 (f) "Land conservation" means acquisition of interests in  
38 real property from willing sellers for conservation purposes.

39 (g) "Stewardship" means the necessary monitoring,  
40 maintenance and enforcement of interests in real property for  
41 conservation purposes.



**§5B-2G-8. Funding of land conservation; issuance of revenue bonds.**

1 (a) *Fund.* --

2 (1) *Created.* -- The West Virginia Outdoor Heritage  
3 Conservation Fund is created for the purposes specified in this  
4 article.

5 (2) *Sources.* -- The West Virginia Outdoor Heritage  
6 Conservation Fund is comprised of:

7 (A) Any money made available to the fund by general or  
8 special fund appropriations;

9 (B) Any money made available to the fund by grants or  
10 transfers from governmental or private sources;

11 (C) Any money realized by investments, interest, dividends  
12 or distributions; and

13 (D) Any money received from the issuance of revenue  
14 bonds in accordance with the provisions of this article; and

15 (3) *Disbursements.* -- The Treasurer may not disburse any  
16 money from the fund other than:

17 (A) For costs associated with the staffing, administration  
18 and technical and legal duties of the fund;

19 (B) For reasonable and necessary expenses incurred by the  
20 members of the board of trustees of the fund in the performance  
21 of official duties;

22 (C) For costs associated with the acquisition of interests in  
23 real property for conservation purposes and for costs associated  
24 with stewardship authorized by this article;

25 (D) For grants to be awarded in accordance with section  
26 nine of this article;

27 (E) For payment of debt service and other costs associated  
28 with revenue bonds issued on the fund's behalf by the Economic  
29 Development Authority; and

30 (F) Of revenue received, directly or indirectly, from the  
31 recording fee under section ten, article one, chapter fifty-nine of  
32 this code and not used for the payment of revenue bonds and  
33 expenses associated therewith, for purposes consistent with the  
34 duties of the fund set forth in this article.

35 (4) *Money remaining at end of fiscal year.* -- Any money  
36 remaining in the fund at the end of a fiscal year shall not revert  
37 to the General Revenue Fund of the state, but shall remain in the  
38 fund to be used for the purposes specified in this article.

39 (5) *Budget.* -- The estimated budget of the fund for the next  
40 fiscal year shall be included with the budget of the West  
41 Virginia Department of Commerce.

42 (6) *Audit.* -- The fund shall be audited annually.

43 (b) *Bonds.* --

44 The Legislature finds and declares that in order to attract  
45 new business, commerce and industry to this state, to retain  
46 existing business and industry providing the citizens of this state  
47 with economic security and to advance the business prosperity  
48 of this state and the economic welfare of the citizens of this  
49 state, it is necessary to provide public financial support for land  
50 conservation as provided in this article.

51 (1) The West Virginia Economic Development Authority  
52 created and provided in article fifteen, chapter thirty-one of this  
53 code shall, by resolution, in accordance with the provisions of  
54 this article and article fifteen, chapter thirty-one of this code and  
55 upon direction of the board of the Outdoor Heritage

56 Conservation Fund, issue revenue bonds of the Economic  
57 Development Authority to pay for all or a portion of the cost of  
58 the acquisition of interests in real property for conservation  
59 purposes authorized under this article or to refund the bonds at  
60 the discretion of the fund. The revenue bonds shall mature at a  
61 time or times not exceeding thirty years from their respective  
62 dates. The principal of, and the interest and redemption  
63 premium, if any, on the bonds shall be payable from the moneys  
64 deposited in the fund pursuant to section ten, article one, chapter  
65 fifty-nine of this code or from other sources identified by the  
66 board of the fund.

67 (2) There is established in the State Treasury a special  
68 revenue fund named the Outdoor Heritage Conservation Fund  
69 into which shall be deposited on and after the first day of July,  
70 two thousand eight, the amounts to be deposited in the fund as  
71 specified in this article. The Outdoor Heritage Conservation  
72 Fund shall consist of all such moneys, all appropriations to the  
73 fund, all interest earned from investment of the fund and any  
74 gifts, grants or contributions received by the fund. All amounts  
75 deposited in the fund pursuant to section ten, article one, chapter  
76 fifty-nine of this code shall be pledged to the repayment of the  
77 principal, interest and redemption premium, if any, on any  
78 revenue bonds or refunding revenue bonds authorized by this  
79 section, including any and all commercially customary and  
80 reasonable costs and expenses which may be incurred in  
81 connection with the issuance, refunding, redemption or  
82 defeasance thereof. The West Virginia Economic Development  
83 Authority may further provide in the resolution and in the trust  
84 agreement for priorities on the revenues paid into the Outdoor  
85 Heritage Conservation Fund pursuant to section ten, article one,  
86 chapter fifty-nine of this code as may be necessary for the  
87 protection of the prior rights of the holders of bonds issued at  
88 different times under the provisions of this section. The bonds  
89 issued pursuant to this subsection shall be separate from all  
90 other bonds which may be or have been issued from time to  
91 time under the provisions of this article.

92 (3) Bonds issued under this subsection shall state on their  
93 face that the bonds do not constitute a debt of the State of West  
94 Virginia; that payment of the bonds, interest and charges  
95 thereon cannot become an obligation of the State of West  
96 Virginia; and that the bondholders' remedies are limited in all  
97 respects to the special revenue fund established in this  
98 subsection for the liquidation of the bonds.

99 (4) The West Virginia Economic Development Authority  
100 shall expend the bond proceeds from the revenue bond issues  
101 authorized and directed by this section for projects as certified  
102 by the board of the fund under the provisions of this article as  
103 serving a public purpose and meeting the criteria established by  
104 this article.

105 (5) If any proceeds from sale of bonds remain after paying  
106 costs and making grants as provided in this subsection, the  
107 surplus may be used as elsewhere provided in this article.

**§5B-2G-9. Grants for land conservation; application; criteria.**

1 (a) An eligible grant recipient may apply for a grant from  
2 the fund to acquire interests in real property for conservation  
3 purposes or for stewardship. An application may not be  
4 submitted to the fund without the written consent of the owner  
5 of the interest in real property identified in the application.

6 (b) Before applying for a grant, the eligible grant recipient  
7 shall notify the owner that is the subject of the grant of the  
8 following in writing:

9 (1) That interests in real property acquired with a grant from  
10 the fund result in a permanent conveyance of such interests in  
11 real property from the owner to the eligible grant recipient or its  
12 assigns; and

13 (2) That it may be in the owner's interest to retain  
14 independent legal counsel, appraisals and other professional  
15 advice.

16 The application shall contain an affirmation that the notice  
17 requirement of this subsection has been met.

18 (c) Grants from the fund shall be awarded based upon the  
19 conservation criteria and financial criteria contained in this  
20 section. In each application, the eligible grant recipient shall  
21 provide information regarding how the proposal meets one or  
22 more of these criteria and advances the purposes of this article.

23 (d) For purposes of this article, conservation criteria  
24 include:

25 (1) Unique or important wildlife habitat as specified in the  
26 State Wildlife Conservation Action Plan;

27 (2) Habitat for rare, threatened or endangered species;

28 (3) A relatively undisturbed or outstanding example of an  
29 ecosystem or natural community indigenous to West Virginia;

30 (4) An important area for public hunting, fishing or other  
31 outdoor recreational uses;

32 (5) Important recreation lands or important habitats  
33 identified in county comprehensive plans;

34 (6) Riparian habitats, wetlands, water quality, watersheds of  
35 significant ecological value or critical aquifer recharge areas;

36 (7) Forest land or working land that has strategic economic  
37 significance;

38 (8) A larger area containing conserved lands or as a  
39 connection between conserved lands;

40 (9) Land of unique cultural, historical or archaeological  
41 significance;

42 (10) Degree of threat to land; and

43 (11) The number of acres of land to be conserved.

44 (e) For purposes of this article, financial criteria include:

45 (1) The degree to which the proposal leverages grants from  
46 the fund by including funding or in-kind assets or services from  
47 other governmental sources; and

48 (2) The degree to which the proposal leverages grants from  
49 the fund by including funding or in-kind assets or services from  
50 private or nonprofit sources or charitable donations, including  
51 bargain sales of interests in real property for conservation  
52 purposes;

53 (f) The board of the fund shall evaluate each proposal  
54 according to the conservation criteria and financial criteria set  
55 forth in this section, and shall award grants on the basis of how  
56 well proposals meet these two criteria.

57 (g) If an eligible grant recipient entity is dissolved or ceases  
58 to exist as an entity, or if any interests in real property obtained  
59 with a grant from the fund are not being utilized strictly for  
60 conservation purposes, the real property interest shall vest in the  
61 fund upon recording of a notice signed by the chair of the fund  
62 and filed with the clerk of the appropriate county and the fund  
63 may transfer the interest to an appropriate eligible grant  
64 recipient.

## **CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.**

### **ARTICLE 1. FEES AND ALLOWANCES.**

#### **§59-1-10. Fees to be charged by clerk of county commission.**

1 For the purpose of this section, the word "page" is  
2 defined as being a paper or electronic writing of not more  
3 than legal size, 8 ½" x 14".

4 The clerk of the county commission shall charge and collect  
5 the following fees:

6 (a) When a writing is admitted to record, for receiving proof  
7 of acknowledgment thereof, entering an order in connection  
8 therewith, endorsing clerk's certificate of recordation thereon  
9 and indexing in a proper index, where the writing is a:

10 (1) Deed of conveyance (with or without a plat), trust deed,  
11 fixture filing or security agreement concerning real estate lease,  
12 fifteen dollars.

13 (2) Financing, continuation, termination or other statement  
14 or writing permitted to be filed under chapter forty-six of this  
15 code, ten dollars.

16 (3) Plat or map (with no deed of conveyance), ten dollars.

17 (4) Service discharge record, no charge.

18 (5) Any document or writing other than those referenced in  
19 subdivisions (1), (2), (3) and (4) of this subsection, ten dollars.

20 (6) If any document or writing contains more than five  
21 pages, for each additional page, one dollar.

22 For any of the documents admitted to record pursuant to this  
23 subsection, if the clerk of the county commission has the  
24 technology available to receive these documents in electronic  
25 form or other media, the clerk shall set a reasonable fee to  
26 record these writings not to exceed the cost for filing paper  
27 documents.

28 (7) Eleven dollars of each recording fee received pursuant  
29 to subdivision (1) of this subsection shall be retained by the  
30 county clerk for the operation of that office and four dollars of  
31 each of the aforesaid recording fees together with five dollars of  
32 the recording fee collected pursuant to subdivision (5) of this  
33 section, shall be paid by the county clerk into the State

34 Treasurer and deposited in equal amounts for deposit into the  
35 Farmland Protection Fund created in article twelve, chapter  
36 eight-a of this code for the benefit of the West Virginia  
37 Agricultural Land Protection Authority and into the Outdoor  
38 Heritage Conservation Fund created in article two-g, chapter  
39 five-b of this code: *Provided*, That the funds deposited pursuant  
40 to this subdivision may only be used for costs, excluding  
41 personnel costs, associated with purpose of land conservation,  
42 as defined in subsection (f), section seven, article two-g, chapter  
43 five-b of this code.

44 (b) For administering any oath other than oaths by officers  
45 and employees of the state, political subdivisions of the state or  
46 a public or quasi-public entity of the state or a political  
47 subdivision of the state, taken in his or her official capacity, five  
48 dollars.

49 (c) For issuance of marriage license and other duties  
50 pertaining to the marriage license (including preparation of the  
51 application, administering the oath, registering and recording  
52 the license, mailing acknowledgment of minister's return to one  
53 of the licensees and notification to a licensee after sixty days of  
54 the nonreceipt of the minister's return), thirty-five dollars.

55 (1) One dollar of the marriage license fee received pursuant  
56 to this subsection shall be paid by the county clerk into the State  
57 Treasury as a state registration fee in the same manner that  
58 license taxes are paid into the Treasury under article twelve,  
59 chapter eleven of this code;

60 (2) Fifteen dollars of the marriage license fee received  
61 pursuant to this subsection shall be paid by the county clerk into  
62 the State Treasury for the Family Protection Shelter Support Act  
63 in the same manner that license taxes are paid into the Treasury  
64 under article twelve, chapter eleven of this code;

65 (3) Ten dollars of the marriage license fee received pursuant  
66 to this subsection shall be deposited in the Courthouse Facilities



67 Improvement Fund created by section six, article twenty-six,  
68 chapter twenty-nine of this code.

69 (d) (1) For a copy of any writing or document, if it is not  
70 otherwise provided for, one dollar fifty cents.

71 (2) If the copy of the writing or document contains more  
72 than two pages, for each additional page, one dollar.

73 (3) For annexing the seal of the commission or clerk to any  
74 paper, one dollar.

75 (4) For a certified copy of a birth certificate, death  
76 certificate or marriage license, five dollars.

77 (e) For copies of any record in electronic form or a medium  
78 other than paper, a reasonable fee set by the clerk of the county  
79 commission not to exceed the costs associated with document  
80 search and duplication.



## CHAPTER 39

**(Com. Sub. for H.B. 4613 - By Delegates Webster,  
Walters, Kessler, Caputo, Fleischauer, Ellem,  
Brown, Manchin, Shook and Hamilton)**

[Passed March 6, 2008; in effect from passage.]  
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §46A-6H-3 of the Code of West Virginia, 1931, as amended, relating to requiring court approval for certain structured settlement transfers; requiring appointment of guardian ad litem; payment of guardian ad litem, attorneys' fees and costs; required findings; and standard of proof.

*Be it enacted by the Legislature of West Virginia:*

That §46A-6H-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**§46A-6H-3. Requirement of court approval for certain structured settlement transfers.**

1 (a) In addition to the requirements of this article, all  
2 transfer agreements must be approved by the circuit court of  
3 the county wherein the consumer resides or where the  
4 structured settlement agreement was executed when the  
5 structured settlement payment rights arise from a personal  
6 injury or other claim.

7 (b) The transferee shall commence the action by filing a  
8 petition with the court seeking approval of the transfer and  
9 providing to the court the disclosure statement required by  
10 subsection (a), section two of this article.

11 (c) The circuit court shall set a time and date for a hearing  
12 on the matter within twenty-one days of the date of the filing  
13 of the petition. The transferee shall notify the consumer and  
14 all interested parties of the date and time of the hearing and  
15 provide them with a copy of the petition.

16 (d) The court may appoint a guardian ad litem for the  
17 consumer in all cases, and shall appoint a guardian at litem  
18 for the consumer in any case where the structured settlement  
19 payment rights belong to an infant, an incompetent person or  
20 a ward of the court. The guardian ad litem shall review the  
21 requisite disclosures and make an independent inquiry to  
22 determine whether the proposed transfer is fair, reasonable  
23 and in the best interests of the consumer and any dependents  
24 of the consumer as well and determine if transfer has been  
25 attempted or accomplished before. The information shall be  
26 reported to the court during the hearing on the matter.

27 (e) An interested party has the right to appear and contest  
28 the proposed transfer at the time of the hearing. If, after  
29 proper notice, the interested party does not make an  
30 appearance, then the interested party shall be bound by the  
31 court's ruling.

32 (f) After a hearing or upon its own motion, the court may  
33 approve the transfer if the court finds that:

34 (1) The consumer has clearly demonstrated that: (A) He  
35 or she, or his or her family is facing a financial hardship that  
36 the transfer would alleviate and that the transfer would not  
37 subject the consumer or the consumer's family to undue  
38 financial hardship in the future; or (B) the transfer is in the  
39 best interest of the consumer: *Provided*, That the judge shall  
40 inquire of the guardian ad litem and the transferee as to  
41 possible adverse tax consequence to the consumer and inform  
42 the consumer of the result of said inquiry;

43 (2) The transferee is in compliance with the provisions of  
44 section two of this article; and

45 (3) The transfer agreement does not contravene the terms  
46 of the structured settlement agreement, including any  
47 restrictions on the right of the consumer to transfer his or her  
48 structured settlement payment rights, unless the annuity  
49 issuer and structured settlement obligor have consented to the  
50 transfer. However, the approval of the annuity issuer and the  
51 structured settlement obligor shall not be required if, at the  
52 time the consumer and the transferee entered into the transfer  
53 agreement, a favorable tax determination was in effect.

54 (g) The court shall award the guardian ad litem  
55 reasonable fees for representing the consumer. Attorneys'  
56 fees and costs shall be paid by the transferee.

57 (h) A consumer may request court approval for a transfer  
58 that does not mandate court approval under this section. Such  
59 voluntary petition by the consumer shall then become subject  
60 to the provisions of this section. The transferee shall be  
61 responsible for filing the action pursuant to subsection (b) of  
62 this section and shall be responsible for attorney's fees or  
63 guardian ad litem fees.

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## CHAPTER 40

**(S.B. 263 - By Senators Love, Green, Hunter,  
McKenzie, White and Minard)**

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[Passed March 6, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 20, 2008.]

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AN ACT to amend and reenact §25-1-3, §25-1-3b, §25-1-11a and §25-1-11c of the Code of West Virginia, 1931, as amended; and to amend and reenact §25-4-4 of said code, all relating generally to the Division of Corrections; updating the statutory list of correctional facilities over which the commissioner has control; providing that the commissioner is authorized to contract with the McDowell County Commission to house and incarcerate inmates at the Stevens Correctional Center; removing the commissioner's authority to serve on the Commission for Distribution of Surplus Food; providing that when a commissary in a division facility is operated by a vendor, the negotiated commission paid by the vendor is to be deposited into the facility's inmate benefit fund; clarifying that wardens and administrators of correctional facilities are subject to the direction of the commissioner; specifying that all employees of the Division of Corrections are responsible for enforcing rules and laws necessary for the control and management of correctional units; modifying duties of those employees designated as correctional peace officers; and

providing that wardens of centers for housing young adult offenders have the same powers and duties as other wardens of correctional facilities.

*Be it enacted by the Legislature of West Virginia:*

That §25-1-3, §25-1-3b, §25-1-11a and §25-1-11c of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §25-4-4 of said code be amended and reenacted, all to read as follows:

**Article**

- 1. Organization, Institutions and Corrections Management.**
- 4. Centers for Housing Young Adult Offenders.**

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND  
CORRECTIONS MANAGEMENT.**

§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions transferred to Department of Health and Human Resources; establishment of work and study release units.

§25-1-3b. Inmate benefit funds.

§25-1-11a. Duties of wardens and administrators; bond; residence.

§25-1-11c. Hiring of other assistants and employees; duties of correctional employees; right to carry weapons; powers of correctional peace officers.

**§25-1-3. Institutions managed by Commissioner of Corrections;  
certain institutions transferred to Department of  
Health and Human Resources; establishment of  
work and study release units.**

1 The Commissioner of Corrections shall manage, direct,  
2 control and govern the following penal or correctional  
3 institutions and any others placed under his or her jurisdiction  
4 or control:

5 Mount Olive Correctional Complex;

6 Huttonsville Correctional Center;

7 Anthony Correctional Center;

8 Denmark Correctional Center;

- 9 Pruntytown Correctional Center;  
10 Northern West Virginia Correctional Center;  
11 St. Marys Correctional Center;  
12 Lakin Correctional Center;  
13 Ohio County Correctional Center;  
14 Beckley Correctional Center; and  
15 Martinsburg Correctional Center.

16 The Commissioner of Corrections is authorized to contract  
17 with the county commission of McDowell County to house and  
18 incarcerate inmates at the Stevens Correctional Center  
19 consistent with all requirements and standards governing the  
20 Division of Corrections.

21 Jurisdiction of and title to the West Virginia Children's  
22 Home at Elkins are hereby transferred to the Department of  
23 Health and Human Resources, which is the custodian of all  
24 deeds and other muniments of title to the property and shall  
25 record those that are susceptible of recordation to be recorded in  
26 the proper offices. Notwithstanding any provision of this code  
27 to the contrary, the West Virginia Children's Home shall be  
28 managed and controlled by a superintendent appointed by the  
29 Commissioner of the Division of Human Services.

30 The commissioner is authorized to establish work and study  
31 release units as extensions and subsidiaries of those state  
32 institutions under his or her control and authority. The work  
33 and study release units may be coeducational and shall be  
34 managed, directed and controlled as provided in this article.

35 Any person employed by the Office of Public Institutions  
36 who on the effective date of this article is a classified civil  
37 service employee shall, within the limits contained in section  
38 two, article six, chapter twenty-nine of this code, remain in the  
39 civil service system as a covered employee.

**§25-1-3b. Inmate benefit funds.**

1 (a) The Commissioner of Corrections shall establish an  
2 inmate benefit fund for each of the institutions under his or her  
3 jurisdiction. The inmate benefit fund is a fund held by the  
4 institutions for the benefit and welfare of inmates incarcerated  
5 in state correctional facilities and for the benefit of victims.

6 (b) There is continued a special revenue account in the State  
7 Treasury for each inmate benefit fund established by the  
8 commissioner. Moneys received by an institution for deposit in an  
9 inmate benefit fund shall be deposited with the State Treasurer to  
10 be credited to the special revenue account created for the  
11 institution's inmate benefit fund. Moneys in a special revenue  
12 account established for an inmate benefit fund may be expended by  
13 the institution for the purposes set forth in this section. Moneys to  
14 be deposited into an inmate benefit fund consist of:

15 (1) All profit from the exchange or commissary operation  
16 and if the commissary is operated by a vendor, whether a public  
17 or private entity, the profit is the negotiated commission paid to  
18 the Division of Corrections by the vendor;

19 (2) All net proceeds from vending machines used for inmate  
20 visitation;

21 (3) All proceeds from contracted inmate telephone  
22 commissions;

23 (4) Any funds that may be assigned by inmates or donated  
24 to the institution by the general public or an inmate service  
25 organization on behalf of all inmates;

26 (5) Any funds confiscated considered contraband; and

27 (6) Any unexpended balances in individual inmate trustee  
28 funds if designated by the inmate upon his or her discharge from  
29 the institution.

30 (c) The inmate benefit fund may only be used for the  
31 following purposes at correctional facilities:

1 (a) The warden or administrator of the correctional  
2 institutions or units shall, in the manner provided in section  
3 eleven of this article, hire all assistants and employees required  
4 for the management of the correctional institutions or units,  
5 including a sufficient number of correctional employees to  
6 preserve order and enforce discipline among the inmates, to  
7 prevent escapes and to remove all persons convicted and  
8 sentenced to the custody of the Division of Corrections, from  
9 the place confined to a correctional institution, all of whom shall  
10 be under the control of the warden. The commissioner may  
11 issue a certificate authorizing any correctional employee who  
12 has successfully completed the division's training program for  
13 firearms certification, which shall be the equivalent of that  
14 required of deputy sheriffs, to carry firearms and concealed  
15 weapons while on duty. Any correctional employee authorized  
16 by the commissioner has the right, without a state license, to  
17 carry firearms and concealed weapons while on duty. Each  
18 correctional employee, authorized by the commissioner, shall  
19 carry with him or her a certificate authorizing him or her to  
20 carry a firearm or concealed weapon when performing his or her  
21 official duties as a correctional employee, bearing the official  
22 signature of the commissioner and warden or administrator.  
23 The right is extended to a correctional employee during the time  
24 the employee travels from place to place within the state for the  
25 purpose of removing prisoners from jails to a correctional  
26 institution of the Division of Corrections, during the time the  
27 employee is pursuing and apprehending escaped inmates and  
28 during any other time the employee is performing official duties  
29 as a correctional employee. No correctional employee has the  
30 right to carry a firearm or concealed weapon for any other  
31 purpose or during any other time, including when traveling to  
32 and from the employee's residence and a correctional  
33 institution, unless the employee has obtained a state license in  
34 the manner prescribed in article seven, chapter sixty-one of this  
35 code.

36 (b) All employees of the Division of Corrections are  
37 responsible for enforcing rules and laws necessary for the  
38 control and management of correctional units and the



39 maintenance of public safety that is within the scope of  
40 responsibilities of the Division of Corrections.

41 (c) The Commissioner of Corrections may designate  
42 correctional employees as correctional peace officers who have the  
43 authority:

44 (1) To detain persons for violations of state law committed  
45 on the property of any state correctional institution;

46 (2) To conduct investigations regarding criminal activity  
47 occurring within a correctional facility; and

48 (3) To execute criminal process or other process in  
49 furtherance of these duties.

#### **ARTICLE 4. CENTERS FOR HOUSING YOUNG ADULT OFFENDERS.**

##### **§25-4-4. Warden.**

1 Each center shall be under the direction of a warden who  
2 shall have the minimum qualification of a college degree with  
3 a major in criminal justice or a related field and the powers and  
4 duties as described in sections eleven and eleven-a, article one  
5 of this chapter. The warden shall be paid an annual salary to be  
6 fixed by the Commissioner of Corrections. The warden, subject  
7 to the authority of the commissioner, has the responsibility for  
8 the overall operation of the center.

9 At each center the warden shall administer programming  
10 which shall include the following components:

11 (1) A work program;

12 (2) An educational program in accordance with section  
13 thirteen-f, article two, chapter eighteen of this code;

14 (3) A recreational program; and

15 (4) A counseling program with an emphasis on substance  
16 abuse and life skills.

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## CHAPTER 41

**(Com. Sub. for H.B. 4570 - By Delegates Stemple, Mahan,  
Browning, Proudfoot, Long, Perry, Hrutkay, Varner and Webster)**

[Passed March 6, 2008; in effect from passage.]

[Approved by the Governor on March 28, 2008.]

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AN ACT to amend and reenact §31-20-27a of the Code of West Virginia, 1931, as amended, relating to authorizing regional jail employees to carry a firearm after receiving appropriate certification; and expanding their arrest authority.

*Be it enacted by the Legislature of West Virginia:*

That §31-20-27a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND  
CORRECTIONAL FACILITY AUTHORITY.**

**§31-20-27a. Regional jail employees right to carry firearm;  
arrest authority of correctional officers.**

- 1 (a) The executive director may issue a certificate
- 2 authorizing any regional jail employee who has successfully
- 3 completed the authority's training program for firearms
- 4 certification, which shall be the equivalent of that required of
- 5 deputy sheriffs, to carry firearms and concealed weapons
- 6 while on duty. Any regional jail employee authorized by the
- 7 executive director has the right, without a state license, to
- 8 carry firearms and concealed weapons while on duty,
- 9 pursuant to the provisions and limitations of this section.

10 Each employee authorized by the executive director shall  
11 carry with him or her a certificate, authorizing him or her to  
12 carry a firearm or concealed weapon when performing his or  
13 her official duties as a regional jail employee, bearing the  
14 official signature of the executive director and administrator.  
15 The right is extended to a regional jail employee during the  
16 time the employee travels from place to place within the state  
17 for the purpose of transporting inmates, and during the time  
18 the employee is pursuing and apprehending escaped inmates,  
19 and during any other time the employee is performing official  
20 duties as a regional jail employee. The regional jail  
21 employee's carrying of a firearm or concealed weapon while  
22 on regional jail property must also comply with rules and  
23 procedures established by the Regional Jail Authority. No  
24 regional jail employee has the right to carry a firearm or  
25 concealed weapon for any other purpose or during any other  
26 time, including when traveling to and from the employee's  
27 residence and a regional jail, unless the employee has  
28 obtained a state license in the manner prescribed in article  
29 seven, chapter sixty-one of this code.

30 (b) Persons employed by the Regional Jail Authority as  
31 correctional officers are hereby authorized and empowered to  
32 make arrests of persons already charged with a violation of  
33 law who surrender themselves to such correctional officer, to  
34 arrest persons already in the custody of the Regional Jail  
35 Authority for violations of law occurring in the officer's  
36 presence, to detain persons for violations of state law  
37 committed on the property of any regional jail, and to  
38 conduct investigations, pursue and apprehend escapees from  
39 the custody of regional jail.

40 (c) Nothing in this section shall be construed as to make  
41 a correctional officer employed by the Regional Jail  
42 Authority a law-enforcement officer as defined in section  
43 one, article twenty-nine, chapter thirty of this code.

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## CHAPTER 42

**(S.B. 784 - By Senators Tomblin, Mr. President, Bowman,  
Chafin, Helmick, Kessler, Prezioso, Caruth, Boley and McKenzie)**

[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 27, 2008.]

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AN ACT to amend and reenact §7-1-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §7-1-1a, all relating to reforming, altering or modifying county government as authorized in section thirteen, article IX of the West Virginia Constitution; establishing requirements for reforming, altering or modifying county commission; and providing for alternative forms of county government.

*Be it enacted by the Legislature of West Virginia:*

That §7-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §7-1-1a, all to read as follows:

### **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

§7-1-1. County commissions corporations; how constituted; election of president.

§7-1-1a. Requirements for reforming, altering or modifying a county commission; alternative forms of county government.

#### **§7-1-1. County commissions corporations; how constituted; election of president.**

- 1 (a) The county commission, formerly the county court,
- 2 tribunal or county council in lieu thereof, of every county

3 within the State of West Virginia shall be a corporation by  
4 the name of “The County Commission of .....  
5 County”, or “The County Council of ..... County” by  
6 which name it may sue and be sued, plead and be impleaded  
7 and contract and be contracted with.

8 (b) A county commission shall consist of three  
9 commissioners as provided in section nine, article IX of the  
10 Constitution of the State of West Virginia, any two of whom  
11 shall constitute a quorum for the transaction of business.

12 (c) A county council, created on or after the first day of  
13 July, two thousand eight, as an alternative to a county  
14 commission pursuant to section thirteen, article IX of the  
15 Constitution of West Virginia, shall consist of four or more  
16 members, a majority of whom shall constitute a quorum for  
17 the transaction of business.

18 (d) Unless provided otherwise in an alternative form of  
19 government, each county commission or council shall  
20 annually, at its first session in each year, or as soon thereafter  
21 as practicable, elect one of its commissioners or council  
22 members as president of the county commission or council.

23 (e) Throughout this chapter and the code, the term  
24 “county commission” or any reference to a county  
25 commission shall include all county councils created in lieu  
26 of the county commission.

**§7-1-1a. Requirements for reforming, altering or modifying a  
county commission; alternative forms of county  
government.**

1 (a) A county government may be reformed, altered or  
2 modified as follows:

3 (1) The county commission or county council of the  
4 county may pass a resolution making application to the

5 Legislature to reform, alter or modify an existing form of  
6 county government in accordance with the requirements of  
7 the West Virginia Constitution and this section; or

8 (2) Ten percent of the registered voters of the county may  
9 sign a petition requesting reformation, alteration or  
10 modification of the existing form of county government in  
11 accordance with the requirements of the West Virginia  
12 Constitution and this section.

13 (b) A county commission or county council seeking to  
14 make application to reform, alter or modify its county  
15 government pursuant to the provisions of section thirteen,  
16 article IX of the West Virginia Constitution shall adopt a  
17 resolution containing the following information:

18 (1) The reasons for the reformation, alteration or  
19 modification of the county commission or county  
20 government;

21 (2) The form of the proposed county government selected  
22 from the alternatives authorized by this section;

23 (3) The proposed name of the county government;

24 (4) When the question of reformation, alteration or  
25 modification of the county government will be on the ballot;

26 (5) How and when the officers of the proposed county  
27 government will be elected or appointed, taking into  
28 consideration the following:

29 (A) When the election on the question of reformation,  
30 alteration or modification of the county government will be held;

31 (B) The normal election cycles for county officials; and

32 (C) The time frames for early and absentee voting  
33 provided in article three, chapter three of this code; and

34 (6) When the new county government will become  
35 effective.

36 (c) Prior to the adoption of a resolution seeking to reform,  
37 alter or modify a county commission or county council, the  
38 governing body of the county shall publish by a Class II legal  
39 advertisement in one or more newspapers of general  
40 circulation throughout the county, in compliance with the  
41 provisions of article three, chapter fifty-nine of this code,  
42 notice of the proposed changes to the current form of county  
43 government. The publication area shall be the entire county.  
44 The notice shall summarize the proposed changes to the  
45 county government and include the date, time and place for  
46 the meeting or meetings in which the resolution will be  
47 considered.

48 (d) After the publication and adoption of the resolution,  
49 the following information shall be submitted by the county to  
50 the Clerk of the Senate and to the Clerk of the House of  
51 Delegates no later than the tenth day of a regular legislative  
52 session in which the request for reforming, altering or  
53 modifying a county commission or county government is to  
54 be considered by the Legislature:

55 (1) A certified copy of the adopted resolution;

56 (2) A copy of the required public notice;

57 (3) The vote on the adoption of the resolution; and

58 (4) The date the resolution was adopted.

59 (e) Registered voters of a county seeking to reform, alter  
60 or modify the county commission or county council pursuant  
61 to section thirteen, article IX of the West Virginia  
62 Constitution shall submit a petition, signed by ten percent of

63 the registered voters in the county, to the county commission  
64 or county council, setting forth the information required in  
65 subsection (b) of this section. Upon receipt of the petition,  
66 the county commission or county council shall verify that the  
67 signatures on the petition are: (1) Legally registered voters of  
68 the county; and (2) equal to ten percent of the registered  
69 voters of the county.

70 (f) The county commission or county council shall,  
71 within thirty days of receipt of a constitutionally defective  
72 petition, return it to the petitioners with a written statement as  
73 to why the petition is defective. The petitioners may, within  
74 ninety days of receipt of the written statement from the  
75 county commission or council and after making the necessary  
76 changes, resubmit the petition to the county commission or  
77 county council.

78 (g) After verifying that the signatures on the petition meet  
79 the constitutional requirements, the county commission or  
80 council shall forward the petition to the Clerk of the Senate  
81 and to the Clerk of the House of Delegates no later than the  
82 tenth day of a regular legislative session in which the request  
83 for reforming, altering or modifying a county commission or  
84 county government is to be considered by the Legislature.

85 (h) After receipt of a certified resolution or verified  
86 petition by the Clerk of the Senate and the Clerk of the House  
87 of Delegates, the Legislature shall determine whether all  
88 constitutional and statutory requirements have been met. If  
89 such requirements have not been met, the certified resolution  
90 or verified petition shall be returned with a written statement  
91 of the deficiencies. A certified resolution or verified petition  
92 may be revised following the procedures set forth in this  
93 section for an original submission and then may be  
94 resubmitted to the Clerk of the Senate and the Clerk of the  
95 House of Delegates for consideration by the Legislature. The  
96 requirement that the petition be submitted prior to the tenth



97 day of the legislative session shall not apply to resubmitted  
98 resolutions or petitions.

99 (i) Following passage of an act by the Legislature  
100 authorizing an election on the question of reforming, altering  
101 or modifying a county commission or council, the question  
102 shall be placed on the ballot of the county at the next general  
103 election following such passage or, at the expense of the  
104 county, a special election.

105 (j) Following approval of the reformation, alteration or  
106 modification of the county commission or council by a  
107 majority of the county's registered voters, nomination of the  
108 county commission or council members and, where  
109 authorized, the chief executive, shall be held in the next  
110 primary election or the primary election set forth in the  
111 resolution or petition to reform, alter or modify the county  
112 commission or council. Election of the county  
113 commissioners or council members and, where authorized,  
114 the chief executive shall be held in the next general election  
115 or the general election set forth in the resolution or petition to  
116 change the form of the county commission.

117 (k) All elections required by this section shall be held in  
118 accordance with the provisions of chapter three of this code.

119 (l) The following are guidelines for forms of county  
120 government:

121 (1) "*Chief executive - county commission plan*". -- Under  
122 this plan:

123 (A) There shall be a chief executive elected by the  
124 registered voters of the county at large and three county  
125 commissioners that shall be elected at large;

126 (B) The commission shall be the governing body;

127 (C) The chief executive shall have the exclusive authority  
128 to supervise, direct and control the administration of the  
129 county government. The chief executive shall carry out,  
130 execute and enforce all ordinances, policies, rules and  
131 regulations of the commission;

132 (D) The salary of the chief executive shall be set by the  
133 Legislature;

134 (E) Other nonelected officers and employees shall be  
135 appointed by the chief executive subject to the approval of  
136 the county commission; and

137 (F) The chief executive shall not be a member of the  
138 county commission nor shall he or she hold any other elective  
139 office.

140 (2) "*County manager - county commission plan*". --  
141 Under this plan:

142 (A) There shall be a county manager appointed by the  
143 county commission and three county commissioners that may  
144 be elected at large;

145 (B) The commission shall be the governing body;

146 (C) The county manager shall have the exclusive  
147 authority to supervise, direct and control the administration  
148 of the county government. The county manager shall carry  
149 out, execute and enforce all ordinances, policies, rules and  
150 regulations of the commission;

151 (D) The salary of the county manager shall be set by the  
152 county commission;

153 (E) Other nonelected officers and employees shall be  
154 appointed by the county manager subject to the approval of  
155 the commission; and

156 (F) The county manager shall not be a member of the  
157 county commission nor shall he or she hold any other elective  
158 office.

159 (3) "*County administrator - county commission plan*". --  
160 Under this plan:

161 (A) There shall be a county administrator appointed by  
162 the county commission and three county commissioners that  
163 shall be elected at large;

164 (B) The commission shall be the governing body;

165 (C) The county administrator shall have the authority to  
166 direct the administration of the county government under the  
167 supervision of the county commission. The county  
168 administrator shall carry out, execute and enforce all  
169 ordinances, policies, rules and regulations of the commission;

170 (D) The salary of the county administrator shall be set by  
171 the county commission;

172 (E) The county administrator shall appoint or employ all  
173 subordinates and employees for whose duties or work he or  
174 she is responsible to the commission; and

175 (F) The county administrator shall not be a member of the  
176 county commission nor shall he or she hold any other elective  
177 office.

178 (4) A county council consisting of four or more members  
179 that shall be elected at large.

180 (5) Any form of county government adopted pursuant to  
181 section thirteen, article IX of the West Virginia Constitution  
182 and this section may, by the methods set forth in this section,

183 return to the traditional county commission or change to  
184 another form of county government, as set out in this section.

185 (m) The purpose of this section is to establish the basic  
186 requirements for reforming, altering or modifying a county  
187 commission or county council pursuant to section thirteen,  
188 article IX of the West Virginia Constitution. The structure  
189 and organization of a county government may be specified in  
190 greater detail by resolution or ordinance so long as such  
191 provisions do not conflict with the purposes and provisions  
192 set forth in this section, chapter seven-a of this code or the  
193 constitution.



## CHAPTER 43

**(Com. Sub. for H.B. 4028 - By Delegates Fleischauer,  
Marshall, Beach and Shook)**

[Passed March 5, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 13, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new section, designated §7-1-300; and to  
amend said code by adding thereto a new section, designated  
§8-12-5e, all relating to authorizing counties and municipalities  
to enter into energy-savings contracts.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended  
by adding thereto a new section, designated §7-1-300; and that said  
code be amended by adding thereto a new section, designated §8-12-  
5e, all to read as follows:

**Chapter**

**7. County Commissions and Officers.**

**8. Municipal Corporations.**

## CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

### ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

#### §7-1-300. Authority to enter into energy-savings contracts.

1 (a) As used in this section:

2 (1) "Energy-conservation measures" means goods or  
3 services, or both, to reduce energy consumption operating  
4 costs of county facilities. They include, but are not limited  
5 to, installation of one or more of the following:

6 (A) Insulation of a building structure and systems within  
7 a building;

8 (B) Storm windows or doors, caulking or weather stripping,  
9 multiglazed windows or doors, heat-absorbing or  
10 heat-reflective glazed and coated window or door systems, or  
11 other window or door modifications that reduce energy  
12 consumption;

13 (C) Automatic energy control systems;

14 (D) Heating, ventilating or air conditioning systems,  
15 including modifications or replacements;

16 (E) Replacement or modification of lighting fixtures to  
17 increase energy efficiency;

18 (F) Energy recovery systems;

19 (G) Cogeneration systems that produce steam or another  
20 form of energy for use by any agency in a building or  
21 complex of buildings owned by the county; or

22 (H) Energy-conservation maintenance measures that  
23 provide long-term operating cost reductions of the building's  
24 present cost of operation.

25 (2) "Energy-savings contract" means a performance-  
26 based contract for the evaluation and recommendation of  
27 energy operations conservation measures and for  
28 implementation of one or more energy-conservation  
29 measures.

30 (3) "Qualified provider" means a person, firm or  
31 corporation experienced in the design, implementation and  
32 installation of energy-conservation measures.

33 (b) Counties are authorized to enter into  
34 performance-based contracts with qualified providers of  
35 energy-conservation measures for the purpose of  
36 significantly reducing energy operating costs of county  
37 owned buildings, subject to the requirements of this section.

38 (c) Before entering into a contract or before the  
39 installation of equipment, modifications or remodeling to be  
40 furnished under a contract, the qualified provider shall first  
41 issue a proposal summarizing the scope of work to be  
42 performed. A proposal must contain estimates of all costs of  
43 installation, modifications or remodeling, including the costs  
44 of design, engineering, installation, maintenance, repairs or  
45 debt service, as well as estimates of the amounts by which  
46 energy operating costs will be reduced. If the county finds,  
47 after receiving the proposal, that the proposal includes one or  
48 more energy-conservation measures, the installation of which  
49 is guaranteed to result in a net savings of a minimum of five  
50 percent of the then current energy operating costs which  
51 savings will, at a minimum, satisfy any debt service required,  
52 the county may enter into a contract with the provider  
53 pursuant to this section.

54 (d) An energy-savings contract must include the  
55 following:

56 (1) A guarantee of a specific minimum net percentage  
57 amount of at least five percent of energy operating costs each  
58 year over the term of the contract that the county will save;

59 (2) A statement of all costs of energy-conservation  
60 measures, including the costs of design, engineering,  
61 installation, maintenance, repairs and operations; and

62 (3) A provision that payments, except obligations upon  
63 termination of the contract before its expiration, are to be  
64 made over time.

65 (e) A county may supplement its payments with federal,  
66 state or local funds to reduce the annual cost or to lower the  
67 initial amount to be financed.

68 (f) Any energy-savings contract entered into for the  
69 purpose of achieving one or more energy-conservation  
70 measures, as authorized by this section, shall be considered  
71 a “public improvement” within the meaning of the provisions  
72 of articles one-c and five-a, chapter twenty-one of this code.  
73 As such, energy-savings contracts entered into pursuant to  
74 this section are subject to competitive bidding requirements  
75 and other requirements of section twenty-two, article twenty  
76 of this chapter.

77 (g) An energy-savings contract may extend beyond the  
78 fiscal year in which it first becomes effective: *Provided,*  
79 That such a contract may not exceed a fifteen-year term:  
80 *Provided, however,* That the long-term contract will be void  
81 unless the agreement provides that the county shall have the  
82 option during each fiscal year of the contract to terminate the  
83 agreement.

84 (h) Counties may enter into a "lease with an option to  
85 purchase" contract for the purchase and installation of  
86 energy-conservation measures if the term of the lease does  
87 not exceed fifteen years and the lease contract includes the  
88 provisions contained in subsection (g) of this section and  
89 meets federal tax requirements for tax-exempt municipal  
90 leasing or long-term financing.

91 (i) The county may include in its annual budget for each  
92 fiscal year any amounts payable under long-term  
93 energy-savings contracts during that fiscal year.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

#### **§8-12-5e. Authority to enter into energy-savings contracts.**

1 (a) As used in this section:

2 (1) "Energy-conservation measures" means goods or  
3 services, or both, to reduce energy consumption operating  
4 costs of municipality facilities. They include, but are not  
5 limited to, installation of one or more of the following:

6 (A) Insulation of a building structure and systems within  
7 a building;

8 (B) Storm windows or doors, caulking or weather  
9 stripping, multiglazed windows or doors, heat-absorbing or  
10 heat-reflective glazed and coated window or door systems, or  
11 other window or door modifications that reduce energy  
12 consumption;



13 (C) Automatic energy control systems;

14 (D) Heating, ventilating or air conditioning systems,  
15 including modifications or replacements;

16 (E) Replacement or modification of lighting fixtures to  
17 increase energy efficiency;

18 (F) Energy recovery systems;

19 (G) Cogeneration systems that produce steam or another  
20 form of energy for use by any agency in a building or  
21 complex of buildings owned by the municipality; or

22 (H) Energy-conservation maintenance measures that  
23 provide long-term operating cost reductions of the building's  
24 present cost of operation.

25 (2) "Energy-savings contract" means a  
26 performance-based contract for the evaluation and  
27 recommendation of energy operations conservation measures  
28 and for implementation of one or more energy-conservation  
29 measures.

30 (3) "Qualified provider" means a person, firm or  
31 corporation experienced in the design, implementation and  
32 installation of energy-conservation measures.

33 (b) Municipalities are authorized to enter into  
34 performance-based contracts with qualified providers of  
35 energy-conservation measures for the purpose of  
36 significantly reducing energy operating costs of municipality  
37 buildings, subject to the requirements of this section.

38 (c) Before entering into a contract or before the  
39 installation of equipment, modifications or remodeling to be  
40 furnished under a contract, the qualified provider shall first

41 issue a proposal summarizing the scope of work to be  
42 performed. A proposal must contain estimates of all costs of  
43 installation, modifications or remodeling, including the costs  
44 of design, engineering, installation, maintenance, repairs or  
45 debt service, as well as estimates of the amounts by which  
46 energy operating costs will be reduced. If the municipality  
47 finds, after receiving the proposal, that the proposal includes  
48 one or more energy-conservation measures, the installation  
49 of which is guaranteed to result in a net savings of a  
50 minimum of five percent of the then current energy operating  
51 costs which savings will, at a minimum, satisfy any debt  
52 service required, the municipality may enter into a contract  
53 with the provider pursuant to this section.

54 (d) An energy-savings contract must include the  
55 following:

56 (1) A guarantee of a specific minimum net percentage  
57 amount of at least five percent of energy operating costs each  
58 year over the term of the contract that the municipality will  
59 save;

60 (2) A statement of all costs of energy-conservation  
61 measures, including the costs of design, engineering,  
62 installation, maintenance, repairs and operations; and

63 (3) A provision that payments, except obligations upon  
64 termination of the contract before its expiration, are to be made  
65 over time.

66 (e) A municipality may supplement its payments with  
67 federal, state or local funds to reduce the annual cost or to  
68 lower the initial amount to be financed.

69 (f) Any energy-savings contract entered into for the  
70 purpose of achieving one or more energy-conservation  
71 measures, as authorized by this section, shall be subject to a  
72 competitive bidding process as provided by municipal

73 ordinance enacted pursuant to section ten-b, article twelve of  
74 this chapter.

75 (g) An energy-savings contract may extend beyond the  
76 fiscal year in which it first becomes effective: *Provided,*  
77 That such a contract may not exceed a fifteen-year term:  
78 *Provided, however,* That the long-term contract will be void  
79 unless the agreement provides that the municipality shall  
80 have the option during each fiscal year of the contract to  
81 terminate the agreement.

82 (h) Municipalities may enter into a "lease with an option  
83 to purchase" contract for the purchase and installation of  
84 energy-conservation measures if the term of the lease does  
85 not exceed fifteen years and the lease contract includes the  
86 provisions contained in subsection (f) of this section and  
87 meets federal tax requirements for tax-exempt municipal  
88 leasing or long-term financing.

89 (i) The municipality may include in its annual budget for  
90 each fiscal year any amounts payable under long-term  
91 energy-savings contracts during that fiscal year.



## CHAPTER 44

**(S.B. 570 - By Senator Caruth)**

[Passed March 6, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §7-12-9b of the Code of West Virginia, 1931, as amended, relating to county commissions' ability to coordinate joint development efforts.

*Be it enacted by the Legislature of West Virginia:*

That §7-12-9b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT  
AUTHORITIES.**

**§7-12-9b. Joint development entities.**

1       (a) The Legislature hereby finds and declares that the  
2 citizens of this state would benefit from coordinated  
3 economic development efforts and that to encourage  
4 cooperation and coordination, county governing bodies,  
5 municipal governing bodies and county and municipal  
6 development authorities should be authorized to organize and  
7 jointly own all of the partnership, ownership and membership  
8 interests in a partnership, corporation or limited liability  
9 company for the sole purpose of undertaking jointly through  
10 their joint ownership of or membership in the partnership,  
11 corporation or limited liability company any project or  
12 projects that an authority established pursuant to this article  
13 would be permitted to undertake.

14       (b) Any combination of two or more county governing  
15 bodies, municipal governing bodies, municipal development  
16 authorities or county development authorities may jointly  
17 form and hold all of the partnership, ownership or  
18 membership interests in a partnership, corporation or limited  
19 liability company, the sole purpose of which is to develop  
20 and own one or more joint economic development projects  
21 (for purposes of this section, a “joint development entity”).  
22 No person or entity other than a county governing body,  
23 municipal governing body, municipal development authority  
24 or county development authority may own any ownership or  
25 membership interest in a joint development entity. Any

26 existing partnership, corporation or limited liability company  
27 is a joint development entity on and after the effective date of  
28 this section if: (I) It was organized for the purposes described  
29 in this subsection prior to the effective date of this section;  
30 and (ii) the partnership, ownership or membership interests  
31 in it meet the requirements of this subsection on and after the  
32 effective date of this section.

33 (c) To the extent consistent with and not prohibited by or  
34 in conflict with the restrictions and limitations on, or the  
35 rights and attributes of, a joint development entity set forth in  
36 this section, the applicable general law governing  
37 partnerships, corporations or limited liability companies  
38 govern the organization, existence, duration, powers,  
39 governance and dissolution of a joint development entity and  
40 the rights and responsibilities of the partners, owners or  
41 members of a joint development entity.

42 (d) A joint development entity is a public corporation and  
43 a political subdivision and instrumentality of its partners,  
44 owners or members and has the powers, rights and privileges  
45 of an authority set forth in sections seven, eight, nine, ten,  
46 eleven, twelve and fourteen of this article in addition to those  
47 granted to partnerships, corporations and limited liability  
48 companies under applicable general law.

49 (e) For West Virginia tax purposes, a joint development  
50 entity is a political subdivision of the State of West Virginia  
51 and is exempt from all state and local taxation and all real  
52 and personal property owned by a joint development entity,  
53 or which the joint development entity may acquire to be  
54 leased, sold or otherwise disposed of, is exempt from taxation  
55 by the state or any county, municipality or other levying body  
56 as public property.

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## CHAPTER 45

**(Com. Sub. for H.B. 4607 - By Delegate White)**

[Passed March 7, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2008.]

AN ACT to repeal §8-13B-1, §8-13B-2, §8-13B-3, §8-13B-4, §8-13B-5, §8-13B-6, §8-13B-7, §8-13B-8, §8-13B-9, §8-13B-10, §8-13B-11, §8-13B-12, §8-13B-13, §8-13B-14, §8-13B-15, §8-13B-16, §8-13B-17, §8-13B-18, §8-13B-19 and §8-13B-20 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-22-12 of said code; and to amend and reenact §8-38-12 of said code, all relating to special district excise taxes authorized for counties and municipalities; clarifying the rates of the tax; authorizing the Tax Commissioner to require the electronic filing of returns and electronic payment of the tax; providing for the sharing of tax information; and providing confidentiality requirements of shared information.

*Be it enacted by the Legislature of West Virginia:*

That §8-13B-1, §8-13B-2, §8-13B-3, §8-13B-4, §8-13B-5, §8-13B-6, §8-13B-7, §8-13B-8, §8-13B-9, §8-13B-10, §8-13B-11, §8-13B-12, §8-13B-13, §8-13B-14, §8-13B-15, §8-13B-16, §8-13B-17, §8-13B-18, §8-13B-19 and §8-13B-20 of the Code of West Virginia, 1931, as amended, be repealed; that §7-22-12 of said code be amended and reenacted; and that §8-38-12 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 7. County Commissions and Officers.**
- 8. Municipal Corporations.**

**CHAPTER 7. COUNTY COMMISSIONS  
AND OFFICERS.**

**ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY  
DEVELOPMENT DISTRICTS.**

**§7-22-12. Special district excise tax authorized.**

1       (a) *General.* -- The county commission of a county,  
2 authorized by the Legislature to levy a special district excise  
3 tax for the benefit of an economic opportunity development  
4 district, may, by order entered of record, impose that tax on  
5 the privilege of selling tangible personal property and  
6 rendering select services in the district in accordance with  
7 this section.

8       (b) *Tax base.* -- The base of a special district excise tax  
9 imposed pursuant to this section shall be identical to the base  
10 of the consumers sales and service tax imposed pursuant to  
11 article fifteen, chapter eleven of this code on sales made and  
12 services rendered within the boundaries of the district. Sales  
13 of gasoline and special fuel are not subject to special district  
14 excise tax but remain subject to the tax levied by article  
15 fifteen, chapter eleven of this code. Except for the exemption  
16 provided in section nine-f of said article, all exemptions and  
17 exceptions from the consumers sales and service tax shall  
18 also apply to the special district excise tax.

19       (c) *Tax rate.* -- The rate or rates of a special district  
20 excise tax levied pursuant to this section shall be identical to  
21 the rate or rates of the consumer sales and service tax  
22 imposed pursuant to article fifteen, chapter eleven of this  
23 code on sales made and services rendered within the  
24 boundaries of the district authorized by this section.

25       (d) *Collection by Tax Commissioner.* -- The order of the  
26 county commission imposing a special district excise tax

27 shall provide for the tax to be collected by the Tax  
28 Commissioner in the same manner as the tax levied by  
29 section three, article fifteen, chapter eleven of this code is  
30 administered, assessed, collected and enforced.

31 (1) The Tax Commissioner may require the electronic  
32 filing of returns related to the special district excise tax  
33 imposed pursuant to this section, and also may require the  
34 electronic payment of the special district excise tax imposed  
35 pursuant to this section. The Tax Commissioner may  
36 prescribe by rules promulgated pursuant to article three,  
37 chapter twenty-nine-a of this code, administrative notices,  
38 and forms and instructions, the procedures and criteria to be  
39 followed to electronically file returns and to electronically  
40 pay the special district excise tax imposed pursuant to this  
41 section.

42 (2) Any rules filed by the State Tax Commissioner  
43 relating to the special district excise tax imposed pursuant to  
44 this section shall set forth the following:

45 (A) Acceptable indicia of timely payment;

46 (B) Which type of electronic filing method or methods a  
47 particular type of taxpayer may or may not use;

48 (C) What type of electronic payment method or methods  
49 a particular type of taxpayer may or may not use;

50 (D) What, if any, exceptions are allowable, and  
51 alternative methods of payment that may be used for any  
52 exceptions;

53 (E) Procedures for making voluntary or mandatory  
54 electronic payments or both;

55 (F) Any other provisions necessary to ensure the timely  
56 electronic filing of returns related to the special district excise



57 tax and the making of payments electronically of the special  
58 district excise tax imposed pursuant to this section.

59 (3)(A) Notwithstanding the provisions of section five-d,  
60 article ten, chapter eleven of this code: (i) So long as bonds  
61 are outstanding pursuant to this article, the Tax  
62 Commissioner shall provide on a monthly basis to the trustee  
63 for bonds issued pursuant to this article information on  
64 returns submitted pursuant to this article; and (ii) the trustee  
65 may share the information so obtained with the county  
66 commission that established the economic opportunity  
67 development district that issued the bonds pursuant to this  
68 article and with the bondholders and with bond counsel for  
69 bonds issued pursuant to this article. The Tax Commissioner  
70 and the trustee may enter into a written agreement in order to  
71 accomplish the exchange of information.

72 (B) Any confidential information provided pursuant to  
73 this subdivision shall be used solely for the protection and  
74 enforcement of the rights and remedies of the bondholders of  
75 bonds issued pursuant to this article. Any person or entity  
76 that is in possession of information disclosed by the Tax  
77 Commissioner or shared by the trustee pursuant to  
78 subdivision (a) of this subsection is subject to the provisions  
79 of section five-d, article ten, chapter eleven of this code as if  
80 that person or entity that is in possession of the tax  
81 information is an officer, employee, agent or representative  
82 of this state or of a local or municipal governmental entity or  
83 other governmental subdivision.

84 (e) *Deposit of net tax collected.* --

85 (1) The order of the county commission imposing a  
86 special district excise tax shall provide that the Tax  
87 Commissioner deposit the net amount of tax collected in the  
88 Special Economic Opportunity Development District Fund to  
89 the credit of the county commission's subaccount therein for  
90 the economic opportunity development district and that the

91 money in the subaccount may only be used to pay for  
 92 development expenditures as provided in this article except  
 93 as provided in subsection (f) of this section.

94 (2) The State Treasurer shall withhold from the county  
 95 commission's subaccount in the Economic Opportunity  
 96 Development District Fund and shall deposit in the General  
 97 Revenue Fund of this state, on or before the twentieth day of  
 98 each calendar month next following the effective date of a  
 99 special district excise tax, a sum equal to one twelfth of the  
 100 base tax revenue amount last certified by the development  
 101 office pursuant to section seven of this article.

102 (f) *Effective date of special district excise tax.* -- Any  
 103 taxes imposed pursuant to the authority of this section shall  
 104 be effective on the first day of the calendar month that begins  
 105 sixty days after the date of adoption of an order entered of  
 106 record imposing the tax or the first day of any later calendar  
 107 month expressly designated in the order.

108 (g) *Copies of order.* -- Upon entry of an order levying a  
 109 special district excise tax, a certified copy of the order shall  
 110 be mailed to the State Auditor, as ex officio the chief  
 111 inspector and supervisor of public offices, the State Treasurer  
 112 and the Tax Commissioner.

## CHAPTER 8. MUNICIPAL CORPORATIONS.

### ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

#### \*§8-38-12. Special district excise tax authorized.

1 (a) *General.* -- The council of a municipality, authorized  
 2 by the Legislature to levy a special district excise tax for the  
 3 benefit of an economic opportunity development district,

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\*CLERK'S NOTE: This section was also amended by S.B. 280 (Chapter 46),  
 which passed subsequent to this act.

4 may, by ordinance, impose that tax on the privilege of selling  
5 tangible personal property and rendering select services in the  
6 district in accordance with this section.

7       (b) *Tax base.* -- The base of a special district excise tax  
8 imposed pursuant to this section shall be identical to the base  
9 of the consumers sales and service tax imposed pursuant to  
10 article fifteen, chapter eleven of this code on sales made and  
11 services rendered within the boundaries of the district. Sales  
12 of gasoline and special fuel are not subject to special district  
13 excise tax but remain subject to the tax levied by article  
14 fifteen, chapter eleven of this code. Except for the exemption  
15 provided in section nine-f of article fifteen, chapter eleven of  
16 this code, all exemptions and exceptions from the consumers  
17 sales and service tax shall also apply to the special district  
18 excise tax.

19       (c) *Tax rate.* -- The rate or rates of a special district  
20 excise tax levied pursuant to this section shall be stated in an  
21 ordinance enacted by the municipality and identical to the  
22 rate or rates of the consumers sales and service tax imposed  
23 pursuant to article fifteen, chapter eleven of this code on sales  
24 rendered within the boundaries of the district authorized by  
25 this section.

26       (d) *Collection by Tax Commissioner.* -- The ordinance of  
27 the municipality imposing a special district excise tax shall  
28 provide for the tax to be collected by the Tax Commissioner  
29 in the same manner as the tax levied by section three, article  
30 fifteen, chapter eleven of this code is administered, assessed,  
31 collected and enforced.

32       (1) The Tax Commissioner may require the electronic  
33 filing of returns related to the special district excise tax  
34 imposed pursuant to this section, and may require the  
35 electronic payment of the special district excise tax imposed  
36 pursuant to this section. The Tax Commissioner may  
37 prescribe by rules promulgated pursuant to article three,

38 chapter twenty-nine-a of this code, administrative notices,  
39 and forms and instructions, the procedures and criteria to be  
40 followed to electronically file returns and to electronically  
41 pay the special district excise tax imposed pursuant to this  
42 section.

43 (2) Any rules filed by the Tax Commissioner relating to  
44 the special district excise tax imposed pursuant to this section  
45 shall set forth the following:

46 (A) Acceptable indicia of timely payment;

47 (B) Which type of electronic filing method or methods a  
48 particular type of taxpayer may or may not use;

49 (C) What type of electronic payment method or methods  
50 a particular type of taxpayer may or may not use;

51 (D) What, if any, exceptions are allowable, and  
52 alternative methods of payment that may be used for any  
53 exceptions;

54 (E) Procedures for making voluntary or mandatory  
55 electronic payments or both;

56 (F) Any other provisions necessary to ensure the timely  
57 electronic filing of returns related to the special district excise  
58 tax and the making of payments electronically of the special  
59 district excise tax imposed pursuant to this section.

60 (3) (A) Notwithstanding the provisions of section five-d,  
61 article ten, chapter eleven of this code: (i) So long as bonds  
62 are outstanding pursuant to this article, the Tax  
63 Commissioner shall provide on a monthly basis to the trustee  
64 for bonds issued pursuant to this article information on  
65 returns submitted pursuant to this article; and (ii) the trustee  
66 may share the information so obtained with the county  
67 commission that established the economic opportunity

68 development district that issued the bonds pursuant to this  
69 article and with the bondholders and with bond counsel for  
70 bonds issued pursuant to this article. The Tax Commissioner  
71 and the trustee may enter into a written agreement in order to  
72 accomplish the exchange of information.

73 (B) Any confidential information provided pursuant to  
74 this subdivision shall be used solely for the protection and  
75 enforcement of the rights and remedies of the bondholders of  
76 bonds issued pursuant to this article. Any person or entity  
77 that is in possession of information disclosed by the Tax  
78 Commissioner or shared by the trustee pursuant to  
79 subdivision (a) of this subsection is subject to the provisions  
80 of section five-d, article ten, chapter eleven of this code as if  
81 the person or entity that is in possession of the tax  
82 information is an officer, employee, agent or representative  
83 of this state or of a local or municipal governmental entity or  
84 other governmental subdivision.

85 (e) *Deposit of net tax collected.* --

86 (1) The ordinance of the municipality imposing a special  
87 district excise tax shall provide that the Tax Commissioner  
88 deposit the net amount of tax collected in the Special  
89 Economic Opportunity Development District Fund to the  
90 credit of the municipality's subaccount therein for the  
91 economic opportunity development district and that the  
92 money in the subaccount may only be used to pay for  
93 development expenditures as provided in this article except  
94 as provided in subsection (f) of this section.

95 (2) The State Treasurer shall withhold from the  
96 municipality's subaccount in the Economic Opportunity  
97 Development District Fund and shall deposit in the General  
98 Revenue Fund of this state, on or before the twentieth day of  
99 each calendar month next following the effective date of a  
100 special district excise tax, a sum equal to one twelfth of the

101 base tax revenue amount last certified by the development  
102 office pursuant to section seven of this article.

103 (f) *Effective date of special district excise tax.* -- Any  
104 taxes imposed pursuant to the authority of this section shall  
105 be effective on the first day of the calendar month that begins  
106 at least sixty days after the date of enactment of the ordinance  
107 imposing the tax or at any later date expressly designated in  
108 the ordinance that begins on the first day of a calendar month.

109 (g) *Copies of ordinance.* -- Upon enactment of an  
110 ordinance levying a special district excise tax, a certified  
111 copy of the ordinance shall be mailed to the State Auditor, as  
112 ex officio the chief inspector and supervisor of public offices,  
113 the State Treasurer and the Tax Commissioner.

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## CHAPTER 46

**(Com. Sub. for S.B. 280 - By Senators  
McCabe, Bailey, Foster and Plymale)**

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[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

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AN ACT to amend and reenact §8-38-3, §8-38-5, §8-38-7, §8-38-12 and §8-38-16 of the Code of West Virginia, 1931, as amended, all relating to the Municipal Economic Opportunity Development District Act generally; adding certain remediation projects to those for which special district excise taxes may be authorized upon meeting certain requirements; clarifying the rates of the tax; authorizing the Tax Commissioner to require the electronic filing of returns and electronic payment of the tax; providing for the sharing of tax information and

confidentiality of such information; and requiring additional deposits of the tax into the general revenue fund in certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

That §8-38-3, §8-38-5, §8-38-7, §8-38-12 and §8-38-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.**

§8-38-3. Definitions.

§8-38-5. Development expenditures.

§8-38-7. Application to development office for community and economic development for approval of an economic opportunity development district project.

§8-38-12. Special district excise tax authorized.

§8-38-16. Bonds issued to finance economic opportunity development district projects.

#### **§8-38-3. Definitions.**

1 For purposes of this article, the term:

2 (1) “Development expenditures” means payments for  
3 governmental functions, programs, activities, facility  
4 construction, improvements and other goods and services  
5 which a district board is authorized to perform or provide  
6 under section five of this article;

7 (2) “District” means an economic opportunity  
8 development district created pursuant to this article;

9 (3) “District board” means a district board created  
10 pursuant to section ten of this article;

11 (4) “Eligible property” means any taxable or exempt real  
12 property located in a district established pursuant to this  
13 article;

14 (5) "Municipality" is a word of art and shall mean, for the  
15 purposes of this article, only Class I and Class II cities as  
16 classified in section three, article one of this chapter;

17 (6) "Remediation" means measures undertaken to bring  
18 about the reconditioning or restoration of property located  
19 within the boundaries of an economic opportunity  
20 development district project that has been affected by  
21 exploration, industrial operations or solid waste disposal and  
22 which measures, when undertaken, will eliminate or  
23 ameliorate the existing state of the property and enable the  
24 property to be commercially developed.

#### **§8-38-5. Development expenditures.**

1 Any municipality that has established an economic  
2 opportunity development district under this article may make,  
3 or authorize to be made by a district board and other public  
4 or private parties, development expenditures as will promote  
5 the economic vitality of the district and the general welfare  
6 of the municipality, including, but not limited to,  
7 expenditures for the following purposes:

8 (1) Beautification of the district by means such as  
9 landscaping and construction and erection of fountains,  
10 shelters, benches, sculptures, signs, lighting, decorations and  
11 similar amenities;

12 (2) Provision of special or additional public services such  
13 as sanitation, security for persons and property and the  
14 construction and maintenance of public facilities, including,  
15 but not limited to, sidewalks, parking lots, parking garages  
16 and other public areas;

17 (3) Making payments for principal, interest, issuance  
18 costs, any of the costs described in section twenty of this  
19 article and appropriate reserves for bonds and other



20 instruments and arrangements issued or entered into by the  
21 municipality for financing the expenditures of the district  
22 described in this section and to otherwise implement the  
23 purposes of this article;

24 (4) Providing financial support for public transportation  
25 and vehicle parking facilities open to the general public,  
26 whether physically situate within the district's boundaries or  
27 on adjacent land;

28 (5) Acquiring, building, demolishing, razing, constructing,  
29 repairing, reconstructing, refurbishing, renovating,  
30 rehabilitating, expanding, altering, otherwise developing,  
31 operating and maintaining real property generally, parking  
32 facilities, commercial structures and other capital  
33 improvements to real property, fixtures and tangible personal  
34 property, whether or not physically situate within the  
35 district's boundaries: *Provided*, That the expenditure directly  
36 benefits the district;

37 (6) Developing plans for the architectural design of the  
38 district and portions thereof and developing plans and  
39 programs for the future development of the district;

40 (7) Developing, promoting and supporting community  
41 events and activities open to the general public that benefit  
42 the district;

43 (8) Providing the administrative costs for a district  
44 management program;

45 (9) Providing for the usual and customary maintenance  
46 and upkeep of all improvements and amenities in the district  
47 as are commercially reasonable and necessary to sustain its  
48 economic viability on a permanent basis;

49 (10) Providing any other services that the municipality or  
50 district board is authorized to perform and which the

51 municipality does not also perform to the same extent on a  
52 countywide basis;

53 (11) Making grants to the owners or tenants of economic  
54 opportunity development district for the purposes described  
55 in this section;

56 (12) Acquiring an interest in any entity or entities that  
57 own any portion of the real property situate in the district and  
58 contributing capital to any entity or entities;

59 (13) Remediation of publicly or privately owned landfills,  
60 solid waste facilities or hazardous waste sites to facilitate  
61 commercial development which would not otherwise be  
62 economically feasible; and

63 (14) To do any and all things necessary, desirable or  
64 appropriate to carry out and accomplish the purposes of this  
65 article notwithstanding any provision of this code to the  
66 contrary.

**§8-38-7. Application to development office for community and  
economic development for approval of an economic  
opportunity development district project.**

1 (a) *General.* -- The development office shall receive and  
2 act on applications filed with it by municipalities pursuant to  
3 section six of this article. Each application must include:

4 (1) A true copy of the notice described in section six of  
5 this article;

6 (2) The total cost of the project;

7 (3) A reasonable estimate of the number of months  
8 needed to complete the project;

9       (4) A general description of the capital improvements,  
10 additional or extended services and other proposed  
11 development expenditures to be made in the district as part of  
12 the project;

13       (5) A description of the proposed method of financing the  
14 development expenditures, together with a description of the  
15 reserves to be established for financing ongoing development  
16 or redevelopment expenditures necessary to permanently  
17 maintain the optimum economic viability of the district  
18 following its inception: *Provided*, That the amounts of the  
19 reserves shall not exceed the amounts that would be required  
20 by ordinary commercial capital market considerations;

21       (6) A description of the sources and anticipated amounts  
22 of all financing, including, but not limited to, proceeds from  
23 the issuance of any bonds or other instruments, revenues  
24 from the special district excise tax and enhanced revenues  
25 from property taxes and fees;

26       (7) A description of the financial contribution of the  
27 municipality to the funding of development expenditures;

28       (8) Identification of any businesses that the municipality  
29 expects to relocate their business locations from the district  
30 to another place in the state in connection with the  
31 establishment of the district or from another place in this state  
32 to the district: *Provided*, That for purposes of this article, any  
33 entities shall be designated "relocated entities";

34       (9) Identification of any businesses currently conducting  
35 business in the proposed economic opportunity development  
36 district that the municipality expects to continue doing  
37 business there after the district is created;

38       (10) A good faith estimate of the aggregate amount of  
39 consumers sales and service tax that was actually remitted to

40 the Tax Commissioner by all business locations identified as  
41 provided in subdivisions (8) and (9) of this subsection with  
42 respect to their sales made and services rendered from their  
43 then current business locations that will be relocated from, or  
44 to, or remain in the district for the twelve full calendar  
45 months next preceding the date of the application: *Provided,*  
46 That for purposes of this article, the aggregate amount is  
47 designated as “the base tax revenue amount”;

48 (11) A good faith estimate of the gross annual district tax  
49 revenue amount;

50 (12) The proposed application of any surplus from all  
51 funding sources to further the objectives of this article;

52 (13) The Tax Commissioner’s certification of: (i) The  
53 amount of consumers sales and service taxes collected from  
54 businesses located in the economic opportunity district  
55 during the twelve calendar months preceding the calendar  
56 quarter during which the application will be submitted to the  
57 development office; (ii) the estimated amount of economic  
58 opportunity district excise tax that will be collected during  
59 the first twelve months after the month in which the Tax  
60 Commissioner would first begin to collect that tax; and (iii)  
61 the estimated amount of economic opportunity district excise  
62 tax that will be collected during the first thirty-six months  
63 after the month in which the Tax Commissioner would first  
64 begin to collect that tax; and

65 (14) Any additional information the development office  
66 may require.

67 (b) *Review of applications.* -- The development office  
68 shall review all project proposals for conformance to  
69 statutory and regulatory requirements, the reasonableness of  
70 the project’s budget and timetable for completion and the  
71 following criteria:

72 (1) The quality of the proposed project and how it  
73 addresses economic problems in the area in which the project  
74 will be located;

75 (2) The merits of the project determined by a cost-benefit  
76 analysis that incorporates all costs and benefits, both public  
77 and private;

78 (3) Whether the project is supported by significant private  
79 sector investment and substantial credible evidence that, but  
80 for the existence of sales tax increment financing, the project  
81 would not be feasible;

82 (4) Whether the economic opportunity development  
83 district excise tax dollars will leverage or be the catalyst for  
84 the effective use of private, other local government, state or  
85 federal funding that is available;

86 (5) Whether there is substantial and credible evidence  
87 that the project is likely to be started and completed in a  
88 timely fashion;

89 (6) Whether the project will, directly or indirectly,  
90 improve the opportunities in the area where the project will  
91 be located for the successful establishment or expansion of  
92 other industrial or commercial businesses;

93 (7) Whether the project will, directly or indirectly, assist  
94 in the creation of additional long-term employment  
95 opportunities in the area and the quality of jobs created in all  
96 phases of the project, to include, but not be limited to, wages  
97 and benefits;

98 (8) Whether the project will fulfill a pressing need for the  
99 area, or part of the area, in which the economic opportunity  
100 district is located;

101 (9) Whether the municipality has a strategy for economic  
102 development in the municipality and whether the project is  
103 consistent with that strategy;

104 (10) Whether the project helps to diversify the local  
105 economy;

106 (11) Whether the project is consistent with the goals of  
107 this article;

108 (12) Whether the project is economically and fiscally  
109 sound using recognized business standards of finance and  
110 accounting; and

111 (13)(A) The ability of the municipality and the project  
112 developer or project team to carry out the project: *Provided*,  
113 That no project may be approved by the development office  
114 unless the amount of all development expenditures proposed  
115 to be made in the first twenty-four months following the  
116 creation of the district results in capital investment of more  
117 than fifty million dollars in the district and the municipality  
118 submits clear and convincing information, to the satisfaction  
119 of the development office, that such investment will be made  
120 if the development office approves the project and the  
121 Legislature authorizes the municipality to levy an excise tax  
122 on sales of goods and services made within the economic  
123 opportunity development district as provided in this article.

124 (B) Notwithstanding any provision of paragraph (A) of  
125 this subdivision to the contrary, no project involving  
126 remediation may be approved by the development office  
127 unless the amount of all development expenditures proposed  
128 to be made in the first forty-eight months following the  
129 creation of the district results in capital investment of more  
130 than fifty million dollars in the district. In addition to the  
131 remaining provisions of paragraph (A) of this subdivision the  
132 development office may not approve a project involving

133 remediation authorized under section five of this article  
134 unless the municipality submits clear and convincing  
135 information, to the satisfaction of the development office,  
136 that the proposed remediation expenditures to be financed by  
137 the issuance of bonds or notes pursuant to section sixteen of  
138 this article do not constitute more than twenty-five percent of  
139 the total redevelopment expenditures associated with the  
140 project.

141 (c) *Additional criteria.* -- The development office may  
142 establish other criteria for consideration when approving the  
143 applications.

144 (d) *Action on the application.* -- The Executive Director  
145 of the Development Office shall act to approve or not  
146 approve any application within thirty days following the  
147 receipt of the application or the receipt of any additional  
148 information requested by the development office, whichever  
149 is the later.

150 (e) *Certification of project.* -- If the Executive Director of  
151 the Development Office approves a municipality's economic  
152 opportunity district project application, he or she shall issue  
153 to the municipality a written certificate evidencing the  
154 approval.

155 The certificate shall expressly state a base tax revenue  
156 amount, the gross annual district tax revenue amount and the  
157 estimated net annual district tax revenue amount which, for  
158 purposes of this article, is the difference between the gross  
159 annual district tax revenue amount and the base tax revenue  
160 amount, all of which the development office has determined  
161 with respect to the district's application based on any  
162 investigation it considers reasonable and necessary,  
163 including, but not limited to, any relevant information the  
164 development office requests from the Tax Commissioner and  
165 the Tax Commissioner provides to the development office:

166 *Provided*, That in determining the net annual district tax  
167 revenue amount, the development office may not use a base  
168 tax revenue amount less than that amount certified by the Tax  
169 Commissioner but, in lieu of confirmation from the Tax  
170 Commissioner of the gross annual district tax revenue  
171 amount, the development office may use the estimate of the  
172 gross annual district tax revenue amount provided by the  
173 municipality pursuant to subsection (a) of this section.

174 (f) *Certification of enlargement of geographic boundaries*  
175 *of previously certified district.* -- If the Executive Director of  
176 the Development Office approves a municipality's economic  
177 opportunity district project application to expand the  
178 geographic boundaries of a previously certified district, he or  
179 she shall issue to the municipality a written certificate  
180 evidencing the approval.

181 The certificate shall expressly state a base tax revenue  
182 amount, the gross annual district tax revenue amount and the  
183 estimated net annual district tax revenue amount which, for  
184 purposes of this article, is the difference between the gross  
185 annual district tax revenue amount and the base tax revenue  
186 amount, all of which the development office has determined  
187 with respect to the district's application based on any  
188 investigation it considers reasonable and necessary,  
189 including, but not limited to, any relevant information the  
190 development office requests from the Tax Commissioner and  
191 the Tax Commissioner provides to the development office:  
192 *Provided*, That in determining the net annual district tax  
193 revenue amount, the development office may not use a base  
194 tax revenue amount less than that amount certified by the Tax  
195 Commissioner, but, in lieu of confirmation from the Tax  
196 Commissioner of the gross annual district tax revenue  
197 amount, the development office may use the estimate of the  
198 gross annual district tax revenue amount provided by the  
199 municipality pursuant to subsection (a) of this section.



200 (g) *Promulgation of rules.* -- The executive director of the  
201 development office may promulgate rules to implement the  
202 economic opportunity development district project  
203 application approval process and to describe the criteria and  
204 procedures it has established in connection therewith. These  
205 rules are not subject to the provisions of chapter  
206 twenty-nine-a of this code but shall be filed with the  
207 Secretary of State.

**\*§8-38-12. Special district excise tax authorized.**

1 (a) *General.* -- The council of a municipality, authorized  
2 by the Legislature to levy a special district excise tax for the  
3 benefit of an economic opportunity development district,  
4 may, by ordinance, impose that tax on the privilege of selling  
5 tangible personal property and rendering select services in the  
6 district in accordance with this section.

7 (b) *Tax base.* -- The base of a special district excise tax  
8 imposed pursuant to this section shall be identical to the base  
9 of the consumers sales and service tax imposed pursuant to  
10 article fifteen, chapter eleven of this code on sales made and  
11 services rendered within the boundaries of the district. Sales  
12 of gasoline and special fuel are not subject to special district  
13 excise tax, but remain subject to the tax levied by article  
14 fifteen, chapter eleven of this code. Except for the exemption  
15 provided in section nine-f of article fifteen, chapter eleven of  
16 this code, all exemptions and exceptions from the consumers  
17 sales and service tax shall also apply to the special district  
18 excise tax.

19 (c) *Tax rate.* -- The rate or rates of a special district  
20 excise tax levied pursuant to this section shall be stated in an

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\*CLERK'S NOTE: This section was also amended by H.B. 4607 (Chapter 45),  
which passed prior to this act.

21 ordinance enacted by the municipality and identical to the  
22 rate or rates of the consumers sales and service tax imposed  
23 pursuant to article fifteen, chapter eleven of this code on sales  
24 rendered within the boundaries of the district authorized by  
25 this section.

26 (d) *Collection by Tax Commissioner.* -- The ordinance of  
27 the municipality imposing a special district excise tax shall  
28 provide for the tax to be collected by the Tax Commissioner  
29 in the same manner as the tax levied by section three, article  
30 fifteen, chapter eleven of this code is administered, assessed,  
31 collected and enforced.

32 (1) The State Tax Commissioner may require the  
33 electronic filing of returns related to the special district excise  
34 tax imposed pursuant to this section and may require the  
35 electronic payment of the special district excise tax imposed  
36 pursuant to this section. The State Tax Commissioner may  
37 prescribe by rules promulgated pursuant to article three,  
38 chapter twenty-nine-a of this code, administrative notices,  
39 and forms and instructions, the procedures and criteria to be  
40 followed to electronically file such returns and to  
41 electronically pay the special district excise tax imposed  
42 pursuant to this section.

43 (2) Any rules filed by the State Tax Commissioner  
44 relating to the special district excise tax imposed pursuant to  
45 this section shall set forth the following:

46 (A) Acceptable indicia of timely payment;

47 (B) Which type of electronic filing method or methods a  
48 particular type of taxpayer may or may not use;

49 (C) What type of electronic payment method or methods  
50 a particular type of taxpayer may or may not use;

51 (D) What, if any, exceptions are allowable and alternative  
52 methods of payment that may be used for any exceptions;

53 (E) Procedures for making voluntary or mandatory  
54 electronic payments or both;

55 (F) Any other provisions necessary to ensure the timely  
56 electronic filing of returns related to the special district excise  
57 tax and the making of payments electronically of the special  
58 district excise tax imposed pursuant to this section.

59 (3) (A) Notwithstanding the provisions of section five-d,  
60 article ten, chapter eleven of this code: (i) So long as bonds  
61 are outstanding pursuant to this article, the Tax  
62 Commissioner shall provide on a monthly basis to the trustee  
63 for bonds issued pursuant to this article information on  
64 returns submitted pursuant to this article; and (ii) the trustee  
65 may share the information so obtained with the county  
66 commission that established the economic opportunity  
67 development district that issued the bonds pursuant to this  
68 article and with the bondholders and with bond counsel for  
69 bonds issued pursuant to this article. The Tax Commissioner  
70 and the trustee may enter into a written agreement in order to  
71 accomplish such exchange of information.

72 (B) Any confidential information provided pursuant to  
73 this subdivision shall be used solely for the protection and  
74 enforcement of the rights and remedies of the bondholders of  
75 bonds issued pursuant to this article. Any person or entity  
76 that is in possession of information disclosed by the Tax  
77 Commissioner or shared by the trustee pursuant to  
78 subdivision (a) of this subsection is subject to the provisions  
79 of section five-d, article ten, chapter eleven of this code as if  
80 such person or entity that is in possession of such tax  
81 information is an officer, employee, agent or representative  
82 of this state or of a local or municipal governmental entity or  
83 other governmental subdivision.

84 (e) *Deposit of net tax collected.* --

85 (1) The ordinance of the municipality imposing a special  
86 district excise tax shall provide that the Tax Commissioner

87 deposit the net amount of tax collected in the special  
88 Economic Opportunity Development District Fund to the  
89 credit of the municipality's subaccount therein for the  
90 economic opportunity development district and that the  
91 money in the subaccount may only be used to pay for  
92 development expenditures as provided in this article except  
93 as provided in subsection (f) of this section.

94 (2)(A) The State Treasurer shall withhold from the  
95 municipality's subaccount in the Economic Opportunity  
96 Development District Fund and shall deposit in the General  
97 Revenue Fund of this state, on or before the twentieth day of  
98 each calendar month next following the effective date of a  
99 special district excise tax, a sum equal to one twelfth of the  
100 base tax revenue amount last certified by the development  
101 office pursuant to section seven of this article.

102 (B) In addition to the amounts described in paragraph (A)  
103 of this subdivision, the Tax Commissioner shall deposit in  
104 the General Revenue Fund of this state on the dates specified  
105 in paragraph (A) not less than twenty percent nor more than  
106 fifty percent of the excess of the special district excise taxes  
107 collected during the preceding month above one twelfth of  
108 the base tax revenue, said percentage to be fixed by the  
109 development office in conjunction with its approval of an  
110 application in accordance with section seven of this article  
111 based on the amount of state funds, if any, to be expended in  
112 conjunction with the respective economic opportunity  
113 development district project for items including, but not  
114 limited to, the acquisition, construction, reconstruction,  
115 improvement, enlargement or extension of roadways, rights-  
116 of-way, sidewalks, traffic signals, water or sewer lines and  
117 other public infrastructure and such other expenditures of  
118 state funds identified by the development office.

119 (f) *Effective date of special district excise tax.* -- Any  
120 taxes imposed pursuant to the authority of this section shall  
121 be effective on the first day of the calendar month that begins  
122 at least sixty days after the date of enactment of the ordinance

123 imposing the tax or at any later date expressly designated in  
124 the ordinance that begins on the first day of a calendar month.

125 (g) *Copies of ordinance.* -- Upon enactment of an  
126 ordinance levying a special district excise tax, a certified  
127 copy of the ordinance shall be mailed to the State Auditor, as  
128 ex officio the chief inspector and supervisor of public offices,  
129 the State Treasurer and the Tax Commissioner.

**§8-38-16. Bonds issued to finance economic opportunity  
development district projects.**

1 (a) *General.* -- The municipality that established the  
2 economic opportunity development district may issue bonds  
3 or notes for the purpose of financing development  
4 expenditures, as described in section five of this article, with  
5 respect to one or more projects within the economic  
6 opportunity development district.

7 (b) *Limited obligations.* -- All bonds and notes issued by  
8 a municipality under the authority of this article are limited  
9 obligations of the municipality.

10 (c) *Term of obligations.* -- No municipality may issue  
11 notes, bonds or other instruments for funding district projects  
12 or improvements that exceed a repayment schedule of thirty  
13 years: *Provided,* That the maximum repayment schedule of  
14 bonds issued to finance remediation authorized under section  
15 five of this article may not exceed twenty years.

16 (d) *Debt service.* -- The principal and interest on the bonds  
17 shall be payable out of the funds on deposit in the subaccount  
18 established for the economic opportunity development district  
19 pursuant to section eight of this article, including, without  
20 limitation, any funds derived from the special district excise tax  
21 imposed by section twelve of this article or other revenues  
22 derived from the economic opportunity development district to  
23 the extent pledged for the purpose by the municipality in the  
24 resolution authorizing the bonds.

25 (e) *Surplus funds.* -- To the extent that the average daily  
26 amount on deposit in the subaccount established for a district  
27 pursuant to section eight of this article exceeds, for more than  
28 six consecutive calendar months, the sum of: (1) One  
29 hundred thousand dollars; plus (2) the amount required to be  
30 kept on deposit pursuant to the documents authorizing,  
31 securing or otherwise relating to the bonds or notes issued  
32 under this section, then the excess shall be used by the district  
33 either to redeem the bonds or notes previously issued or  
34 remitted to the general fund of this state.

35 (f) *Debt not general obligation of municipality.* --  
36 Neither the notes or bonds and any interest coupons issued  
37 under the authority of this article shall ever constitute an  
38 indebtedness of the municipality issuing the notes or bonds  
39 within the meaning of any constitutional provision or  
40 statutory limitation and shall never constitute or give rise to  
41 a pecuniary liability of the municipality issuing the notes or  
42 bonds.

43 (g) *Debt not a charge general credit or taxing powers of*  
44 *municipality.* -- Neither the bonds or notes, nor interest  
45 thereon, is a charge against the general credit or taxing  
46 powers of the municipality and that fact shall be plainly  
47 stated on the face of each bond or note.

48 (h) *Issuance of bonds or notes.* --

49 (1) Bonds or notes allowed under this section may be  
50 executed, issued and delivered at any time and, from time to  
51 time, may be in a form and denomination, may be of a tenor,  
52 must be negotiable but may be registered as to the principal  
53 thereof or as to the principal and interest thereof, may be  
54 payable in any amounts and at any time or times, may be  
55 payable at any place or places, may bear interest at any rate  
56 or rates payable at any place or places and evidenced in any  
57 manner and may contain any provisions therein not  
58 inconsistent herewith, all as provided in the ordinance of the

59 municipality whereunder the bonds or notes are authorized to  
60 be issued.

61 (2) The bonds may be sold by the municipality at public  
62 or private sale at, above or below par as the municipality  
63 authorizes.

64 (3) Bonds and notes issued pursuant to this article shall  
65 be signed by the authorized representative of the municipality  
66 and attested by the municipal recorder and be under the seal  
67 of the municipality.

68 (4) Any coupons attached to the bonds shall bear the  
69 facsimile signature of the authorized representative of the  
70 municipality. In case any of the officials whose signatures  
71 appear on the bonds, notes or coupons cease to be officers  
72 before the delivery of the bonds or notes, their signatures  
73 shall, nevertheless, be valid and sufficient for all purposes to  
74 the same extent as if they had remained in office until the  
75 delivery.

76 (i) *Additional bonds or notes.* -- If the proceeds of the  
77 bonds or notes, by error of calculation or otherwise, are less  
78 than the cost of the economic opportunity development  
79 district project, or if additional real or personal property is to  
80 be added to the district project or if it is determined that  
81 financing is needed for additional development or  
82 redevelopment expenditures, additional bonds or notes may,  
83 in like manner, be issued to provide the amount of the  
84 deficiency or to defray the cost of acquiring or financing any  
85 additional real or personal property or development or  
86 redevelopment expenditures and, unless otherwise provided  
87 in the trust agreement, mortgage or deed of trust, are  
88 considered to be of the same issue and shall be entitled to  
89 payment from the same fund, without preference or priority,  
90 and shall be of equal priority as to any security.

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## CHAPTER 47

**(Com. Sub. for H.B. 4527 - By Delegates Manchin,  
Caputo and Longstreth)**

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[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2008.]

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AN ACT to amend and reenact §8A-4-1 and §8A-4-2 of the Code of West Virginia, 1931, as amended, all relating to subdivision and land development ordinances; and providing an option to counties and municipalities to regulate subdivisions and land development.

*Be it enacted by the Legislature of West Virginia:*

That §8A-4-1 and §8A-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 4. SUBDIVISION AND LAND DEVELOPMENT ORDINANCE.**

§8A-4-1. Subdivision and land development ordinances authorized.

§8A-4-2. Contents of subdivision and land development ordinance.

#### **§8A-4-1. Subdivision and land development ordinances authorized.**

1       (a) The governing body of a municipality or a county  
2       may regulate subdivisions and land development within its  
3       jurisdiction by:

4       (1) Adopting a comprehensive plan and enacting a  
5       subdivision and land development ordinance; or



6 (2) Establishing a planning commission, enacting a  
7 subdivision and land development ordinance, and adopting a  
8 comprehensive plan for the area included in the subdivision  
9 and land development ordinance within three years of the  
10 enactment of the subdivision and land development  
11 ordinance.

12 (b) A municipality may adopt, by reference, the  
13 subdivision and land development ordinance of the county in  
14 which it is located.

15 (c) With the prior approval of the county planning  
16 commission, a municipality may, by ordinance, designate the  
17 county planning commission as the planning commission for  
18 the municipality to review and approve subdivision or land  
19 development plans and plats.

**§8A-4-2. Contents of subdivision and land development ordinance.**

1 (a) A subdivision and land development ordinance shall  
2 include the following provisions:

3 (1) A minor subdivision or land development process,  
4 including criteria, requirements and a definition of minor  
5 subdivision;

6 (2) The authority of the planning commission and its staff  
7 to approve a minor subdivision or land development;

8 (3) A major subdivision or land development process,  
9 including criteria and requirements;

10 (4) The authority of the planning commission to approve  
11 a major subdivision or land development;

12 (5) The standards for setback requirements, lot sizes,  
13 streets, sidewalks, walkways, parking, easements, rights-of-  
14 way, drainage, utilities, infrastructure, curbs, gutters, street

15 lights, fire hydrants, storm water management and water and  
16 wastewater facilities;

17 (6) Standards for flood-prone or subsidence areas;

18 (7) A review process for subdivision or land development  
19 plans and plats by the planning commission;

20 (8) An approval process for subdivision or land  
21 development plans and plats by the planning commission,  
22 including the authority to approve subdivision or land  
23 development plans and plats with conditions;

24 (9) A process to amend final approved subdivision or  
25 land development plans and plats;

26 (10) A requirement that before development of the land  
27 is commenced, subdivision and land development plans and  
28 plats must be approved by the applicable planning  
29 commission, in accordance with the comprehensive plan, if  
30 a comprehensive plan has been adopted;

31 (11) A requirement that after approval of the subdivision  
32 or land development plat by the planning commission and  
33 before the subdivision or development of the land is  
34 commenced, the subdivision and land development plat shall  
35 be recorded in the office of the clerk of the county  
36 commission where a majority of the land to be developed  
37 lies;

38 (12) A schedule of fees to be charged which are proportioned  
39 to the cost of checking and verifying proposed plats;

40 (13) The process for granting waivers from the minimum  
41 standards of the subdivision and land development ordinance;

42 (14) Improvement location permit process, including a  
43 requirement that a structure or development of land is  
44 prohibited without an improvement location permit;

45 (15) The acceptable methods of payment to cover the cost  
46 of the water and sewer service infrastructure, which can  
47 include, but are not limited to, bonds, impact fees, escrow  
48 fees and proffers;

49 (16) The process for cooperating and coordinating with  
50 other governmental agencies affected by the subdivision and  
51 land development and use; and

52 (17) Penalties for violating the subdivision and land  
53 development ordinance.

54 (b) A subdivision and land development ordinance may  
55 include the following provisions:

56 (1) Establishing a board of subdivision and land  
57 development appeals with the same powers, duties and  
58 appeals process as set out for the board of zoning appeals  
59 under the provisions of article eight of this chapter;

60 (2) Requirements for green space, common areas, public  
61 grounds, walking and cycling paths, recreational trails, parks,  
62 playgrounds and recreational areas;

63 (3) Encourage the use of renewable energy systems and  
64 energy-conserving building design;

65 (4) Vested property right, including requirements;

66 (5) Exemptions of certain types of land development  
67 from the subdivision and land development ordinance  
68 requirements, including, but not limited to, single-family  
69 residential structures and farm structures; and

70 (6) Any other provisions consistent with the comprehensive  
71 plan the governing body considers necessary.

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**CHAPTER 48****(S.B. 671 - By Senators Tomblin, Mr. President, and Deem)**

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[Passed March 8, 2008; in effect July 1, 2008.]  
[Approved by the Governor on March 27, 2008.]

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AN ACT to amend and reenact §14-2-8 of the Code of West Virginia, 1931, as amended, relating to increasing the compensation of the judges of the Court of Claims.

*Be it enacted by the Legislature of West Virginia:*

That §14-2-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. CLAIMS AGAINST THE STATE.****§14-2-8. Compensation of judges; expenses.**

1 Each judge of the court shall receive two hundred ten  
2 dollars for each day actually served and expenses incurred in  
3 the performance of his or her duties paid at the same per diem  
4 rate as members of the Legislature: *Provided*, That the  
5 presiding judge shall receive an additional fifty dollars for  
6 each day actually served. In addition to the expense per  
7 diem, each judge may, when using his or her own vehicle, be  
8 reimbursed for mileage at the mileage rate equal to the  
9 amount paid by the travel management office of the  
10 department of administration. The number of days served by  
11 each judge shall not exceed one hundred in any fiscal year,  
12 except by authority of the Joint Committee on Government  
13 and Finance: *Provided*, That in computing the number of

14 days served, days utilized solely for the exercise of duties  
15 assigned to judges and commissioners by the provisions of  
16 article two-a of this chapter shall be disregarded. For the  
17 purpose of this section, time served shall include time spent  
18 in the hearing of claims, in the consideration of the record, in  
19 the preparation of opinions and in necessary travel.



## CHAPTER 49

**(S.B. 238 - By Senator Kessler)**

[Passed March 6, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §50-4-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §51-2-2 of said code, all relating to increasing the monetary jurisdictional requirement for circuit courts; increasing the monetary jurisdictional amount for removal of a civil suit from magistrate court to circuit court; increasing the monetary jurisdictional amount to file a civil suit in circuit court; and clarifying original and general jurisdiction of circuit courts.

*Be it enacted by the Legislature of West Virginia:*

That §50-4-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §51-2-2 of said code be amended and reenacted, all to read as follows:

**Chapter**

**50. Magistrate Courts.**

**51. Courts and Their Officers.**

## CHAPTER 50. MAGISTRATE COURTS.

### Article

4. Procedure Before Trial.
2. Circuit Courts; Circuit Judges.

### ARTICLE 4. PROCEDURE BEFORE TRIAL.

#### §50-4-8. Removal to circuit court.

1       At any time before trial in a civil action involving less  
2 than two thousand five hundred dollars the action may be  
3 removed to circuit court upon the concurrence of all parties  
4 and upon the payment of the circuit court filing fee. At any  
5 time before trial in a civil action involving two thousand five  
6 hundred dollars or more, any party may, upon payment of the  
7 circuit court filing fee, cause such action to be removed to the  
8 circuit court. All appropriate documents shall then be  
9 forwarded along with such fee to the clerk of the circuit  
10 court. The matter shall then be heard by the circuit court.

## CHAPTER 51. COURTS AND THEIR OFFICERS.

### ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

#### §51-2-2. Jurisdiction.

1       (a) The circuit court shall have supervision and control of  
2 all proceedings before magistrates, by mandamus, prohibition  
3 and certiorari.

4       (b) Except in cases confined exclusively by the  
5 constitution to some other tribunal, the circuit court shall  
6 have original and general jurisdiction of all matters at law  
7 where the amount in controversy, excluding interest, exceeds

8 two thousand five hundred dollars: *Provided*, That the  
9 jurisdictional limit on amounts in controversy does not apply  
10 to real estate installment sales contracts.

11 (c) The circuit court shall have original and general  
12 jurisdiction in all of the following matters:

13 (1) Habeas corpus;

14 (2) Mandamus;

15 (3) Quo warranto;

16 (4) Prohibition;

17 (5) Crimes; and

18 (6) Misdemeanors.

19 (d) The circuit court shall have original and general  
20 jurisdiction in all cases in equity, including jurisdiction in  
21 equity to remove any cloud on the title to real property, or  
22 any part of a cloud, or any estate, right or interest in the real  
23 property, and to determine questions of title with respect to  
24 the real property without requiring allegations or proof of  
25 actual possession of the real property.

26 (e) The circuit court shall have appellate jurisdiction in  
27 all cases, civil and criminal, where an appeal, writ of error or  
28 supersedeas may be allowed to the judgment or proceedings  
29 of any inferior tribunal.

30 (f) The circuit court shall also have any other jurisdiction,  
31 whether supervisory, original, appellate or concurrent, as is  
32 or may be prescribed by law.

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**CHAPTER 50****(Com. Sub. for S.B. 580 - By Senators Plymale and Love)**

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[Passed March 4, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 20, 2008.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §50-5-14a, relating to authorizing magistrate courts to accept unsigned copies of citations with payments for same.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended and reenacted by adding thereto a new section, designated §50-5-14a, to read as follows:

**ARTICLE 5. TRIALS, HEARINGS AND APPEALS.****§50-5-14a. Disposition without court appearance.**

1 Tender of payment by a person charged by citation of the  
2 assessed fine and costs shall constitute a plea of no contest to  
3 such citation and signing of the citation by the person  
4 charged shall not be required for entry of a judgment of  
5 conviction.



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**CHAPTER 51**

**(H.B. 4388 - By Delegates Webster, Mahan, Hrutkay, Guthrie, Fleischauer, Lane, Shook, Burdiss, Azinger, Brown and Ellem)**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-1-21, relating to authorizing the West Virginia Supreme Court of Appeals to maintain a domestic violence database.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §51-1-21, to read as follows:

**ARTICLE 1. WEST VIRGINIA SUPREME COURT OF APPEALS.**

**§ 51-1-21. Authority to maintain domestic violence database.**

1 (a) The West Virginia Supreme Court of Appeals is  
2 hereby authorized to maintain a domestic violence database  
3 containing certified copies of protective orders entered by the  
4 courts of this state and granted pursuant to the provisions of  
5 article twenty-seven, chapter forty-eight of this code.  
6 Further, the domestic violence database shall also include,  
7 whenever possible, protective orders issued by other  
8 jurisdictions pursuant to its law.

9 (b) A petitioner who obtains a protective order pursuant  
10 to article twenty-seven, chapter forty-eight of this code, or a  
11 protective order from another jurisdiction pursuant to its law,  
12 may register that order with the West Virginia Supreme  
13 Court of Appeals.

14 (c) Nothing in this section precludes the enforcement of  
15 an order in a county other than the county or jurisdiction in  
16 which the order was issued if the petitioner has not registered  
17 the order with the West Virginia Supreme Court of Appeals.



## CHAPTER 52

**(Com. Sub. for S.B. 291 - By Senators Helmick and Yoder)**

[Passed March 7, 2008; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §51-2-1 of the Code of West Virginia, 1931, as amended, relating to authorizing an additional circuit court judge to each of the ninth, twenty-second and twenty-fourth judicial circuits.

*Be it enacted by the Legislature of West Virginia:*

That §51-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.**

**§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.**

1 (a) The state shall be divided into the following judicial  
2 circuits with the following number of judges:

3 (1) The counties of Brooke, Hancock and Ohio shall  
4 constitute the first circuit and shall have four judges;

5 (2) The counties of Marshall, Tyler and Wetzel shall  
6 constitute the second circuit and shall have two judges;

7 (3) The counties of Doddridge, Pleasants and Ritchie  
8 shall constitute the third circuit and shall have one judge;

9 (4) The counties of Wood and Wirt shall constitute the  
10 fourth circuit and shall have three judges;

11 (5) The counties of Calhoun, Jackson, Mason and Roane  
12 shall constitute the fifth circuit and shall have two judges;

13 (6) The county of Cabell shall constitute the sixth circuit  
14 and shall have four judges;

15 (7) The county of Logan shall constitute the seventh  
16 circuit and shall have two judges;

17 (8) The county of McDowell shall constitute the eighth  
18 circuit and shall have two judges;

19 (9) The county of Mercer shall constitute the ninth circuit  
20 and shall have two judges : *Provided*, That effective the first  
21 day of September, two thousand eight, said circuit shall have  
22 three judges;

23 (10) The county of Raleigh shall constitute the tenth  
24 circuit and shall have three judges;

25 (11) The counties of Greenbrier and Pocahontas shall  
26 constitute the eleventh circuit and shall have two judges;

27 (12) The county of Fayette shall constitute the twelfth  
28 circuit and shall have two judges;

29 (13) The county of Kanawha shall constitute the  
30 thirteenth circuit and shall have seven judges;

31 (14) The counties of Braxton, Clay, Gilmer and Webster  
32 shall constitute the fourteenth circuit and shall have two  
33 judges;

34 (15) The county of Harrison shall constitute the fifteenth  
35 circuit and shall have three judges;

36 (16) The county of Marion shall constitute the sixteenth  
37 circuit and shall have two judges;

38 (17) The county of Monongalia shall constitute the  
39 seventeenth circuit and shall have two judges;

40 (18) The county of Preston shall constitute the eighteenth  
41 circuit and shall have one judge;

42 (19) The counties of Barbour and Taylor shall constitute  
43 the nineteenth circuit and shall have one judge;

44 (20) The county of Randolph shall constitute the  
45 twentieth circuit and shall have one judge;

46 (21) The counties of Grant, Mineral and Tucker shall  
47 constitute the twenty-first circuit and shall have two judges;

48 (22) The counties of Hampshire, Hardy and Pendleton  
49 shall constitute the twenty-second circuit and shall have one  
50 judge: *Provided*, That effective the first day of September,  
51 two thousand eight, said circuit shall have two judges;

52 (23) The counties of Berkeley, Jefferson and Morgan shall  
53 constitute the twenty-third circuit and shall have five judges;

54 (24) The county of Wayne shall constitute the  
55 twenty-fourth circuit and shall have one judge: *Provided*,  
56 That effective the first day of September, two thousand eight,  
57 said circuit shall have two judges;

58 (25) The counties of Lincoln and Boone shall constitute  
59 the twenty-fifth circuit and shall have two judges;

60 (26) The counties of Lewis and Upshur shall constitute  
61 the twenty-sixth circuit and shall have one judge;

62 (27) The county of Wyoming shall constitute the  
63 twenty-seventh circuit and shall have one judge;

64 (28) The county of Nicholas shall constitute the  
65 twenty-eighth circuit and shall have one judge;

66 (29) The county of Putnam shall constitute the  
67 twenty-ninth circuit and shall have two judges;

68 (30) The county of Mingo shall constitute the thirtieth  
69 circuit and shall have one judge; and

70 (31) The counties of Monroe and Summers shall  
71 constitute the thirty-first circuit and shall have one judge.

72 (b) The Kanawha County circuit court shall be a court of  
73 concurrent jurisdiction with each single judge circuit where  
74 the sitting judge in the single judge circuit is unavailable by  
75 reason of sickness, vacation or other reason.

76 (c) Any judge in office on the effective date of the  
77 reenactment of this section shall continue as a judge of the  
78 circuit as constituted under prior enactments of this section,  
79 unless sooner removed or retired as provided by law, until the  
80 thirty-first day of December, two thousand eight.

81 (d) The term of office of all circuit court judges shall be  
82 for eight years. The term of office for all circuit court judges

83 elected during the general election conducted in the year two  
84 thousand eight shall commence on the first day of January,  
85 two thousand nine, and end on the thirty-first day of  
86 December, two thousand sixteen.

87 (e) For election purposes, in every judicial circuit having  
88 two or more judges there shall be numbered divisions  
89 corresponding to the number of circuit judges in each circuit.  
90 Each judge shall be elected at large from the entire circuit. In  
91 each numbered division of a judicial circuit, the candidates  
92 for nomination or election shall be voted upon and the votes  
93 cast for the candidates in each division shall be tallied  
94 separately from the votes cast for candidates in other  
95 numbered divisions within the circuit. The candidate  
96 receiving the highest number of the votes cast within a  
97 numbered division shall be nominated or elected, as the case  
98 may be.

99 (f) Judges serving a judicial circuit comprised of four or  
100 more counties with two or more judges shall not be residents  
101 of the same county.

102 (g) The Supreme Court of Appeals shall, by rule,  
103 establish the terms of court of circuit judges.

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## CHAPTER 53

**(Com. Sub. for H.B. 4296 - By Delegates Canterbury,  
Campbell and Crosier)**

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[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2008.]

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AN ACT to amend and reenact §53-4A-7 of the Code of West Virginia, 1931, as amended, relating to the rights of crime

victims; requiring that prosecuting attorneys provide notice to victims of crimes of violence or next of kin in homicides when a habeas corpus proceeding vacates a conviction or sentence and the victim or next of kin previously provides names and addresses.

*Be it enacted by the Legislature of West Virginia:*

That §53-4A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 4A. POST-CONVICTION HABEAS CORPUS.**

##### **§53-4A-7. Denial of relief; hearings; evidence; record; judgment.**

1 (a) If the petition, affidavits, exhibits, records and other  
2 documentary evidence attached thereto, or the return or other  
3 pleadings, or the record in the proceedings which resulted in  
4 the conviction and sentence, or the record or records in a  
5 proceeding or proceedings on a prior petition or petitions  
6 filed under the provisions of this article, or the record or  
7 records in any other proceeding or proceedings instituted by  
8 the petitioner to secure relief from his conviction or sentence,  
9 show to the satisfaction of the court that the petitioner is  
10 entitled to no relief, or that the contention or contentions and  
11 grounds (in fact or law) advanced have been previously and  
12 finally adjudicated or waived, the court shall enter an order  
13 denying the relief sought. If it appears to the court from said  
14 petition, affidavits, exhibits, records and other documentary  
15 evidence attached thereto, or the return or other pleadings, or  
16 any such record or records referred to above, that there is  
17 probable cause to believe that the petitioner may be entitled  
18 to some relief and that the contention or contentions and  
19 grounds (in fact or law) advanced have not been previously  
20 and finally adjudicated or waived, the court shall promptly  
21 hold a hearing and/or take evidence on the contention or

22 contentions and grounds (in fact or law) advanced, and the  
23 court shall pass upon all issues of fact without a jury. The  
24 court may also provide for one or more hearings to be held  
25 and/or evidence to be taken in any other county or counties  
26 in the state.

27 (b) A record of all proceedings under this article and all  
28 hearings and evidence shall be made and kept. The  
29 evidentiary depositions of witnesses taken by either the  
30 petitioner or the state, on reasonable notice to the other, may  
31 be read as evidence. The court may receive proof by proper  
32 oral testimony or other proper evidence. All of the evidence  
33 shall be made a part of the record. When a hearing is held  
34 and/or evidence is taken by a judge of a circuit court or  
35 statutory court in vacation, a transcript of the proceedings  
36 shall be signed by the judge and certified to the clerk of the  
37 court in which the judgment is to be rendered, and be entered  
38 by him among the records of that court. A record of all  
39 proceedings in the Supreme Court of Appeals shall be  
40 entered among the records of such court.

41 (c) When the court determines to deny or grant relief, as  
42 the case may be, the court shall enter an appropriate order  
43 with respect to the conviction or sentence in the former  
44 criminal proceedings and such supplementary matters as are  
45 deemed necessary and proper to the findings in the case,  
46 including, but not limited to, remand, the vacating or setting  
47 aside of the plea, conviction and sentence, arraignment,  
48 retrial, custody, bail, discharge, correction of sentence and  
49 resentencing, or other matters which may be necessary and  
50 proper. In any order entered in accordance with the  
51 provisions of this section, the court shall make specific  
52 findings of fact and conclusions of law relating to each  
53 contention or contentions and grounds (in fact or law)  
54 advanced, shall clearly state the grounds upon which the  
55 matter was determined, and shall state whether a federal  
56 and/or state right was presented and decided. Any order



57 entered in accordance with the provisions of this section shall  
58 constitute a final judgment, and, unless reversed, shall be  
59 conclusive.

60 (d) Notwithstanding any provision of law to the contrary,  
61 whenever a conviction from a crime of violence is reversed  
62 or a sentence of incarceration for such an offence is vacated  
63 pursuant to the provisions of this article, the prosecuting  
64 attorney of the county of prosecution shall, prior to a retrial  
65 or entering into any plea negotiations or sentence  
66 negotiations to resolve the matter, notify the victim or if the  
67 offence was a homicide, the next of kin of the victim, by  
68 United States mail sent to the last known address of said  
69 person, if his or her name and address has previously been  
70 provided to the prosecuting attorney.

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## CHAPTER 54

**(S.B. 659 - By Senators Tomblin, Mr. President,  
Plymale and Kessler)**

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[Passed March 8, 2008; in effect July 1, 2008.]  
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §14-2A-3 and §14-2A-14 of the Code of West Virginia, 1931, as amended, all relating to crime victims' compensation; increasing the allowable expense for funerals, cremations and burials; and increasing the compensation to all claimants because of the death of the victim.

*Be it enacted by the Legislature of West Virginia:*

That §14-2A-3 and §14-2A-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; all to read as follows:

**ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS  
OF CRIMES.**

§14-2A-3. Definitions.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

**§14-2A-3. Definitions.**

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons,  
3 whether residents or nonresidents of this state, who claim an  
4 award of compensation under this article:

5 (1) A victim: *Provided*, That the term "victim" does not  
6 include a nonresident of this state where the criminally  
7 injurious act did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased  
9 victim; or in the event that the deceased victim is a minor, the  
10 parents, legal guardians and siblings of the victim;

11 (3) A third person, other than a collateral source, who  
12 legally assumes or voluntarily pays the obligations of a  
13 victim, or of a dependent of a victim, which obligations are  
14 incurred as a result of the criminally injurious conduct that is  
15 the subject of the claim;

16 (4) A person who is authorized to act on behalf of a  
17 victim, dependent or a third person who is not a collateral  
18 source, including, but not limited to, assignees, persons  
19 holding power of attorney or other persons who hold  
20 authority to make or submit claims in place of or on behalf of  
21 a victim, a dependent or third person who is not a collateral  
22 source; and, in the event that the victim, dependent or third  
23 person who is not a collateral source is a minor or other  
24 legally incompetent person, the duly qualified fiduciary of  
25 the minor; and

26 (5) A person who is a secondary victim in need of mental  
27 health counseling due to the person's exposure to the crime  
28 committed. An award to a secondary victim may not exceed  
29 one thousand dollars.

30 (6) A person who owns real property damaged by the  
31 operation of a methamphetamine laboratory without the  
32 knowledge or consent of the owner of the real property.

33 (b) "Collateral source" means a source of benefits or  
34 advantages for economic loss otherwise compensable that the  
35 victim or claimant has received, or that is readily available to  
36 him or her, from any of the following sources:

37 (1) The offender, including any restitution received from  
38 the offender pursuant to an order by a court of law sentencing  
39 the offender or placing him or her on probation following a  
40 conviction in a criminal case arising from the criminally  
41 injurious act for which a claim for compensation is made;

42 (2) The government of the United States or any of its  
43 agencies, a state or any of its political subdivisions or an  
44 instrumentality of two or more states;

45 (3) Social Security, Medicare and Medicaid;

46 (4) State-required, temporary, nonoccupational disability  
47 insurance; other disability insurance;

48 (5) Workers' compensation;

49 (6) Wage continuation programs of any employer;

50 (7) Proceeds of a contract of insurance payable to the  
51 victim or claimant for loss that was sustained because of the  
52 criminally injurious conduct;

53 (8) A contract providing prepaid hospital and other health  
54 care services or benefits for disability; and

55 (9) That portion of the proceeds of all contracts of  
56 insurance payable to the claimant on account of the death of  
57 the victim which exceeds twenty-five thousand dollars.

58 (c) "Criminally injurious conduct" means conduct that  
59 occurs or is attempted in this state or in any state not having  
60 a victim compensation program which by its nature poses a  
61 substantial threat of personal injury or death and is  
62 punishable by fine or imprisonment or death or would be so  
63 punishable but for the fact that the person engaging in the  
64 conduct lacked capacity to commit the crime under the laws  
65 of this state. Criminally injurious conduct also includes an  
66 act of terrorism, as defined in 18 U. S. C. §2331, committed  
67 outside of the United States against a resident of this state.  
68 Criminally injurious conduct does not include conduct arising  
69 out of the ownership, maintenance or use of a motor vehicle,  
70 except when the person engaging in the conduct intended to  
71 cause personal injury or death, or when the person engaging  
72 in the conduct committed negligent homicide, driving under  
73 the influence of alcohol, controlled substances or drugs,  
74 reckless driving or when the person leaves the scene of the  
75 accident.

76 (d) "Dependent" means an individual who received over  
77 half of his or her support from the victim. For the purpose of  
78 determining whether an individual received over half of his  
79 or her support from the victim, there shall be taken into  
80 account the amount of support received from the victim as  
81 compared to the entire amount of support which the  
82 individual received from all sources, including support which  
83 the individual himself or herself supplied. The term  
84 "support" includes, but is not limited to, food, shelter,  
85 clothing, medical and dental care and education. The term  
86 "dependent" includes a child of the victim born after his or  
87 her death.

88 (e) "Economic loss" means economic detriment  
89 consisting only of allowable expense, work loss and  
90 replacement services loss. If criminally injurious conduct

91 causes death, economic loss includes a dependent's economic  
92 loss and a dependent's replacement services loss.  
93 Noneconomic detriment is not economic loss; however,  
94 economic loss may be caused by pain and suffering or  
95 physical impairment. For purposes of this article, the term  
96 "economic loss" includes a lost scholarship as defined in this  
97 section.

98 (f)(1) "Allowable expense" means reasonable charges  
99 incurred or to be incurred for reasonably needed products,  
100 services and accommodations, including those for medical  
101 care, mental health counseling, prosthetic devices, eye  
102 glasses, dentures, rehabilitation and other remedial treatment  
103 and care.

104 (2) Allowable expense includes a total charge not in  
105 excess of seven thousand dollars for expenses in any way  
106 related to funerals, cremations and burials. It does not  
107 include that portion of a charge for a room in a hospital,  
108 clinic, convalescent home, nursing home or any other  
109 institution engaged in providing nursing care and related  
110 services in excess of a reasonable and customary charge for  
111 semiprivate accommodations, unless accommodations other  
112 than semiprivate accommodations are medically required.

113 (3) Allowable expense also includes:

114 (A) A charge, not to exceed five thousand dollars, for  
115 cleanup of real property damaged by a methamphetamine  
116 laboratory or a charge, not to exceed one thousand dollars,  
117 for any other crime scene cleanup;

118 (B) Victim relocation costs, not to exceed one thousand  
119 dollars; and

120 (C) Reasonable travel expenses, not to exceed one  
121 thousand dollars, for a claimant to attend court proceedings  
122 that are conducted for the prosecution of the offender.

123 (D) Reasonable travel expenses for a claimant to return  
124 a person who is a minor or incapacitated adult who has been  
125 unlawfully removed from this state to another state or  
126 country, if such removal constitutes a crime under the laws  
127 of this state. Reasonable travel expenses to another state for  
128 such purpose may not exceed two thousand dollars and  
129 reasonable travel expenses for such purpose to another  
130 county may not exceed three thousand dollars.

131 (g) "Work loss" means loss of income from work that the  
132 injured person would have performed if he or she had not  
133 been injured and expenses reasonably incurred or to be  
134 incurred by him or her to obtain services in lieu of those he  
135 or she would have performed for income, reduced by any  
136 income from substitute work actually performed or to be  
137 performed by him or her or by income he or she would have  
138 earned in available appropriate substitute work that he or she  
139 was capable of performing but unreasonably failed to  
140 undertake. "Work loss" also includes loss of income from  
141 work by the parent or legal guardian of a minor victim who  
142 must miss work to take care of the minor victim.

143 (h) "Replacement services loss" means expenses  
144 reasonably incurred or to be incurred in obtaining ordinary  
145 and necessary services in lieu of those the injured person  
146 would have performed, not for income but for the benefit of  
147 himself or herself or his or her family, if he or she had not  
148 been injured.

149 (i) "Dependent's economic loss" means loss after a  
150 victim's death of contributions or things of economic value to  
151 his or her dependents, not including services they would have  
152 received from the victim if he or she had not suffered the  
153 fatal injury, less expenses of the dependents avoided by  
154 reason of the victim's death.

155 (j) "Dependent's replacement service loss" means loss  
156 reasonably incurred or to be incurred by dependents after a  
157 victim's death in obtaining ordinary and necessary services in

158 lieu of those the victim would have performed for their  
159 benefit if he or she had not suffered the fatal injury, less  
160 expenses of the dependents avoided by reason of the victim's  
161 death and not subtracted in calculating dependent's economic  
162 loss.

163 (k) "Victim" means a person who suffers personal injury  
164 or death as a result of any one of the following: (1)  
165 Criminally injurious conduct; (2) the good faith effort of the  
166 person to prevent criminally injurious conduct; or (3) the  
167 good faith effort of the person to apprehend a person that the  
168 injured person has observed engaging in criminally injurious  
169 conduct or who the injured person has reasonable cause to  
170 believe has engaged in criminally injurious conduct  
171 immediately prior to the attempted apprehension. "Victim"  
172 shall also include the owner of real property damaged by the  
173 operation of a methamphetamine laboratory.

174 (l) "Contributory misconduct" means any conduct of the  
175 claimant, or of the victim through whom the claimant claims  
176 an award, that is unlawful or intentionally tortious and that,  
177 without regard to the conduct's proximity in time or space to  
178 the criminally injurious conduct, has causal relationship to  
179 the criminally injurious conduct that is the basis of the claim  
180 and shall also include the voluntary intoxication of the  
181 claimant, either by the consumption of alcohol or the use of  
182 any controlled substance when the intoxication has a causal  
183 connection or relationship to the injury sustained. The  
184 voluntary intoxication of a victim is not a defense against the  
185 estate of a deceased victim.

186 (m) "Lost scholarship" means a scholarship, academic  
187 award, stipend or other monetary scholastic assistance which  
188 had been awarded or conferred upon a victim in conjunction  
189 with a post-secondary school educational program and which  
190 the victim is unable to receive or use, in whole or in part, due  
191 to injuries received from criminally injurious conduct.

**§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.**

1 (a) Except as provided in subsection (b), section ten of  
2 this article, the judge or commissioner may not approve an  
3 award of compensation to a claimant who did not file his or  
4 her application for an award of compensation within two  
5 years after the date of the occurrence of the criminally  
6 injurious conduct that caused the injury or death for which he  
7 or she is seeking an award of compensation.

8 (b) The judge or commissioner may not approve an  
9 award of compensation if the criminally injurious conduct  
10 upon which the claim is based was not reported to a  
11 law-enforcement officer or agency within seventy-two hours  
12 after the occurrence of the conduct, unless it is determined  
13 that good cause existed for the failure to report the conduct  
14 within the 72-hour period.

15 (c) The judge or commissioner may not approve an award  
16 of compensation to a claimant who is the offender or an  
17 accomplice of the offender who committed the criminally  
18 injurious conduct, nor to any claimant if the award would  
19 unjustly benefit the offender or his or her accomplice.

20 (d) A judge or commissioner, upon a finding that the  
21 claimant or victim has not fully cooperated with appropriate  
22 law-enforcement agencies or the claim investigator, may  
23 deny a claim, reduce an award of compensation or reconsider  
24 a claim already approved.

25 (e) A judge or commissioner may not approve an award  
26 of compensation if the injury occurred while the victim was  
27 confined in any state, county or regional jail, prison, private  
28 prison or correctional facility.

29 (f) After reaching a decision to approve an award of  
30 compensation, but prior to announcing the approval, the



31 judge or commissioner shall require the claimant to submit  
32 current information as to collateral sources on forms  
33 prescribed by the Clerk of the Court of Claims. The judge or  
34 commissioner shall reduce an award of compensation or deny  
35 a claim for an award of compensation that is otherwise  
36 payable to a claimant to the extent that the economic loss  
37 upon which the claim is based is or will be recouped from  
38 other persons, including collateral sources, or if the reduction  
39 or denial is determined to be reasonable because of the  
40 contributory misconduct of the claimant or of a victim  
41 through whom he or she claims. If an award is reduced or a  
42 claim is denied because of the expected recoupment of all or  
43 part of the economic loss of the claimant from a collateral  
44 source, the amount of the award or the denial of the claim  
45 shall be conditioned upon the claimant's economic loss being  
46 recouped by the collateral source: *Provided*, That if it is  
47 thereafter determined that the claimant will not receive all or  
48 part of the expected recoupment, the claim shall be reopened  
49 and an award shall be approved in an amount equal to the  
50 amount of expected recoupment that it is determined the  
51 claimant will not receive from the collateral source, subject  
52 to the limitation set forth in subsection (g) of this section.

53 (g) (1) Except in the case of death, or as provided in  
54 subdivision (2) of this subsection, compensation payable to  
55 a victim and to all other claimants sustaining economic loss  
56 because of injury to that victim may not exceed twenty-five  
57 thousand dollars in the aggregate. Compensation payable to  
58 all claimants because of the death of the victim may not  
59 exceed fifty thousand dollars in the aggregate.

60 (2) In the event the victim's personal injuries are so  
61 severe as to leave the victim with a disability, as defined in  
62 Section 223 of the Social Security Act, as amended, as  
63 codified in 42 U. S. C. §423, the court may award an  
64 additional amount, not to exceed one hundred thousand  
65 dollars, for special needs attributable to the injury.

66 (h) If an award of compensation of five thousand dollars  
67 or more is made to a minor, a guardian shall be appointed  
68 pursuant to the provisions of article ten, chapter forty-four of  
69 this code to manage the minor's estate.

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## CHAPTER 55

**(Com. Sub. for S.B. 185 - By Senators Tomblin,  
Mr. President, and Caruth)  
[By Request of the Executive]**

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[Passed March 6, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 20, 2008.]

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AN ACT to amend and reenact §27-3-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-7-7 of said code; and to amend said code by adding thereto a new article, designated §61-7A-1, §61-7A-2, §61-7A-3, §61-7A-4 and §61-7A-5, all relating to clarifying mental conditions which prohibit firearms' possession and disclosure of prohibited firearm possession; disclosure of confidential information; notice of surrender of firearms under certain conditions; right to petition to regain ability to possess firearms; legislative intent; definitions; requiring state registry of persons precluded firearms' possession due to mental condition; authorizing reporting of information to national registry; limitations on use of information; and establishing a procedure for petitioning to regain right to possess a firearm.

*Be it enacted by the Legislature of West Virginia:*

That §27-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §61-7-7 of said code be amended and reenacted; and that said code be amended by adding thereto a

new article, designated §61-7A-1, §61-7A-2, §61-7A-3, §61-7A-4 and §61-7A-5, all to read as follows:

**Chapter**

**27. Mentally Ill Persons.**

**61. Crimes and Their Punishment.**

**CHAPTER 27. MENTALLY ILL PERSONS.**

**ARTICLE 3. CONFIDENTIALITY.**

**§27-3-1. Definition of confidential information; disclosure.**

1 (a) Communications and information obtained in the  
2 course of treatment or evaluation of any client or patient are  
3 confidential information. Such confidential information  
4 includes the fact that a person is or has been a client or  
5 patient, information transmitted by a patient or client or  
6 family thereof for purposes relating to diagnosis or treatment,  
7 information transmitted by persons participating in the  
8 accomplishment of the objectives of diagnosis or treatment,  
9 all diagnoses or opinions formed regarding a client's or  
10 patient's physical, mental or emotional condition, any advice,  
11 instructions or prescriptions issued in the course of diagnosis  
12 or treatment, and any record or characterization of the matters  
13 hereinbefore described. It does not include information  
14 which does not identify a client or patient, information from  
15 which a person acquainted with a client or patient would not  
16 recognize such client or patient and uncoded information  
17 from which there is no possible means to identify a client or  
18 patient.

19 (b) Confidential information shall not be disclosed,  
20 except:

21 (1) In a proceeding under section four, article five of this  
22 chapter to disclose the results of an involuntary examination  
23 made pursuant to section two, three or four of said article;

24 (2) In a proceeding under article six-a of this chapter to  
25 disclose the results of an involuntary examination made  
26 pursuant thereto;

27 (3) Pursuant to an order of any court based upon a finding  
28 that the information is sufficiently relevant to a proceeding  
29 before the court to outweigh the importance of maintaining  
30 the confidentiality established by this section;

31 (4) To provide notice to the federal National Instant  
32 Criminal Background Check System, established pursuant to  
33 section 103(d) of the Brady Handgun Violence Prevention  
34 Act, 18 U. S. C. §922, in accordance with article seven-a,  
35 chapter sixty-one of this code;

36 (5) To protect against a clear and substantial danger of  
37 imminent injury by a patient or client to himself, herself or  
38 another;

39 (6) For treatment or internal review purposes, to staff of  
40 the mental health facility where the patient is being cared for  
41 or to other health professionals involved in treatment of the  
42 patient; and

43 (7) Without the patient's consent as provided for under  
44 the Privacy Rule of the federal Health Insurance Portability  
45 and Accountability Act of 1996, 45 C. F. R. §164.506, for  
46 thirty days from the date of admission to a mental health  
47 facility if: (i) The provider makes a good faith effort to obtain  
48 consent from the patient or legal representative prior to  
49 disclosure; (ii) the minimum information necessary is  
50 released for a specifically stated purpose; and (iii) prompt  
51 notice of the disclosure, the recipient of the information and  
52 the purpose of the disclosure is given to the patient or legal  
53 representative.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

## Article

## 7. Dangerous Weapons.

## 7A. State Mental Health Registry; Reporting of Persons Proscribed From Firearm Possession Due to Mental Condition to the National Instant Criminal Background Check System; Legislative Findings; Definitions; Reporting Requirements; Reinstatement of Rights Procedures.

**ARTICLE 7. DANGEROUS WEAPONS.****§61-7-7. Persons prohibited from possessing firearms; classifications; reinstatement of rights to possess; offenses; penalties.**

1 (a) Except as provided in this section, no person shall  
2 possess a firearm, as such is defined in section two of this  
3 article, who:

4 (1) Has been convicted in any court of a crime punishable  
5 by imprisonment for a term exceeding one year;

6 (2) Is habitually addicted to alcohol;

7 (3) Is an unlawful user of or habitually addicted to any  
8 controlled substance;

9 (4) Has been adjudicated as a mental defective or who  
10 has been involuntarily committed to a mental institution  
11 pursuant to the provisions of chapter twenty-seven of this  
12 code: *Provided*, That once an individual has been adjudicated  
13 as a mental defective or involuntarily committed to a mental  
14 institution, he or she shall be duly notified that they are to  
15 immediately surrender any firearms in their ownership or  
16 possession: *Provided, however*, That the mental hygiene  
17 commissioner or circuit judge shall first make a  
18 determination of the appropriate public or private individual  
19 or entity to act as conservator for the surrendered property;

20 (5) Is an alien illegally or unlawfully in the United States;

21 (6) Has been discharged from the armed forces under  
22 dishonorable conditions;

23 (7) Is subject to a domestic violence protective order that:

24 (A) Was issued after a hearing of which such person  
25 received actual notice and at which such person had an  
26 opportunity to participate;

27 (B) Restrains such person from harassing, stalking or  
28 threatening an intimate partner of such person or child of  
29 such intimate partner or person, or engaging in other conduct  
30 that would place an intimate partner in reasonable fear of  
31 bodily injury to the partner or child; and

32 (C) (i) Includes a finding that such person represents a  
33 credible threat to the physical safety of such intimate partner  
34 or child; or

35 (ii) By its terms explicitly prohibits the use, attempted use  
36 or threatened use of physical force against such intimate  
37 partner or child that would reasonably be expected to cause  
38 bodily injury; or

39 (8) Has been convicted of a misdemeanor offense of  
40 assault or battery either under the provisions of section  
41 twenty-eight, article two of this chapter or the provisions of  
42 subsection (b) or (c), section nine of said article in which the  
43 victim was a current or former spouse, current or former  
44 sexual or intimate partner, person with whom the defendant  
45 has a child in common, person with whom the defendant  
46 cohabits or has cohabited, a parent or guardian, the  
47 defendant's child or ward or a member of the defendant's  
48 household at the time of the offense or has been convicted in  
49 any court of any jurisdiction of a comparable misdemeanor  
50 crime of domestic violence.

51 Any person who violates the provisions of this subsection  
52 shall be guilty of a misdemeanor and, upon conviction  
53 thereof, shall be fined not less than one hundred dollars nor  
54 more than one thousand dollars or confined in the county jail  
55 for not less than ninety days nor more than one year, or both.

56 (b) Notwithstanding the provisions of subsection (a) of  
57 this section, any person:

58 (1) Who has been convicted in this state or any other  
59 jurisdiction of a felony crime of violence against the person  
60 of another or of a felony sexual offense; or

61 (2) Who has been convicted in this state or any other  
62 jurisdiction of a felony controlled substance offense  
63 involving a Schedule I controlled substance other than  
64 marijuana, a Schedule II or a Schedule III controlled  
65 substance as such are defined in sections two hundred four,  
66 two hundred five and two hundred six, article two, chapter  
67 sixty-a of this code and who possesses a firearm as such is  
68 defined in section two of this article shall be guilty of a  
69 felony and, upon conviction thereof, shall be confined in a  
70 state correctional facility for not more than five years or fined  
71 not more than five thousand dollars, or both. The provisions  
72 of subsection (c) of this section shall not apply to persons  
73 convicted of offenses referred to in this subsection or to  
74 persons convicted of a violation of this subsection.

75 (c) Any person prohibited from possessing a firearm by  
76 the provisions of subsection (a) of this section may petition  
77 the circuit court of the county in which he or she resides to  
78 regain the ability to possess a firearm and if the court finds by  
79 clear and convincing evidence that the person is competent  
80 and capable of exercising the responsibility concomitant with  
81 the possession of a firearm, the court may enter an order  
82 allowing the person to possess a firearm if such possession  
83 would not violate any federal law: *Provided*, That a person

84 prohibited from possessing a firearm by the provisions of  
 85 subdivision (4), subsection (a) of this section may petition to  
 86 regain the ability to possess a firearm in accordance with the  
 87 provisions of section five, article seven-a of this chapter.

**ARTICLE 7A. STATE MENTAL HEALTH REGISTRY;  
 REPORTING OF PERSONS  
 PROSCRIBED FROM FIREARM  
 POSSESSION DUE TO MENTAL  
 CONDITION TO THE NATIONAL  
 INSTANT CRIMINAL BACKGROUND  
 CHECK SYSTEM; LEGISLATIVE  
 FINDINGS; DEFINITIONS; REPORTING  
 REQUIREMENTS; REINSTATEMENT  
 OF RIGHTS PROCEDURES.**

§61-7A-1. Legislative intent.

§61-7A-2. Definitions.

§61-7A-3. Persons whose names are to be supplied to the central state mental health registry.

§61-7A-4. Confidentiality; limits on use of registry information.

§61-7A-5. Petition to regain right to possess firearms.

**§61-7A-1. Legislative intent.**

1 It is the intention of the Legislature in the enactment of  
 2 this article to clarify the persons whom it intends to proscribe  
 3 from the possession of firearms due to substance abuse or  
 4 mental illness; establish a process in reporting the names of  
 5 persons proscribed from possession of firearms due to mental  
 6 illness to the central state mental health registry; authorize  
 7 reporting by registry to the National Instant Criminal  
 8 Background Check System; and to prescribe a means for  
 9 reinstating one's ability to lawfully possess a firearm.

**§61-7A-2. Definitions.**

1 As used in this article and as the terms are deemed to  
 2 mean in 18 U. S. C. §922(g) and section seven, article seven



3 of this chapter as each exists as of the thirty-first day of  
4 January, two thousand eight:

5 (1) "A person adjudicated as a mental defective" means  
6 a person who has been determined by a duly authorized  
7 court, tribunal, board or other entity to be mentally ill to the  
8 point where he or she has been found to be incompetent to  
9 stand trial due to mental illness or insanity, has been found  
10 not guilty in a criminal proceeding by reason of mental  
11 illness or insanity or has been determined to be unable to  
12 handle his or her own affairs due to mental illness or insanity.

13 (2) "Committed to a mental institution" means to have  
14 been involuntarily committed for treatment pursuant to the  
15 provisions of chapter twenty-seven of this code.

16 (3) "Mental institution" means any facility or part of a  
17 facility used for the treatment of persons committed for  
18 treatment of mental illness or addiction.

**§61-7A-3. Persons whose names are to be supplied to the  
central state mental health registry.**

1 (a) The Superintendent of the West Virginia State Police  
2 and the Secretary of the Department of Health and Human  
3 Resources, or their designees, shall cooperate with the circuit  
4 clerk of each county and Administrator of the West Virginia  
5 Supreme Court of Appeals in compiling and maintaining a  
6 database containing the names and identifying information of  
7 persons who have been adjudicated to be mentally defective  
8 or who have been committed for treatment of a mental illness  
9 pursuant to the provisions of chapter twenty-seven of this  
10 code. The registry shall be maintained by the Administrator  
11 of the Supreme Court of Appeals or the Superintendent of the  
12 West Virginia State Police.

13 (b) The name of any person who has been adjudicated to  
14 be mentally defective or who has been committed for  
15 treatment of a mental illness pursuant to the provisions of

16 chapter twenty-seven of this code which shall be provided to  
17 the Superintendent of the West Virginia State Police for  
18 inclusion in the central state mental health registry. Upon  
19 receipt of the information being received by the central state  
20 mental health registry it may be transmitted to the National  
21 Instant Criminal Background Check System and to county  
22 sheriffs;

23 (c) The Secretary of Department of Human Resources  
24 and the circuit clerk of each county shall, as soon as  
25 practicable after the effective date of this article, supply to  
26 the Superintendent of the West Virginia State Police for  
27 inclusion in the central state mental health registry the name  
28 and identifying information required by the provisions of  
29 subsection (d) of this section of all persons covered by the  
30 provisions of this article and shall on an ongoing basis  
31 continue to provide such information as it is developed;

32 (d) The central state mental health registry shall contain  
33 the name, address at the time of commitment or adjudication,  
34 date of birth, date of commitment or adjudication and of all  
35 persons who have been adjudicated to be mentally defective  
36 or who have been committed for treatment of a mental illness  
37 pursuant to the provisions of chapter twenty-seven of this  
38 code.

39 (e) The central state mental health registry shall provide  
40 only such information about a person on the registry to  
41 county sheriffs and the National Instant Criminal Background  
42 Check System as is necessary to identify registrants; and

43 (f) On or before the first day of January, two thousand  
44 ten, the central state mental health registry shall contain the  
45 name, address at the time of commitment or adjudication,  
46 date of birth, date of commitment or adjudication and any  
47 other identifying characteristics of all persons who have been  
48 adjudicated to be mentally defective or who have been  
49 committed for treatment of a mental illness pursuant to the  
50 provisions of chapter twenty-seven of this code. Under no

51 circumstances shall the registry contain information relating  
52 to any diagnosis or treatment provided.

**§61-7A-4. Confidentiality; limits on use of registry information.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, the Superintendent of the State Police, the Secretary  
3 of the Department of Health and Human Resources and the  
4 circuit clerks and the Administrator of the Supreme Court of  
5 Appeals may provide notice to the central state mental health  
6 registry and the National Instant Criminal Background Check  
7 System established pursuant to Section 103(d) of the Brady  
8 Handgun Violence Protection Act, 18 U. S. C. §922, that a  
9 person: (i) Has been involuntarily committed as provided in  
10 chapter twenty-seven of this code; (ii) has been adjudicated  
11 mentally incompetent in a proceeding under article six-a of  
12 this chapter; or (iii) has regained the ability to possess a  
13 firearm by order of a circuit court in a proceeding under  
14 section five of this article.

15 (b) The information contained in the central state mental  
16 health registry is to be used solely for the purpose of records  
17 checks related to firearms purchases and for eligibility for a  
18 state license or permit to possess or carry a concealed  
19 firearm.

20 (c) Whenever a person's name and other identifying  
21 information has been added to the central state mental health  
22 registry, a review of the state concealed handgun registry  
23 shall be undertaken and if such review reveals that the person  
24 possesses a current concealed handgun license, the sheriff of  
25 the county issuing the concealed handgun license shall be  
26 informed of the person's change in status.

**§61-7A-5. Petition to regain right to possess firearms.**

1 (a) Any person who is prohibited from possessing a  
2 firearm pursuant to the provisions of section seven, article  
3 seven of this chapter or by provisions of federal law by virtue

4 solely of having previously been adjudicated to be mentally  
5 defective or to having a prior involuntary commitment to a  
6 mental institution pursuant to chapter twenty-seven of this  
7 code may petition the circuit court of the county of his or her  
8 residence to regain the ability to lawfully possess a firearm.  
9 If the court finds by clear and convincing evidence that the  
10 person is competent and capable of exercising the  
11 responsibilities concomitant with the possession of a firearm,  
12 the court may enter an order allowing the petitioner to  
13 possess a firearm.

14 (b) The circuit clerk of each county shall provide the  
15 Superintendent of the West Virginia State Police or his or her  
16 designee with a certified copy of any order entered pursuant  
17 to the provisions of this section. If the order restores the  
18 petitioner's ability to possess a firearm, petitioner's name  
19 shall be promptly removed from the central state mental  
20 health registry and the superintendent shall forthwith inform  
21 the Federal Bureau of Investigation or other federal entity  
22 operating the National Instant Criminal Background Check  
23 System of the court action.

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## CHAPTER 56

**(Com. Sub. for H.B. 4484 - By Delegates Webster, Mahan,  
Fleischauer, Hrutkay, Guthrie, Long, Staggers, Shook,  
Varner, Brown and Pino)**

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[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

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AN ACT to amend and reenact §61-2-9a of the Code of West Virginia, 1931, as amended, all relating to the criminal offense of stalking, including penalties.

*Be it enacted by the Legislature of West Virginia:*

That §61-2-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

## **ARTICLE 2. CRIMES AGAINST THE PERSON.**

### **§61-2-9a. Stalking; harassment; penalties; definitions.**

1       (a) Any person who repeatedly follows another knowing  
2 or having reason to know that the conduct causes the person  
3 followed to reasonably fear for his or her safety or suffer  
4 significant emotional distress. is guilty of a misdemeanor  
5 and, upon conviction thereof, shall be incarcerated in the  
6 county or regional jail for not more than six months or fined  
7 not more than one thousand dollars, or both.

8       (b) Any person who repeatedly harasses or repeatedly  
9 makes credible threats against another is guilty of a  
10 misdemeanor and, upon conviction thereof, shall be  
11 incarcerated in the county or regional jail for not more than  
12 six months or fined not more than one thousand dollars, or  
13 both.

14       (c) Notwithstanding any provision of this code to the  
15 contrary, any person who violates the provisions of  
16 subsection (a) or (b) of this section in violation of an order  
17 entered by a circuit court, magistrate court or family court  
18 judge, in effect and entered pursuant to part 48-5-501, et seq.,  
19 part 48-5-601, et seq. or 48-27-403 of this code is guilty of a  
20 misdemeanor and, upon conviction thereof, shall be  
21 incarcerated in the county jail for not less than ninety days  
22 nor more than one year or fined not less than two thousand  
23 dollars nor more than five thousand dollars, or both.

24       (d) A second or subsequent conviction for a violation of  
25 this section occurring within five years of a prior conviction

26 is a felony punishable by incarceration in a state correctional  
27 facility for not less than one year nor more than five years or  
28 fined not less than three thousand dollars nor more than ten  
29 thousand dollars, or both.

30 (e) Notwithstanding any provision of this code to the  
31 contrary, any person against whom a protective order for  
32 injunctive relief is in effect pursuant to the provisions of  
33 section five hundred one, article twenty-seven, chapter forty-  
34 eight of this code who has been served with a copy of said  
35 order or section six hundred eight, article five, chapter forty-  
36 eight of this code who is convicted of a violation of the  
37 provisions of this section shall be guilty of a felony and  
38 punishable by incarceration in a state correctional facility for  
39 not less than one year nor more than five years or fined not  
40 less than three thousand dollars nor more than ten thousand  
41 dollars, or both.

42 (f) For the purposes of this section:

43 (1) "Bodily injury" means substantial physical pain,  
44 illness or any impairment of physical condition;

45 (2) "Credible threat" means a threat of bodily injury made  
46 with the apparent ability to carry out the threat and with the  
47 result that a reasonable person would believe that the threat  
48 could be carried out;

49 (3) "Harasses" means willful conduct directed at a  
50 specific person or persons which would cause a reasonable  
51 person mental injury or emotional distress;

52 (4) "Immediate family" means a spouse, parent,  
53 stepparent, mother-in-law, father-in-law, child, stepchild,  
54 sibling, or any person who regularly resides in the household  
55 or within the prior six months regularly resided in the  
56 household; and

57 (5) "Repeatedly" means on two or more occasions.

58 (g) Nothing in this section shall be construed to prevent  
59 lawful assembly and petition for the lawful redress of  
60 grievances, including, but not limited to: Any labor or  
61 employment relations issue; demonstration at the seat of  
62 federal, state, county or municipal government; activities  
63 protected by the West Virginia constitution or the United  
64 States Constitution or any statute of this state or the United  
65 States.

66 (h) Any person convicted under the provisions of this  
67 section who is granted probation or for whom execution or  
68 imposition of a sentence or incarceration is suspended is to  
69 have as a condition of probation or suspension of sentence  
70 that he or she participate in counseling or medical treatment  
71 as directed by the court.

72 (i) Upon conviction, the court may issue an order  
73 restraining the defendant from any contact with the victim for  
74 a period not to exceed ten years. The length of any restraining  
75 order shall be based upon the seriousness of the violation  
76 before the court, the probability of future violations, and the  
77 safety of the victim or his or her immediate family. The  
78 duration of the restraining order may be longer than five  
79 years only in cases when a longer duration is necessary to  
80 protect the safety of the victim or his or her immediate  
81 family.

82 (j) It is a condition of bond for any person accused of the  
83 offense described in this section that the person is to have no  
84 contact, direct or indirect, verbal or physical, with the alleged  
85 victim.

86 (k) Nothing in this section may be construed to preclude  
87 a sentencing court from exercising its power to impose home  
88 confinement with electronic monitoring as an alternative  
89 sentence.

90 (l) The Governor’s Committee on Crime, Delinquency  
91 and Correction, after consultation with representatives of  
92 labor, licensed domestic violence programs and rape crisis  
93 centers which meet the standards of the West Virginia  
94 Foundation for Rape Information and Services, is authorized  
95 to promulgate legislative rules and emergency rules pursuant  
96 to article three, chapter twenty-nine-a of this code,  
97 establishing appropriate standards for the enforcement of this  
98 section by state, county, and municipal law-enforcement  
99 officers and agencies.

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## CHAPTER 57

**(Com. Sub. for S.B. 590 - By Senators Prezioso, Stollings,  
Jenkins, Kessler, McKenzie and Foster)**

[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2008.]

A BILL to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to the protection of health care workers and protective services workers; establishing enhanced criminal penalties for crimes of violence against listed persons when they are engaged in official duties; and defining “health care worker” and “protective services worker”.

*Be it enacted by the Legislature of West Virginia:*

That §61-2-10b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. CRIMES AGAINST THE PERSON.**



**§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, probation officers, humane officers, emergency medical service personnel, firefighters, Fire Marshal, Division of Forestry employees, county or state correctional employees, Public Service Commission motor carrier inspector and enforcement officer and court security personnel; penalties.**

1       (a) *Malicious assault.* -- Any person who maliciously  
2 shoots, stabs, cuts or wounds or by any means causes bodily  
3 injury with intent to maim, disfigure, disable or kill a police  
4 officer, probation officer, conservation officer, humane  
5 officer, emergency medical service personnel, health care  
6 worker, protective services worker, firefighter, State Fire  
7 Marshal or employee, Division of Forestry employee, county  
8 correctional employee or state correctional employee,  
9 employee of an urban mass transportation system, court  
10 security personnel or Public Service Commission motor  
11 carrier inspector and enforcement officer acting in his or her  
12 official capacity and the person committing the malicious  
13 assault knows or has reason to know that the victim is acting  
14 in his or her official capacity is guilty of a felony and, upon  
15 conviction thereof, shall be confined in a correctional facility  
16 for not less than three nor more than fifteen years.

17       (b) *Unlawful assault.* -- Any person who unlawfully but  
18 not maliciously shoots, stabs, cuts or wounds or by any  
19 means causes a police officer, probation officer, conservation  
20 officer, humane officer, emergency medical service  
21 personnel, health care worker, protective services worker,  
22 firefighter, State Fire Marshal or employee, Division of  
23 Forestry employee, county correctional employee or state  
24 correctional employee, employee of an urban mass  
25 transportation system, court security personnel or Public  
26 Service Commission motor carrier inspector and enforcement  
27 officer acting in his or her official capacity bodily injury with  
28 intent to maim, disfigure, disable or kill him or her and the

29 person committing the unlawful assault knows or has reason  
30 to know that the victim is acting in his or her official capacity  
31 is guilty of a felony and, upon conviction thereof, shall be  
32 confined in a correctional facility for not less than two nor  
33 more than five years.

34 (c) *Battery.* -- Any person who unlawfully, knowingly  
35 and intentionally makes physical contact of an insulting or  
36 provoking nature with a police officer, probation officer,  
37 conservation officer, humane officer, emergency medical  
38 service personnel, health care worker, protective services  
39 worker, firefighter, State Fire Marshal or employee, Division  
40 of Forestry employee, county correctional employee, state  
41 correctional employee, employee of an urban mass  
42 transportation system, court security personnel or Public  
43 Service Commission motor carrier inspector and enforcement  
44 officer acting in his or her official capacity, or unlawfully and  
45 intentionally causes physical harm to that person acting in  
46 such capacity, is guilty of a misdemeanor and, upon  
47 conviction thereof, shall be confined in jail for not less than  
48 one month nor more than twelve months, fined the sum of  
49 five hundred dollars, or both. If any person commits a  
50 second such offense, he or she is guilty of a felony and, upon  
51 conviction thereof, shall be confined in a correctional facility  
52 for not less than one year nor more than three years or fined  
53 the sum of one thousand dollars or both fined and confined.  
54 Any person who commits a third violation of this subsection  
55 is guilty of a felony and, upon conviction thereof, shall be  
56 confined in a correctional facility not less than two years nor  
57 more than five years or fined not more than two thousand  
58 dollars or both fined and confined.

59 (d) *Assault.* -- Any person who unlawfully attempts to  
60 commit a violent injury to the person of a police officer,  
61 probation officer, conservation officer, humane officer,  
62 emergency medical service personnel, health care worker,  
63 protective services worker, firefighter, State Fire Marshal or  
64 employee, Division of Forestry employee, county  
65 correctional employee, state correctional employee,

66 employee of an urban mass transportation system, court  
67 security personnel or Public Service Commission motor  
68 carrier inspector and enforcement officer acting in his or her  
69 official capacity, or unlawfully commits an act which places  
70 that person acting in his or her official capacity in reasonable  
71 apprehension of immediately receiving a violent injury, is  
72 guilty of a misdemeanor and, upon conviction thereof, shall  
73 be confined in jail for not less than twenty-four hours nor  
74 more than six months, fined not more than two hundred  
75 dollars, or both fined and confined.

76 (e) For purposes of this section:

77 (1) "Court security personnel" means any person  
78 employed by a circuit court, family court, magistrate court,  
79 county commission, sheriff, the state or other political  
80 subdivision to operate and maintain security devices,  
81 including, but not limited to, a metal detector, X-ray  
82 machine, video monitoring equipment and/or other security  
83 devices, prevent or detect crime, enforce the laws of this state  
84 or otherwise provide court security.

85 (2) "Division of Forestry employee" means an officer,  
86 agent, employee or servant, whether full time or not, of the  
87 Division of Forestry.

88 (3) "Employee of an urban mass transportation system"  
89 means any person employed by an urban mass transportation  
90 system as such is defined in section three, article  
91 twenty-seven, chapter eight of this code or by a system that  
92 receives federal transit administration funding under 49 U. S.  
93 C. §5307 or §5311.

94 (4) "Health care worker" means any nurse, nurse  
95 practitioner, physician, physician assistant or technician  
96 practicing at, and all persons employed by, a hospital, county  
97 or district health department, long-term care facility,  
98 physician's office, clinic or outpatient treatment facility.

99 (5) "Police officer" means any person employed by the  
100 State Police, any person employed by the state to perform  
101 law-enforcement duties, any person employed by a political  
102 subdivision of this state who is responsible for the prevention  
103 or detection of crime and the enforcement of the penal, traffic  
104 or highway laws of this state or employed as a special police  
105 officer as defined in section forty-one, article three of this  
106 chapter.

107 (6) "Protective services worker" means an employee of  
108 the Department of Health and Human Resources employed  
109 as, or a person contracted with the Department of Health and  
110 Human Resources as, a child or adult protective services  
111 worker.

112 (7) "Public Service Commission motor carrier inspector  
113 and enforcement officer" means an officer, agent or  
114 employee of the Public Service Commission charged with the  
115 enforcement of commercial motor vehicle safety and weight  
116 restriction laws of the State of West Virginia.



## CHAPTER 58

**(Com. Sub. for H.B. 4344 - By Delegates Webster, Overington,  
Pino, Schadler, Brown, Fleischauer and Shook)**

[Passed March 6, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §61-8-19 of the Code of West Virginia, 1931, as amended, relating to the criminal offense of cruelty to animals; providing that animals be adequately sheltered; and prohibiting the tethering or chaining of animals in a cruel manner.

*Be it enacted by the Legislature of West Virginia:*

That §61-8-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY  
AND DECENCY.**

**§61-8-19. Cruelty to animals; penalties; exclusions.**

1 (a) (1) It is unlawful for any person to intentionally,  
2 knowingly or recklessly,

3 (A) Mistreat an animal in cruel manner;

4 (B) Abandon an animal;

5 (C) Withhold,

6 (i) Proper sustenance, including food or water;

7 (ii) Shelter that protects from the elements of weather; or

8 (iii) Medical treatment, necessary to sustain normal  
9 health and fitness or to end the suffering of any animal;

10 (D) Abandon an animal to die;

11 (E) Leave an animal unattended and confined in a motor  
12 vehicle when physical injury to or death of the animal is  
13 likely to result;

14 (F) Ride an animal when it is physically unfit;

15 (G) Bait or harass an animal for the purpose of making it  
16 perform for a person's amusement;

17 (H) Cruelly chain or tether an animal; or

18 (I) Use, train or possess a domesticated animal for the  
19 purpose of seizing, detaining or mistreating any other  
20 domesticated animal.

21 (2) Any person in violation of subdivision (1) of this  
22 subsection is guilty of a misdemeanor and, upon conviction  
23 thereof, shall be fined not less than three hundred nor more  
24 than two thousand dollars or confined in jail not more than  
25 six months, or both.

26 (b) A person who intentionally tortures, or mutilates or  
27 maliciously kills an animal, or causes, procures or authorizes  
28 any other person to torture, mutilate or maliciously kill an  
29 animal, is guilty of a felony and, upon conviction thereof,  
30 shall be confined in a correctional facility not less than one  
31 nor more than five years and be fined not less than one  
32 thousand dollars nor more than five thousand dollars. For the  
33 purposes of this subsection, "torture" means an action taken  
34 for the primary purpose of inflicting pain.

35 (c) A person, other than a licensed veterinarian or a  
36 person acting under the direction or with the approval of a  
37 licensed veterinarian, who knowingly and willfully  
38 administers or causes to be administered to any animal  
39 participating in any contest any controlled substance or any  
40 other drug for the purpose of altering or otherwise affecting  
41 said animal's performance is guilty of a misdemeanor and,  
42 upon conviction thereof, shall be fined not less than five  
43 hundred nor more than two thousand dollars.

44 (d) Any person convicted of a violation of this section  
45 forfeits his or her interest in any animal and all interest in the  
46 animal vests in the humane society or county pound of the  
47 county in which the conviction was rendered and the person  
48 is, in addition to any fine imposed, liable for any costs

49 incurred or to be incurred by the humane society or county  
50 pound as a result.

51 (e) For the purpose of this section, the term "controlled  
52 substance" has the same meaning ascribed to it by subsection  
53 (d), section one hundred one, article one, chapter sixty-a of  
54 this code.

55 (f) The provisions of this section do not apply to lawful  
56 acts of hunting, fishing, trapping or animal training or farm  
57 livestock, poultry, gaming fowl or wildlife kept in private or  
58 licensed game farms if kept and maintained according to  
59 usual and accepted standards of livestock, poultry, gaming  
60 fowl or wildlife or game farm production and management,  
61 nor to humane use of animals or activities regulated under  
62 and in conformity with the provisions of 7 U.S.C. §2131, *et*  
63 *seq.*, and the regulations promulgated thereunder, as both  
64 statutes and regulations are in effect on the effective date of  
65 this section.

66 (g) Notwithstanding the provisions of subsection (a) of  
67 this section, any person convicted of a second or subsequent  
68 violation of subsection (a) is guilty of a misdemeanor and  
69 shall be confined in jail for a period of not less than ninety  
70 days nor more than one year, fined not less than five hundred  
71 dollars nor more than three thousand dollars, or both. The  
72 incarceration set forth in this subsection is mandatory unless  
73 the provisions of subsection (h) of this section are complied  
74 with.

75 (h) (1) Notwithstanding any provision of this code to the  
76 contrary, no person who has been convicted of a violation of  
77 the provisions of subsection (a) or (b) of this section may be  
78 granted probation until the defendant has undergone a  
79 complete psychiatric or psychological evaluation and the  
80 court has reviewed the evaluation. Unless the defendant is  
81 determined by the court to be indigent, he or she is  
82 responsible for the cost of the evaluation.

83 (2) For any person convicted of a violation of subsection  
84 (a) or (b) of this section, the court may, in addition to the  
85 penalties provided in this section, impose a requirement that  
86 he or she complete a program of anger management  
87 intervention for perpetrators of animal cruelty. Unless the  
88 defendant is determined by the court to be indigent, he or she  
89 is responsible for the cost of the program.

90 (i) In addition to any other penalty which can be imposed  
91 for a violation of this section, a court shall prohibit any  
92 person so convicted from possessing, owning or residing with  
93 any animal or type of animal for a period of five years  
94 following entry of a misdemeanor conviction and fifteen  
95 years following entry of a felony conviction. A violation  
96 under this subsection is a misdemeanor punishable by a fine  
97 not exceeding two thousand dollars and forfeiture of the  
98 animal.

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## CHAPTER 59

**(H.B. 4644 - By Delegates Varner, Hrutkay, Ellem,  
Schadler and D. Poling)**

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[Passed March 7, 2008; in effect from passage.]

[Approved by the Governor on March 28, 2008.]

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AN ACT to amend and reenact §62-1C-7 of the Code of West Virginia, 1931, as amended, relating to removing the provision allowing a bail posted by someone other than the person under bail to be forfeited for failure to comply with a condition of bail, other than that to appear.

*Be it enacted by the Legislature of West Virginia:*



That §62-1C-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## ARTICLE 1C. BAIL.

### §62-1C-7. Forfeiture of bail; basis therefor.

1       (1) Whenever a person under bail serves as his or her  
2 own surety and he or she willfully and without just cause  
3 fails to appear as and when required or violates any other  
4 term or condition of bail, the circuit court or magistrate shall  
5 declare the bail forfeited.

6       (2) Whenever a person or entity other than the person  
7 under bail serves as surety, forfeiture of bail shall be declared  
8 only when the person under bail willfully and without just  
9 cause fails to appear as and when required.

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## CHAPTER 60

**(Com. Sub. for S.B. 142 - By Senator Kessler)**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §5-1-16a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-11-26, all relating to expungement of certain criminal records generally; changing time frames for petitions for expungement after gubernatorial pardons; authorizing expungement of certain criminal convictions committed between the ages of eighteen and

twenty-six; petition for expungement fee; time frame for eligibility for expungement; contents of the petition for expungement; service, notice and publication requirements for the petition for expungement; prosecutor and state agency opposition to the petition for expungement; burden of proof; court procedure for hearing and ruling upon the petition; crimes which are not eligible for expungement; and establishing procedures for sealing and later use of expunged records.

*Be it enacted by the Legislature of West Virginia:*

That §5-1-16a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-11-26, 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.**
- 61. **Crimes and Their Punishment.**

**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 1. THE GOVERNOR.**

**§5-1-16a. Expungement of criminal record upon full and unconditional pardon.**

- 1 (a) Any person who has received a full and unconditional
- 2 pardon from the Governor, pursuant to the provisions of
- 3 section eleven, article VII of the Constitution of West
- 4 Virginia and section sixteen of this article may petition the
- 5 circuit court in the county where the conviction was had to
- 6 have the record of such conviction expunged. The petition
- 7 shall be served upon the prosecuting attorney of the county

8 where the petition was filed. Any person petitioning the  
9 court for an order of expungement shall publish a notice of  
10 the time and place that such petition will be made, which  
11 notice shall be published as a Class I legal advertisement in  
12 compliance with the provisions of article three, chapter fifty-  
13 nine of this code and the publication area for such publication  
14 shall be the county where the petition is filed. The circuit  
15 court, upon verification of the act of pardon and after a  
16 hearing to determine that good cause exists, may enter an  
17 order directing that all public record of the petitioner's  
18 conviction be expunged.

19 (b) The record expunged pursuant to the provisions of  
20 this section may not be considered in an application to any  
21 educational institution in this state or an application for any  
22 licensure required by any professional organization in this  
23 state.

24 (c) No person shall be eligible for expungement pursuant  
25 to this section until one year after having been pardoned.

26 (d) No person shall be eligible for expungement pursuant  
27 to this section until five years after the discharge of his or her  
28 sentence upon the conviction for which he or she was  
29 pardoned.

30 (e) No person shall be eligible for expungement of a  
31 record of conviction of first degree murder, as defined in  
32 section one, article two, chapter sixty-one of this code;  
33 treason, as defined in section one, article one of said chapter;  
34 kidnapping, as defined in section fourteen-a, article two of  
35 said chapter; or any felony defined in article eight-b of said  
36 chapter.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

**§61-11-26. Expungement of certain criminal convictions; procedures; effect.**

1 (a) Any person convicted of a misdemeanor offense or  
2 offenses arising from the same transaction committed while  
3 he or she was between the ages of eighteen and twenty-six  
4 may, pursuant to the provisions of this section, petition the  
5 circuit court in which the conviction or convictions occurred  
6 for expungement of the conviction or convictions and the  
7 records associated therewith. The clerk of the circuit court  
8 shall charge and collect in advance the same fee as is charged  
9 for instituting a civil action pursuant to subdivision (1),  
10 subsection (a), section eleven, article one, chapter fifty-nine  
11 of this code for a petition for expungement.

12 (b) Expungement shall not be available for any  
13 conviction of an offense listed in subsection (j) of this  
14 section. The relief afforded by this subsection is only  
15 available to persons having no other prior or subsequent  
16 convictions other than minor traffic violations at the time the  
17 petition is filed: *Provided*, That at the time the petition is  
18 filed and during the time the petition is pending, petitioner  
19 may not be the subject of an arrest or any other pending  
20 criminal proceeding. No person shall be eligible for  
21 expungement pursuant to the provisions of subsection (a) of  
22 this section until one year after the conviction, completion of  
23 any sentence of incarceration or probation, whichever is later  
24 in time.

25 (c) Each petition to expunge a conviction or convictions  
26 pursuant to this section shall be verified under oath and  
27 include the following information:

28 (1) Petitioner's current name and all other legal names or  
29 aliases by which petitioner has been known at any time;

30 (2) All of petitioner's addresses from the date of the  
31 offense or alleged offense in connection with which an  
32 expungement order is sought to date of the petition;

33 (3) Petitioner's date of birth and social security number;

34 (4) Petitioner's date of arrest, the court of jurisdiction and  
35 criminal complaint, indictment, summons or case number;

36 (5) The statute or statutes and offense or offenses for  
37 which petitioner was charged and of which petitioner was  
38 convicted;

39 (6) The names of any victim or victims, or that there were  
40 no identifiable victims;

41 (7) Whether there is any current order for restitution,  
42 protection, restraining order or other no contact order  
43 prohibiting the petitioner from contacting the victims or  
44 whether there has ever been a prior order for restitution,  
45 protection or restraining order prohibiting the petitioner from  
46 contacting the victim. If there is such a current order,  
47 petitioner shall attach a copy of that order to his or her  
48 petition;

49 (8) The court's disposition of the matter and punishment  
50 imposed, if any;

51 (9) Why expungement is sought, such as, but not limited  
52 to, employment or licensure purposes, and why it should be  
53 granted;

54 (10) The steps the petitioner has taken since the time of  
55 the offenses toward personal rehabilitation, including  
56 treatment, work or other personal history that demonstrates  
57 rehabilitation;

58 (11) Whether petitioner has ever been granted  
59 expungement or similar relief regarding a criminal conviction  
60 by any court in this state, any other state or by any federal  
61 court;

62 (12) Documentation of the notice publication required by  
63 subsection (d) of this section; and

64 (13) Any other supporting documents, sworn statements,  
65 affidavits or other information supporting the petition to  
66 expunge.

67 (d) Any person petitioning the court for an order of  
68 expungement pursuant to the provisions of subsection (a) of  
69 this section shall publish a notice that such petition is being  
70 made, which notice shall include the petitioner's name; the  
71 time and identification of the conviction or convictions for  
72 which petitioner seeks expungement; that expungement is  
73 sought pursuant to section twenty-six, article eleven, chapter  
74 sixty-one of this code; the court in which the petition will be  
75 filed; and the right of any individual to file a notice of  
76 opposition to the petition in the circuit court within ten days  
77 of the publication of notice. The notice shall be published as  
78 a Class I legal advertisement in compliance with the  
79 provisions of article three, chapter fifty-nine of this code and  
80 the publication area for such publication shall be the county  
81 where the petition is filed.

82 (e) A copy of the petition, with any supporting  
83 documentation, shall be served by petitioner pursuant to the  
84 rules of the trial court upon the Superintendent of the State  
85 Police; the prosecuting attorney of the county of conviction;  
86 the chief of police or other executive head of the municipal  
87 police department wherein the offense was committed; the  
88 chief law-enforcement officer of any other law-enforcement  
89 agency which participated in the arrest of the petitioner; the  
90 superintendent or warden of any institution in which the  
91 petitioner was confined; the magistrate court or municipal  
92 court which disposed of the petitioner's criminal charge; and  
93 all other state and local government agencies whose records  
94 would be affected by the proposed expungement. The  
95 prosecutorial office that had jurisdiction over the offense or

96 offenses for which expungement is sought shall serve by first  
97 class mail the petition for expungement, accompanying  
98 documentation and any proposed expungement order to any  
99 identified victims.

100 (f) Upon receipt of a petition for expungement, or notice  
101 pursuant to subsection(d)of this section, the Superintendent  
102 of the State Police; the prosecuting attorney of the county of  
103 conviction; the chief of police or other executive head of the  
104 municipal police department wherein the offense was  
105 committed; the chief law-enforcement officer of any other  
106 law-enforcement agency which participated in the arrest of  
107 the petitioner; the superintendent or warden of any institution  
108 in which the petitioner was confined; the magistrate court or  
109 municipal court which disposed of the petitioner's criminal  
110 charge; all other state and local government agencies whose  
111 records would be affected by the proposed expungement and  
112 any other interested individual or agency that desires to  
113 oppose the expungement shall, within thirty days of receipt  
114 of the petition or notice of the petition pursuant to subsection  
115 (d) of this section, file a notice of opposition with the court  
116 with supporting documentation and sworn statements setting  
117 forth the reasons for resisting the petition for expungement.  
118 A copy of any notice of opposition with supporting  
119 documentation and sworn statements shall be served upon the  
120 petitioner in accordance with trial court rules. The petitioner  
121 may file a reply no later than ten days after service of any  
122 notice of opposition to the petition for expungement.

123 (g) The burden of proof shall be on the petitioner to prove  
124 by clear and convincing evidence that: (1) The conviction or  
125 convictions for which expungement is sought are the only  
126 convictions against petitioner and that the conviction or  
127 convictions are not excluded from expungement by  
128 subsection (j) of this section; (2) that the requisite time period  
129 has passed since the conviction or convictions or end of the  
130 completion of any sentence of incarceration or probation; (3)  
131 petitioner has no criminal charges pending against him or

132 her; (4) the expungement is consistent with the public  
133 welfare; (5) petitioner has, by his or her behavior since the  
134 conviction or convictions, evidenced that he or she has been  
135 rehabilitated and is law-abiding; and (6) any other matter  
136 deemed appropriate or necessary by the court to make a  
137 determination regarding the petition for expungement.

138 (h) Within sixty days of the filing of a petition for  
139 expungement the circuit court shall:

140 (1) Summarily grant the petition;

141 (2) Set the matter for hearing; or

142 (3) Summarily deny the petition if the court determines  
143 that the petition is insufficient or, based upon supporting  
144 documentation and sworn statements filed in opposition to  
145 the petition, the court determines that the petitioner, as a  
146 matter of law, is not entitled to expungement.

147 (i) If the court sets the matter for hearing, all interested  
148 parties who have filed a notice of opposition shall be notified.  
149 At the hearing, the court may inquire into the background of  
150 the petitioner and shall have access to any reports or records  
151 relating to the petitioner that are on file with any law-  
152 enforcement authority, the institution of confinement, if any,  
153 and parole authority or other agency which was in any way  
154 involved with the petitioner's arrest, conviction, sentence and  
155 post-conviction supervision, including any record of arrest or  
156 conviction in any other state or federal court. The court may  
157 hear testimony of witnesses and any other matter the court  
158 deems proper and relevant to its determination regarding the  
159 petition. The court shall enter an order reflecting its ruling on  
160 the petition for expungement with appropriate findings of fact  
161 and conclusions of law.

162 (j) No person shall be eligible for expungement of a  
163 conviction and the records associated therewith pursuant to



164 the provisions of subsection (a) of this section for any  
165 violation involving the infliction of serious physical injury;  
166 involving the provisions of article eight-b of this chapter  
167 where the petitioner was eighteen years old, or older, at the  
168 time the violation occurred and the victim was twelve years  
169 of age, or younger, at the time the violation occurred;  
170 involving the use or exhibition of a deadly weapon or  
171 dangerous instrument; of the provisions of subsection (b) or  
172 (c), section nine, article two of this chapter where the victim  
173 was a spouse, a person with whom the person seeking  
174 expungement had a child in common or with whom the  
175 person seeking expungement ever cohabitated prior to the  
176 offense; any violation of the provisions of section twenty-  
177 eight of said article; a conviction for driving under the  
178 influence of alcohol, controlled substances or a conviction for  
179 a violation of section three, article four, chapter seventeen-b  
180 of this code or section nineteen, article eight of this chapter.

181 (k) If the court grants the petition for expungement, it  
182 shall order the sealing of all records in the custody of the  
183 court and expungement of any records in the custody of any  
184 other agency or official, including law-enforcement records.  
185 Every agency with records relating to the arrest, charge or  
186 other matters arising out of the arrest or conviction that is  
187 ordered to expunge records shall certify to the court within  
188 sixty days of the entry of the expungement order that the  
189 required expungement has been completed. All orders  
190 enforcing the expungement procedure shall also be sealed.

191 (l) Upon expungement, the proceedings in the matter  
192 shall be deemed never to have occurred. The court and other  
193 agencies shall reply to any inquiry that no record exists on  
194 the matter. The person whose record is expunged shall not  
195 have to disclose the fact of the record or any matter relating  
196 thereto on an application for employment, credit or other type  
197 of application.

198 (m) Inspection of the sealed records in the court's  
199 possession may thereafter be permitted by the court only  
200 upon a motion by the person who is the subject of the records  
201 or upon a petition filed by a prosecuting attorney that  
202 inspection and possible use of the records in question are  
203 necessary to the investigation or prosecution of a crime in  
204 this state or another jurisdiction. If the court finds that the  
205 interests of justice will be served by granting a petition to  
206 inspect the sealed record, it may be granted.

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## CHAPTER 61

**(Com. Sub. for S.B. 467 - By Senators Unger, Prezioso, Plymale,  
Jenkins, Foster, Stollings, Hunter and Love)**

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[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

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AN ACT to amend and reenact §22-14-3, §22-14-15 and §22-14-19 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §22-14-20, §22-14-21 and §22-14-22, all relating to dam safety; defining terms; providing for the establishment, administration and management of the Dam Safety Rehabilitation Revolving Fund; providing moneys for the fund; providing eligibility requirements to receive loans from the fund; providing rule-making authority; providing application requirements for loans from the fund; establishing loan agreement requirements; providing for collection of moneys due the fund; providing authority to the Department of Environmental Protection for deficient dams that are privately owned by a noncompliant dam owner; and establishing civil penalties.

*Be it enacted by the Legislature of West Virginia:*

That §22-14-3, §22-14-15 and §22-14-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §22-14-20, §22-14-21 and §22-14-22, all to read as follows:

#### **ARTICLE 14. DAM CONTROL ACT.**

§22-14-3. Definition of terms used in article.

§22-14-15. Civil penalties and injunctive relief.

§22-14-19. Dam Safety Rehabilitation Revolving Fund established; disbursement of fund moneys.

§22-14-20. Dam Safety Rehabilitation Revolving Fund program.

§22-14-21. Collection of money due to the fund.

§22-14-22. Authority of Department of Environmental Protection for deficient dams that are privately owned by a noncompliant dam owner.

#### **§22-14-3. Definition of terms used in article.**

1 As used in this article, unless used in a context that  
2 clearly requires a different meaning, the term:

3 (a) "Alterations" or "repairs" means only those changes  
4 in the structure or integrity of a dam that may affect its safety  
5 to be determined by the secretary.

6 (b) "Application for a certificate of approval" means the  
7 written application provided to the secretary requesting that  
8 a person be issued a certificate of approval.

9 (c) "Appurtenant works" means any structure or facility  
10 that is an adjunct of, or connected, appended or annexed to,  
11 a dam, including, but not limited to, spillways, a reservoir  
12 and its rim, low-level outlet works or water conduits such as  
13 tunnels, pipelines and penstocks either through the dam or its  
14 abutments.

15 (d) "Authority" means the Water Development Authority  
16 provided in section four, article one, chapter twenty-two-c of  
17 this code.

18 (e) "Certificate of approval" means the written approval  
19 issued by the secretary to a person who has applied to the  
20 secretary for a certificate of approval that authorizes the  
21 person to place, construct, enlarge, alter, repair or remove a  
22 dam and specifies the conditions or limitations under which  
23 the work is to be performed by that person.

24 (f) (1) "Dam" means an artificial barrier or obstruction,  
25 including any works appurtenant to it and any reservoir  
26 created by it, which is or will be placed, constructed,  
27 enlarged, altered or repaired so that it does or will impound  
28 or divert water and:

29 (A) Is or will be twenty-five feet or more in height from  
30 the natural bed of the stream or watercourse measured at the  
31 downstream toe of the barrier and which does or can  
32 impound fifteen acre-feet or more of water; or

33 (B) Is or will be six feet or more in height from the  
34 natural bed of the stream or watercourse measured at the  
35 downstream toe of the barrier and which does or can  
36 impound fifty acre-feet or more of water;

37 (2) "Dam" does not mean:

38 (A) Any dam owned by the federal government;

39 (B) Any dam for which the operation and maintenance of  
40 the dam is the responsibility of the federal government;

41 (C) Farm ponds constructed and used primarily for  
42 agricultural purposes, including, but not limited to, livestock  
43 watering, irrigation, retention of animal wastes and fish  
44 culture and that have no potential to cause loss of human life  
45 in the event of embankment failure; or

46 (D) Roadfill or other transportation structures that do not  
47 or will not impound water under normal conditions and that  
48 have a designed culvert or similar conveyance or capacity  
49 that would be used under a state designed highway at the  
50 same location: *Provided*, That the secretary may apply the  
51 provisions of section ten of this article for roadfill or other  
52 transportation structures that become a hazard to human life  
53 or property through the frequent or continuous impoundment  
54 of water.

55 (g) "Deficient dam" means a noncoal-related dam that  
56 exhibits one or more design, maintenance or operational  
57 problems that may adversely affect the performance of the  
58 dam over a period of time or during a major storm or other  
59 inclement weather that may cause loss of life or property; or  
60 a noncoal-related dam that otherwise fails to meet the  
61 requirements of this article.

62 (h) "Department" means the Department of  
63 Environmental Protection.

64 (i) "Enlargement" means any change in or addition to an  
65 existing dam which: (1) Raises the height of the dam; (2)  
66 raises or may raise the water storage elevation of the water  
67 impounded by the dam; (3) increases or may increase the  
68 amount of water impounded by the dam; or (4) increases or  
69 may increase the watershed area from which water is  
70 impounded by the dam.

71 (j) "Noncompliant dam owner" means an owner who has  
72 received two or more orders to repair or remove a deficient  
73 dam without completion of the repairs or removal within time  
74 frames established by the secretary.

75 (k) "Person" means any public or private corporation,  
76 institution, association, society, firm, organization or  
77 company organized or existing under the laws of this or any

78 other state or country; the State of West Virginia; any state  
79 governmental agency; any political subdivision of the state or  
80 of its counties or municipalities; a sanitary district; a public  
81 service district; a drainage district; a conservation district; a  
82 watershed improvement district; a partnership, trust or estate;  
83 a person or individual; a group of persons or individuals  
84 acting individually or as a group; or any other legal entity.  
85 The term "person", when used in this article, includes and  
86 refers to any authorized agent, lessee or trustee of any of the  
87 foregoing or receiver or trustee appointed by any court for  
88 any of the foregoing.

89 (l) "Reservoir" means any basin which contains or will  
90 contain impounded water.

91 (m) "Secretary" means the Secretary of the Department  
92 of Environmental Protection.

93 (n) "Natural Resources Conservation Service" means the  
94 Natural Resources Conservation Service of the United States  
95 Department of Agriculture or any successor or predecessor  
96 agency, including the Soil Conservation Service.

97 (o) "Water" means any liquid, including any solids or  
98 other matter that may be contained in the liquid, which is or  
99 may be impounded by a dam.

100 (p) "Water storage elevation" means the maximum  
101 elevation that water can reach behind a dam without  
102 encroaching on the freeboard approved for the dam under  
103 flood conditions.

#### **§22-14-15. Civil penalties and injunctive relief.**

1 (a) Any person who violates any provision of this article,  
2 any certificate of approval or any rule, notice or order issued  
3 pursuant to this article is subject to a civil administrative

4 penalty, to be levied by the secretary, of not more than five  
5 thousand dollars for each day the violation continues, not to  
6 exceed a maximum of twenty thousand dollars. In assessing  
7 any penalty, the secretary shall take into account the  
8 seriousness of the violation and any good faith efforts to  
9 comply with applicable requirements as well as any other  
10 appropriate factors as may be established by rules proposed  
11 by the secretary for legislative approval pursuant to article  
12 three, chapter twenty-nine-a of this code. No assessment  
13 may be levied pursuant to this subsection until after the  
14 alleged violator has been notified by certified mail or  
15 personal service. The notice shall include a reference to the  
16 section of the statute, rule, notice, order or statement of the  
17 certificate of approval's terms that was allegedly violated, a  
18 concise statement of the facts alleged to constitute the  
19 violation, a statement of the amount of the civil  
20 administrative penalty to be imposed and a statement of the  
21 alleged violator's right to an informal hearing. The alleged  
22 violator has twenty calendar days from receipt of the notice  
23 within which to deliver to the secretary a written request for  
24 an informal hearing. If no hearing is requested, the notice  
25 becomes a final order after the expiration date of the  
26 twenty-day period. If a hearing is requested, the secretary  
27 shall inform the alleged violator of the time and place of the  
28 hearing. Within thirty days following the informal hearing,  
29 the secretary shall issue and furnish to the violator a written  
30 decision, and the reasons for the decision, concerning the  
31 assessment of a civil administrative penalty. The authority to  
32 levy a civil administrative penalty is in addition to all other  
33 enforcement provisions of this article and the payment of any  
34 assessment does not affect the availability of any other  
35 enforcement provision in connection with the violation for  
36 which the assessment is levied: *Provided*, That no  
37 combination of assessments against a violator shall exceed  
38 twenty thousand dollars per day of each violation: *Provided*,  
39 *however*, That any violation for which the violator has paid  
40 a civil administrative penalty assessed under this subsection

41 is not subject to a separate civil penalty action under this  
42 article to the extent of the amount of the civil administrative  
43 penalty paid. Civil administrative penalties shall be levied in  
44 accordance with the rules promulgated under the authority of  
45 section four of this article. The net proceeds of assessments  
46 collected pursuant to this subsection shall be deposited in the  
47 dam safety fund established pursuant to section eighteen of  
48 this article. Any person adversely affected by the assessment  
49 of a civil administrative penalty has the right to appeal to the  
50 Environmental Quality Board pursuant to the provisions of  
51 article one, chapter twenty-two-b of this code.

52 (b) No assessment levied pursuant to subsection (a) of  
53 this section is due and payable until the procedures for review  
54 of the assessment as set out in said subsection have been  
55 completed.

56 (c) Any person who violates any provision of any  
57 certificate issued under or subject to the provisions of this  
58 article is subject to a civil penalty not to exceed twenty-five  
59 thousand dollars per day of the violation and any person who  
60 violates any provision of this article or of any rule or who  
61 violates any standard or order promulgated or made and  
62 entered under the provisions of this article is subject to a civil  
63 penalty not to exceed twenty-five thousand dollars per day of  
64 the violation. The civil penalty may be imposed and  
65 collected only by a civil action instituted by the secretary in  
66 the circuit court of Kanawha County or in the county in  
67 which the violation or noncompliance exists or is taking  
68 place.

69 Upon application by the secretary, the circuit courts of  
70 this state or the judges thereof in vacation may by injunction  
71 compel compliance with and enjoin violations of the  
72 provisions of this article and rules proposed in accordance  
73 with section four of this article, the terms and conditions of  
74 any certificate of approval granted under the provisions of



75 this article or any order of the secretary or Environmental  
76 Quality Board and the venue of any action shall be in the  
77 circuit court of Kanawha County or in the county in which  
78 the violation or noncompliance exists or is taking place. The  
79 court or the judge thereof in vacation may issue a temporary  
80 or preliminary injunction in any case pending a decision on  
81 the merits of any injunctive application filed. In seeking an  
82 injunction, it is not necessary for the secretary to post bond  
83 or to allege or prove at any stage of the proceeding that  
84 irreparable damage will occur if the injunction is not issued  
85 or that the remedy at law is inadequate. An application for  
86 injunctive relief or a civil penalty action under this section  
87 may be filed and relief granted notwithstanding the fact that  
88 all administrative remedies provided in this article have not  
89 been exhausted or invoked against the person or persons  
90 against whom the relief is sought.

91 The judgment of the circuit court upon any application  
92 filed or in any civil action instituted under the provisions of  
93 this section is final unless reversed, vacated or modified on  
94 appeal to the Supreme Court of Appeals. An appeal shall be  
95 sought in the manner provided by law for appeals from  
96 circuit courts in other civil cases, except that the petition  
97 seeking review of an order in any injunction proceeding must  
98 be filed with the Supreme Court of Appeals within ninety  
99 days from the date of entry of the judgment of the circuit  
100 court.

101 (d) Upon request of the secretary, the Attorney General  
102 or the prosecuting attorney of the county in which the  
103 violation occurs shall assist the secretary in any civil action  
104 under this section.

105 (e) In any action brought pursuant to the provisions of  
106 this section, the state or any agency of the state which  
107 prevails may be awarded costs and reasonable attorney's fees.

**§22-14-19. Dam Safety Rehabilitation Revolving Fund established; disbursement of fund moneys.**

1 (a) There is created in the State Treasury a special  
2 revenue fund known as the Dam Safety Rehabilitation  
3 Revolving Fund. The fund shall be comprised of money  
4 allocated to the state by the federal government expressly for  
5 the purposes of establishing and maintaining a state Dam  
6 Safety Rehabilitation Revolving Fund. The fund shall also  
7 include all receipts from loans made by the fund, any moneys  
8 appropriated by the Legislature, all income from the  
9 investment of moneys held in the fund and all other moneys  
10 designated for deposit to the fund from any source, public or  
11 private. The fund shall operate as a special revenue fund and  
12 all deposits and payments into the fund do not expire to the  
13 General Revenue Fund, but shall remain in the account and  
14 be available for expenditure in succeeding fiscal years.

15 (b) The fund, to the extent that money is available, shall  
16 be used solely to make loans to persons who own an interest  
17 in a deficient dam on the list of deficient dams created  
18 pursuant to section twenty of this article to finance the  
19 engineering, design, alteration, improvement, repair,  
20 breaching or removal of the deficient dam necessary to  
21 correct or remove the deficiencies and other activities as  
22 authorized by a federal grant, a legislative appropriation or by  
23 the secretary pursuant to section twenty-two of this article.  
24 The fund may also be used to defray costs incurred by the  
25 department or the authority in administering the provisions of  
26 this subsection.

27 (c) The secretary, in consultation with the authority, shall  
28 promulgate rules, in accordance with the provisions of article  
29 three, chapter twenty-nine-a of this code, to govern the  
30 disbursement of moneys from the fund, establish a state  
31 deficient dams rehabilitation assistance program to direct the  
32 distribution of loans from the fund, establish criteria for

33 eligibility to receive loans from the fund and establish the  
34 terms and conditions of the loans, including interest rates and  
35 repayment terms. The secretary may initially promulgate  
36 rules or amendments to rules as emergency rules pursuant to  
37 the provisions of said article.

38 (d) The secretary and the authority may employ qualified  
39 officers, agents, advisors and consultants and other persons  
40 necessary to carry out the administration and management of  
41 the fund.

42 (e) The authority shall propose rules for legislative  
43 approval in accordance with the provisions of article three,  
44 chapter twenty-nine-a of this code to govern the pledge of  
45 loans to secure bonds of the authority.

46 (f) Disbursements from the fund shall be authorized for  
47 payment in writing by the director of the authority or the  
48 director's designee. Moneys in the fund shall not be  
49 commingled with other money of the authority.

**§22-14-20. Dam Safety Rehabilitation Revolving Fund program.**

1 (a) The secretary shall develop a state list of deficient  
2 dams using a priority ranking system based on factors  
3 designed by the secretary. Only dams on the list of deficient  
4 dams are eligible for a loan from the Dam Safety  
5 Rehabilitation Revolving Fund.

6 (b) The secretary shall develop an application, including  
7 eligibility requirements for persons applying for loans to  
8 correct or remove deficient dams. The eligibility  
9 requirements shall include, at a minimum, that the:

10 (1) Dam is on the list of deficient dams;

11 (2) Person is in a state of readiness to proceed to  
12 planning, design or construction and expend loan payments  
13 in a timely manner;

14 (3) Person has demonstrated the ability to repay the loan;  
15 and

16 (4) Person is in compliance with section five of this  
17 article.

18 (c) A person who owns an interest in a deficient dam on  
19 the list of deficient dams may apply to the department for a  
20 loan from the fund on forms designed and approved by the  
21 secretary.

22 (d) Following approval by the secretary of the application  
23 for a loan and a determination by the secretary and the  
24 authority that moneys are available for a loan, the secretary  
25 may direct the authority to enter a loan agreement with the  
26 person submitting the approved application.

27 (e) At the direction of the department pursuant to  
28 subsection (d) of this section, the authority shall enter into a  
29 loan agreement with a person approved for a loan. The loan  
30 agreement is binding under the laws of West Virginia and  
31 shall contain provisions as required by the secretary,  
32 including:

33 (1) The cost of the project, the amount of the loan and the  
34 terms of repayment of the loan and the security for the loan  
35 which may include a deed of trust or other appropriate  
36 security instrument creating a lien on the project or any other  
37 collateral the secretary may require;

38 (2) The specific purposes for which the proceeds of the  
39 loan are required to be expended, the procedures as to the  
40 disbursement of loan proceeds including an estimated  
41 monthly draw schedule and the duties and obligations  
42 imposed upon the applicant in regard to the acquisition or  
43 construction of the project;

44 (3) The agreement of the applicant to repay the  
45 obligations of the applicant under the loan agreement,  
46 including provisions that revenue may be pledged for the  
47 repayment of the loan together with all interest, fees and  
48 charges on the loan and all other financial obligations of the  
49 applicant under the loan agreement;

50 (4) If notes or other interim obligations are being issued  
51 by the applicant, the agreement of the applicant to take other  
52 repayment actions that are required of the applicant under the  
53 loan agreement;

54 (5) The agreement of the applicant to accept the  
55 authority's enforcement remedies pursuant to section  
56 twenty-one of this article in the event of any default under the  
57 loan; and

58 (6) The agreement of the applicant to comply with all  
59 applicable federal and state statutes and rules and regulations  
60 and all applicable local ordinances pertinent to the financing,  
61 acquisition, design, construction, operation, maintenance and  
62 use of the project.

63 (f) (1) If the secretary assumes full charge and  
64 responsibility over a dam pursuant to section twenty-two of  
65 this article, and seeks to expend money from the fund for the  
66 purpose of repairing or removing a dam or taking other  
67 remedial action, the secretary shall, prior to seeking a  
68 requisition from the fund, provide the authority with the  
69 following information:

70 (A) The location of the dam;

71 (B) The owners of the dam; and

72 (C) The maximum amount estimated for repairing or  
73 removing the dam or taking other remedial action.

74 (2) The authority shall then determine whether sufficient  
75 moneys are available to satisfy the maximum amount  
76 estimated for the dam and still meet all loan obligations of  
77 the fund.

78 (g) The obligation of the authority to enter into loan  
79 agreements is conditioned on the availability of moneys in  
80 the fund in amounts and on terms and conditions as, at the  
81 direction of the secretary, will enable the authority to make  
82 loans.

83 (h) The ability of the secretary to use moneys in the fund  
84 pursuant to section twenty-two of this article is conditioned  
85 upon the availability of moneys in the fund.

**§22-14-21. Collection of money due to the fund.**

1 (a) In order to ensure the timely payment of all sums due  
2 and owing to the fund under a revolving fund loan agreement  
3 between the state and a person, and notwithstanding any  
4 provisions of this code to the contrary, the authority has and  
5 may, at its option, exercise the following rights and remedies  
6 in the event of any default under a loan agreement:

7 (1) The authority may directly impose, in its own name  
8 and for its own benefit, service charges upon all users of a  
9 project funded by a loan distributed pursuant to this article  
10 and may proceed directly to enforce and collect service  
11 charges, together with all necessary costs of the enforcement  
12 and collection;

13 (2) The authority may exercise, in its own name or in the  
14 name of and as the agent for a person, all of the rights,  
15 powers and remedies of the person with respect to the project  
16 or which may be conferred upon the person by statute, rule,  
17 or judicial decision, including all rights and remedies with  
18 respect to users of the project funded by the loan distributed  
19 to that person pursuant to this article; and

20 (3) The authority may, by civil action, mandamus or  
21 other judicial or administrative proceeding, compel  
22 performance by a person of all of the terms and conditions of  
23 the loan agreement, including:

24 (A) The adjustment of service charges as required to  
25 repay the loan or otherwise satisfy the terms of the loan  
26 agreement;

27 (B) The enforcement and collection of service charges;  
28 and

29 (C) The enforcement of all rights and remedies conferred  
30 by statute, rule, regulation or judicial decision, including, but  
31 not limited to, all rights associated with a security or other  
32 interest in real or personal property with the right to foreclose  
33 upon a default under a loan agreement.

34 (b) The rights and remedies enumerated in this section  
35 are in addition to rights and remedies conferred upon the  
36 authority by law or pursuant to the loan agreement.

**§22-14-22. Authority of Department of Environmental  
Protection for deficient dams that are privately  
owned by a noncompliant dam owner.**

1 (a) The secretary may assume full charge and  
2 responsibility over a dam and may expend money from the  
3 Dam Safety Rehabilitation Revolving Fund for the purpose  
4 of repair or removal of the dam or other remedial action, if:

5 (1) The dam is a deficient dam;

6 (2) The dam is privately owned; and

7 (3) The owner is a noncompliant dam owner.

8 (b) All costs incurred by the secretary to repair or remove  
9 the dam or take other remedial action shall be promptly  
10 repaid by the owner upon request or, if not repaid, the  
11 secretary may recover costs and damages from the owner by  
12 appropriate civil action. Moneys obtained from the civil  
13 action shall be promptly deposited in the fund.

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## CHAPTER 62

**(Com. Sub. for S.B. 325 - By Senators Love, Bailey,  
Wells, Green, Facemyer and Hunter)**

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[Passed March 6, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 27, 2008.]

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AN ACT to amend and reenact §5-10B-10a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-10B-12a, all relating to the deferred compensation plan for state employees; and providing the Treasurer with information needed to operate the state deferred compensation plan.

*Be it enacted by the Legislature of West Virginia:*

That §5-10B-10a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §5-10B-12a, all to read as follows:

### **ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.**

§5-10B-10a. Matching contribution program.

§5-10B-12a. Disclosure of information to the Treasurer for operation of the plan.



**§5-10B-10a. Matching contribution program.**

1       (a) For a period commencing the first day of July, two  
2 thousand seven, and continuing through the thirtieth day of  
3 September, two thousand twelve, the Treasurer is authorized  
4 to establish and operate a savings incentive program pursuant  
5 to section 401(a) of the Internal Revenue Code of 1986, as  
6 amended, in which a state employee participating in the  
7 deferred compensation plan authorized in this article may  
8 receive certain matching contributions pursuant to this  
9 section. The Treasurer shall establish matching program  
10 guidelines in accordance with this article.

11       (b) To qualify for participation in the matching program,  
12 a state employee shall have contributed to his or her deferred  
13 compensation account not less than ten dollars every pay  
14 period during a fiscal year.

15       (c) (1) Subject to the limitations provided by subdivision  
16 (2) of this subsection and subsections (e) and (f) of this  
17 section, the Treasurer shall allocate and credit a matching  
18 sum of up to twenty-five percent of the contributions a  
19 qualified state employee made to his or her deferred  
20 compensation account during a fiscal year for a period of up  
21 to five fiscal years, which contributions shall be at least ten  
22 dollars in every pay period during the fiscal year and which  
23 matching contributions for any employee shall not exceed  
24 one hundred dollars in any one fiscal year and four hundred  
25 dollars total over the life of the matching program.

26       (2) The Treasurer shall set the amount of funds a  
27 qualified state employee may receive as a match in  
28 accordance with this section in an amount not to exceed the  
29 amount of funds authorized by the Legislature for this  
30 purpose.

31       (d) The matching contribution shall be remitted annually  
32 by the Treasurer from the West Virginia Deferred

33 Compensation Matching Fund, which is hereby created, to  
34 the employee's account in the West Virginia Deferred  
35 Compensation Trust Fund no later than the thirtieth day of  
36 September each year for the prior fiscal year.

37 (e) The Treasurer shall not obligate, authorize or pay any  
38 match for which funds are not available in the West Virginia  
39 Deferred Compensation Matching Fund.

40 (f) Operation of the matching program is contingent upon  
41 funding made available by the West Virginia Legislature and  
42 may be changed or discontinued at any time for a time certain  
43 or indefinitely, as determined by the Legislature or the  
44 Treasurer. The maximum amount of funds that may be  
45 expended from the Deferred Compensation Matching Fund  
46 in any one fiscal year is one million dollars.

47 (g) On or before the first day of June, two thousand eight,  
48 the unclaimed property administrator shall transfer the  
49 amount of one million dollars from the Unclaimed Property  
50 Trust Fund to the Deferred Compensation Matching Fund for  
51 operation of the matching program.

52 (h) Moneys in the Deferred Compensation Matching  
53 Fund may be invested, in whole or in part, with the West  
54 Virginia Board of Treasury Investments or any other entity  
55 the Treasurer selects and all earnings shall accrue to and be  
56 retained by the fund.

57 (i) The State of West Virginia, the Treasurer and his or  
58 her employees, agents and representatives shall not be liable  
59 for any losses incurred by the Deferred Compensation  
60 Matching Fund.

61 (j) Any moneys remaining in the Deferred Compensation  
62 Matching Fund at the termination of the matching program shall  
63 be transferred to the General Revenue Fund of the state no later  
64 than the thirty-first day of December, two thousand twelve.

65 (k) Any public employer may elect to operate its own  
66 matching program.

**§5-10B-12a. Disclosure of information to the Treasurer for  
operation of the plan.**

1 For purposes of this article, any person or entity with  
2 information pertaining to an employee participating in the  
3 state plan shall disclose to the Treasurer any payroll related  
4 information the Treasurer determines he or she needs for the  
5 operation of the state deferred compensation plan.  
6 Disclosure of the information shall begin upon enactment of  
7 this section on a schedule and under arrangements required  
8 by the Treasurer. Information disclosed pursuant to this  
9 section shall be used by the Treasurer only for the operation  
10 of the state plan. The Treasurer shall treat the information  
11 obtained as confidential and shall not disclose the  
12 information except to a vendor providing goods or services  
13 for the plan, who shall also treat the information as  
14 confidential, or as required by law.

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CHAPTER 63

**(Com. Sub. for H.B. 4619 - By Delegates Schoen and Webster)**

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[Passed March 8, 2008; in effect from passage.]  
[Approved by the Governor on March 31, 2008.]

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AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new article, designated §48-5A-101 and §48-5A-102, all relating to requesting the Supreme Court of Appeals to study collaborative law procedures and to present its finding to the Legislature; and providing legislative findings.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §48-5A-101 and §48-5A-102, all to read as follows:

**ARTICLE 5A. COLLABORATIVE FAMILY LAW PROCEEDINGS.**

§48-5A-101. Legislative findings.

§48-5A-102. Collaborative law generally; requesting the Supreme Court to study collaborative law procedures for possible implementation in this state.

**§48-5A-101. Legislative findings.**

1 The Legislature finds that parties to family law actions  
2 often have particular needs and interests that may not be  
3 addressed through traditional litigation. The Legislature also  
4 finds that in the area of family law there may be an  
5 alternative approach to dispute resolution which targets  
6 settlement from the outset and which employs cooperative  
7 negotiation and problem solving that encourages compromise  
8 and direct communication among the parties.

**§48-5A-102. Collaborative law generally; requesting the Supreme Court to study collaborative law procedures for possible implementation in this state.**

1 (a) Collaborative law is a procedure in which parties who  
2 are involved in family law matters and the involved attorneys  
3 agree in writing to use their best efforts and make a  
4 good-faith attempt to resolve their disputes arising from  
5 family law matters on an agreed basis without resorting to  
6 judicial intervention, except to have a court approve the  
7 settlement agreement, make the legal pronouncements and  
8 sign the orders required by law to effectuate the agreement of  
9 the parties as the court determines appropriate.

10 (b) Several states have passed laws adopting  
11 collaborative law procedures. The Legislature requests that  
12 the Supreme Court of Appeals study the use of collaborative  
13 law procedures in the family courts of this state and, should  
14 the court find that the procedures would be an effective  
15 alternative approach to dispute resolution in family law  
16 matters, promulgate rules for the implementation of the  
17 collaborative law procedures. The Legislature further  
18 requests that the Supreme Court of Appeals present its  
19 findings and any rules promulgated to the Legislature at the  
20 regular session of the Legislature, 2009.

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## CHAPTER 64

**(Com. Sub. for H.B. 3065 - By Delegates Eldridge, Rodighiero, Ellis,  
Stemple, Williams, Perry, Beach, Shook, Argento and Reynolds)**

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[Passed March 6, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 15, 2008.]

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AN ACT to amend and reenact §48-9-209 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §48-9-301a; and to amend said code by adding thereto a new section, designated §61-6-25, all relating false allegations of child abuse and/or neglect; relief from false allegations on allocation of custodial responsibility under a parenting plan; imposition of reasonable costs and reasonable attorney's fees for defending against false allegations; request for disclosure of source of allegations by Department of Health and Human Resources; investigation of allegations of child sexual abuse by family courts; and new misdemeanor offense for falsely reporting child abuse.

*Be it enacted by the Legislature of West Virginia:*

That §48-9-209 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §48-9-301a; and that said code be amended by adding thereto a new section, designated §61-6-25, all to read as follows:

**Chapter**

**48. Domestic Relations.**

**61. Crimes and Their Punishment.**

**CHAPTER 48. DOMESTIC RELATIONS.**

**ARTICLE 9. CUSTODY OF CHILDREN.**

**PART 2 – PARENTING PLANS.**

§48-9-209. Parenting plan; limiting factors.

§48-9-301a. Child abuse allegations.

**§48-9-209. Parenting plan; limiting factors.**

1 (a) If either of the parents so requests, or upon receipt of  
2 credible information thereof, the court shall determine  
3 whether a parent who would otherwise be allocated  
4 responsibility under a parenting plan:

5 (1) Has abused, neglected or abandoned a child, as  
6 defined by state law;

7 (2) Has sexually assaulted or sexually abused a child as  
8 those terms are defined in articles eight-b and eight-d, chapter  
9 sixty-one of this code;

10 (3) Has committed domestic violence, as defined in  
11 section 27-202;

12       (4) Has interfered persistently with the other parent's  
13 access to the child, except in the case of actions taken for the  
14 purpose of protecting the safety of the child or the interfering  
15 parent or another family member, pending adjudication of the  
16 facts underlying that belief; or

17       (5) Has repeatedly made fraudulent reports of domestic  
18 violence or child abuse.

19       (b) If a parent is found to have engaged in any activity  
20 specified by subsection (a) of this section, the court shall  
21 impose limits that are reasonably calculated to protect the  
22 child or child's parent from harm. The limitations that the  
23 court shall consider include, but are not limited to:

24       (1) An adjustment of the custodial responsibility of the  
25 parents, including but not limited to:

26       (A) Increased parenting time with the child to make up  
27 for any parenting time the other parent lost as a result of the  
28 proscribed activity;

29       (B) An additional allocation of parenting time in order to  
30 repair any adverse effect upon the relationship between the  
31 child and the other parent resulting from the proscribed  
32 activity; or

33       (C) The allocation of exclusive custodial responsibility to  
34 one of them;

35       (2) Supervision of the custodial time between a parent  
36 and the child;

37       (3) Exchange of the child between parents through an  
38 intermediary, or in a protected setting;

39       (4) Restraints on the parent from communication with or  
40 proximity to the other parent or the child;

41 (5) A requirement that the parent abstain from possession  
42 or consumption of alcohol or nonprescribed drugs while  
43 exercising custodial responsibility and in the twenty-four  
44 hour period immediately preceding such exercise;

45 (6) Denial of overnight custodial responsibility;

46 (7) Restrictions on the presence of specific persons while  
47 the parent is with the child;

48 (8) A requirement that the parent post a bond to secure  
49 return of the child following a period in which the parent is  
50 exercising custodial responsibility or to secure other  
51 performance required by the court;

52 (9) A requirement that the parent complete a program of  
53 intervention for perpetrators of domestic violence, for drug  
54 or alcohol abuse, or a program designed to correct another  
55 factor; or

56 (10) Any other constraints or conditions that the court  
57 deems necessary to provide for the safety of the child, a  
58 child's parent or any person whose safety immediately affects  
59 the child's welfare.

60 (c) If a parent is found to have engaged in any activity  
61 specified in subsection (a) of this section, the court may not  
62 allocate custodial responsibility or decision-making  
63 responsibility to that parent without making special written  
64 findings that the child and other parent can be adequately  
65 protected from harm by such limits as it may impose under  
66 subsection (b) of this section. The parent found to have  
67 engaged in the behavior specified in subsection (a) of this  
68 section has the burden of proving that an allocation of  
69 custodial responsibility or decision-making responsibility to  
70 that parent will not endanger the child or the other parent.



71 (d) If the court determines, based on the investigation  
72 described in part three of this article or other evidence  
73 presented to it, that an accusation of child abuse or neglect,  
74 or domestic violence made during a child custody proceeding  
75 is false and the parent making the accusation knew it to be  
76 false at the time the accusation was made, the court may  
77 order reimbursement to be paid by the person making the  
78 accusations of costs resulting from defending against the  
79 accusations. Such reimbursement may not exceed the actual  
80 reasonable costs incurred by the accused party as a result of  
81 defending against the accusation and reasonable attorney's  
82 fees incurred.

83 (e) (1) A parent who believes he or she is the subject of  
84 activities by the other parent described in subdivision (5) of  
85 subsection (a), may move the court pursuant to subdivision  
86 (4), subsection (b), section one, article seven, chapter forty-  
87 nine of this code for the Department of Health and Human  
88 Resources to disclose whether the other parent was the source  
89 of the allegation and, if so, whether the Department found the  
90 report to be:

91 (A) Substantiated;

92 (B) Unsubstantiated;

93 (C) Inconclusive; or

94 (D) Still under investigation.

95 (2) If the court grants a motion pursuant to this  
96 subsection, disclosure by the Department of Health and  
97 Human Resources shall be in camera. The court may  
98 disclose to the parties information received from the  
99 Department only if it has reason to believe a parent  
100 knowingly made a false report.

## PART 3 - FACT FINDING.

**§48-9-301a. Child abuse allegations.**

1 (a) If allegations of child abuse are made during a child  
2 custody proceeding and the court has concerns regarding the  
3 child's safety, the court may take any reasonable, temporary  
4 steps as the court, in its discretion, deems appropriate under  
5 the circumstances to protect the child's safety until an  
6 investigation can be completed. Nothing in this subsection  
7 shall affect the applicability of sections two and nine of  
8 article six-a, chapter forty-nine of this code.

9 (b) If allegations of child abuse are made during a child  
10 custody proceeding, the court may request that the local child  
11 protective service conduct an investigation of the allegations  
12 pursuant to article six-a, chapter forty-nine of this code. Upon  
13 completion of the investigation, the agency shall report its  
14 findings to the court.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.****ARTICLE 6. CRIMES AGAINST THE PEACE.****§61-6-25. Falsely reporting child abuse.**

1 (a) Any person who knowingly and intentionally reports  
2 or causes to be reported to a law enforcement officer, child  
3 protective service worker or judicial officer that another has  
4 committed child sexual abuse, child abuse or neglect as such  
5 are defined in section three, article one, chapter forty-nine of  
6 this code who when doing so knows or has reason to know  
7 such accusation is false and who does it with the intent to  
8 influence a child custody decision shall be guilty of a  
9 misdemeanor, and, upon conviction, shall be fined not more  
10 than one thousand dollars, sentenced to not more than sixty  
11 hours of court-approved community service, or both.

12 (b) In addition to any other sanctions imposed by the  
13 provisions of this section, any person convicted of a violation  
14 of this section shall be required to attend and complete a  
15 court-approved parenting class.



## CHAPTER 65

**(S.B. 217 - By Senators Jenkins and Guills)**

[Passed March 6, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §8-10-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-3-3a of said code; and to amend and reenact §50-3-2a of said code, all relating to resident and nonresident drivers' failure to pay costs, fines, forfeitures or penalties imposed upon conviction of a motor vehicle violation; and reducing the time period for nonresidents to pay costs, fines, forfeitures or penalties before the court sends notice to the Division of Motor Vehicles to suspend the nonresident offender's driver's privilege to drive in this state.

*Be it enacted by the Legislature of West Virginia:*

That §8-10-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17B-3-3a of said code be amended and reenacted; and that §50-3-2a of said code be amended and reenacted, all to read as follows:

**Chapter**

- 8. Municipal Corporations.**
- 17B. Motor Vehicle Driver's License.**
- 50. Magistrate Courts.**

**CHAPTER 8. MUNICIPAL CORPORATIONS.****ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.****§8-10-2a. Payment of fines by credit cards or payment plan; suspension of driver's license for failure to pay motor vehicle violation fines or to appear in court.**

1 (a) A municipal court may accept credit cards in payment  
2 of all costs, fines, forfeitures or penalties. A municipal court  
3 may collect a substantial portion of all costs, fines, forfeitures  
4 or penalties at the time such amount is imposed by the court  
5 so long as the court requires the balance to be paid within one  
6 hundred eighty days from the date of judgment and in  
7 accordance with a payment plan: *Provided*, That all costs,  
8 fines, forfeitures or penalties imposed by the municipal court  
9 upon a nonresident of this state by judgment entered upon a  
10 conviction for a motor vehicle violation defined in section  
11 three-a, article three, chapter seventeen-b of this code must  
12 be paid within eighty days from the date of judgment. The  
13 payment plan shall specify: (1) The number of additional  
14 payments to be made; (2) the dates on which such payments  
15 and amounts shall be made; and (3) amounts due on such  
16 dates.

17 (b) If costs, fines, forfeitures or penalties imposed by the  
18 municipal court for motor vehicle violations as defined in  
19 section three-a, article three, chapter seventeen-b of this code  
20 are not paid within the time limits imposed pursuant to  
21 subsection (a) of this section, or if a person fails to appear or  
22 otherwise respond in court when charged with a motor  
23 vehicle violation as defined in section three-a, article three,  
24 chapter seventeen-b of this code, the municipal court must  
25 notify the Commissioner of the Division of Motor Vehicles  
26 of such failure to pay or failure to appear.

**CHAPTER 17B. MOTOR VEHICLE  
DRIVER'S LICENSES.**

**ARTICLE 3. CANCELLATION, SUSPENSION OR  
REVOCAATION OF LICENSES.**

**§17B-3-3a. Suspending license for failure to pay fines or  
penalties imposed by magistrate court or  
municipal court.**

1 (a) The division shall suspend the license of any resident  
2 of this state or the privilege of a nonresident to drive a motor  
3 vehicle in this state upon receiving notice from a magistrate  
4 court or municipal court of this state, pursuant to subsection  
5 (b), section two-a, article three, chapter fifty of this code or  
6 subsection (b), section two-a, article ten, chapter eight of this  
7 code, that such person has defaulted on the payment of costs,  
8 fines, forfeitures or penalties which were imposed on the  
9 person by the magistrate court or municipal court by  
10 judgment entered upon conviction of any motor vehicle  
11 violation or that such person has failed to respond or appear  
12 in court when charged with a motor vehicle violation.

13 (b) The magistrate court or municipal court shall notify  
14 the division upon a default of payment as follows:

15 (1) For a resident of this state, after one hundred eighty  
16 days following the date of judgment upon the conviction; or

17 (2) For a nonresident of this state, after eighty days  
18 following the date of judgment upon the conviction.

19 (c) For the purposes of this section, section two-a, article  
20 three, chapter fifty of this code and section two-a, article ten,  
21 chapter eight of this code, "motor vehicle violation" shall be  
22 defined as any violation designated in chapter seventeen-a,  
23 seventeen-b, seventeen-c, seventeen-d or seventeen-e of this

24 code or the violation of any municipal ordinance relating to  
25 the operation of a motor vehicle for which the violation  
26 thereof would result in a fine or penalty: *Provided*, That any  
27 parking violation or other violation for which a citation may  
28 be issued to an unattended vehicle shall not be considered a  
29 motor vehicle violation for the purposes of this section,  
30 section two-a, article three, chapter fifty of this code or  
31 section two-a, article ten, chapter eight of this code.

## CHAPTER 50. MAGISTRATE COURTS.

### ARTICLE 3. COSTS, FINES AND RECORDS.

#### **§50-3-2a. Payment by credit card or payment plan; suspension of licenses for failure to make payments or appear or respond; restitution; liens.**

1 (a) A magistrate court may accept credit cards in payment  
2 of all costs, fines, fees, forfeitures, restitution or penalties in  
3 accordance with rules promulgated by the supreme court of  
4 appeals. Any charges made by the credit company shall be  
5 paid by the person responsible for paying the cost, fine,  
6 forfeiture or penalty.

7 (b) Unless otherwise required by law, a magistrate court  
8 may collect a portion of any costs, fines, fees, forfeitures,  
9 restitution or penalties at the time the amount is imposed by  
10 the court so long as the court requires the balance to be paid  
11 in accordance with a payment plan which specifies: (1) The  
12 number of payments to be made; (2) the dates on which the  
13 payments are due; and (3) the amounts due for each payment.  
14 The written agreement represents the minimum payments and  
15 the last date those payments may be made. The obligor or  
16 the obligor's agent may accelerate the payment schedule at  
17 any time by paying any additional portion of any costs, fines,  
18 fees, forfeitures, restitution or penalties.

19 (c) (1) If any costs, fines, fees, forfeitures, restitution or  
20 penalties imposed by the magistrate court in a criminal case  
21 are not paid within one hundred eighty days from the date of  
22 judgment and the expiration of any stay of execution, the  
23 magistrate court clerk or, upon judgment rendered on appeal,  
24 the circuit clerk shall notify the Commissioner of the  
25 Division of Motor Vehicles of the failure to pay: *Provided,*  
26 That in a criminal case in which a nonresident of this state is  
27 convicted of a motor vehicle violation defined in section  
28 three-a, article three, chapter seventeen-b of this code, the  
29 appropriate clerk shall notify the Division of Motor Vehicles  
30 of the failure to pay within eighty days from the date of  
31 judgment and expiration of any stay of execution. Upon  
32 notice, the Division of Motor Vehicles shall suspend any  
33 privilege the person defaulting on payment may have to  
34 operate a motor vehicle in this state, including any driver's  
35 license issued to the person by the Division of Motor  
36 Vehicles, until all costs, fines, fees, forfeitures, restitution or  
37 penalties are paid in full. The suspension shall be imposed in  
38 accordance with the provisions of section six, article three,  
39 chapter seventeen-b of this code: *Provided, however,* That  
40 any person who has had his or her license to operate a motor  
41 vehicle in this state suspended pursuant to this subsection and  
42 his or her failure to pay is based upon inability to pay, may,  
43 if he or she is employed on a full or part-time basis, petition  
44 to the circuit court for an order authorizing him or her to  
45 operate a motor vehicle solely for employment purposes.  
46 Upon a showing satisfactory to the court of inability to pay,  
47 employment and compliance with other applicable motor  
48 vehicle laws, the court shall issue an order granting relief.

49 (2) In addition to the provisions of subdivision (1) of this  
50 subsection, if any costs, fines, fees, forfeitures, restitution or  
51 penalties imposed or ordered by the magistrate court for a  
52 hunting violation described in chapter twenty of this code are  
53 not paid within one hundred eighty days from the date of  
54 judgment and the expiration of any stay of execution, the

55 magistrate court clerk or, upon a judgment rendered on  
56 appeal, the circuit clerk shall notify the Director of the  
57 Division of Natural Resources of the failure to pay. Upon  
58 notice, the Director of the Division of Natural Resources  
59 shall suspend any privilege the person failing to appear or  
60 otherwise respond may have to hunt in this state, including  
61 any hunting license issued to the person by the Division of  
62 Natural Resources, until all the costs, fines, fees, forfeitures,  
63 restitution or penalties are paid in full.

64 (3) In addition to the provisions of subdivision (1) of this  
65 subsection, if any costs, fines, fees, forfeitures, restitution or  
66 penalties imposed or ordered by the magistrate court for a  
67 fishing violation described in chapter twenty of this code are  
68 not paid within one hundred eighty days from the date of  
69 judgment and the expiration of any stay of execution, the  
70 magistrate court clerk or, upon a judgment rendered on  
71 appeal, the circuit clerk shall notify the Director of the  
72 Division of Natural Resources of the failure to pay. Upon  
73 notice, the Director of the Division of Natural Resources  
74 shall suspend any privilege the person failing to appear or  
75 otherwise respond may have to fish in this state, including  
76 any fishing license issued to the person by the Division of  
77 Natural Resources, until all the costs, fines, fees, forfeitures,  
78 restitution or penalties are paid in full.

79 (d) (1) If a person charged with any criminal violation of  
80 this code fails to appear or otherwise respond in court, the  
81 magistrate court shall notify the Commissioner of the  
82 Division of Motor Vehicles thereof within fifteen days of the  
83 scheduled date to appear unless the person sooner appears or  
84 otherwise responds in court to the satisfaction of the  
85 magistrate. Upon notice, the Division of Motor Vehicles  
86 shall suspend any privilege the person failing to appear or  
87 otherwise respond may have to operate a motor vehicle in  
88 this state, including any driver's license issued to the person  
89 by the Division of Motor Vehicles, until final judgment in the



90 case and, if a judgment of guilty, until all costs, fines, fees,  
91 forfeitures, restitution or penalties imposed are paid in full.  
92 The suspension shall be imposed in accordance with the  
93 provisions of section six, article three, chapter seventeen-b of  
94 this code.

95 (2) In addition to the provisions of subdivision (1) of this  
96 subsection, if a person charged with any hunting violation  
97 described in chapter twenty of this code fails to appear or  
98 otherwise respond in court, the magistrate court shall notify  
99 the Director of the Division of Natural Resources of the  
100 failure thereof within fifteen days of the scheduled date to  
101 appear unless the person sooner appears or otherwise  
102 responds in court to the satisfaction of the magistrate. Upon  
103 notice, the Director of the Division of Natural Resources  
104 shall suspend any privilege the person failing to appear or  
105 otherwise respond may have to hunt in this state, including  
106 any hunting license issued to the person by the Division of  
107 Natural Resources, until final judgment in the case and, if a  
108 judgment of guilty, until all costs, fines, fees, forfeitures,  
109 restitution or penalties imposed are paid in full.

110 (3) In addition to the provisions of subdivision (1) of this  
111 subsection, if a person charged with any fishing violation  
112 described in chapter twenty of this code fails to appear or  
113 otherwise respond in court, the magistrate court shall notify  
114 the Director of the Division of Natural Resources of the  
115 failure thereof within fifteen days of the scheduled date to  
116 appear unless the person sooner appears or otherwise  
117 responds in court to the satisfaction of the magistrate. Upon  
118 notice, the Director of the Division of Natural Resources  
119 shall suspend any privilege the person failing to appear or  
120 otherwise respond may have to fish in this state, including  
121 any fishing license issued to the person by the Division of  
122 Natural Resources, until final judgment in the case and, if a  
123 judgment of guilty, until all costs, fines, fees, forfeitures,  
124 restitution or penalties imposed are paid in full.

125 (e) In every criminal case which involves a misdemeanor  
126 violation, a magistrate may order restitution where  
127 appropriate when rendering judgment.

128 (f) (1) If all costs, fines, fees, forfeitures, restitution or  
129 penalties imposed by a magistrate court and ordered to be  
130 paid are not paid within one hundred eighty days from the  
131 date of judgment and the expiration of any stay of execution,  
132 the clerk of the magistrate court shall notify the prosecuting  
133 attorney of the county of nonpayment and provide the  
134 prosecuting attorney with an abstract of judgment. The  
135 prosecuting attorney shall file the abstract of judgment in the  
136 office of the clerk of the county commission in the county  
137 where the defendant was convicted and in any county  
138 wherein the defendant resides or owns property. The clerks  
139 of the county commissions shall record and index the  
140 abstracts of judgment without charge or fee to the  
141 prosecuting attorney and when so recorded, the amount stated  
142 to be owing in the abstract shall constitute a lien against all  
143 property of the defendant.

144 (2) When all the costs, fines, fees, forfeitures, restitution  
145 or penalties described in subdivision (1) of this subsection for  
146 which an abstract of judgment has been recorded are paid in  
147 full, the clerk of the magistrate court shall notify the  
148 prosecuting attorney of the county of payment and provide  
149 the prosecuting attorney with a release of judgment, prepared  
150 in accordance with the provisions of section one, article  
151 twelve, chapter thirty-eight of this code, for filing and  
152 recordation pursuant to the provisions of this subdivision.  
153 Upon receipt from the clerk, the prosecuting attorney shall  
154 file the release of judgment in the office of the clerk of the  
155 county commission in each county where an abstract of the  
156 judgment was recorded. The clerks of the county  
157 commissions shall record and index the release of judgment  
158 without charge or fee to the prosecuting attorney.

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**CHAPTER 66**

**(Com. Sub. for H.B. 4139 - By Delegates Webster, Hrutkay,  
Kessler, Moore, Pino, Stemple and Overington)**

[Passed March 7, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §17B-2-1 of the Code of West Virginia, 1931, as amended; and to further amend said chapter by adding thereto a new article, designated §17B-2B-1, §17B-2B-2, §17B-2B-3, §17B-2B-4, §17B-2B-5, §17B-2B-6, §17B-2B-7, §17B-2B-8, §17B-2B-9, §17B-2B-10 and §17B-2B-11, all relating to licensing persons using bioptic telescopic devices to operate a motor vehicle; creating a Class G driver's license for persons using bioptic telescopic devices who complete an approved driver training program; authorizing the Division of Rehabilitation Services to create an approved driver training program; establishing minimum eligibility requirements for acceptance into an approved driver training program and minimum curriculum requirements; establishing criteria and restrictions for a Class G instruction permit and driver's license; specifying the duration of the Class G instruction permit and driver's license; providing for removal of the daytime driving restriction in certain circumstances; establishing standards for licensure of restricted out-of-state drivers to obtain a West Virginia Class G instruction permit or driver's license; providing prerequisites for renewal of a Class G driver's license; providing for suspension, revocation and reinstatement of Class G driver's licenses; requiring the Commissioner of the Division of Motor Vehicles to collect information regarding accidents, violations and convictions by Class G licensees and to report the same annually to the Legislature; requiring the Commissioner of the Division of

Motor Vehicles and the Director of the Division of Rehabilitation Services to propose legislative rules; and clarifying that training provisions for Class G licensees do not apply to persons already licensed in this state to operate a motor vehicle while wearing bioptic telescopic devices.

*Be it enacted by the Legislature of West Virginia:*

That §17B-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated §17B-2B-1, §17B-2B-2, §17B-2B-3, §17B-2B-4, §17B-2B-5, §17B-2B-6, §17B-2B-7, §17B-2B-8, §17B-2B-9, §17B-2B-10 and §17B-2B-11, all to read as follows:

**Article**

**2. Issuance of License, Expiration and Renewal.**

**2B. License to Operate a Motor Vehicle with Bioptic Telescopic Device.**

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

**\*§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.**

1 (a)(1) No person, except those hereinafter expressly  
2 exempted, may drive any motor vehicle upon a street or  
3 highway in this state or upon any subdivision street used by  
4 the public generally unless the person has a valid driver's  
5 license issued pursuant to this code for the type or class of  
6 vehicle being driven.

7 (2) Any person licensed to operate a motor vehicle  
8 pursuant to this code may exercise the privilege thereby  
9 granted in the manner provided in this code and, except as

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\*CLERK'S NOTE: This section was also amended by H.B. 2503 (Chapter 116), which passed prior to this act.

10 otherwise provided by law, is not required to obtain any other  
11 license to exercise the privilege by any county, municipality  
12 or local board or body having authority to adopt local police  
13 regulations.

14 (b) The division, upon issuing a driver's license, shall  
15 indicate on the license the type or general class or classes of  
16 vehicles the licensee may operate in accordance with this  
17 code, federal law or rule. Licenses shall be issued in  
18 different colors for those drivers under age eighteen, those  
19 drivers age eighteen to twenty-one and adult drivers. The  
20 commissioner is authorized to select and assign colors to the  
21 licenses of the various age groups.

22 (c) Driver's licenses issued by the division shall be  
23 classified in the following manner:

24 (1) A Class A, B or C license shall be issued to those  
25 persons eighteen years of age or older with two years of  
26 driving experience who have qualified for the commercial  
27 driver's license established by chapter seventeen-e of this  
28 code and the federal Motor Carrier Safety and Improvement  
29 Act of 1999 and subsequent rules, and have paid the required  
30 fee.

31 (2) A Class D license shall be issued to those persons  
32 eighteen years and older with one year of driving experience  
33 who operate motor vehicles other than those types of vehicles  
34 which require the operator to be licensed under the provisions  
35 of chapter seventeen-e of this code and federal law and rule  
36 and whose primary function or employment is the  
37 transportation of persons or property for compensation or  
38 wages and have paid the required fee. For the purpose of  
39 regulating the operation of motor vehicles, wherever the term  
40 "chauffeur's license" is used in this code, it shall be construed  
41 to mean the Class A, B, C or D license described in this  
42 section or chapter seventeen-e of this code or federal law or  
43 rule: *Provided*, That anyone not required to be licensed

44 under the provisions of chapter seventeen-e of this code and  
45 federal law or rule and who operates a motor vehicle  
46 registered or required to be registered as a Class A motor  
47 vehicle, as that term is defined in section one, article ten,  
48 chapter seventeen-a of this code, with a gross vehicle weight  
49 rating of less than eight thousand one pounds, is not required  
50 to obtain a Class D license.

51 (3) A Class E license shall be issued to those persons who  
52 have qualified for a driver's license under the provisions of  
53 this chapter and who are not required to obtain a Class A, B,  
54 C or D license and who have paid the required fee. The Class  
55 E license may be endorsed under the provisions of section  
56 seven-b of this article for motorcycle operation. The Class E  
57 or (G) license for any person under the age of eighteen may  
58 also be endorsed with the appropriate graduated driver  
59 license level in accordance with the provisions of section  
60 three-a of this article.

61 (4) A Class F license shall be issued to those persons who  
62 successfully complete the motorcycle examination procedure  
63 provided by this chapter and have paid the required fee, but  
64 who do not possess a Class A, B, C, D or E driver's license.

65 (5) A Class G driver's license or instruction permit shall  
66 be issued to a person using bioptic telescopic lenses who has  
67 successfully completed an approved driver training program  
68 and complied with all other requirements of article two-b of  
69 this chapter.

70 (d) All licenses issued under this section may contain  
71 information designating the licensee as a diabetic, organ  
72 donor, as deaf or hard-of-hearing or as having any other  
73 handicap or disability, according to criteria established by the  
74 division, if the licensee requests this information on the  
75 license.

76 (e) No person, except those hereinafter expressly  
77 exempted, may drive any motorcycle upon a street or  
78 highway in this state or upon any subdivision street used by  
79 the public generally unless the person has a valid motorcycle  
80 license, a valid license which has been endorsed under  
81 section seven-b of this article for motorcycle operation or a  
82 valid motorcycle instruction permit.

83 (f) (1) An identification card may be issued to any person  
84 who:

85 (A) Is a resident of this state in accordance with the  
86 provisions of section one-a, article three, chapter seventeen-a  
87 of this code;

88 (B) Has reached the age of two years. The division may  
89 also issue an identification card to a person under the age of  
90 two years for good cause shown;

91 (C) Has paid the required fee of two dollars and fifty  
92 cents per year: *Provided*, That the fee is not required if the  
93 applicant is sixty-five years or older or is legally blind; and

94 (D) Presents a birth certificate or other proof of age and  
95 identity acceptable to the division with a completed  
96 application on a form furnished by the division.

97 (2) The identification card shall contain the same  
98 information as a driver's license except that the identification  
99 card shall be clearly marked as an identification card.  
100 However, the division may issue an identification card with  
101 less information to persons under the age of sixteen. An  
102 identification card may be renewed annually on application  
103 and payment of the fee required by this section.

104 (A) Every identification card issued to a person who has  
105 attained his or her twenty-first birthday shall expire on the  
106 licensee's birthday in those years in which the licensee's age

107 is evenly divisible by five. Except as provided in paragraph  
108 (B) of this subdivision, no identification card may be issued  
109 for less than three years or for more than seven years and  
110 expires on the licensee's birthday in those years in which the  
111 licensee's age is evenly divisible by five.

112 (B) Every identification card issued to a person who has  
113 not attained his or her twenty-first birthday shall expire thirty  
114 days after the licensee's twenty-first birthday.

115 (C) Every identification card issued to persons under the  
116 age of sixteen shall be issued for a period of two years and  
117 shall expire on the last day of the month in which the  
118 applicant's birthday occurs.

119 (3) The division may issue an identification card to an  
120 applicant whose privilege to operate a motor vehicle has been  
121 refused, canceled, suspended or revoked under the provisions  
122 of this code.

123 (g) Any person violating the provisions of this section is  
124 guilty of a misdemeanor and, upon conviction, shall be fined  
125 not more than five hundred dollars; and upon a second or  
126 subsequent conviction, shall be fined not more than five  
127 hundred dollars or confined in jail not more than six months,  
128 or both.

## **ARTICLE 2B. LICENSE TO OPERATE A MOTOR VEHICLE WITH BIOPTIC TELESCOPIC DEVICE.**

- §17B-2B-1. Definitions.
- §17B-2B-2. Class G instruction permit or driver's license; participation in approved driver training program; eligibility criteria; required curriculum.
- §17B-2B-3. Class G instruction permit; eligibility criteria; restrictions; duration of permit.
- §17B-2B-4. Class G driver's license; eligibility criteria; duration of license; surrender of current license; provisions not applicable to persons already licensed to drive with bioptic device.
- §17B-2B-5. Restrictions on Class G driver's license; removal of daytime driving restrictions.



- §17B-2B-6. Restricted out-of-state drivers; required to obtain Class G driver's license; surrender of current license; waiver of requirement to participate in an approved driver training program.
- §17B-2B-7. Renewal of license.
- §17B-2B-8. Suspension, revocation and reinstatement of license.
- §17B-2B-9. Commissioner and director to collect information regarding Class G licensees; report to Legislature.
- §17B-2B-10. Rules.
- §17B-2B-11. Applicability.

### §17B-2B-1. Definitions.

1 For purposes of this article, the following terms have the  
2 meaning indicated:

3 (1) "Applicant" means any person applying for a Class G  
4 instruction permit or license to operate a motor vehicle in this  
5 state who must use a bioptic telescopic device to meet the  
6 commissioner's minimum visual acuity and visual field  
7 standards for licensure.

8 (2) "Approved driver training program" means a program  
9 that:

10 (A) Provides and coordinates comprehensive assessment  
11 and training of driving skills and responses;

12 (B) Emphasizes clinical and functional vision skills,  
13 predriver readiness skills and the physical, mental and social  
14 driving skills of an applicant;

15 (C) Is approved by the Division of Rehabilitation  
16 Services, after consultation with the division; and

17 (D) Is operated by and under the auspices of the Division  
18 of Rehabilitation Services at its headquarters at Institute,  
19 Kanawha County.

20 (3) "Bioptic telescopic device" means a two focus optical  
21 system used to magnify distant objects by including a small

22 telescope that is mounted in a spectacle lens so as to allow an  
23 unobstructed view of the horizontal visual field through  
24 normal distance corrective lenses.

25 (4) "Corrective lenses" means eyeglasses, contact lenses,  
26 and intraocular lenses, but does not mean a bioptic telescopic  
27 device.

28 (5) "Daytime driving restriction" means a limitation on  
29 the operation of a motor vehicle to:

30 (A) The period of time between thirty minutes after  
31 sunrise and thirty minutes before sunset; and

32 (B) Weather conditions that do not significantly reduce  
33 the visibility of the roadway, other traffic, and traffic control  
34 devices.

35 (6) "Field expander" means a device used to compensate  
36 for peripheral visual field loss.

37 (7) "Restricted out-of-state driver" means a person who  
38 has been issued, by another state, a valid driver's license with  
39 a restriction requiring the driver to use a bioptic telescopic  
40 device.

41 (8) "Vision specialist" means a licensed ophthalmologist  
42 or optometrist.

43 (9) "Visual acuity" means the measure of a person's  
44 clarity of vision based on the Snellen visual acuity scale.

45 (10) "Visual field" means the area of physical space  
46 visible to the eye in a given fixed position.

**§17B-2B-2. Class G instruction permit or driver's license;  
participation in approved driver training**

**program; eligibility criteria; required curriculum.**

1 (a) A person who does not meet the visual acuity and  
2 visual field standards established by the commissioner for  
3 licensure to operate a motor vehicle in this state, but who is  
4 able to satisfy the minimum vision requirements using a  
5 bioptic telescopic device is eligible for a Class G instruction  
6 permit or driver's license pursuant to this article if he or she  
7 is participating in or has successfully completed an approved  
8 driver training program.

9 (b) An applicant is eligible to participate in an approved  
10 driver training program if he or she:

11 (1) Submits to the commissioner and to the Division of  
12 Rehabilitation Services a report of examination by a vision  
13 specialist, on a form prescribed by the Division of  
14 Rehabilitation Services, which certifies that:

15 (A) In the opinion of the vision specialist, the applicant's  
16 vision can be corrected with the use of a bioptic telescopic  
17 device and without field expanders to satisfy the minimum  
18 visual acuity and visual field standards established by the  
19 commissioner;

20 (B) No ocular diagnosis or prognosis currently exists or  
21 is likely to occur during the period of licensure which would  
22 cause deterioration of the applicant's visual acuity or visual  
23 field to levels below the commissioner's minimum visual  
24 acuity and visual field standards for licensure; and

25 (C) The applicant is a likely candidate for acceptance into  
26 an approved driver training program; and

27 (2) Satisfies any other criteria for participation  
28 established by the Division of Rehabilitation Services.

29 (c) An approved driver training program shall include, at  
30 a minimum:

31 (1) PreDriving instruction with regard to highway signs  
32 and the rules of the road;

33 (2) PreDriving instruction in proper use of bioptic  
34 telescopic devices; and

35 (3) At least thirty hours of behind-the-wheel instruction  
36 in driving with bioptic telescopic devices.

37 (d) The Division of Rehabilitation Services may waive  
38 preDriving instruction with regard to highway signs and the  
39 rules of the road pursuant to subdivision (1), subsection (c)  
40 of this section if the applicant:

41 (1) Has at least three years of experience driving with an  
42 unrestricted license; and

43 (2) Passes the written examination provided in  
44 subdivision (2), subsection (a), section (3) of this section.

**§17B-2B-3. Class G instruction permit; eligibility criteria;  
restrictions; duration of permit.**

1 (a) An applicant is eligible for a Class G instruction  
2 permit if he or she has:

3 (1) Been accepted into and enrolled in an approved driver  
4 training program;

5 (2) Passed a written examination, in the manner  
6 prescribed by the commissioner, testing the applicant's:

7 (A) Ability to read and understand highway signs  
8 regulating, warning and directing traffic; and

9 (B) Knowledge of the traffic laws of this state; and

10 (3) Satisfied, at each stage of the licensing process, any  
11 additional requirements for an instruction permit required by  
12 article two of this chapter that are not addressed in this  
13 article.

14 (b) The commissioner may not issue a Class G instruction  
15 permit until the applicant has surrendered any license he or  
16 she currently holds to operate a motor vehicle.

17 (c) A Class G instruction permit authorizes the permittee  
18 to operate a Class A passenger motor vehicle, weighing eight  
19 thousand (8000) pounds or less, subject to the following  
20 restrictions:

21 (1) The applicant may drive only while using a bioptic  
22 telescopic device;

23 (2) The applicant is subject to a daytime driving  
24 restriction;

25 (3) The applicant may drive only when accompanied by  
26 a certified driver rehabilitation specialist or driver  
27 rehabilitation educator; and

28 (4) Any other conditions or restrictions the commissioner  
29 considers necessary to insure the safe operation of the motor  
30 vehicle.

31 (d) A Class G instruction permit is valid for up to one  
32 year. Upon expiration of the instruction permit, the applicant  
33 may reapply for a new instruction permit, provided that he or  
34 she is eligible pursuant to subsection (a) of this section.

**§17B-2B-4. Class G driver's license; eligibility criteria;  
duration of license; surrender of current**

**license; provisions not applicable to persons already licensed to drive with bioptic device.**

1 (a) A person who has obtained a Class G instruction  
2 permit may obtain a Class G driver's license to operate a  
3 motor vehicle if he or she has:

4 (1) Been certified by the Division of Rehabilitation  
5 Services as having successfully completed an approved  
6 driver training program, along with any agency  
7 recommendations regarding license restrictions or  
8 modifications, including, but not limited to:

9 (A) Special adaptive equipment;

10 (B) Hours of permitted operation;

11 (C) Types of roads on which the applicant may operate a  
12 vehicle; and

13 (D) How far from home the applicant may operate a  
14 vehicle;

15 (2) Submitted to the commissioner and to the Director of  
16 the Division of Rehabilitation Services, on a form prescribed  
17 by the Division of Rehabilitation Services, a report of  
18 examination by a vision specialist, conducted after the  
19 applicant completes the approved driver training program,  
20 certifying that the applicant continues to meet the minimum  
21 visual acuity and visual field standards established by the  
22 commissioner for licensure to operate a motor vehicle;

23 (3) Successfully completed a comprehensive road skills  
24 examination, conducted at a location determined by the  
25 commissioner, with a certified driver rehabilitation specialist  
26 or driver rehabilitation educator in the test vehicle along with  
27 the driving examiner. The comprehensive road skills  
28 examination shall include, at a minimum:

29 (A) A "passenger in car" test with bioptic telescopic  
30 device in place designed to test competency in using the  
31 bioptic telescopic device under stationary and dynamic  
32 conditions;

33 (B) A maneuverability skills test; and

34 (C) A standardized on-road test designed to test driving  
35 competency of the applicant; and

36 (4) Satisfied, at each stage of the licensing process, any  
37 additional requirements for licensure required by article two  
38 of this chapter that are not addressed in this article;

39 (b) If an applicant fails the comprehensive road skills  
40 examination three times, he or she is not eligible to retake the  
41 examination until he or she has successfully completed  
42 additional training in an approved driver training program  
43 and been recommended for retesting by the director of the  
44 program.

45 (c) An applicant who has a current license to operate a  
46 motor vehicle other than a Class G driver's license must  
47 surrender his or her current driver's license before the  
48 commissioner will issue a Class G driver's license or  
49 instruction permit.

50 (d) Every Class G licensee must provide the  
51 commissioner with a report of examination by a vision  
52 specialist, conducted no more than three months prior to the  
53 annual anniversary of the issuance of the license, certifying  
54 that the applicant continues to meet the minimum visual  
55 acuity and visual field standards established by the  
56 commissioner for licensure to operate a motor vehicle. The  
57 report shall be submitted on a form prescribed by the  
58 commissioner.

**§17B-2B-5. Restrictions on Class G driver's license; removal of daytime driving restriction.**

1 (a) A Class G driver's license authorizes the licensee to  
2 operate a Class A passenger motor vehicle, weighing eight  
3 thousand pounds or less, subject to the following restrictions:

4 (1) The applicant may drive only while using a bioptic  
5 telescopic device;

6 (2) Daytime driving restriction; and

7 (3) Any other conditions or restrictions the commissioner  
8 considers necessary to insure the safe operation of the motor  
9 vehicle.

10 (b) An applicant to whom a Class G driver's license has  
11 been issued may apply to the commissioner for removal of  
12 the daytime driving restriction if the applicant has:

13 (1) Operated a motor vehicle for thirty-six months  
14 without an at-fault accident, moving violation or license  
15 suspension;

16 (2) Submitted a report of a vision examination, conducted  
17 not more than six months prior to the application, by a vision  
18 specialist showing that the licensee's visual impairment is  
19 stable and that he or she can see well enough to operate a  
20 vehicle at night;

21 (3) Successfully completed additional evaluation and  
22 training, in an approved driver training program, specifically  
23 designed for night driving;

24 (4) Passed a comprehensive night driving examination.

**§17B-2B-6. Restricted out-of-state drivers; required to obtain Class G driver's license; surrender of current**



**license; waiver of requirement to participate in an approved driver training program.**

1 (a) A restricted out-of-state driver establishing residence  
2 in West Virginia must apply for a Class G driver's license in  
3 this state.

4 (b) To obtain a Class G driver's license, the restricted  
5 out-of-state driver must:

6 (1) Satisfy all the requirements of licensure contained in  
7 sections three and four of this article;

8 (2) Surrender his or her out-of-state driver's license to the  
9 commissioner; and

10 (3) Provide the commissioner with a report of  
11 examination by a vision specialist, conducted no more than  
12 ninety-days prior to the application, showing that the  
13 applicant meets the minimum vision standards.

14 (c) If, based upon an evaluation of the out-of-state  
15 driver's abilities, along with any recommendations, the  
16 Division of Rehabilitation Services certifies to the  
17 commissioner that the restricted out-of-state driver was  
18 required, as a condition of licensure in the other state, to  
19 complete training substantially equivalent to the approved  
20 driver training program required by this article, the  
21 commissioner may waive the requirement that the restricted  
22 out-of-state driver complete an approved driver training  
23 program in this state prior to licensure.

**§17B-2B-7. Renewal of license.**

1 (a) A Class G driver's license is valid for no more than  
2 two years.

3 (b) To renew a Class G driver's license, the licensee must  
4 submit a report of a comprehensive vision examination by a  
5 vision specialist at least ninety-days prior to expiration of the  
6 license.

7 (c) If the vision specialist certifies that the conditions  
8 causing the licensee's visual impairment are stable, and the  
9 licensee continues to satisfy the commissioner's minimum  
10 visual acuity and visual field standards for licensure, the  
11 division shall renew the license for a period of one year.

12 (d) If the vision specialist certifies that the conditions  
13 causing the licensee's visual impairment are unstable or  
14 deteriorating, the commissioner may require the licensee to  
15 undergo additional testing or training before deciding  
16 whether to renew the license.

17 (e) If any comprehensive vision examination by a vision  
18 specialist determines that the licensee no longer satisfies the  
19 minimum visual acuity or visual field standards for licensure,  
20 the division shall not renew the license.

#### **§17B-2B-8. Suspension, revocation and reinstatement of license.**

1 (a) The commissioner may immediately suspend the  
2 Class G driver's license of any driver who is involved in an  
3 accident resulting in bodily injury or death, violates the  
4 restrictions placed on his or her license or is convicted of  
5 more than one moving violation within a twelve-month  
6 period, if the commissioner makes a finding that allowing the  
7 licensee to continue to drive pending resolution of the  
8 suspension would present a danger to the public.

9 (b) The commissioner shall suspend the driver's license  
10 of any licensee who fails to meet visual acuity or visual field  
11 minimum standards.

12 (c) The commissioner shall suspend the driver's license  
13 of any licensee who fails an evaluation of his or her ability to  
14 safely operate a motor vehicle by the division of  
15 rehabilitation's driving training program.

16 (d) A licensee whose license is suspended pursuant to this  
17 section may request a hearing within ten days of receiving the  
18 commissioner's notice of immediate suspension. No stay of  
19 the license suspension may be granted pending the hearing,  
20 but the commissioner must conduct a requested hearing on  
21 the suspension of the license within seventy days of receiving  
22 the request for a hearing. Only the licensee may request a  
23 continuance, but no stay of the suspension may be granted  
24 pending the delayed hearing.

**§17B-2B-9. Commissioner and director to collect information  
regarding Class G licensees; report to Legislature.**

1 (a) The commissioner shall collect and monitor  
2 information regarding accidents, license suspensions and  
3 revocations and convictions of Class G licensees.

4 (b) On or before the first day of February, of each year  
5 after the first Class G driver's license is issued:

6 (1) The commissioner shall provide to the Joint  
7 Committee on Government and Finance a written report  
8 detailing:

9 (A) The number of Class G driver's licenses issued in the  
10 previous calendar year; and

11 (B) Whether and to what extent holders of Class G  
12 driver's licenses were, during the previous calendar year:

13 (i) Involved in vehicular crashes; or

14 (ii) The subject of proceedings to suspend or revoke their  
15 licenses or were convicted of offenses involving moving  
16 violations, the rules of the road, illegal substance use or legal  
17 substance abuse.

18 (2) The Director of the Division of Rehabilitation  
19 Services shall provide to the Joint Committee on Government  
20 and Finance a written report detailing, for the previous  
21 calendar year:

22 (A) The number of applicants for the approved driver  
23 training program;

24 (B) The number of persons who successfully completed  
25 the program;

26 (C) The number of persons who failed to complete the  
27 program and the reason for each failure; and

28 (D) The status of the approved driver training program's  
29 funding and the extent to which persons who applied for the  
30 program were able to pay the costs associated with it.

**§17B-2B-10. Rules.**

1 (a) The Director of the Division of Rehabilitation  
2 Services, after consultation with the commissioner, shall  
3 propose legislative rules for promulgation in accordance with  
4 article three, chapter twenty-nine-a of this code establishing:

5 (1) Additional criteria, including minimum visual acuity  
6 and visual field standards, for acceptance into an approved  
7 driver training program;

8 (2) Additional curriculum requirements for an approved  
9 driver training program;

10 (3) Standards for successful completion of an approved  
11 driver training program;

12 (4) Standards for the comprehensive road skills test;

13 (5) Criteria for certifying whether an out-of-state driver  
14 training program is substantially equivalent to an approved  
15 driver training program in this state;

16 (6) Minimum requirements for additional driver training,  
17 if required, including criteria for night time driving;

18 (7) Any other standards or criteria necessary to  
19 implement this article.

20 (b) The commissioner, in collaboration with the Director  
21 of the Division of Rehabilitation Services, shall propose  
22 legislative rules for promulgation in accordance with article  
23 three, chapter twenty-nine-a of this code establishing:

24 (1) Criteria for issuance of a Class G instruction permit  
25 or driver's license, including minimum visual acuity and  
26 visual field standards;

27 (2) Standards for imposing and removing additional  
28 restrictions on an individual applicant's Class G instruction  
29 permit or driver's license;

30 (3) Standards for suspension, revocation and  
31 reinstatement of a Class G instruction permit or driver's  
32 license; and

33 (4) Any other standards or criteria necessary to  
34 implement this article.

**§17B-2B-11. Applicability.**

1 Except for the provisions of subsection (d), section four  
2 of this article requiring an annual report of vision  
3 examination to be submitted to the commissioner, the  
4 provisions of this article are not applicable to any person  
5 licensed by the commissioner to operate a motor vehicle with  
6 a bioptic telescopic device prior to the effective date of this  
7 article.

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## CHAPTER 67

**(Com. Sub. for H.B. 4331 - By Delegates Boggs and Schadler)**

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[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2008.]

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AN ACT to amend and reenact §17B-2-1a, §17B-2-3a, §17B-2-5, §17B-2-6, §17B-2-7 and §17B-2-8 of the Code of West Virginia, 1931, as amended, all relating to the issuance of driver's licenses; disposition of surrendered licenses; issuance of an identification card to applicants who possess a valid driver's license; providing a reduced criminal penalty for violating the terms and conditions of a level one or level two graduated driver's license; defining exceptions for the use of the address of principle residence; removing an obsolete provision related to the issuance of a driver's license without a photo; providing for the use of a passport in lieu of a birth certificate; requiring an applicant to pay a fee for the third and subsequent attempt at the written examination prior to obtaining an instruction permit; and extending the validity of instruction permits from sixty days to ninety days.

*Be it enacted by the Legislature of West Virginia:*

That §17B-2-1a, §17B-2-3a, §17B-2-5, §17B-2-6, §17B-2-7 and §17B-2-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

## **ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

- §17-2-1a. Surrender of license from other state of jurisdiction prior to receipt of license from this state; examination; fees required.
- §17-2-3a. Graduated driver's license.
- §17-2-5. Qualifications, issuance and fee for instruction permits.
- §17-2-6. Application for license or instruction permit; fee to accompany application.
- §17-2-7. Examination of applicants.
- §17-2-8. Issuance and contents of licenses; fees.

### **§17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.**

1       (a) The Division of Motor Vehicles shall not issue a  
2 driver's license to a person who holds a valid license to  
3 operate a motor vehicle issued by another state or jurisdiction  
4 unless or until the applicant shall surrender to the division the  
5 foreign license, or the person has signed and submitted to the  
6 division an affidavit to the effect that the person has  
7 surrendered all valid licenses issued to him or her by other  
8 states or jurisdictions. Any surrendered license issued by any  
9 other state or jurisdiction shall be destroyed or at the  
10 discretion of the division retained by the division and the  
11 division shall notify the original state of licensure that the  
12 person who surrendered the license has been licensed in this  
13 state. It shall be unlawful for a person to possess more than  
14 one valid driver's license at any time.

15       (b) Every driver shall, within thirty days after taking up  
16 residence in this state, apply to the division for a driver's  
17 license as prescribed in this article. For the purposes of this  
18 chapter the presumption that a natural person is a resident of  
19 this state is based on the provisions of section one-a, article

20 three, chapter seventeen-a of this code. The division may  
21 assign the driver's license class, type, endorsements or  
22 restrictions based on the applicant's prior licensing status,  
23 age and the type of licensing system used by the state of prior  
24 licensing.

25 (c) All other applicable provisions of this article relating  
26 to issuance, fees, expiration and renewal of licenses, and  
27 driver examination of applicants shall also apply to this  
28 section.

**\*§17B-2-3a. Graduated driver's licenses.**

1 (a) Any person under the age of eighteen may not operate  
2 a motor vehicle unless he or she has obtained a graduated  
3 driver's license in accordance with the three-level graduated  
4 driver's license system described in the following provisions.

5 (b) Any person under the age of twenty-one, regardless  
6 of class or level of licensure, who operates a motor vehicle  
7 with any measurable alcohol in his or her system is subject to  
8 the provisions of section two, article five, chapter seventeen-c  
9 of this code and section two, article five-a of said chapter.  
10 Any person under the age of eighteen, regardless of class or  
11 licensure level, is subject to the mandatory school attendance  
12 provisions of section eleven, article eight, chapter eighteen of  
13 this code.

14 (c) *Level one instruction permit.* -- An applicant who is  
15 fifteen years or older meeting all other requirements  
16 prescribed in this code may be issued a level one instruction  
17 permit.

18 (1) *Eligibility.* -- The division shall not issue a level one  
19 instruction permit unless the applicant:

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\*CLERK'S NOTE: This section was also amended by H.B. 4023 (Chapter 68),  
which passed subsequent to this act.



20 (A) Presents a completed application, as prescribed by  
21 the provisions of section six of this article, and which is  
22 accompanied by a writing, duly acknowledged, consenting to  
23 the issuance of the graduated driver's license and executed by  
24 a parent or guardian entitled to custody of the applicant;

25 (B) Presents a certified copy of a birth certificate issued  
26 by a state or other governmental entity responsible for vital  
27 records or a valid and unexpired passport issued by the  
28 United States government, evidencing that the applicant  
29 meets the minimum age requirement and is of verifiable  
30 identity;

31 (C) Passes the vision and written knowledge examination  
32 and completes the driving under the influence awareness  
33 program, as prescribed in section seven of this article;

34 (D) Presents a current school enrollment form or  
35 otherwise shows compliance with the provisions of section  
36 eleven, article eight, chapter eighteen of this code; and

37 (E) Pays a fee of five dollars which shall permit the  
38 applicant two attempts at the written knowledge test.

39 (2) *Terms and conditions of instruction permit.* -- A level  
40 one instruction permit issued under the provisions of this  
41 section is valid until thirty days after the date the applicant  
42 attains the age of eighteen and is not renewable. However,  
43 any permit holder who allows his or her permit to expire  
44 prior to successfully passing the road skills portion of the  
45 driver examination, and who has not committed any offense  
46 which requires the suspension, revocation or cancellation of  
47 the instruction permit, may reapply for a new instruction  
48 permit under the provisions of section six of this article. The  
49 division shall immediately revoke the permit upon receipt of  
50 a second conviction for a moving violation of traffic  
51 regulations and laws of the road or violation of the terms and

52 conditions of a level one instruction permit, which  
53 convictions have become final unless a greater penalty is  
54 required by this section or any other provision of this code.  
55 Any person whose instruction permit has been revoked is  
56 disqualified from retesting for a period of ninety days.  
57 However, after the expiration of ninety days, the person may  
58 retest if otherwise eligible. In addition to all other provisions  
59 of this code for which a driver's license may be restricted,  
60 suspended, revoked or canceled, the holder of a level one  
61 instruction permit may only operate a motor vehicle under  
62 the following conditions:

63 (A) Under the direct supervision of a licensed driver,  
64 twenty-one years of age or older, or a driver's education or  
65 driving school instructor who is acting in an official capacity  
66 as an instructor, who is fully alert and unimpaired, and the  
67 only other occupant of the front seat. The vehicle may be  
68 operated with no more than two additional passengers, unless  
69 the passengers are family members;

70 (B) Between the hours of five a.m. and eleven p.m.;

71 (C) All occupants must use safety belts in accordance  
72 with the provisions of section forty-nine, article fifteen,  
73 chapter seventeen-c of this code;

74 (D) Without any measurable blood alcohol content, in  
75 accordance with the provisions of subsection (h), section two,  
76 article five, chapter seventeen-c of this code; and

77 (E) Maintains current school enrollment or otherwise  
78 shows compliance with the provisions of section eleven,  
79 article eight, chapter eighteen of this code.

80 (F) A holder of a level one instruction permit who is  
81 under the age of eighteen years may not use a wireless  
82 communication device while operating a motor vehicle,

83 unless the use of the wireless communication device is for  
84 contacting a 911 system. A law-enforcement officer may  
85 enforce the provisions of this paragraph only as a secondary  
86 action when a law-enforcement officer with probable cause  
87 detains a driver for a suspected violation of another provision  
88 of this code. A person violating the provisions of this  
89 paragraph is guilty of a misdemeanor and, upon conviction  
90 thereof, shall for the first offense be fined twenty-five dollars;  
91 for a second offense be fined fifty dollars; and for a third or  
92 subsequent offense be fined seventy-five dollars.

93 (d) *Level two intermediate driver's license.* -- An  
94 applicant sixteen years of age or older, meeting all other  
95 requirements of the code, may be issued a level two  
96 intermediate driver's license.

97 (1) *Eligibility.* — The division shall not issue a level two  
98 intermediate driver's license unless the applicant:

99 (A) Presents a completed application as prescribed in  
100 section six of this article;

101 (B) Has held the level one instruction permit  
102 conviction-free for the one hundred eighty days immediately  
103 preceding the date of application for a level two intermediate  
104 license;

105 (C) Has completed either a driver's education course  
106 approved by the State Department of Education or thirty  
107 hours of behind-the-wheel driving experience certified by a  
108 parent or legal guardian or other responsible adult over the  
109 age of twenty-one as indicated on the form prescribed by the  
110 division: *Provided*, That nothing in this paragraph shall be  
111 construed to require any school or any county board of  
112 education to provide any particular number of driver's  
113 education courses or to provide driver's education training to  
114 any student;

115 (D) Presents a current school enrollment form or  
116 otherwise shows compliance with the provisions of section  
117 eleven, article eight, chapter eighteen of this code;

118 (E) Passes the road skills examination as prescribed by  
119 section seven of this article; and

120 (F) Pays a fee of five dollars.

121 (2) *Terms and conditions of a level two intermediate*  
122 *driver's license.* -- A level two intermediate driver's license  
123 issued under the provisions of this section shall expire thirty  
124 days after the applicant attains the age of eighteen, or until  
125 the licensee qualifies for a level three full Class E license,  
126 whichever comes first. In addition to all other provisions of  
127 this code for which a driver's license may be restricted,  
128 suspended, revoked or canceled, the holder of a level two  
129 intermediate driver's license may only operate a motor  
130 vehicle under the following conditions:

131 (A) Unsupervised between the hours of five a.m. and  
132 eleven p.m.;

133 (B) Only under the direct supervision of a licensed driver,  
134 age twenty-one years or older, between the hours of eleven  
135 p.m. and five a.m. except when the licensee is going to or  
136 returning from:

137 (i) Lawful employment;

138 (ii) A school-sanctioned activity;

139 (iii) A religious event; or

140 (iv) An emergency situation that requires the licensee to  
141 operate a motor vehicle to prevent bodily injury or death of  
142 another;

143 (C) All occupants shall use safety belts in accordance  
144 with the provisions of section forty-nine, article fifteen,  
145 chapter seventeen-c of this code;

146 (D) Operates the vehicle with no more than three  
147 passengers under the age of nineteen, unless the passengers  
148 are family members, in addition to the driver;

149 (E) Without any measurable blood alcohol content in  
150 accordance with the provisions of subsection (h), section two,  
151 article five, chapter seventeen-c of this code;

152 (F) Maintains current school enrollment or otherwise  
153 shows compliance with the provisions of section eleven,  
154 article eight, chapter eighteen of this code;

155 (G) A holder of a level two intermediate driver's license  
156 who is under the age of eighteen years may not use a wireless  
157 communication device while operating a motor vehicle,  
158 unless the use of the wireless communication device is for  
159 contacting a 911 system. A law-enforcement officer may  
160 enforce the provisions of this paragraph only as a secondary  
161 action when a law-enforcement officer with probable cause  
162 detains a driver for a suspected violation of another provision  
163 of this code. A person violating the provisions of this  
164 paragraph is guilty of a misdemeanor and, upon conviction  
165 thereof, shall for the first offense be fined twenty-five dollars;  
166 for a second offense be fined fifty dollars; and for a third or  
167 subsequent offense be fined seventy-five dollars.

168 (H) Upon the first conviction for a moving traffic  
169 violation or a violation of paragraph (A), (B), (C), (D) or (G),  
170 subdivision (1), subsection (d) of this section of the terms and  
171 conditions of a level two intermediate driver's license, the  
172 licensee shall enroll in an approved driver improvement  
173 program unless a greater penalty is required by this section or  
174 by any other provision of this code; and

175 (I) Upon the second conviction for a moving traffic  
176 violation or a violation of the terms and conditions of the  
177 level two intermediate driver's license, the licensee's  
178 privilege to operate a motor vehicle shall be revoked or  
179 suspended for the applicable statutory period or until the  
180 licensee's eighteenth birthday, whichever is longer unless a  
181 greater penalty is required by this section or any other  
182 provision of this code. Any person whose driver's license  
183 has been revoked as a level two intermediate driver, upon  
184 reaching the age of eighteen years and if otherwise eligible  
185 may reapply for an instruction permit, then a driver's license  
186 in accordance with the provisions of sections five, six and  
187 seven of this article.

188 (e) *Level three, full Class E license.* -- The level three  
189 license is valid until thirty days after the date the licensee  
190 attains his or her twenty-first birthday. Unless otherwise  
191 provided in this section or any other section of this code, the  
192 holder of a level three full Class E license is subject to the  
193 same terms and conditions as the holder of a regular Class E  
194 driver's license.

195 A level two intermediate licensee whose privilege to  
196 operate a motor vehicle has not been suspended, revoked or  
197 otherwise canceled and who meets all other requirements of  
198 the code may be issued a level three full Class E license  
199 without further examination or road skills testing if the  
200 licensee:

201 (1) Has reached the age of seventeen years; and

202 (A) Presents a completed application as prescribed by the  
203 provisions of section six of this article;

204 (B) Has held the level two intermediate license  
205 conviction free for the twelve-month period immediately  
206 preceding the date of the application;

207 (C) Has completed any driver improvement program  
208 required under paragraph (G), subdivision (2), subsection (d)  
209 of this section; and

210 (D) Pays a fee of two dollars and fifty cents for each year  
211 the license is valid. An additional fee of fifty cents shall be  
212 collected to be deposited in the Combined Voter Registration  
213 and Driver's Licensing Fund established in section twelve,  
214 article two, chapter three of this code; or

215 (2) Reaches the age of eighteen years; and

216 (A) Presents a completed application as prescribed by the  
217 provisions of section six of this article; and

218 (B) Pays a fee of two dollars and fifty cents for each year  
219 the license is valid. An additional fee of fifty cents shall be  
220 collected to be deposited in the Combined Voter Registration  
221 and Driver's Licensing Fund established in section twelve,  
222 article two, chapter three of this code.

223 (f) A person violating the provisions of the terms and  
224 conditions of a level one or level two intermediate driver's  
225 license, is guilty of a misdemeanor and, upon conviction  
226 thereof, shall for the first offense be fined twenty-five dollars;  
227 for a second offense be fined fifty dollars; and for a third or  
228 subsequent offense be fined seventy-five dollars.

**§17B-2-5. Qualifications, issuance and fee for instruction permits.**

1 (a) Any person who is at least fifteen years of age may  
2 apply to the division for an instruction permit. However, any  
3 person who has not attained the age of eighteen shall comply  
4 with the provisions of section three-a of this article. The  
5 division may, in its discretion, after the applicant has  
6 successfully passed all parts of the examination other than the

7 road skills test, issue to the applicant an instruction permit  
8 which entitles the applicant while having the permit in his or  
9 her immediate possession to drive a motor vehicle upon the  
10 public highways when accompanied by a licensed driver of  
11 at least twenty-one years of age, a driver's education or  
12 driving school instructor that is acting in an official capacity  
13 as an instructor, who is alert and unimpaired or a certified  
14 division license examiner acting in an official capacity as an  
15 examiner, who is occupying a seat beside the driver.

16 (1) Any instruction permit issued to a person under the  
17 age of eighteen years shall be issued in accordance with the  
18 provisions of section three-a of this article.

19 (2) Any permit issued to a person who has reached the  
20 age of eighteen years is valid for a period of ninety days. The  
21 fee for the instruction permit is five dollars.

22 (b) Any person sixteen years of age or older may apply  
23 to the division for a motorcycle instruction permit. Any  
24 person under the age of eighteen must have first completed  
25 the requirements for a level two intermediate driver's license  
26 or a Class E driver's license before being eligible for a  
27 motorcycle instruction permit.

28 The division may, in its discretion, after the applicant has  
29 successfully passed all parts of the motorcycle examination  
30 other than the driving test, and presented documentation of  
31 compliance with the provisions of section eleven, article  
32 eight, chapter eighteen of this code, if applicable, issue to the  
33 applicant an instruction permit which entitles the applicant  
34 while having the permit in his or her immediate possession to  
35 drive a motorcycle upon the public streets or highways for a  
36 period of ninety days, during the daylight hours between  
37 sunrise and sunset only. No holder of a motorcycle  
38 instruction permit shall operate a motorcycle while carrying  
39 any passenger on the vehicle.



40 A motorcycle instruction permit is not renewable, but a  
41 qualified applicant may apply for a new permit. The fee for  
42 a motorcycle instruction permit is five dollars, which shall be  
43 paid into a special fund in the state treasury known as the  
44 motor vehicle fees fund.

**§17B-2-6. Application for license or instruction permit; fee to accompany application.**

1 (a) Every application for an instruction permit or for a  
2 driver's license shall be made upon a form furnished by the  
3 division. Every application shall be accompanied by the  
4 proper fee and payment of the fee shall entitle an applicant  
5 under the age of eighteen to not more than two attempts at the  
6 written test or not more than three attempts to pass the road  
7 skills test. An applicant age eighteen years or older is  
8 entitled to not more than two attempts at the written test or  
9 not more than three attempts to pass the road skills test within  
10 a period of ninety days from the date of issuance of the  
11 instruction permit. An applicant who fails either the written  
12 test or the road skills test may not be tested twice within a  
13 period of one week.

14 (b) Any applicant who has not been previously licensed  
15 must hold an instruction permit for a minimum of thirty days.  
16 For the purposes of this section, the term "previously  
17 licensed" means an applicant who has obtained at least a level  
18 one graduated license or junior driver's license issued under  
19 the provisions of this article or has obtained an equal or  
20 greater level of licensure if previously licensed in another  
21 state.

22 (c) Every said application shall state the full legal name,  
23 date of birth, sex, and residence address of the applicant and  
24 briefly describe the applicant and shall state whether the  
25 applicant has theretofore been a licensed driver and, if so,  
26 when, and by what state or country and whether any such

27 license has ever been suspended or revoked within the five  
28 years next preceding the date of application, or whether an  
29 application has ever been refused and, if so, the date of and  
30 reason for the suspension, revocation or refusal, whether the  
31 applicant desires a notation on the driver's license indicating  
32 that the applicant is an organ donor, in accordance with  
33 article one-b of this chapter, a diabetic, deaf, or hard of  
34 hearing, or has any other handicap or disability and such  
35 other pertinent information as the commissioner may require.

**§17B-2-7. Examination of applicants.**

1 (a) Upon the presentment of the applicant's certified copy  
2 of the birth certificate issued by a state or other governmental  
3 entity responsible for vital records or a valid and unexpired  
4 passport issued by the United States government, as evidence  
5 that the applicant is of lawful age and verifiable identity, the  
6 Division of Motor Vehicles shall examine every applicant for  
7 a license to operate a motor vehicle in this state, except as  
8 otherwise provided in this section. The examination shall  
9 include a test of the applicant's eyesight, the applicant's  
10 ability to read and understand highway signs regulating,  
11 warning, and directing traffic, the applicant's knowledge of  
12 the traffic laws of this state, and the applicant's knowledge of  
13 the effects of alcohol upon persons and the dangers of driving  
14 a motor vehicle under the influence of alcohol. The  
15 examination shall also include an actual demonstration of  
16 ability to exercise ordinary and reasonable control in the  
17 operation of a motor vehicle, and any further physical and  
18 mental examination as the Division of Motor Vehicles  
19 considers necessary to determine the applicant's fitness to  
20 operate a motor vehicle safely upon the highways.

21 (b) The commissioner shall propose legislative rules for  
22 promulgation in accordance with the provisions of article  
23 three, chapter twenty-nine-a of this code concerning the  
24 examination of applicants for licenses and the qualifications

25 required of applicants, and the examination of applicants by  
26 the division shall be in accordance with the rules. The rules  
27 shall provide for the viewing of educational material or films  
28 on the medical, biological, and psychological effects of  
29 alcohol upon persons, the dangers of driving a motor vehicle  
30 while under the influence of alcohol and the criminal  
31 penalties and administrative sanctions for alcohol and drug  
32 related motor vehicle violations.

33 (c) After successful completion of the examination  
34 required by this section, section three-a, or section seven-b of  
35 this article, and prior to the issuance of a license pursuant to  
36 the provisions of section eight of this article, every applicant  
37 for a driver's license, graduated driver's license, or  
38 motorcycle-only license shall attend a mandatory education  
39 class on the dangers and social consequences of driving a  
40 motor vehicle while under the influence of alcohol. To the  
41 extent practicable, the commissioner shall use as lecturers at  
42 those classes persons who can relate first-hand experiences  
43 as victims or family members of victims of alcohol-related  
44 accidents or drivers who have been involved in  
45 alcohol-related accidents which caused serious bodily injury  
46 or death.

#### **§17B-2-8. Issuance and contents of licenses; fees.**

1 (a) The division shall, upon payment of the required fee,  
2 issue to every applicant qualifying therefor a driver's license,  
3 which shall indicate the type or general class or classes of  
4 vehicle or vehicles the licensee may operate in accordance  
5 with this chapter or chapter seventeen-e of this code, or  
6 motorcycle-only license. Each license shall contain a coded  
7 number assigned to the licensee, the full legal name, date of  
8 birth, residence address, a brief description and a color  
9 photograph of the licensee and either a facsimile of the  
10 signature of the licensee or a space upon which the signature  
11 of the licensee shall be written with pen and ink immediately

12 upon receipt of the license. No license is valid until it has  
13 been so signed by the licensee.

14 (b) A driver's license which is valid for operation of a  
15 motorcycle shall contain a motorcycle endorsement.

16 (c) The division shall use such process or processes in the  
17 issuance of licenses that will, insofar as possible, prevent any  
18 alteration, counterfeiting, duplication, reproduction, forging  
19 or modification of, or the superimposition of a photograph  
20 on, the license.

21 (d) The fee for the issuance of a Class E driver's license  
22 is two dollars and fifty cents per year for each year the  
23 license is issued to be valid. The fee for issuance of a Class  
24 D driver's license is six dollars and twenty-five cents per year  
25 for each year the license is issued to be valid. An additional  
26 fee of fifty cents shall be collected from the applicant at the  
27 time of original issuance or each renewal and the additional  
28 fee shall be deposited in the "combined voter registration and  
29 driver's licensing fund," established pursuant to the  
30 provisions of section twelve, article two, chapter three of this  
31 code. The additional fee for adding a motorcycle  
32 endorsement to a driver's license is one dollar per year for  
33 each year the license is issued.

34 (e) The fee for issuance of a motorcycle-only license is  
35 two dollars and fifty cents for each year for which the  
36 motorcycle license is to be valid. The fees for the motorcycle  
37 endorsement or motorcycle-only license shall be paid into a  
38 special fund in the State Treasury known as the Motorcycle  
39 Safety Fund as established in section seven, article one-d of  
40 this chapter.

41 (f) The fee for the issuance of either the level one or level  
42 two graduated driver's license as prescribed in section three-a  
43 of this article is five dollars.

44 (g) The division may use an address on the face of the  
45 license other than the applicant's address of residence if:

46 (1) The applicant has a physical address or location that  
47 is not recognized by the post office for the purpose of  
48 receiving mail;

49 (2) The applicant is enrolled in a state address  
50 confidentiality program or the alcohol test and lock program;

51 (3) The applicant's address is entitled to be suppressed  
52 under a state or federal law or suppressed by a court order; or

53 (4) At the discretion of the commissioner, the applicant's  
54 address may be suppressed to provide security for classes of  
55 applicants such as law-enforcement officials, protected  
56 witnesses and members of the state and federal judicial  
57 systems.

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## CHAPTER 68

**(Com. Sub. for H.B. 4023 - By Mr. Speaker, Mr. Thompson  
and Delegate Armstead)  
[By Request of the Executive]**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-3-6 of said code; and to amend and reenact §18-8-11 of said code, all relating to the denial or suspension of the driver's license of any student between the ages of fifteen and eighteen who withdraws from school or fails to make substantial progress towards graduating; providing for appeal; defining certain terms; and providing for exceptions.

*Be it enacted by the Legislature of West Virginia:*

That §17B-2-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17B-3-6 of said code be amended and reenacted; and that §18-8-11 of said code be amended and reenacted, all to read as follows:

**Chapter**

**17B. Motor Vehicle Driver's Licenses.**

**18. Education.**

**CHAPTER 17B. MOTOR VEHICLE  
DRIVER'S LICENSES.**

**Article**

**2. Issuance of License, Expiration, and Renewal.**

**3. Cancellation, Suspension, or Revocation of Licenses.**

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION, AND  
RENEWAL.**

**\*§17B-2-3a. Graduated driver's license.**

1 (a) Any person under the age of eighteen may not operate  
2 a motor vehicle unless he or she has obtained a graduated  
3 driver's license in accordance with the three-level graduated  
4 driver's license system described in the following provisions.

5 (b) Any person under the age of twenty-one, regardless  
6 of class or level of licensure, who operates a motor vehicle  
7 with any measurable alcohol in his or her system is subject to  
8 the provisions of section two, article five, chapter seventeen-c  
9 of this code and section two, article five-a of said chapter.  
10 Any person under the age of eighteen, regardless of class or  
11 licensure level, is subject to the mandatory school attendance  
12 and satisfactory academic progress provisions of section  
13 eleven, article eight, chapter eighteen of this code.

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\***CLERK'S NOTE:** This section was also amended by H.B. 4331 (Chapter 67), which passed prior to this act.

14 (c) *Level one instruction permit.* -- An applicant who is  
15 fifteen years or older meeting all other requirements  
16 prescribed in this code may be issued a level one instruction  
17 permit.

18 (1) *Eligibility.* -- The division shall not issue a level one  
19 instruction permit unless the applicant:

20 (A) Presents a completed application, as prescribed by  
21 the provisions of section six of this article, and which is  
22 accompanied by a writing, duly acknowledged, consenting to  
23 the issuance of the graduated driver's license and executed by  
24 a parent or guardian entitled to custody of the applicant;

25 (B) Presents a certified copy of a birth certificate issued  
26 by a state or other governmental entity responsible for vital  
27 records unexpired, or a valid passport issued by the United  
28 States government evidencing that the applicant meets the  
29 minimum age requirement and is of verifiable identity;

30 (C) Passes the vision and written knowledge examination  
31 and completes the driving under the influence awareness  
32 program, as prescribed in section seven of this article;

33 (D) Presents a driver's eligibility certificate or otherwise  
34 shows compliance with the provisions of section eleven,  
35 article eight, chapter eighteen of this code; and

36 (E) Pays a fee of five dollars, which shall permit the  
37 applicant at the written knowledge test.

38 (2) *Terms and conditions of instruction permit.* -- A level  
39 one instruction permit issued under the provisions of this  
40 section is valid until thirty days after the date the applicant  
41 attains the age of eighteen and is not renewable. However,  
42 any permit holder who allows his or her permit to expire  
43 prior to successfully passing the road skills portion of the  
44 driver examination, and who has not committed any offense

45 which requires the suspension, revocation or cancellation of  
46 the instruction permit, may reapply for a new instruction  
47 permit under the provisions of section six of this article. The  
48 division shall immediately revoke the permit upon receipt of  
49 a second conviction for a moving violation of traffic  
50 regulations and laws of the road or violation of the terms and  
51 conditions of a level one instruction permit, which  
52 convictions have become final unless a greater penalty is  
53 required by this section or any other provision of this code.  
54 Any person whose instruction permit has been revoked is  
55 disqualified from retesting for a period of ninety days.  
56 However, after the expiration of ninety days, the person may  
57 retest if otherwise eligible. In addition to all other provisions  
58 of this code for which a driver's license may be restricted,  
59 suspended, revoked or canceled, the holder of a level one  
60 instruction permit may only operate a motor vehicle under  
61 the following conditions:

62 (A) Under the direct supervision of a licensed driver,  
63 twenty-one years of age or older, or a driver's education or  
64 driving school instructor who is acting in an official capacity  
65 as an instructor, who is fully alert and unimpaired, and the  
66 only other occupant of the front seat. The vehicle may be  
67 operated with no more than two additional passengers, unless  
68 the passengers are family members;

69 (B) Between the hours of five a.m. and eleven p.m.;

70 (C) All occupants must use safety belts in accordance  
71 with the provisions of section forty-nine, article fifteen,  
72 chapter seventeen-c of this code;

73 (D) Without any measurable blood alcohol content, in  
74 accordance with the provisions of subsection (h), section two,  
75 article five, chapter seventeen-c of this code; and

76 (E) Maintains current school enrollment and is making  
77 satisfactory academic progress or otherwise shows



78 compliance with the provisions of section eleven, article  
79 eight, chapter eighteen of this code.

80 (F) A holder of a level one instruction permit who is  
81 under the age of eighteen years may not use a wireless  
82 communication device while operating a motor vehicle,  
83 unless the use of the wireless communication device is for  
84 contacting a 9-1-1 system. A law-enforcement officer may  
85 enforce the provisions of this paragraph only as a secondary  
86 action when a law-enforcement officer with probable cause  
87 detains a driver for a suspected violation of another provision  
88 of this code. A person violating the provisions of this  
89 paragraph is guilty of a misdemeanor and, upon conviction  
90 thereof, shall for the first offense be fined twenty-five dollars;  
91 for a second offense be fined fifty dollars; and for a third or  
92 subsequent offense be fined seventy-five dollars.

93 (d) *Level two intermediate driver's license.* -- An  
94 applicant sixteen years of age or older, meeting all other  
95 requirements of the code, may be issued a level two  
96 intermediate driver's license.

97 (1) *Eligibility.* -- The division shall not issue a level two  
98 intermediate driver's license unless the applicant:

99 (A) Presents a completed application as prescribed in  
100 section six of this article;

101 (B) Has held the level one instruction permit conviction-  
102 free for the one hundred eighty days immediately preceding  
103 the date of application for a level two intermediate license;

104 (C) Has completed either a driver's education course  
105 approved by the State Department of Education or thirty  
106 hours of behind-the-wheel driving experience certified by a  
107 parent or legal guardian or other responsible adult over the  
108 age of twenty-one as indicated on the form prescribed by the

109 division: *Provided*, That nothing in this paragraph shall be  
110 construed to require any school or any county board of  
111 education to provide any particular number of driver's  
112 education courses or to provide driver's education training to  
113 any student;

114 (D) Presents a driver's eligibility certificate or otherwise  
115 shows compliance with the provisions of section eleven,  
116 article eight, chapter eighteen of this code;

117 (E) Passes the road skills examination as prescribed by  
118 section seven of this article; and

119 (F) Pays a fee of five dollars.

120 (2) *Terms and conditions of a level two intermediate*  
121 *driver's license.* -- A level two intermediate driver's license  
122 issued under the provisions of this section shall expire thirty  
123 days after the applicant attains the age of eighteen, or until  
124 the licensee qualifies for a level three full Class E license,  
125 whichever comes first. In addition to all other provisions of  
126 this code for which a driver's license may be restricted,  
127 suspended, revoked or canceled, the holder of a level two  
128 intermediate driver's license may only operate a motor  
129 vehicle under the following conditions:

130 (A) Unsupervised between the hours of five a.m. and  
131 eleven p.m.;

132 (B) Only under the direct supervision of a licensed driver,  
133 age twenty-one years or older, between the hours of eleven  
134 p.m. and five a.m. except when the licensee is going to or  
135 returning from:

136 (i) Lawful employment;

137 (ii) A school-sanctioned activity;

- 138 (iii) A religious event; or
- 139 (iv) An emergency situation that requires the licensee to  
140 operate a motor vehicle to prevent bodily injury or death of  
141 another;
- 142 (C) All occupants shall use safety belts in accordance  
143 with the provisions of section forty-nine, article fifteen,  
144 chapter seventeen-c of this code;
- 145 (D) Operates the vehicle with no more than three  
146 passengers under the age of nineteen, unless the passengers  
147 are family members, in addition to the driver;
- 148 (E) Without any measurable blood alcohol content in  
149 accordance with the provisions of subsection (h), section two,  
150 article five, chapter seventeen-c of this code;
- 151 (F) Maintains current school enrollment and is making  
152 satisfactory academic progress or otherwise shows  
153 compliance with the provisions of section eleven, article  
154 eight, chapter eighteen of this code;
- 155 (G) A holder of a level two intermediate driver's license  
156 who is under the age of eighteen years may not use a wireless  
157 communication device while operating a motor vehicle,  
158 unless the use of the wireless communication device is for  
159 contacting a 9-1-1 system. A law-enforcement officer may  
160 enforce the provisions of this paragraph only as a secondary  
161 action when a law-enforcement officer with probable cause  
162 detains a driver for a suspected violation of another provision  
163 of this code. A person violating the provisions of this  
164 paragraph is guilty of a misdemeanor and, upon conviction  
165 thereof, shall for the first offense be fined twenty-five dollars;  
166 for a second offense be fined fifty dollars; and for a third or  
167 subsequent offense be fined seventy-five dollars.

168 (H) Upon the first conviction for a moving traffic  
169 violation or a violation of paragraph (A), (B), (C), (D) or (G),  
170 subdivision (1), subsection (d) of this section of the terms and  
171 conditions of a level two intermediate driver's license, the  
172 licensee shall enroll in an approved driver improvement  
173 program unless a greater penalty is required by this section or  
174 by any other provision of this code.

175 At the discretion of the commissioner, completion of an  
176 approved driver improvement program may be used to negate  
177 the effect of a minor traffic violation as defined by the  
178 commissioner against the one year conviction-free driving  
179 criteria for early eligibility for a level three driver's license;  
180 and

181 (I) Upon the second conviction for a moving traffic  
182 violation or a violation of the terms and conditions of the  
183 level two intermediate driver's license, the licensee's  
184 privilege to operate a motor vehicle shall be revoked or  
185 suspended for the applicable statutory period or until the  
186 licensee's eighteenth birthday, whichever is longer unless a  
187 greater penalty is required by this section or any other  
188 provision of this code. Any person whose driver's license  
189 has been revoked as a level two intermediate driver, upon  
190 reaching the age of eighteen years and if otherwise eligible  
191 may reapply for an instruction permit, then a driver's license  
192 in accordance with the provisions of sections five, six and  
193 seven of this article.

194 (e) *Level three, full Class E license.* -- The level three  
195 license is valid until thirty days after the date the licensee  
196 attains his or her twenty-first birthday. Unless otherwise  
197 provided in this section or any other section of this code, the  
198 holder of a level three full Class E license is subject to the  
199 same terms and conditions as the holder of a regular Class E  
200 driver's license.

201 A level two intermediate licensee whose privilege to  
202 operate a motor vehicle has not been suspended, revoked or  
203 otherwise canceled and who meets all other requirements of  
204 the code may be issued a level three full Class E license  
205 without further examination or road skills testing if the  
206 licensee:

207 (1) Has reached the age of seventeen years; and

208 (A) Presents a completed application as prescribed by the  
209 provisions of section six of this article;

210 (B) Has held the level two intermediate license  
211 conviction free for the twelve-month period immediately  
212 preceding the date of the application;

213 (C) Has completed any driver improvement program  
214 required under paragraph (G), subdivision (2), subsection (d)  
215 of this section; and

216 (D) Pays a fee of two dollars and fifty cents for each year  
217 the license is valid. An additional fee of fifty cents shall be  
218 collected to be deposited in the Combined Voter Registration  
219 and Driver's Licensing Fund established in section twelve,  
220 article two, chapter three of this code;

221 (E) Presents a driver's eligibility certificate or otherwise  
222 shows compliance with the provisions of section eleven,  
223 article eight, chapter eighteen of this code; or

224 (2) Reaches the age of eighteen years; and

225 (A) Presents a completed application as prescribed by the  
226 provisions of section six of this article; and

227 (B) Pays a fee of two dollars and fifty cents for each year  
228 the license is valid. An additional fee of fifty cents shall be

229 collected to be deposited in the Combined Voter Registration  
230 and Driver's Licensing Fund established in section twelve,  
231 article two, chapter three of this code.

**ARTICLE 3. CANCELLATION, SUSPENSION, OR  
REVOCATION OF LICENSES.**

**§17B-3-6. Authority of division to suspend or revoke license;  
hearing.**

1 (a) The division is hereby authorized to suspend the  
2 driver's license of any person without preliminary hearing  
3 upon a showing by its records or other sufficient evidence  
4 that the licensee:

5 (1) Has committed an offense for which mandatory  
6 revocation of a driver's license is required upon conviction;

7 (2) Has by reckless or unlawful operation of a motor  
8 vehicle, caused or contributed to an accident resulting in the  
9 death or personal injury of another or property damage;

10 (3) Has been convicted with such frequency of serious  
11 offenses against traffic regulations governing the movement  
12 of vehicles as to indicate a disrespect for traffic laws and a  
13 disregard for the safety of other persons on the highways;

14 (4) Is an habitually reckless or negligent driver of a motor  
15 vehicle;

16 (5) Is incompetent to drive a motor vehicle;

17 (6) Has committed an offense in another state which if  
18 committed in this state would be a ground for suspension or  
19 revocation;

20 (7) Has failed to pay or has defaulted on a plan for the  
21 payment of all costs, fines, forfeitures or penalties imposed  
22 by a magistrate court or municipal court within ninety days,  
23 as required by section two-a, article three, chapter fifty or  
24 section two-a, article ten, chapter eight of this code;

25 (8) Has failed to appear or otherwise respond before a  
26 magistrate court or municipal court when charged with a  
27 motor vehicle violation as defined in section three-a of this  
28 article;

29 (9) Is under the age of eighteen and has withdrawn either  
30 voluntarily or involuntarily due to misconduct from a  
31 secondary school or has failed to maintain satisfactory  
32 academic progress, as provided in section eleven, article  
33 eight, chapter eighteen of this code; or

34 (10) Has failed to pay overdue child support or comply  
35 with subpoenas or warrants relating to paternity or child  
36 support proceedings, if a circuit court has ordered the  
37 suspension of the license as provided in article five-a, chapter  
38 forty-eight-a of this code and the child support enforcement  
39 division has forwarded to the division a copy of the court  
40 order suspending the license, or has forwarded its  
41 certification that the licensee has failed to comply with a new  
42 or modified order that stayed the suspension and provided for  
43 the payment of current support and any arrearage due.

44 (b) The driver's license of any person having his or her  
45 license suspended shall be reinstated if:

46 (1) The license was suspended under the provisions of  
47 subdivision (7), subsection (a) of this section and the  
48 payment of costs, fines, forfeitures or penalties imposed by  
49 the applicable court has been made;

50 (2) The license was suspended under the provisions of  
51 subdivision (8), subsection (a) of this section, and the person  
52 having his or her license suspended has appeared in court and  
53 has prevailed against the motor vehicle violations charged; or

54 (3) The license was suspended under the provisions of  
55 subdivision (10), subsection (a) of this section, and the  
56 division has received a court order restoring the license or a  
57 certification by the child support enforcement division that  
58 the licensee is complying with the original support order or  
59 a new or modified order that provides for the payment of  
60 current support and any arrearage due.

61 (c) Any reinstatement of a license under subdivision (1),  
62 (2) or (3), subsection (b) of this section shall be subject to a  
63 reinstatement fee designated in section nine of this article.

64 (d) Upon suspending the driver's license of any person as  
65 hereinbefore in this section authorized, the division shall  
66 immediately notify the licensee in writing, sent by certified  
67 mail, return receipt requested, to the address given by the  
68 licensee in applying for license, and upon his request shall  
69 afford him an opportunity for a hearing as early as practical  
70 within not to exceed twenty days after receipt of such request  
71 in the county wherein the licensee resides unless the division  
72 and the licensee agree that such hearing may be held in some  
73 other county. Upon such hearing the commissioner or his  
74 duly authorized agent may administer oaths and may issue  
75 subpoenas for the attendance of witnesses and the production  
76 of relevant books and papers and may require a  
77 reexamination of the licensee. Upon such hearing the  
78 division shall either rescind its order of suspension or, good  
79 cause appearing therefor, may extend the suspension of such  
80 license or revoke such license. The provisions of this  
81 subsection (d) providing for notice and hearing are not  
82 applicable to a suspension under subdivision (10), subsection  
83 (a) of this section.



**CHAPTER 18. EDUCATION.****ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.****§18-8-11. School attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.**

1 (a) In accordance with the provisions of sections three-a  
2 and five, article two, chapter seventeen-b of this code, the  
3 Division of Motor Vehicles shall deny a license or instruction  
4 permit for the operation of a motor vehicle to any person  
5 under the age of eighteen who does not at the time of  
6 application present a diploma or other certificate of  
7 graduation issued to the person from a secondary high school  
8 of this state or any other state or documentation that the  
9 person: (1) Is enrolled and making satisfactory progress in a  
10 course leading to a general educational development  
11 certificate (GED) from a state-approved institution or  
12 organization or has obtained the certificate; (2) is enrolled  
13 and is making satisfactory academic progress in a secondary  
14 school of this state or any other state; (3) is excused from the  
15 requirement due to circumstances beyond his or her control;  
16 or (4) is enrolled in an institution of higher education as a  
17 full-time student in this state or any other state.

18 (b) The attendance director or chief administrator shall  
19 upon request provide a driver's eligibility certificate on a  
20 form approved by the Department of Education to any  
21 student at least fifteen but less than eighteen years of age who  
22 is properly enrolled and is making satisfactory academic  
23 progress in a school under the jurisdiction of the official for  
24 presentation to the Division of Motor Vehicles on application  
25 for or reinstatement of an instruction permit or license to  
26 operate a motor vehicle.

27 (c) Whenever a student at least fifteen but less than  
28 eighteen years of age, except as provided in subsection (g) of  
29 this section, withdraws from school, the attendance director  
30 or chief administrator shall notify the Division of Motor  
31 Vehicles of the student's withdrawal no later than five days  
32 from the date of the withdrawal. Within five days of receipt  
33 of the notice, the Division of Motor Vehicles shall send  
34 notice to the student that the student's instruction permit or  
35 license to operate a motor vehicle will be suspended under  
36 the provisions of section six, article three, chapter seventeen-  
37 b of this code on the thirtieth day following the date the  
38 notice was sent unless documentation of compliance with the  
39 provisions of this section is received by the Division of  
40 Motor Vehicles before that time. The notice shall also advise  
41 the student that he or she is entitled to a hearing before the  
42 county superintendent of schools or his or her designee or  
43 before the appropriate private school official concerning  
44 whether the student's withdrawal from school was due to a  
45 circumstance or circumstances beyond the control of the  
46 student. If suspended, the division may not reinstate an  
47 instruction permit or license until such time as the student  
48 returns to school and shows satisfactory academic progress  
49 or until such time as the student attains eighteen years of age.

50 (d) Whenever a student at least fifteen but less than  
51 eighteen years of age is enrolled in a secondary school and  
52 fails to maintain satisfactory academic progress, the  
53 attendance director or chief administrator shall follow the  
54 procedures set out in subsection (c) of this section to notify  
55 the Division of Motor Vehicles. Within five days of receipt  
56 of the notice, the Division of Motor Vehicles shall send  
57 notice to the student that the student's instruction permit or  
58 license will be suspended under the provisions of section six,  
59 article three, chapter seventeen-b of this code on the thirtieth  
60 day following the date the notice was sent unless  
61 documentation of compliance with the provisions of this

62 section is received by the Division of Motor Vehicles before  
63 that time. The notice shall also advise the student that he or  
64 she is entitled to a hearing before the county superintendent  
65 of schools or his or her designee or before the appropriate  
66 private school official concerning whether the student's  
67 failure to make satisfactory academic progress was due to a  
68 circumstance or circumstances beyond the control of the  
69 student. Once suspension is ordered, the division may not  
70 reinstate an instruction permit or license until such time as  
71 the student shows satisfactory academic progress or until  
72 such time as the student attains eighteen years of age.

73 (e) Upon written request of a student, within ten days of  
74 receipt of a notice of suspension as provided by this section,  
75 the Division of Motor Vehicles shall afford the student the  
76 opportunity for an administrative hearing. The scope of the  
77 hearing shall be limited to determining if there is a question  
78 of improper identity, incorrect age, or some other clerical  
79 error.

80 (f) For the purposes of this section:

81 (1) Withdrawal is defined as more than ten consecutive  
82 or fifteen total days unexcused absences during a school year,  
83 or suspension pursuant to subsections (a) and (b) of section  
84 one-a, article five, chapter eighteen-a of this code.

85 (2) "Satisfactory academic progress" means the attaining  
86 and maintaining of grades sufficient to allow for graduation  
87 and course-work in an amount sufficient to allow graduation  
88 in five years or by age nineteen, whichever is earlier.

89 (3) "Circumstances outside the control of the student"  
90 shall include, but not be limited to, medical reasons, familial  
91 responsibilities and the necessity of supporting oneself or  
92 another.

93       (4) Suspension or expulsion from school or imprisonment  
94 in a jail or a West Virginia correctional facility is not a  
95 circumstance beyond the control of the student.

96       (g) Whenever the withdrawal from school of the student,  
97 the student's failure to enroll in a course leading to or to  
98 obtain a GED or high school diploma, or the student's failure  
99 to make satisfactory academic progress is due to a  
100 circumstance or circumstances beyond the control of the  
101 student, or the withdrawal from school is for the purpose of  
102 transfer to another school as confirmed in writing by the  
103 student's parent or guardian, no notice shall be sent to the  
104 Division of Motor Vehicles to suspend the student's motor  
105 vehicle operator's license and if the student is applying for a  
106 license, the attendance director or chief administrator shall  
107 provide the student with documentation to present to the  
108 Division of Motor Vehicles to excuse the student from the  
109 provisions of this section. The school district superintendent  
110 (or the appropriate school official of any private secondary  
111 school) with the assistance of the county attendance director  
112 and any other staff or school personnel shall be the sole judge  
113 of whether any of the grounds for denial or suspension of a  
114 license as provided by this section are due to a circumstance  
115 or circumstances beyond the control of the student.

116       (h) The State Board shall promulgate rules necessary for  
117 uniform implementation of this section among the counties  
118 and as may otherwise be necessary for the implementation of  
119 this section. The rule may not include attainment by a  
120 student of any certain grade point average as a measure of  
121 satisfactory progress toward graduation.

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**CHAPTER 69**

**(H.B. 4069 - By Delegates Stemple, Brown, Hrutkay,  
Kessler, Pino and Overington)**

[Passed March 5, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 13, 2008.]

AN ACT to amend and reenact §17B-2-12 of the Code of West Virginia, 1931, as amended; and to further amend said article by adding thereto a new section, designated §17B-2-12a, all relating to requiring vision screening for renewal of a driver's license.

*Be it enacted by the Legislature of West Virginia:*

That §17B-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated §17B-2-12a, all to read as follows:

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND  
RENEWAL.**

§17B-2-12. Expiration of licenses.

§17B-2-12a. Renewal of driver's license upon expiration; vision screening; renewal fees.

**§17B-2-12. Expiration of licenses.**

1 (a) Except as provided in subsection (c) of this section,  
2 every driver's license shall expire five years from the date of  
3 its issuance.

4 (b)(1) Every driver's license issued to a person who has  
5 attained his or her twenty-first birthday shall expire on the

6 licensee's birthday in those years in which the licensee's age  
7 is evenly divisible by five. Except as provided in the  
8 following subdivisions and in subsection (c) of this section,  
9 no driver's license may be issued for less than three years or  
10 for more than seven years and shall be valid for a period of  
11 five years, expiring on the licensee's birthday in a year in  
12 which the licensee's age is evenly divisible by five.

13 (2) Every driver's license issued to a person who has not  
14 attained his or her twenty-first birthday shall expire thirty  
15 days after the licensee's twenty-first birthday, except as  
16 provided in section three-a of this article.

17 (3) The driver's license of any person in the Armed  
18 Forces shall expire six months after the date on which the  
19 person is separated from active duty in the Armed Forces  
20 under honorable circumstances.

21 (c) A license issued to a person who is not a citizen of the  
22 United States may only be issued for the time the person is  
23 legally authorized to be in the United States, not to exceed  
24 five years. If the time the person is authorized to be in the  
25 United States is extended, the commissioner may renew the  
26 license in accordance with section twelve-a of this article for  
27 the time extended, not to exceed five years.

**§17B-2-12a. Renewal of driver's license upon expiration; vision  
screening; renewal fees.**

1 (a) The commissioner shall notify each person who holds  
2 a valid driver's license of the expiration date of the license by  
3 first class mail to the last address known to the division. The  
4 notice shall be mailed at least ninety days prior to the  
5 expiration date of the license and shall include a renewal  
6 application form and instructions for renewal.

7 (b) The holder of a valid driver's license may apply to the  
8 division for renewal of the license on the form provided by  
9 the division. To be eligible for license renewal the applicant  
10 must:

- 11 (1) Pay the fee required by section eight of this article;
- 12 (2) Obtain a new color photograph from the division; and
- 13 (3) Pass a vision screening conducted by the division.

14 (c) The commissioner shall assess an additional fee of  
15 five dollars for every application for renewal submitted after  
16 the expiration of the applicant's license.

17 (d) The commissioner shall determine whether an  
18 applicant qualifies for a renewed license.

19 (e) The commissioner shall provide by rule a procedure  
20 by which an applicant who does not meet the minimum  
21 vision standards for licensure may present evidence to show  
22 that his or her vision has been corrected to meet the minimum  
23 visual standards and that he or she is capable of safely  
24 operating a motor vehicle.

25 (f) The commissioner may not renew the driver's license  
26 of an applicant whose eyesight cannot be corrected to  
27 conform to the minimum vision standards established by this  
28 code and by the rules of the commissioner.

29 (g) Vision screening conducted pursuant to this section  
30 shall not be used to collect any type of personal biometric  
31 identifying information including, but not limited to, a retinal  
32 scan.

33 (h) The commissioner shall propose legislative rules for  
34 promulgation in accordance with the provisions of article

35 three, chapter twenty-nine-a of this code to implement the  
36 provisions of this section.

37 (i) The provisions of this section requiring an applicant  
38 for renewal of a driver's license to successfully complete a  
39 vision screening as a condition of renewing a driver's license  
40 shall become effective on the first day of January, two  
41 thousand nine.

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## CHAPTER 70

**(Com. Sub. for S.B. 535 - By Senators Foster, Jenkins, Kessler,  
Green, Hunter, Wells, Hall, McKenzie and White)**

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[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2008.]

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AN ACT to amend and reenact §17B-4-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §17C-5-2 and §17C-5-7 of said code; and to amend and reenact §17C-5A-1, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code, all relating to modifications to administrative and criminal penalties for driving a motor vehicle under the influence of alcohol and/or drugs; reducing the criminal and administrative sanctions for driving a vehicle with a lawfully suspended or revoked license; providing for concurrent sentences for driving a vehicle with a lawfully suspended or revoked license; removing the mandatory 24-hour incarceration for first offense driving under the influence; creating an aggravated offense of driving with a blood alcohol concentration of fifteen hundredths of one percent or more, by weight; permitting participation in the Motor Vehicle Alcohol Test and Lock Program for first offense driving under the influence; process for rejecting or modifying hearing examiner's proposed findings; law-enforcement officers excused



from hearings unless presence is requested by party whose license is at issue; adoption of law-enforcement affidavit if officer does not attend hearing; mandating participation in the Motor Vehicle Alcohol Test and Lock Program for first offense driving under the influence; providing enhanced administrative sanctions for persons operating a motor vehicle with a blood alcohol concentration of fifteen hundredths of one percent or more, by weight; making certain technical changes to administrative procedures; transferring primary authority of the Safety and Treatment Program to the Department of Health and Human Resources; providing for removal of the Driver's Rehabilitation Fund from the jurisdiction of the Division of Motor Vehicles and placing it under the jurisdiction of the Secretary of the Department of Health and Human Resources; requiring Department of Health and Human Resources to propose legislative rules; providing that a person whose driver's license is revoked for refusing to take a secondary chemical test is not eligible to reduce the revocation period by completing the Safety and Treatment Program; removing requirement that victim impact panels be implemented pursuant to legislative rules; requiring the Commissioner of the Division of Motor Vehicles to propose legislative rules; reducing the minimum period of revocation for participation in the test and lock program; increasing minimum periods of participation in the ignition interlock device for aggravating offenses; and denying participation in the Motor Vehicle Alcohol Test and Lock Program for person whose driver's license is revoked for driving under the influence of drugs.

*Be it enacted by the Legislature of West Virginia:*

That §17B-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17C-5-2 and §17C-5-7 of said code be amended and reenacted; and that §17C-5A-1, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code be amended and reenacted, all to read as follows:

**Chapter**

**17B. Motor Vehicle Driver's Licenses.**

**17C. Traffic Regulations and Laws of the Road.**

**CHAPTER 17B. MOTOR VEHICLE  
DRIVER'S LICENSES.**

**ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.**

**§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of eight hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.**

1           (a) Except as otherwise provided in subsection (b) or (d)  
2 of this section, any person who drives a motor vehicle on any  
3 public highway of this state at a time when his or her  
4 privilege to do so has been lawfully suspended or revoked by  
5 this state or any other jurisdiction is, for the first offense,  
6 guilty of a misdemeanor and, upon conviction thereof, shall  
7 be fined not less than one hundred dollars nor more than five  
8 hundred dollars; for the second offense, the person is guilty  
9 of a misdemeanor and, upon conviction thereof, shall be  
10 fined not less than one hundred dollars nor more than five  
11 hundred dollars; for the third or any subsequent offense, the  
12 person is guilty of a misdemeanor and, upon conviction  
13 thereof, shall be confined in jail for a period of not less than  
14 thirty days nor more than ninety days and shall be fined not  
15 less than one hundred fifty dollars nor more than five  
16 hundred dollars.

17           (b) Any person who drives a motor vehicle on any public  
18 highway of this state at a time when his or her privilege to do  
19 so has been lawfully revoked for driving under the influence  
20 of alcohol, controlled substances or other drugs, or any  
21 combination thereof, or for driving while having an alcoholic  
22 concentration in his or her blood of eight hundredths of one  
23 percent or more, by weight, or for refusing to take a

24 secondary chemical test of blood alcohol content, is, for the  
25 first offense, guilty of a misdemeanor and, upon conviction  
26 thereof, shall be confined in jail for a period of not less than  
27 thirty days nor more than six months and shall be fined not  
28 less than one hundred dollars nor more than five hundred  
29 dollars; for the second offense, the person is guilty of a  
30 misdemeanor and, upon conviction thereof, shall be confined  
31 in jail for a period of not less than six months nor more than  
32 one year and shall be fined not less than one thousand dollars  
33 nor more than three thousand dollars; for the third or any  
34 subsequent offense, the person is guilty of a felony and, upon  
35 conviction thereof, shall be imprisoned in a state correctional  
36 facility for not less than one year nor more than three years  
37 and, in addition to the mandatory prison sentence, shall be  
38 fined not less than three thousand dollars nor more than five  
39 thousand dollars.

40 (c) Upon receiving a record of the first or subsequent  
41 conviction of any person under subsection (b) of this section  
42 upon a charge of driving a vehicle while the license of that  
43 person was lawfully suspended or revoked, the division shall  
44 extend the period of the suspension or revocation for an  
45 additional period of six months which may be served  
46 concurrently with any other suspension or revocation. Upon  
47 receiving a record of the second or subsequent conviction of  
48 any person under subsection (a) of this section upon a charge  
49 of driving a vehicle while the license of that person was  
50 lawfully suspended or revoked, the division shall extend the  
51 period of the suspension or revocation for an additional  
52 period of ninety days which may be served concurrently with  
53 any other suspension or revocation.

54 (d) Any person who drives a motor vehicle on any public  
55 highway of this state at a time when his or her privilege to do  
56 so has been lawfully suspended for driving while under the  
57 age of twenty-one years with an alcohol concentration in his  
58 or her blood of two hundredths of one percent or more, by  
59 weight, but less than eight hundredths of one percent, by

60 weight, is guilty of a misdemeanor and, upon conviction  
61 thereof, shall be confined in jail for twenty-four hours or  
62 shall be fined not less than fifty dollars nor more than five  
63 hundred dollars, or both.

64 Upon receiving a record of a first or subsequent  
65 conviction under this subsection for a charge of driving a  
66 vehicle while the license of that person was lawfully  
67 suspended or revoked, the division shall extend the period of  
68 the suspension or revocation for an additional period of six  
69 months which may be served concurrently with any other  
70 suspension or revocation.

71 (e) An order for home detention by the court pursuant to  
72 the provisions of article eleven-b, chapter sixty-two of this  
73 code may be used as an alternative sentence to any period of  
74 incarceration required by this section.

## **CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

### **Article**

#### **5. Serious Traffic Offenses.**

##### **5A. Administrative procedures for suspension and revocation of licenses for driving under the influence of alcohol, controlled substances or drugs.**

### **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or drugs or refusal to submit to secondary chemical test.

§17C-5A-2. Hearing; revocation; review.

§17C-5A-3. Safety and treatment program; reissuance of license.

§17C-5A-3a. Establishment of and participation in the Motor Vehicle Alcohol Test and Lock Program.

#### **§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.**

1 (a) Any person who:

2 (1) Drives a vehicle in this state while he or she:

3 (A) Is under the influence of alcohol;

4 (B) Is under the influence of any controlled substance;

5 (C) Is under the influence of any other drug;

6 (D) Is under the combined influence of alcohol and any  
7 controlled substance or any other drug; or

8 (E) Has an alcohol concentration in his or her blood of  
9 eight hundredths of one percent or more, by weight; and

10 (2) While driving does any act forbidden by law or fails  
11 to perform any duty imposed by law in the driving of the  
12 vehicle, which act or failure proximately causes the death of  
13 any person within one year next following the act or failure;  
14 and

15 (3) Commits the act or failure in reckless disregard of the  
16 safety of others and when the influence of alcohol, controlled  
17 substances or drugs is shown to be a contributing cause to the  
18 death, is guilty of a felony and, upon conviction thereof, shall  
19 be imprisoned in a state correctional facility for not less than  
20 two years nor more than ten years and shall be fined not less  
21 than one thousand dollars nor more than three thousand  
22 dollars.

23 (b) Any person who:

24 (1) Drives a vehicle in this state while he or she:

25 (A) Is under the influence of alcohol;

26 (B) Is under the influence of any controlled substance;

27 (C) Is under the influence of any other drug;

28 (D) Is under the combined influence of alcohol and any  
29 controlled substance or any other drug;

30 (E) Has an alcohol concentration in his or her blood of  
31 eight hundredths of one percent or more, by weight; and

32 (2) While driving does any act forbidden by law or fails  
33 to perform any duty imposed by law in the driving of the  
34 vehicle, which act or failure proximately causes the death of  
35 any person within one year next following the act or failure,  
36 is guilty of a misdemeanor and, upon conviction thereof,  
37 shall be confined in jail for not less than ninety days nor more  
38 than one year and shall be fined not less than five hundred  
39 dollars nor more than one thousand dollars.

40 (c) Any person who:

41 (1) Drives a vehicle in this state while he or she:

42 (A) Is under the influence of alcohol;

43 (B) Is under the influence of any controlled substance;

44 (C) Is under the influence of any other drug;

45 (D) Is under the combined influence of alcohol and any  
46 controlled substance or any other drug; or

47 (E) Has an alcohol concentration in his or her blood of  
48 eight hundredths of one percent or more, by weight; and

49 (2) While driving does any act forbidden by law or fails  
50 to perform any duty imposed by law in the driving of the  
51 vehicle, which act or failure proximately causes bodily injury  
52 to any person other than himself or herself, is guilty of a  
53 misdemeanor and, upon conviction thereof, shall be confined

54 in jail for not less than one day nor more than one year,  
55 which jail term is to include actual confinement of not less  
56 than twenty-four hours, and shall be fined not less than two  
57 hundred dollars nor more than one thousand dollars.

58 (d) Any person who:

59 (1) Drives a vehicle in this state while he or she:

60 (A) Is under the influence of alcohol;

61 (B) Is under the influence of any controlled substance;

62 (C) Is under the influence of any other drug;

63 (D) Is under the combined influence of alcohol and any  
64 controlled substance or any other drug; or

65 (E) Has an alcohol concentration in his or her blood of  
66 eight hundredths of one percent or more, by weight, but less  
67 than fifteen hundredths of one percent, by weight;

68 (2) Is guilty of a misdemeanor and, upon conviction  
69 thereof, shall be confined in jail for up to six months and  
70 shall be fined not less than one hundred dollars nor more than  
71 five hundred dollars. A person sentenced pursuant to this  
72 subdivision shall receive credit for any period of actual  
73 confinement he or she served upon arrest for the subject  
74 offense.

75 (e) Any person who drives a vehicle in this state while he  
76 or she has an alcohol concentration in his or her blood of  
77 fifteen hundredths of one percent or more, by weight, is  
78 guilty of a misdemeanor and, upon conviction thereof, shall  
79 be confined in jail for not less than two days nor more than  
80 six months, which jail term is to include actual confinement  
81 of not less than twenty-four hours, and shall be fined not less  
82 than two hundred dollars nor more than one thousand dollars.

83 A person sentenced pursuant to this subdivision shall receive  
84 credit for any period of actual confinement he or she served  
85 upon arrest for the subject offense.

86 (f) Any person who, being an habitual user of narcotic  
87 drugs or amphetamine or any derivative thereof, drives a  
88 vehicle in this state is guilty of a misdemeanor and, upon  
89 conviction thereof, shall be confined in jail for not less than  
90 one day nor more than six months, which jail term is to  
91 include actual confinement of not less than twenty-four  
92 hours, and shall be fined not less than one hundred dollars  
93 nor more than five hundred dollars. A person sentenced  
94 pursuant to this subdivision shall receive credit for any period  
95 of actual confinement he or she served upon arrest for the  
96 subject offense.

97 (g) Any person who:

98 (1) Knowingly permits his or her vehicle to be driven in  
99 this state by any other person who:

100 (A) Is under the influence of alcohol;

101 (B) Is under the influence of any controlled substance;

102 (C) Is under the influence of any other drug;

103 (D) Is under the combined influence of alcohol and any  
104 controlled substance or any other drug;

105 (E) Has an alcohol concentration in his or her blood of  
106 eight hundredths of one percent or more, by weight;

107 (2) Is guilty of a misdemeanor and, upon conviction  
108 thereof, shall be confined in jail for not more than six months  
109 and shall be fined not less than one hundred dollars nor more  
110 than five hundred dollars.



111 (h) Any person who knowingly permits his or her vehicle  
112 to be driven in this state by any other person who is an  
113 habitual user of narcotic drugs or amphetamine or any  
114 derivative thereof is guilty of a misdemeanor and, upon  
115 conviction thereof, shall be confined in jail for not more than  
116 six months and shall be fined not less than one hundred  
117 dollars nor more than five hundred dollars.

118 (i) Any person under the age of twenty-one years who  
119 drives a vehicle in this state while he or she has an alcohol  
120 concentration in his or her blood of two hundredths of one  
121 percent or more, by weight, but less than eight hundredths of  
122 one percent, by weight, for a first offense under this  
123 subsection is guilty of a misdemeanor and, upon conviction  
124 thereof, shall be fined not less than twenty-five dollars nor  
125 more than one hundred dollars. For a second or subsequent  
126 offense under this subsection, the person is guilty of a  
127 misdemeanor and, upon conviction thereof, shall be confined  
128 in jail for twenty-four hours and shall be fined not less than  
129 one hundred dollars nor more than five hundred dollars. A  
130 person who is charged with a first offense under the  
131 provisions of this subsection may move for a continuance of  
132 the proceedings, from time to time, to allow the person to  
133 participate in the Motor Vehicle Alcohol Test and Lock  
134 Program as provided in section three-a, article five-a of this  
135 chapter. Upon successful completion of the program, the  
136 court shall dismiss the charge against the person and expunge  
137 the person's record as it relates to the alleged offense. In the  
138 event the person fails to successfully complete the program,  
139 the court shall proceed to an adjudication of the alleged  
140 offense. A motion for a continuance under this subsection  
141 may not be construed as an admission or be used as evidence.

142 A person arrested and charged with an offense under the  
143 provisions of this subsection or subsection (a), (b), (c), (d),  
144 (e), (f), (g) or (h) of this section may not also be charged with  
145 an offense under this subsection arising out of the same  
146 transaction or occurrence.

147 (j) Any person who:

148 (1) Drives a vehicle in this state while he or she:

149 (A) Is under the influence of alcohol;

150 (B) Is under the influence of any controlled substance;

151 (C) Is under the influence of any other drug;

152 (D) Is under the combined influence of alcohol and any  
153 controlled substance or any other drug; or

154 (E) Has an alcohol concentration in his or her blood of  
155 eight hundredths of one percent or more, by weight; and

156 (2) The person while driving has on or within the motor  
157 vehicle one or more other persons who are unemancipated  
158 minors who have not reached their sixteenth birthday is  
159 guilty of a misdemeanor and, upon conviction thereof, shall  
160 be confined in jail for not less than two days nor more than  
161 twelve months, which jail term is to include actual  
162 confinement of not less than forty-eight hours and shall be  
163 fined not less than two hundred dollars nor more than one  
164 thousand dollars.

165 (k) A person violating any provision of subsection (b),  
166 (c), (d), (e), (f), (g) or (i) of this section, for the second  
167 offense under this section, is guilty of a misdemeanor and,  
168 upon conviction thereof, shall be confined in jail for not less  
169 than six months nor more than one year and the court may, in  
170 its discretion, impose a fine of not less than one thousand  
171 dollars nor more than three thousand dollars.

172 (l) A person violating any provision of subsection (b), (c),  
173 (d), (e), (f), (g) or (i) of this section, for the third or any  
174 subsequent offense under this section, is guilty of a felony  
175 and, upon conviction thereof, shall be imprisoned in a state

176 correctional facility for not less than one nor more than three  
177 years and the court may, in its discretion, impose a fine of not  
178 less than three thousand dollars nor more than five thousand  
179 dollars.

180 (m) For purposes of subsections (k) and (l) of this section  
181 relating to second, third and subsequent offenses, the  
182 following types of convictions are to be regarded as  
183 convictions under this section:

184 (1) Any conviction under the provisions of subsection (a),  
185 (b), (c), (d), (e), (f) or (g) of this section or under a prior  
186 enactment of this section for an offense which occurred  
187 within the ten-year period immediately preceding the date of  
188 arrest in the current proceeding;

189 (2) Any conviction under a municipal ordinance of this  
190 state or any other state or a statute of the United States or of  
191 any other state of an offense which has the same elements as  
192 an offense described in subsection (a), (b), (c), (d), (e), (f),  
193 (g) or (h) of this section, which offense occurred within the  
194 ten-year period immediately preceding the date of arrest in  
195 the current proceeding.

196 (n) A person may be charged in a warrant or indictment  
197 or information for a second or subsequent offense under this  
198 section if the person has been previously arrested for or  
199 charged with a violation of this section which is alleged to  
200 have occurred within the applicable time period for prior  
201 offenses, notwithstanding the fact that there has not been a  
202 final adjudication of the charges for the alleged previous  
203 offense. In that case, the warrant or indictment or  
204 information must set forth the date, location and particulars  
205 of the previous offense or offenses. No person may be  
206 convicted of a second or subsequent offense under this  
207 section unless the conviction for the previous offense has  
208 become final.

209 (o) The fact that any person charged with a violation of  
210 subsection (a), (b), (c), (d), (e) or (f) of this section, or any  
211 person permitted to drive as described under subsection (g)  
212 or (h) of this section, is or has been legally entitled to use  
213 alcohol, a controlled substance or a drug does not constitute  
214 a defense against any charge of violating subsection (a), (b),  
215 (c), (d), (e), (f), (g) or (h) of this section.

216 (p) For purposes of this section, the term "controlled  
217 substance" has the meaning ascribed to it in chapter sixty-a  
218 of this code.

219 (q) The sentences provided in this section upon  
220 conviction for a violation of this article are mandatory and  
221 are not subject to suspension or probation: *Provided*, That the  
222 court may apply the provisions of article eleven-a, chapter  
223 sixty-two of this code to a person sentenced or committed to  
224 a term of one year or less for a first offense under this  
225 section. An order for home detention by the court pursuant  
226 to the provisions of article eleven-b of said chapter may be  
227 used as an alternative sentence to any period of incarceration  
228 required by this section for a first or subsequent offense:  
229 *Provided, however*, That for any period of home  
230 incarceration ordered for a person convicted of second  
231 offense under this section, electronic monitoring shall be  
232 required for no fewer than five days of the total period of  
233 home confinement ordered and the offender may not leave  
234 home for those five days notwithstanding the provisions of  
235 section five, article eleven-b, chapter sixty-two of this code:  
236 *Provided further*, That for any period of home incarceration  
237 ordered for a person convicted of a third or subsequent  
238 violation of this section, electronic monitoring shall be  
239 included for no fewer than ten days of the total period of  
240 home confinement ordered and the offender may not leave  
241 home for those ten days notwithstanding section five, article  
242 eleven-b, chapter sixty-two of this code.

**§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.**

1 (a) If any person under arrest as specified in section four  
2 of this article refuses to submit to any secondary chemical  
3 test, the tests shall not be given: *Provided*, That prior to the  
4 refusal, the person is given an oral warning and a written  
5 statement advising him or her that his or her refusal to submit  
6 to the secondary test finally designated will result in the  
7 revocation of his or her license to operate a motor vehicle in  
8 this state for a period of at least forty-five days and up to life;  
9 and that after fifteen minutes following the warnings the  
10 refusal is considered final. The arresting officer after that  
11 period of time expires has no further duty to provide the  
12 person with an opportunity to take the secondary test. The  
13 officer shall, within forty-eight hours of the refusal, sign and  
14 submit to the Commissioner of Motor Vehicles a written  
15 statement of the officer that: (1) He or she had reasonable  
16 grounds to believe the person had been driving a motor  
17 vehicle in this state while under the influence of alcohol,  
18 controlled substances or drugs; (2) the person was lawfully  
19 placed under arrest for an offense relating to driving a motor  
20 vehicle in this state while under the influence of alcohol,  
21 controlled substances or drugs; (3) the person refused to  
22 submit to the secondary chemical test finally designated in  
23 the manner provided in section four of this article; and (4) the  
24 person was given a written statement advising him or her that  
25 his or her license to operate a motor vehicle in this state  
26 would be revoked for a period of at least forty-five days and  
27 up to life if he or she refused to submit to the secondary test  
28 finally designated in the manner provided in section four of  
29 this article. The signing of the statement required to be  
30 signed by this section constitutes an oath or affirmation by  
31 the person signing the statement that the statements contained  
32 in the statement are true and that any copy filed is a true  
33 copy. The statement shall contain upon its face a warning to  
34 the officer signing that to willfully sign a statement

35 containing false information concerning any matter or thing,  
36 material or not material, is false swearing and is a  
37 misdemeanor. Upon receiving the statement the  
38 commissioner shall make and enter an order revoking the  
39 person's license to operate a motor vehicle in this state for the  
40 period prescribed by this section.

41 For the first refusal to submit to the designated secondary  
42 chemical test, the commissioner shall make and enter an  
43 order revoking the person's license to operate a motor vehicle  
44 in this state for a period of one year or forty-five days, with  
45 an additional one year of participation in the Motor Vehicle  
46 Alcohol Test and Lock Program in accordance with the  
47 provisions of section three-a, article five-a of this chapter:  
48 *Provided*, That a person revoked for driving while under the  
49 influence of drugs is not eligible to participate in the Motor  
50 Vehicle Test and Lock Program. The application for  
51 participation in the Motor Vehicle Alcohol Test and Lock  
52 Program shall be considered to be a waiver of the hearing  
53 provided in section two of said article. If the commissioner  
54 has previously revoked the person's license under the  
55 provisions of this section, the commissioner shall, for the  
56 refusal to submit to the designated secondary chemical test,  
57 make and enter an order revoking the person's license to  
58 operate a motor vehicle in this state for a period of ten years:  
59 *Provided, however*, That the license may be reissued in five  
60 years in accordance with the provisions of section three,  
61 article five-a of this chapter. If the commissioner has  
62 previously revoked the person's license more than once under  
63 the provisions of this section, the commissioner shall, for the  
64 refusal to submit to the designated secondary chemical test,  
65 make and enter an order revoking the person's license to  
66 operate a motor vehicle in this state for a period of life. A  
67 copy of each order shall be forwarded to the person by  
68 registered or certified mail, return receipt requested, and shall  
69 contain the reasons for the revocation and shall specify the  
70 revocation period imposed pursuant to this section. A

71 revocation shall not become effective until ten days after  
72 receipt of the copy of the order. Any person who is  
73 unconscious or who is otherwise in a condition rendering him  
74 or her incapable of refusal shall be considered not to have  
75 withdrawn his or her consent for a test of his or her blood,  
76 breath or urine as provided in section four of this article and  
77 the test may be administered although the person is not  
78 informed that his or her failure to submit to the test will result  
79 in the revocation of his or her license to operate a motor  
80 vehicle in this state for the period provided for in this section.  
81

82 A revocation under this section shall run concurrently  
83 with the period of any suspension or revocation imposed in  
84 accordance with other provisions of this code and growing  
85 out of the same incident which gave rise to the arrest for  
86 driving a motor vehicle while under the influence of alcohol,  
87 controlled substances or drugs and the subsequent refusal to  
88 undergo the test finally designated in accordance with the  
89 provisions of section four of this article.

90 (b) For the purposes of this section, where reference is  
91 made to previous suspensions or revocations under this  
92 section, the following types of suspensions or revocations  
93 shall also be regarded as suspensions or revocations under  
94 this section:

95 (1) Any suspension or revocation on the basis of a  
96 conviction under a municipal ordinance of another state or a  
97 statute of the United States or of any other state of an offense  
98 which has the same elements as an offense described in  
99 section two of this article for conduct which occurred on or  
100 after the tenth day of June, one thousand nine hundred  
101 eighty-three; and

102 (2) Any revocation under the provisions of section one or  
103 two, article five-a of this chapter for conduct which occurred

104 on or after the tenth day of June, one thousand nine hundred  
105 eighty-three.

106 (c) A person whose license to operate a motor vehicle in  
107 this state has been revoked shall be afforded an opportunity  
108 to be heard, in accordance with the provisions of section two,  
109 article five-a of this chapter.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR  
SUSPENSION AND REVOCATION OF  
LICENSES FOR DRIVING UNDER  
THE INFLUENCE OF ALCOHOL,  
CONTROLLED SUBSTANCES OR  
DRUGS.**

**§17C-5A-1. Implied consent to administrative procedure;  
revocation for driving under the influence of  
alcohol, controlled substances or drugs or  
refusal to submit to secondary chemical test.**

1 (a) Any person who is licensed to operate a motor vehicle  
2 in this state and who drives a motor vehicle in this state shall  
3 be deemed to have given his or her consent by the operation  
4 thereof, subject to the provisions of this article, to the  
5 procedure set forth in this article for the determination of  
6 whether his or her license to operate a motor vehicle in this  
7 state should be revoked because he or she did drive a motor  
8 vehicle while under the influence of alcohol, controlled  
9 substances or drugs, or combined influence of alcohol or  
10 controlled substances or drugs, or did drive a motor vehicle  
11 while having an alcohol concentration in his or her blood of  
12 eight hundredths of one percent or more, by weight, or did  
13 refuse to submit to any secondary chemical test required  
14 under the provisions of article five of this chapter or did drive  
15 a motor vehicle while under the age of twenty-one years with  
16 an alcohol concentration in his or her blood of two  
17 hundredths of one percent or more, by weight, but less than  
18 eight hundredths of one percent, by weight.



19 (b) Any law-enforcement officer investigating a person  
20 for an offense described in section two, article five of this  
21 chapter or for an offense described in a municipal ordinance  
22 which has the same elements as an offense described in said  
23 section shall report to the Commissioner of the Division of  
24 Motor Vehicles by written statement within forty-eight hours  
25 of the conclusion of the investigation the name and address  
26 of the person believed to have committed the offense. The  
27 report shall include the specific offense with which the  
28 person is charged and, if applicable, a copy of the results of  
29 any secondary tests of blood, breath or urine. The signing of  
30 the statement required to be signed by this subsection  
31 constitutes an oath or affirmation by the person signing the  
32 statement that the statements contained in the statement are  
33 true and that any copy filed is a true copy. The statement  
34 shall contain upon its face a warning to the officer signing  
35 that to willfully sign a statement containing false information  
36 concerning any matter or thing, material or not material, is  
37 false swearing and is a misdemeanor.

38 (c) If, upon examination of the written statement of the  
39 officer and the tests results described in subsection (b) of this  
40 section, the commissioner determines that a person  
41 committed an offense described in section two, article five of  
42 this chapter or an offense described in a municipal ordinance  
43 which has the same elements as an offense described in said  
44 section and that the results of any secondary test or tests  
45 indicate that at the time the test or tests were administered the  
46 person had, in his or her blood, an alcohol concentration of  
47 eight hundredths of one percent or more, by weight, or at the  
48 time the person committed the offense he or she was under  
49 the influence of alcohol, controlled substances or drugs, the  
50 commissioner shall make and enter an order revoking or  
51 suspending the person's license to operate a motor vehicle in  
52 this state. If the results of the tests indicate that at the time  
53 the test or tests were administered the person was under the  
54 age of twenty-one years and had an alcohol concentration in  
55 his or her blood of two hundredths of one percent or more, by

56 weight, but less than eight hundredths of one percent, by  
57 weight, the commissioner shall make and enter an order  
58 suspending the person's license to operate a motor vehicle in  
59 this state. A copy of the order shall be forwarded to the  
60 person by registered or certified mail, return receipt  
61 requested, and shall contain the reasons for the revocation or  
62 suspension and describe the applicable revocation or  
63 suspension periods provided in section two of this article. A  
64 revocation or suspension shall not become effective until ten  
65 days after receipt of a copy of the order.

66 (d) Any law-enforcement officer taking a child into  
67 custody under the provisions of section six-a, article five of  
68 this chapter who has reasonable cause to believe that the  
69 child, at the time of driving the motor vehicle, had an alcohol  
70 concentration in his or her blood of two hundredths of one  
71 percent or more, by weight, or that the act of the child in  
72 driving the motor vehicle was such that it would provide  
73 grounds for arrest for an offense defined under the provisions  
74 of section two of said article if the child were an adult, shall  
75 report to the Commissioner of the Division of Motor  
76 Vehicles by written statement within forty-eight hours the  
77 name and address of the child.

78 (e) If applicable, the report shall include a description of  
79 the specific offense with which the child could have been  
80 charged if the child were an adult and a copy of the results of  
81 any secondary tests of blood, breath or urine. The signing of  
82 the statement required to be signed by this subsection  
83 constitutes an oath or affirmation by the person signing the  
84 statement that the statements contained in the statement are  
85 true and that any copy filed is a true copy. The statement  
86 shall contain upon its face a warning to the officer signing  
87 that to willfully sign a statement containing false information  
88 concerning any matter or thing, material or not material, is  
89 false swearing and is a misdemeanor.

90 (f) Upon examination of the written statement of the  
91 officer and any test results described in subsection (d) of this  
92 section, if the commissioner determines that the results of the  
93 test indicate that at the time the test or tests were  
94 administered the child had, in his or her blood, an alcohol  
95 concentration of two hundredths of one percent or more, by  
96 weight, but also determines that the act of the child in driving  
97 the motor vehicle was not such that it would provide grounds  
98 for arrest for an offense defined under the provisions of  
99 subsection (a), (b), (c), (d), (e), (f), (g) or (h), section two,  
100 article five of this chapter if the child were an adult, the  
101 commissioner shall make and enter an order suspending the  
102 child's license to operate a motor vehicle in this state. If the  
103 commissioner determines that the act of the child in driving  
104 the motor vehicle was such that it would provide grounds for  
105 arrest for an offense defined under the provisions of  
106 subsection (a), (b), (c), (d), (e), (f), (g) or (h), section two,  
107 article five of this chapter if the child were an adult, the  
108 commissioner shall make and enter an order revoking the  
109 child's license to operate a motor vehicle in this state. A  
110 copy of the order shall be forwarded to the child by registered  
111 or certified mail, return receipt requested, and shall contain  
112 the reasons for the suspension or revocation and describe the  
113 applicable suspension or revocation periods provided for in  
114 section two of this article. A suspension or revocation shall  
115 not become effective until ten days after receipt of a copy of  
116 the order.

**§17C-5A-2. Hearing; revocation; review.**

1 (a) Upon the written request of a person whose license to  
2 operate a motor vehicle in this state has been revoked or  
3 suspended under the provisions of section one of this article  
4 or section seven, article five of this chapter, the  
5 Commissioner of the Division of Motor Vehicles shall stay  
6 the imposition of the period of revocation or suspension and  
7 afford the person an opportunity to be heard. The written

8 request must be filed with the commissioner in person or by  
9 registered or certified mail, return receipt requested, within  
10 thirty calendar days after receipt of a copy of the order of  
11 revocation or suspension or no hearing will be granted. The  
12 hearing shall be before the commissioner or a hearing  
13 examiner retained by the commissioner who shall rule on  
14 evidentiary issues and submit proposed findings of fact and  
15 conclusions of law for the consideration of the commissioner  
16 and all of the pertinent provisions of article five, chapter  
17 twenty-nine-a of this code shall apply. The commissioner  
18 may reject or modify the hearing examiner's proposed  
19 findings of fact and conclusions of law, in writing, and only  
20 if:

21 (1) There is an error of law;

22 (2) They are clearly wrong in view of the reliable,  
23 probative and substantial evidence on the whole record; or

24 (3) They are arbitrary or capricious or characterized by  
25 abuse of discretion or clearly unwarranted exercise of  
26 discretion.

27 (b) The hearing shall be held at an office of the division  
28 located in or near the county in which the arrest was made in  
29 this state or at some other suitable place in the county in  
30 which the arrest was made if an office of the division is not  
31 available.

32 (c) Any hearing shall be held within one hundred eighty  
33 days after the date upon which the commissioner received the  
34 timely written request for a hearing unless there is a  
35 postponement or continuance. The commissioner may  
36 postpone or continue any hearing on the commissioner's own  
37 motion or upon application for each person for good cause  
38 shown. The commissioner shall adopt and implement by a  
39 procedural rule written policies governing the postponement

40 or continuance of any hearing on the commissioner's own  
41 motion or for the benefit of any law-enforcement officer or  
42 any person requesting the hearing and the policies shall be  
43 enforced and applied to all parties equally. For the purpose  
44 of conducting the hearing, the commissioner may issue  
45 subpoenas and subpoenas duces tecum in accordance with the  
46 provisions of section one, article five, chapter twenty-nine-a  
47 of this code: *Provided*, That the notice of hearing to the  
48 appropriate law-enforcement officers by registered or  
49 certified mail, return receipt requested, constitutes a  
50 subpoena to appear at the hearing without the necessity of  
51 payment of fees by the Division of Motor Vehicles.

52 (d) Any investigating officer who submits a statement  
53 pursuant to section one of this article that results in a hearing  
54 pursuant to this section shall not attend the hearing on the  
55 subject of that affidavit unless requested to do so by the party  
56 whose license is at issue in that hearing or by the  
57 commissioner. The hearing request form shall clearly and  
58 concisely inform a person seeking a hearing of the fact that  
59 the investigating officer will only attend the hearing if  
60 requested to do so and provide for a box to be checked  
61 requesting the investigating officer's attendance. The  
62 language shall appear prominently on the hearing request  
63 form. The Division of Motor Vehicles is solely responsible  
64 for causing the attendance of the investigating officers. Law-  
65 enforcement officers shall be compensated for the time  
66 expended in their travel and appearance before the  
67 commissioner by the law-enforcement agency by whom they  
68 are employed at their regular rate if they are scheduled to be  
69 on duty during said time or at their regular overtime rate if  
70 they are scheduled to be off duty during said time. If the  
71 party whose license is at issue does not request the  
72 investigating officer to attend the hearing, the commissioner  
73 shall consider the written statement, test results and any other  
74 information submitted by the investigating officer pursuant  
75 to section one of this article in that officer's absence.

76 (e) The principal question at the hearing shall be whether  
77 the person did drive a motor vehicle while under the  
78 influence of alcohol, controlled substances or drugs, or did  
79 drive a motor vehicle while having an alcohol concentration  
80 in the person's blood of eight hundredths of one percent or  
81 more, by weight, or did refuse to submit to the designated  
82 secondary chemical test, or did drive a motor vehicle while  
83 under the age of twenty-one years with an alcohol  
84 concentration in his or her blood of two hundredths of one  
85 percent or more, by weight, but less than eight hundredths of  
86 one percent, by weight.

87 The commissioner may propose a legislative rule in  
88 compliance with the provisions of article three, chapter  
89 twenty-nine-a of this code which may provide that if a person  
90 accused of driving a motor vehicle while under the influence  
91 of alcohol, controlled substances or drugs, or accused of  
92 driving a motor vehicle while having an alcohol  
93 concentration in the person's blood of eight hundredths of one  
94 percent or more, by weight, or accused of driving a motor  
95 vehicle while under the age of twenty-one years with an  
96 alcohol concentration in his or her blood of two hundredths  
97 of one percent or more, by weight, but less than eight  
98 hundredths of one percent, by weight, intends to challenge  
99 the results of any secondary chemical test of blood, breath or  
100 urine under section seven, article five of this chapter or  
101 intends to cross-examine the individual or individuals who  
102 administered the test or performed the chemical analysis, the  
103 person shall, within an appropriate period of time prior to the  
104 hearing, notify the commissioner in writing of his or her  
105 intention. The rule may provide that when there is a failure  
106 to comply with the notice requirement, the results of the  
107 secondary test, if any, shall be admissible as though the  
108 person and the commissioner had stipulated the admissibility  
109 of the evidence. Any rule shall provide that the rule shall not  
110 be invoked in the case of a person who is not represented by  
111 counsel unless the communication from the commissioner to

112 the person establishing a time and place for the hearing also  
113 informed the person of the consequences of the person's  
114 failure to timely notify the commissioner of the person's  
115 intention to challenge the results of the secondary chemical  
116 test or cross-examine the individual or individuals who  
117 administered the test or performed the chemical analysis.

118 (f) In the case of a hearing in which a person is accused  
119 of driving a motor vehicle while under the influence of  
120 alcohol, controlled substances or drugs, or accused of driving  
121 a motor vehicle while having an alcohol concentration in the  
122 person's blood of eight hundredths of one percent or more, by  
123 weight, or accused of driving a motor vehicle while under the  
124 age of twenty-one years with an alcohol concentration in his  
125 or her blood of two hundredths of one percent or more, by  
126 weight, but less than eight hundredths of one percent, by  
127 weight, the commissioner shall make specific findings as to:  
128 (1) Whether the investigating law-enforcement officer had  
129 reasonable grounds to believe the person to have been driving  
130 while under the influence of alcohol, controlled substances or  
131 drugs, or while having an alcohol concentration in the  
132 person's blood of eight hundredths of one percent or more, by  
133 weight, or to have been driving a motor vehicle while under  
134 the age of twenty-one years with an alcohol concentration in  
135 his or her blood of two hundredths of one percent or more, by  
136 weight, but less than eight hundredths of one percent, by  
137 weight; (2) whether the person committed an offense  
138 involving driving under the influence of alcohol, controlled  
139 substances or drugs, or was lawfully taken into custody for  
140 the purpose of administering a secondary test; and (3)  
141 whether the tests, if any, were administered in accordance  
142 with the provisions of this article and article five of this  
143 chapter.

144 (g) If, in addition to a finding that the person did drive a  
145 motor vehicle while under the influence of alcohol,  
146 controlled substances or drugs, or did drive a motor vehicle

147 while having an alcohol concentration in the person's blood  
148 of eight hundredths of one percent or more, by weight, or did  
149 drive a motor vehicle while under the age of twenty-one  
150 years with an alcohol concentration in his or her blood of two  
151 hundredths of one percent or more, by weight, but less than  
152 eight hundredths of one percent, by weight, the commissioner  
153 also finds by a preponderance of the evidence that the person  
154 when driving did an act forbidden by law or failed to perform  
155 a duty imposed by law, which act or failure proximately  
156 caused the death of a person and was committed in reckless  
157 disregard of the safety of others and if the commissioner  
158 further finds that the influence of alcohol, controlled  
159 substances or drugs or the alcohol concentration in the blood  
160 was a contributing cause to the death, the commissioner shall  
161 revoke the person's license for a period of ten years:  
162 *Provided*, That if the commissioner has previously suspended  
163 or revoked the person's license under the provisions of this  
164 section or section one of this article within the ten years  
165 immediately preceding the date of arrest, the period of  
166 revocation shall be for the life of the person.

167 (h) If, in addition to a finding that the person did drive a  
168 motor vehicle while under the influence of alcohol,  
169 controlled substances or drugs, or did drive a motor vehicle  
170 while having an alcohol concentration in the person's blood  
171 of eight hundredths of one percent or more, by weight, the  
172 commissioner also finds by a preponderance of the evidence  
173 that the person when driving did an act forbidden by law or  
174 failed to perform a duty imposed by law, which act or failure  
175 proximately caused the death of a person, the commissioner  
176 shall revoke the person's license for a period of five years:  
177 *Provided*, That if the commissioner has previously suspended  
178 or revoked the person's license under the provisions of this  
179 section or section one of this article within the ten years  
180 immediately preceding the date of arrest, the period of  
181 revocation shall be for the life of the person.



182 (i) If, in addition to a finding that the person did drive a  
183 motor vehicle while under the influence of alcohol,  
184 controlled substances or drugs, or did drive a motor vehicle  
185 while having an alcohol concentration in the person's blood  
186 of eight hundredths of one percent or more, by weight, the  
187 commissioner also finds by a preponderance of the evidence  
188 that the person when driving did an act forbidden by law or  
189 failed to perform a duty imposed by law, which act or failure  
190 proximately caused bodily injury to a person other than  
191 himself or herself, the commissioner shall revoke the person's  
192 license for a period of two years: *Provided*, That if the  
193 commissioner has previously suspended or revoked the  
194 person's license under the provisions of this section or section  
195 one of this article within the ten years immediately preceding  
196 the date of arrest, the period of revocation shall be ten years:  
197 *Provided, however*, That if the commissioner has previously  
198 suspended or revoked the person's license more than once  
199 under the provisions of this section or section one of this  
200 article within the ten years immediately preceding the date of  
201 arrest, the period of revocation shall be for the life of the  
202 person.

203 (j) If the commissioner finds by a preponderance of the  
204 evidence that the person did drive a motor vehicle while  
205 under the influence of alcohol, controlled substances or  
206 drugs, or did drive a motor vehicle while having an alcohol  
207 concentration in the person's blood of eight hundredths of one  
208 percent or more, by weight, but less than fifteen hundredths  
209 of one percent or more, by weight, or finds that the person  
210 knowingly permitted the person's vehicle to be driven by  
211 another person who was under the influence of alcohol,  
212 controlled substances or drugs, or knowingly permitted the  
213 person's vehicle to be driven by another person who had an  
214 alcohol concentration in his or her blood of eight hundredths  
215 of one percent or more, by weight the commissioner shall  
216 revoke the person's license for a period of six months or a  
217 period of fifteen days with an additional one hundred and  
218 twenty days of participation in the Motor Vehicle Alcohol

219 Test and Lock Program in accordance with the provisions of  
220 section three-a of this article: *Provided*, That a person whose  
221 license is revoked for driving while under the influence of  
222 drugs is not eligible to participate in the Motor Vehicle  
223 Alcohol Test and Lock Program: *Provided, however*, That if  
224 the commissioner has previously suspended or revoked the  
225 person's license under the provisions of this section or section  
226 one of this article within the ten years immediately preceding  
227 the date of arrest, the period of revocation shall be ten years:  
228 *Provided further*, That if the commissioner has previously  
229 suspended or revoked the person's license more than once  
230 under the provisions of this section or section one of this  
231 article within the ten years immediately preceding the date of  
232 arrest, the period of revocation shall be for the life of the  
233 person.

234 (k) (1) If in addition to finding by a preponderance of the  
235 evidence that the person did drive a motor vehicle while  
236 under the influence of alcohol, controlled substance or drugs,  
237 the commissioner also finds by a preponderance of the  
238 evidence that the person did drive a motor vehicle while  
239 having an alcohol concentration in the person's blood of  
240 fifteen hundredths of one percent or more, by weight, the  
241 commissioner shall revoke the person's license for a period  
242 of forty-five days with an additional two hundred and seventy  
243 days of participation in the Motor Vehicle Alcohol Test and  
244 Lock Program in accordance with the provisions of article  
245 three-a, article five-a, chapter seventeen-c of this code:  
246 *Provided*, That if the commissioner has previously suspended  
247 or revoked the person's license under the provisions of this  
248 section or section one of this article within the ten years  
249 immediately preceding the date of arrest, the period of  
250 revocation shall be ten years: *Provided, however*, That if the  
251 commissioner has previously suspended or revoked the  
252 person's license more than once under the provisions of this  
253 section or section one of this article within the ten years  
254 immediately preceding the date of arrest, the period of  
255 revocation shall be for the life of the person.

256 (2) If a person whose license is revoked pursuant to  
257 subdivision (1) of this subsection proves by clear and  
258 convincing evidence that they do not own a motor vehicle  
259 upon which the alcohol test and lock device may be installed  
260 or is otherwise incapable of participating in the Motor  
261 Vehicle Alcohol Test and Lock Program, the period of  
262 revocation shall be one hundred eighty days: *Provided*, That  
263 if the commissioner has previously suspended or revoked the  
264 person's license under the provisions of this section or section  
265 one of this article within the ten years immediately preceding  
266 the date of arrest, the period of revocation shall be ten years:  
267 *Provided, however*, That if the commissioner has previously  
268 suspended or revoked the person's license more than once  
269 under the provisions of this section or section one of this  
270 article within the ten years immediately preceding the date of  
271 arrest, the period of revocation shall be for the life of the  
272 person.

273 (l) If, in addition to a finding that the person did drive a  
274 motor vehicle while under the age of twenty-one years with  
275 an alcohol concentration in his or her blood of two  
276 hundredths of one percent or more, by weight, but less than  
277 eight hundredths of one percent, by weight, the commissioner  
278 also finds by a preponderance of the evidence that the person  
279 when driving did an act forbidden by law or failed to perform  
280 a duty imposed by law, which act or failure proximately  
281 caused the death of a person, and if the commissioner further  
282 finds that the alcohol concentration in the blood was a  
283 contributing cause to the death, the commissioner shall  
284 revoke the person's license for a period of five years:  
285 *Provided*, That if the commissioner has previously suspended  
286 or revoked the person's license under the provisions of this  
287 section or section one of this article within the ten years  
288 immediately preceding the date of arrest, the period of  
289 revocation shall be for the life of the person.

290 (m) If, in addition to a finding that the person did drive a  
291 motor vehicle while under the age of twenty-one years with

292 an alcohol concentration in his or her blood of two  
293 hundredths of one percent or more, by weight, but less than  
294 eight hundredths of one percent, by weight, the commissioner  
295 also finds by a preponderance of the evidence that the person  
296 when driving did an act forbidden by law or failed to perform  
297 a duty imposed by law, which act or failure proximately  
298 caused bodily injury to a person other than himself or herself,  
299 and if the commissioner further finds that the alcohol  
300 concentration in the blood was a contributing cause to the  
301 bodily injury, the commissioner shall revoke the person's  
302 license for a period of two years: *Provided*, That if the  
303 commissioner has previously suspended or revoked the  
304 person's license under the provisions of this section or section  
305 one of this article within the ten years immediately preceding  
306 the date of arrest, the period of revocation shall be ten years:  
307 *Provided, however*, That if the commissioner has previously  
308 suspended or revoked the person's license more than once  
309 under the provisions of this section or section one of this  
310 article within the ten years immediately preceding the date of  
311 arrest, the period of revocation shall be for the life of the  
312 person.

313 (n) If the commissioner finds by a preponderance of the  
314 evidence that the person did drive a motor vehicle while  
315 under the age of twenty-one years with an alcohol  
316 concentration in his or her blood of two hundredths of one  
317 percent or more, by weight, but less than eight hundredths of  
318 one percent, by weight, the commissioner shall suspend the  
319 person's license for a period of sixty days: *Provided*, That if  
320 the commissioner has previously suspended or revoked the  
321 person's license under the provisions of this section or section  
322 one of this article, the period of revocation shall be for one  
323 year, or until the person's twenty-first birthday, whichever  
324 period is longer.

325 (o) If, in addition to a finding that the person did drive a  
326 motor vehicle while under the influence of alcohol,  
327 controlled substances or drugs, or did drive a motor vehicle

328 while having an alcohol concentration in the person's blood  
329 of eight hundredths of one percent or more, by weight, the  
330 commissioner also finds by a preponderance of the evidence  
331 that the person when driving did have on or within the motor  
332 vehicle another person who has not reached his or her  
333 sixteenth birthday, the commissioner shall revoke the  
334 person's license for a period of one year: *Provided*, That if  
335 the commissioner has previously suspended or revoked the  
336 person's license under the provisions of this section or section  
337 one of this article within the ten years immediately preceding  
338 the date of arrest, the period of revocation shall be ten years:  
339 *Provided, however*, That if the commissioner has previously  
340 suspended or revoked the person's license more than once  
341 under the provisions of this section or section one of this  
342 article within the ten years immediately preceding the date of  
343 arrest, the period of revocation shall be for the life of the  
344 person.

345 (p) For purposes of this section, where reference is made  
346 to previous suspensions or revocations under this section, the  
347 following types of criminal convictions or administrative  
348 suspensions or revocations shall also be regarded as  
349 suspensions or revocations under this section or section one  
350 of this article:

351 (1) Any administrative revocation under the provisions of  
352 the prior enactment of this section for conduct which  
353 occurred within the ten years immediately preceding the date  
354 of arrest;

355 (2) Any suspension or revocation on the basis of a  
356 conviction under a municipal ordinance of another state or a  
357 statute of the United States or of any other state of an offense  
358 which has the same elements as an offense described in  
359 section two, article five of this chapter for conduct which  
360 occurred within the ten years immediately preceding the date  
361 of arrest; or

362 (3) Any revocation under the provisions of section seven,  
363 article five of this chapter for conduct which occurred within  
364 the ten years immediately preceding the date of arrest.

365 (q) In the case of a hearing in which a person is accused  
366 of refusing to submit to a designated secondary test, the  
367 commissioner shall make specific findings as to: (1) Whether  
368 the arresting law-enforcement officer had reasonable grounds  
369 to believe the person had been driving a motor vehicle in this  
370 state while under the influence of alcohol, controlled  
371 substances or drugs; (2) whether the person committed an  
372 offense relating to driving a motor vehicle in this state while  
373 under the influence of alcohol, controlled substances or  
374 drugs; (3) whether the person refused to submit to the  
375 secondary test finally designated in the manner provided in  
376 section four, article five of this chapter; and (4) whether the  
377 person had been given a written statement advising the  
378 person that the person's license to operate a motor vehicle in  
379 this state would be revoked for at least forty-five days and up  
380 to life if the person refused to submit to the test finally  
381 designated in the manner provided in said section.

382 (r) If the commissioner finds by a preponderance of the  
383 evidence that: (1) The investigating officer had reasonable  
384 grounds to believe the person had been driving a motor  
385 vehicle in this state while under the influence of alcohol,  
386 controlled substances or drugs; (2) the person committed an  
387 offense relating to driving a motor vehicle in this state while  
388 under the influence of alcohol, controlled substances or  
389 drugs; (3) the person refused to submit to the secondary  
390 chemical test finally designated; and (4) the person had been  
391 given a written statement advising the person that the  
392 person's license to operate a motor vehicle in this state would  
393 be revoked for a period of at least forty-five days and up to  
394 life if the person refused to submit to the test finally  
395 designated, the commissioner shall revoke the person's  
396 license to operate a motor vehicle in this state for the periods  
397 specified in section seven, article five of this chapter. The  
398 revocation period prescribed in this subsection shall run

399 concurrently with any other revocation period ordered under  
400 this section or section one of this article arising out of the  
401 same occurrence.

402 (s) If the commissioner finds to the contrary with respect  
403 to the above issues the commissioner shall rescind his or her  
404 earlier order of revocation or shall reduce the order of  
405 revocation to the appropriate period of revocation under this  
406 section or section seven, article five of this chapter. A copy  
407 of the commissioner's order made and entered following the  
408 hearing shall be served upon the person by registered or  
409 certified mail, return receipt requested. During the pendency  
410 of any hearing, the revocation of the person's license to  
411 operate a motor vehicle in this state shall be stayed.

412 If the commissioner shall after hearing make and enter an  
413 order affirming the commissioner's earlier order of  
414 revocation, the person shall be entitled to judicial review as  
415 set forth in chapter twenty-nine-a of this code. The  
416 commissioner may not stay enforcement of the order. The  
417 court may grant a stay or supersede as of the order only upon  
418 motion and hearing, and a finding by the court upon the  
419 evidence presented, that there is a substantial probability that  
420 the appellant shall prevail upon the merits and the appellant  
421 will suffer irreparable harm if the order is not stayed:  
422 *Provided*, That in no event shall the stay or supersede as of  
423 the order exceed one hundred fifty days. Notwithstanding the  
424 provisions of section four, article five of said chapter, the  
425 commissioner may not be compelled to transmit a certified  
426 copy of the file or the transcript of the hearing to the circuit  
427 court in less than sixty days.

428 (t) In any revocation or suspension pursuant to this  
429 section, if the driver whose license is revoked or suspended  
430 had not reached the driver's eighteenth birthday at the time of  
431 the conduct for which the license is revoked or suspended,  
432 the driver's license shall be revoked or suspended until the  
433 driver's eighteenth birthday or the applicable statutory period

434 of revocation or suspension prescribed by this section,  
435 whichever is longer.

436 (u) Funds for this section's hearing and appeal process  
437 may be provided from the Drunk Driving Prevention Fund,  
438 as created by section forty-one, article two, chapter fifteen of  
439 this code, upon application for the funds to the Commission  
440 on Drunk Driving Prevention.

**§17C-5A-3. Safety and treatment program; reissuance of license.**

1 (a) The Department of Health and Human Resources,  
2 Division of Alcoholism and Drug Abuse, shall propose a  
3 legislative rule or rules for promulgation in accordance with  
4 the provisions of chapter twenty-nine-a of this code  
5 establishing a comprehensive safety and treatment program  
6 for persons whose licenses have been revoked under the  
7 provisions of this article or section seven, article five of this  
8 chapter or subsection (6), section five, article three, chapter  
9 seventeen-b of this code and shall also establish the minimum  
10 qualifications for mental health facilities or other public  
11 agencies or private entities conducting the safety and  
12 treatment program: *Provided*, That the Department of Health  
13 and Human Resources, Division of Alcoholism and Drug  
14 Abuse may establish standards whereby the division will  
15 accept or approve participation by violators in another  
16 treatment program which provides the same or substantially  
17 similar benefits as the safety and treatment program  
18 established pursuant to this section.

19 (b) The program shall include, but not be limited to,  
20 treatment of alcoholism, alcohol and drug abuse,  
21 psychological counseling, educational courses on the dangers  
22 of alcohol and drugs as they relate to driving, defensive  
23 driving or other safety driving instruction and other programs  
24 designed to properly educate, train and rehabilitate the  
25 offender.



26 (c) (1) The Department of Health and Human Resources,  
27 Division of Alcoholism and Drug Abuse, shall provide for  
28 the preparation of an educational and treatment program for  
29 each person whose license has been revoked under the  
30 provisions of this article or section seven, article five of this  
31 chapter or subsection (6), section five, article three, chapter  
32 seventeen-b of this code which shall contain the following:  
33 (A) A listing and evaluation of the offender's prior traffic  
34 record; (B) The characteristics and history of alcohol or drug  
35 use, if any; (C) His or her amenability to rehabilitation  
36 through the alcohol safety program; and (D) a  
37 recommendation as to treatment or rehabilitation and the  
38 terms and conditions of the treatment or rehabilitation. The  
39 program shall be prepared by persons knowledgeable in the  
40 diagnosis of alcohol or drug abuse and treatment.

41 (2) The Department of Health and Human Resources  
42 shall establish a fee by legislative rule proposed pursuant to  
43 article three, chapter twenty-nine-a of this code to be  
44 collected from each offender enrolled in the safety and  
45 treatment program. The program provider shall collect the  
46 established fee from each participant upon enrollment unless  
47 the department has determined that the participant is an  
48 indigent based upon criteria established pursuant to  
49 subdivision (3) of this subsection. The Department of Health  
50 and Human Resources shall reimburse enrollment fees to  
51 program providers for each eligible indigent offender.

52 (3) The Department of Health and Human Resources  
53 shall establish by legislative rule, proposed pursuant to article  
54 three, chapter twenty-nine-a of this code, criteria to determine  
55 the eligibility for the payment of safety and treatment  
56 services for indigent offenders. The rule shall include, but is  
57 not limited to, the development of a criteria for determining  
58 eligibility; promulgation of application forms; establishment  
59 of procedures for the review of applications; and the  
60 establishment of a mechanism for the payment for safety and  
61 training services for eligible offenders.

62 (4) On or before the fifteenth day of January, of each  
63 year, the Secretary of the Department of Health and Human  
64 Resources shall report to the Legislature on:

65 (A) The total number of offenders participating in the  
66 safety and treatment program during the prior year;

67 (B) The total number of indigent offenders participating  
68 in the safety and treatment program during the prior year;

69 (C) The total number of program providers during the  
70 prior year; and

71 (D) The total amount of reimbursements paid to program  
72 provider during the prior year.

73 (5) The commissioner after giving due consideration to  
74 the program developed for the offender, shall prescribe the  
75 necessary terms and conditions for the reissuance of the  
76 license to operate a motor vehicle in this state revoked under  
77 this article or section seven, article five of this chapter or  
78 subsection (6), section five, article three, chapter seventeen-b  
79 of this code which shall include successful completion of the  
80 educational, treatment or rehabilitation program, subject to  
81 the following:

82 (A) When the period of revocation is six months, the  
83 license to operate a motor vehicle in this state shall not be  
84 reissued until: (i) At least ninety days have elapsed from the  
85 date of the initial revocation, during which time the  
86 revocation was actually in effect; (ii) the offender has  
87 successfully completed the program; (iii) all costs of the  
88 program and administration have been paid; and (iv) all costs  
89 assessed as a result of a revocation hearing have been paid;

90 (B) When the period of revocation is for a period of one  
91 year or for more than a year, the license to operate a motor  
92 vehicle in this state shall not be reissued until: (i) At least one

93 half of the time period has elapsed from the date of the initial  
94 revocation, during which time the revocation was actually in  
95 effect; (ii) The offender has successfully completed the  
96 program; (iii) All costs of the program and administration  
97 have been paid; and (iv) All costs assessed as a result of a  
98 revocation hearing have been paid. Notwithstanding any  
99 provision in this code, a person whose license is revoked for  
100 refusing to take a chemical test as required by section seven,  
101 article five of this chapter for a first offense is not eligible to  
102 reduce the revocation period by completing the safety and  
103 treatment program.

104 (C) When the period of revocation is for life, the license  
105 to operate a motor vehicle in this state shall not be reissued  
106 until: (i) At least ten years have elapsed from the date of the  
107 initial revocation, during which time the revocation was  
108 actually in effect; (ii) the offender has successfully completed  
109 the program; (iii) all costs of the program and administration  
110 have been paid; and (iv) all costs assessed as a result of a  
111 revocation hearing have been paid.

112 (D) Notwithstanding any provision of this code or any  
113 rule, any mental health facilities or other public agencies or  
114 private entities conducting the safety and treatment program  
115 when certifying that a person has successfully completed a  
116 safety and treatment program shall only have to certify that  
117 the person has successfully completed the program.

118 (d) (1) The Department of Health and Human Resources,  
119 Division of Alcoholism and Drug Abuse, shall provide for  
120 the preparation of an educational program for each person  
121 whose license has been suspended for sixty days pursuant to  
122 the provisions of subsection (n), section two, article five-a of  
123 this chapter. The educational program shall consist of not  
124 less than twelve nor more than eighteen hours of actual  
125 classroom time.

126 (2) When a sixty-day period of suspension has been  
127 ordered, the license to operate a motor vehicle shall not be  
128 reinstated until: (A) At least sixty days have elapsed from the  
129 date of the initial suspension, during which time the  
130 suspension was actually in effect; (B) the offender has  
131 successfully completed the educational program; (C) all costs  
132 of the program and administration have been paid; and (D) all  
133 costs assessed as a result of a suspension hearing have been  
134 paid.

135 (e) A required component of the rehabilitation program  
136 provided in subsection (b) of this section and the education  
137 program provided for in subsection (c) of this section shall be  
138 participation by the violator with a victim impact panel  
139 program providing a forum for victims of alcohol and drug-  
140 related offenses and offenders to share first-hand experiences  
141 on the impact of alcohol- and drug-related offenses in their  
142 lives. The Department of Health and Human Resources,  
143 Division of Alcoholism and Drug Abuse, shall propose and  
144 implement a plan for victim impact panels where appropriate  
145 numbers of victims are available and willing to participate  
146 and shall establish guidelines for other innovative programs  
147 which may be substituted where the victims are not available  
148 to assist persons whose licenses have been suspended or  
149 revoked for alcohol and drug-related offenses to gain a full  
150 understanding of the severity of their offenses in terms of the  
151 impact of the offenses on victims and offenders. The plan  
152 shall require, at a minimum, discussion and consideration of  
153 the following:

154 (A) Economic losses suffered by victims or offenders;

155 (B) Death or physical injuries suffered by victims or  
156 offenders;

157 (C) Psychological injuries suffered by victims or  
158 offenders;

159 (D) Changes in the personal welfare or familial  
160 relationships of victims or offenders; and

161 (E) Other information relating to the impact of alcohol  
162 and drug-related offenses upon victims or offenders.

163 The Department of Health and Human Resources,  
164 Division of Alcoholism and Drug Abuse, shall ensure that  
165 any meetings between victims and offenders shall be  
166 nonconfrontational and ensure the physical safety of the  
167 persons involved.

**§17C-5A-3a. Establishment of and participation in the Motor Vehicle  
Alcohol Test and Lock Program.**

1 (a) (1) The Division of Motor Vehicles shall control and  
2 regulate a Motor Vehicle Alcohol Test and Lock Program for  
3 persons whose licenses have been revoked pursuant to this  
4 article or the provisions of article five of this chapter or have  
5 been convicted under section two, article five of this chapter.

6 (2) The program shall include the establishment of a  
7 users fee for persons participating in the program which shall  
8 be paid in advance and deposited into the Driver's  
9 Rehabilitation Fund: *Provided*, That on and after the first day  
10 of July, two thousand seven, any unexpended balance  
11 remaining in the Driver's Rehabilitation Fund shall be  
12 transferred to the Motor Vehicle Fees Fund created under the  
13 provisions of section twenty-one, article two, chapter  
14 seventeen-a of this code and all further fees collected shall be  
15 deposited in that fund.

16

17 (3) Except where specified otherwise, the use of the term  
18 "program" in this section refers to the Motor Vehicle Alcohol  
19 Test and Lock Program. The Commissioner of the Division  
20 of Motor Vehicles shall propose legislative rules for  
21 promulgation in accordance with the provisions of chapter  
22 twenty-nine-a of this code for the purpose of implementing

23 the provisions of this section. The rules shall also prescribe  
24 those requirements which, in addition to the requirements  
25 specified by this section for eligibility to participate in the  
26 program, the commissioner determines must be met to obtain  
27 the commissioner's approval to operate a motor vehicle  
28 equipped with a motor vehicle alcohol test and lock system.

29 (4) For purposes of this section, a "motor vehicle alcohol  
30 test and lock system" means a mechanical or computerized  
31 system which, in the opinion of the commissioner, prevents  
32 the operation of a motor vehicle when, through the system's  
33 assessment of the blood alcohol content of the person  
34 operating or attempting to operate the vehicle, the person is  
35 determined to be under the influence of alcohol.

36 (5) The commissioner shall establish by legislative rule,  
37 proposed pursuant to article three, chapter twenty-nine-a of  
38 this code, criteria to determine the eligibility for the payment  
39 of the installation of ignition interlock devices in the vehicles  
40 of indigent offenders. The rule shall include, but is not  
41 limited to, the development of a criteria for determining  
42 eligibility; promulgation of application forms; establishment  
43 of procedures for the review of applications; and the  
44 establishment of a mechanism for the payment of  
45 installations for eligible offenders.

46 (6) On or before the fifteenth day of January, of each  
47 year, the commissioner of the division of motor vehicles shall  
48 report to the Legislature on:

49 (A) The total number of offenders participating in the  
50 program during the prior year;

51 (B) The total number of indigent offenders participating  
52 in the program during the prior year;

53 (C) The terms of any contracts with the providers of  
54 ignition interlock devices ; and

55 (D) The total cost of the program to the state during the  
56 prior year.

57 (b)(1) Any person whose license is revoked for the first  
58 time pursuant to this article or the provisions of article five of  
59 this chapter is eligible to participate in the program when the  
60 person's minimum revocation period as specified by  
61 subsection (c) of this section has expired and the person is  
62 enrolled in or has successfully completed the safety and  
63 treatment program or presents proof to the commissioner  
64 within sixty days of receiving approval to participate by the  
65 commissioner that he or she is enrolled in a safety and  
66 treatment program: *Provided*, That anyone whose license is  
67 revoked for the first time pursuant to subsection (k), section  
68 two of this article must participate in the program when the  
69 person's minimum revocation period as specified by  
70 subsection (c) of this section has expired and the person is  
71 enrolled in or has successfully completed the safety and  
72 treatment program or presents proof to the commissioner  
73 within sixty days of receiving approval to participate by the  
74 commissioner that he or she is enrolled in a safety and  
75 treatment program.

76 (2) Any person whose license has been suspended  
77 pursuant to the provisions of subsection (n), section two of  
78 this article for driving a motor vehicle while under the age of  
79 twenty-one years with an alcohol concentration in his or her  
80 blood of two hundredths of one percent or more, by weight,  
81 but less than eight hundredths of one percent, by weight, is  
82 eligible to participate in the program after thirty days have  
83 elapsed from the date of the initial suspension, during which  
84 time the suspension was actually in effect: *Provided*, That in  
85 the case of a person under the age of eighteen, the person is  
86 eligible to participate in the program after thirty days have  
87 elapsed from the date of the initial suspension, during which  
88 time the suspension was actually in effect or after the  
89 person's eighteenth birthday, whichever is later. Before the  
90 commissioner approves a person to operate a motor vehicle

91 equipped with a motor vehicle alcohol test and lock system,  
92 the person must agree to comply with the following  
93 conditions:

94 (A) If not already enrolled, the person shall enroll in and  
95 complete the educational program provided in subsection (d),  
96 section three of this article at the earliest time that placement  
97 in the educational program is available, unless good cause is  
98 demonstrated to the commissioner as to why placement  
99 should be postponed;

100 (B) The person shall pay all costs of the educational  
101 program, any administrative costs and all costs assessed for  
102 any suspension hearing.

103 (3) Notwithstanding the provisions of this section to the  
104 contrary, a person eligible to participate in the program under  
105 this subsection may not operate a motor vehicle unless  
106 approved to do so by the commissioner.

107 (c) A person who participates in the program under  
108 subdivision (1), subsection (b) of this section is subject to a  
109 minimum revocation period and minimum period for the use  
110 of the ignition interlock device as follows:

111 (1) For a person whose license has been revoked for a  
112 first offense for six months pursuant to the provisions of  
113 section one-a of this article for conviction of an offense  
114 defined in subsection (d) or (g), section two, article five of  
115 this chapter or pursuant to subsection (j), section two of this  
116 article, the minimum period of revocation for participation in  
117 the test and lock program is fifteen days and the minimum  
118 period for the use of the ignition interlock device is one  
119 hundred and twenty-five days;

120 (2) For a person whose license has been revoked for a  
121 first offense pursuant to section seven, article five of this  
122 chapter, the minimum period of revocation for participation



123 in the test and lock program is forty-five days and the  
124 minimum period for the use of the ignition interlock device  
125 is one year;

126 (3) For a person whose license has been revoked for a  
127 first offense pursuant to section one-a of this article for  
128 conviction of an offense defined in subsection (e), section  
129 two, article five of this chapter or pursuant to subsection (j),  
130 section two of this article, the minimum period of revocation  
131 for participation in the test and lock program is forty-five  
132 days and the minimum period for the use of the ignition  
133 interlock device is two hundred seventy days;

134 (4) For a person whose license has been revoked for a  
135 first offense pursuant to the provisions of section one-a of  
136 this article for conviction of an offense defined in subsection  
137 (a), section two, article five of this chapter or pursuant to  
138 subsection (f), section two of this article, the minimum period  
139 of revocation before the person is eligible for participation in  
140 the test and lock program is twelve months and the minimum  
141 period for the use of the ignition interlock device is two  
142 years;

143 (5) For a person whose license has been revoked for a  
144 first offense pursuant to the provisions of section one-a of  
145 this article for conviction of an offense defined in subsection  
146 (b), section two, article five of this chapter or pursuant to  
147 subsection (g), section two of this article, the minimum  
148 period of revocation is six months and the minimum period  
149 for the use of the ignition interlock device is two years;

150 (6) For a person whose license has been revoked for a  
151 first offense pursuant to the provisions of section one-a of  
152 this article for conviction of an offense defined in subsection  
153 (c), section two, article five of this chapter or pursuant to  
154 subsection (h), section two of this article, the minimum  
155 period of revocation for participation in the program is two

156 months and the minimum period for the use of the ignition  
157 interlock device is one year;

158 (7) For a person whose license has been revoked for a  
159 first offense pursuant to the provisions of section one-a of  
160 this article for conviction of an offense defined in subsection  
161 (j), section two, article five of this chapter or pursuant to  
162 subsection (m), section two of this article, the minimum  
163 period of revocation for participation in the program is two  
164 months and the minimum period for the use of the ignition  
165 interlock device is ten months;

166 (d) Notwithstanding any provision of the code to the  
167 contrary, a person shall participate in the program if the  
168 person is convicted under section two, article five of this  
169 chapter or the person's license is revoked under section two  
170 of this article or section seven, article five of this chapter and  
171 the person was previously either convicted or his or her  
172 license was revoked under any provision cited in this  
173 subsection within the past ten years. The minimum  
174 revocation period for a person required to participate in the  
175 program under this subsection is one year and the minimum  
176 period for the use of the ignition interlock device is two  
177 years, except that the minimum revocation period for a  
178 person required to participate because of a violation of  
179 subsection (n), section two of this article or subsection (i),  
180 section two, article five of this chapter is two months and the  
181 minimum period of participation is one year. The division  
182 shall add an additional two months to the minimum period  
183 for the use of the ignition interlock device if the offense was  
184 committed while a minor was in the vehicle. The division  
185 shall add an additional six months to the minimum period for  
186 the use of the ignition interlock device if a person other than  
187 the driver received injuries. The division shall add an  
188 additional two years to the minimum period for the use of the  
189 ignition interlock device if a person other than the driver is  
190 injured and the injuries result in that person's death. The  
191 division shall add one year to the minimum period for the use  
192 of the ignition interlock device for each additional previous

193 conviction or revocation within the past ten years. Any  
194 person required to participate under this subsection must have  
195 an ignition interlock device installed on every vehicle he or  
196 she owns or operates.

197 (e) Notwithstanding any other provision in this code, a  
198 person whose license is revoked for driving under the  
199 influence of drugs is not eligible to participate in the Motor  
200 Vehicle Alcohol Test and Lock Program.

201 (f) An applicant for the test and lock program may not  
202 have been convicted of any violation of section three, article  
203 four, chapter seventeen-b of this code for driving while the  
204 applicant's driver's license was suspended or revoked within  
205 the six-month period preceding the date of application for  
206 admission to the test and lock program unless such is  
207 necessary for employment purposes.

208 (g) Upon permitting an eligible person to participate in  
209 the program, the commissioner shall issue to the person, and  
210 the person is required to exhibit on demand, a driver's license  
211 which shall reflect that the person is restricted to the  
212 operation of a motor vehicle which is equipped with an  
213 approved motor vehicle alcohol test and lock system.

214 (h) The commissioner may extend the minimum period  
215 of revocation and the minimum period of participation in the  
216 program for a person who violates the terms and conditions  
217 of participation in the program as found in this section, or  
218 legislative rule, or any agreement or contract between the  
219 participant and the division or program service provider.

220 (i) A person whose license has been suspended pursuant  
221 to the provisions of subsection (n), section two of this article  
222 who has completed the educational program and who has not  
223 violated the terms required by the commissioner of the  
224 person's participation in the program is entitled to the  
225 reinstatement of his or her driver's license six months from  
226 the date the person is permitted to operate a motor vehicle by

227 the commissioner. When a license has been reinstated  
228 pursuant to this subsection, the records ordering the  
229 suspension, records of any administrative hearing, records of  
230 any blood alcohol test results and all other records pertaining  
231 to the suspension shall be expunged by operation of law:  
232 *Provided*, That a person is entitled to expungement under the  
233 provisions of this subsection only once. The expungement  
234 shall be accomplished by physically marking the records to  
235 show that the records have been expunged and by securely  
236 sealing and filing the records. Expungement has the legal  
237 effect as if the suspension never occurred. The records may  
238 not be disclosed or made available for inspection and in  
239 response to a request for record information, the  
240 commissioner shall reply that no information is available.  
241 Information from the file may be used by the commissioner  
242 for research and statistical purposes so long as the use of the  
243 information does not divulge the identity of the person.

244 (j) In addition to any other penalty imposed by this code,  
245 any person who operates a motor vehicle not equipped with  
246 an approved motor vehicle alcohol test and lock system  
247 during that person's participation in the Motor Vehicle  
248 Alcohol Test and Lock Program is guilty of a misdemeanor  
249 and, upon conviction thereof, shall be confined in jail for a  
250 period not less than one month nor more than six months and  
251 fined not less than one hundred dollars nor more than five  
252 hundred dollars. Any person who attempts to bypass the  
253 alcohol test and lock system is guilty of a misdemeanor and,  
254 upon conviction thereof, shall be confined in jail not more  
255 than six months and fined not less than one hundred dollars  
256 nor more than one thousand dollars: *Provided*, That  
257 notwithstanding any provision of this code to the contrary, a  
258 person enrolled and participating in the test and lock program  
259 may operate a motor vehicle solely at his or her job site if the  
260 operation is a condition of his or her employment. For the  
261 purpose of this section, job site does not include any street or  
262 highway open to the use of the public for purposes of  
263 vehicular traffic.

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## CHAPTER 71

**(Com. Sub. for H.B. 4588 - By Delegates Perry, Browning,  
M. Poling, Shaver, Wysong, Duke, Romine, Williams and Ellis)**

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[Passed March 8, 2008; in effect July 1, 2008.]

[Approved by the Governor on March 31, 2008.]

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AN ACT to repeal §18-9A-5a, §18-9A-5b, §18-9A-10a and §18-9A-22 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-1-1 of said code; to amend and reenact §18-9A-2, §18-9A-3a, §18-9A-4, §18-9A-5, §18-9A-6, §18-9A-7, §18-9A-8, §18-9A-9, §18-9A-10 and §18-9A-21 of said code; and to amend and reenact §18-20-5 of said code, all relating to public school support; defining terms; eliminating adjusted enrollment and certain waiver provisions; eliminating obsolete provisions; providing alternate computation of county and total basic foundation program funding for certain years; limiting basis of foundation allowances for personnel to certain ratios of net student enrollment instead of adjusted enrollment; establishing different net enrollment limits on the basis of differences in students per square mile and expiring existing ratios and funding provisions; providing for certain adjustments to net enrollment for allowances in low enrollment counties; requiring review of certain issues; establishing minimum ratios of professional instructional personnel per students in net enrollment; providing criteria for certain new positions; establishing student density categories for determining allowance for transportation; modifying incentive for alternative fuel use and allowance for transporting students to certain multi-county centers; removing obsolete provisions for certain competitive bidding; deleting allowance for administrative costs; providing foundation allowance for

professional student support personnel, including fixed charges; including professional student support personnel costs in determining professional substitute allowance; placing funding supplement for advanced placement and dual credit enrollment in allowance to improve instructional programs; repealing provisions for certain additional nursing positions; providing enrollment basis for alternative program funding and adding prevention programs; expiring certain provisions for funding for economies of scale in certain counties; requiring annual review and report by state superintendent on exceptional student services and accounting of services and costs; requiring appropriation for distribution upon application to support children with high acuity needs that exceed county capacity from funds available; and requiring rule to implement distribution.

*Be it enacted by the Legislature of West Virginia:*

That §18-9A-5a, §18-9A-5b, §18-9A-10a and §18-9A-22 of the Code of West Virginia, 1931, as amended, be repealed; that §18-1-1 of said code be amended and reenacted; that §18-9A-2, §18-9A-3a, §18-9A-4, §18-9A-5, §18-9A-6, §18-9A-7, §18-9A-8, §18-9A-9, §18-9A-10 and §18-9A-21 of said code be amended and reenacted; and that §18-20-5 of said code be amended and reenacted, all to read as follows:

**Article**

- 1. Definitions; Limitations of Chapter; Goals for Education.**
- 9A. Public School Support.**
- 20. Education of Exceptional Children.**

**ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER;  
GOALS FOR EDUCATION.**

**§18-1-1. Definitions.**

- 1 The following words used in this chapter and in any
- 2 proceedings pursuant thereto have the meanings ascribed to
- 3 them unless the context clearly indicates a different meaning:

- 4 (a) "School" means the students and teachers assembled  
5 in one or more buildings, organized as a unit;
- 6 (b) "District" means county school district;
- 7 (c) "State board" means the West Virginia Board of  
8 Education;
- 9 (d) "County board" or "board" means a county board of  
10 education;
- 11 (e) "State superintendent" means the State Superintendent  
12 of Free Schools;
- 13 (f) "County superintendent" or "superintendent" means  
14 a county superintendent of schools;
- 15 (g) "Teacher" means a teacher, supervisor, principal,  
16 superintendent, public school librarian or any other person  
17 regularly employed for instructional purposes in a public  
18 school in this state;
- 19 (h) "Service person" or "service personnel," whether  
20 singular or plural, means any nonteaching school employee  
21 who is not included in the meaning of "teacher" as defined in  
22 this section, and who serves the school or schools as a whole,  
23 in a nonprofessional capacity, including such areas as  
24 secretarial, custodial, maintenance, transportation, school  
25 lunch and aides. Any reference to "service employee" or  
26 "service employees" in this chapter or chapter eighteen-a of  
27 this code means service person or service personnel as  
28 defined in this section;
- 29 (i) "Social worker" means a nonteaching school  
30 employee who, at a minimum, possesses an undergraduate  
31 degree in social work from an accredited institution of higher  
32 learning and who provides various professional social work

33 services, activities or methods as defined by the state board  
34 for the benefit of students;

35 (j) “Regular full-time employee” means any person  
36 employed by a county board who has a regular position or  
37 job throughout his or her employment term, without regard  
38 to hours or method of pay;

39 (k) “Career clusters” means broad groupings of related  
40 occupations;

41 (l) “Work-based learning” means a structured activity  
42 that correlates with and is mutually supportive of the  
43 school-based learning of the student and includes specific  
44 objectives to be learned by the student as a result of the  
45 activity;

46 (m) “School-age juvenile” means any individual who is  
47 entitled to attend or who, if not placed in a residential facility,  
48 would be entitled to attend public schools in accordance with:  
49 (1) Section five, article two of this chapter; (2) sections  
50 fifteen and eighteen, article five of this chapter; or (3) section  
51 one, article twenty of this chapter;

52 (n) “Student with a disability” means an exceptional  
53 child, other than gifted, pursuant to section one, article  
54 twenty of this chapter;

55 (o) “Casual deficit” means a deficit of not more than  
56 three percent of the approved levy estimate or a deficit that is  
57 nonrecurring from year to year.

## **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

§18-9A-2. Definitions.

§18-9A-3a. Total state basic foundation program for fiscal years 2009 through 2013, only.

§18-9A-4. Foundation allowance for professional educators.

§18-9A-5. Foundation allowance for service personnel.

§18-9A-6. Foundation allowance for fixed charges.



- §18-9A-7. Foundation allowance for transportation cost.
- §18-9A-8. Foundation allowance for professional student support services.
- §18-9A-9. Foundation allowance for other current expense and substitute employees.
- §18-9A-10. Foundation allowance to improve instructional programs.
- §18-9A-21. Funding for alternative education programs.

### **§18-9A-2. Definitions.**

1 For the purpose of this article:

2 (a) “State board” means the West Virginia Board of  
3 Education.

4 (b) “County board” or “board” means a county board of  
5 education.

6 (c) “Professional salaries” means the state legally  
7 mandated salaries of the professional educators as provided  
8 in article four, chapter eighteen-a of this code.

9 (d) “Professional educator” shall be synonymous with  
10 and shall have the same meaning as “teacher” as defined in  
11 section one, article one of this chapter, and includes  
12 technology integration specialists.

13 (e) “Professional instructional personnel” means a  
14 professional educator whose regular duty is as that of a  
15 classroom teacher, librarian, attendance director or school  
16 psychologist. A professional educator having both  
17 instructional and administrative or other duties shall be  
18 included as professional instructional personnel for that ratio  
19 of the school day for which he or she is assigned and serves  
20 on a regular full-time basis in appropriate instruction, library,  
21 attendance, or psychologist duties.

22 (f) “Professional student support personnel” means a  
23 “professional person” as those terms are defined in section  
24 one, article one, chapter eighteen-a of this code who is  
25 assigned and serves on a regular full-time basis as a

26 counselor or as a school nurse with a bachelor's degree and  
27 who is licensed by the West Virginia Board of Examiners for  
28 Registered Professional Nurses.

29 (g) "Service personnel salaries" means the state legally  
30 mandated salaries for service personnel as provided in section  
31 eight-a, article four, chapter eighteen-a of this code.

32 (h) "Service personnel" means all personnel as provided  
33 in section eight, article four, chapter eighteen-a of this code.  
34 For the purpose of computations under this article of ratios of  
35 service personnel to net enrollment, a service employee shall  
36 be counted as that number found by dividing his or her  
37 number of employment days in a fiscal year by two hundred:  
38 *Provided*, That the computation for any service person  
39 employed for three and one-half hours or less per day as  
40 provided in section eight-a, article four, chapter eighteen-a of  
41 this code shall be calculated as one-half an employment day.

42 (i) "Net enrollment" means the number of pupils enrolled  
43 in special education programs, kindergarten programs and  
44 grades one to twelve, inclusive, of the public schools of the  
45 county. Net enrollment further shall include:

46 (1) Adults enrolled in regular secondary vocational  
47 programs existing as of the effective date of this section,  
48 subject to the following:

49 (A) Net enrollment includes no more than one thousand  
50 of those adults counted on the basis of full-time equivalency  
51 and apportioned annually to each county in proportion to the  
52 adults participating in regular secondary vocational programs  
53 in the prior year counted on the basis of full-time  
54 equivalency; and

55 (B) Net enrollment does not include any adult charged  
56 tuition or special fees beyond that required of the regular  
57 secondary vocational student;

58 (2) Students enrolled in early childhood education  
59 programs as provided in section forty-four, article five of this  
60 chapter, counted on the basis of full-time equivalency;

61 (3) No pupil shall be counted more than once by reason  
62 of transfer within the county or from another county within  
63 the state, and no pupil shall be counted who attends school in  
64 this state from another state;

65 (4) The enrollment shall be modified to the equivalent of  
66 the instructional term and in accordance with the eligibility  
67 requirements and rules established by the state board; and

68 (5) For any county whose net enrollment as determined  
69 under all other provisions of this definition is less than one  
70 thousand four hundred, the net enrollment of the county shall  
71 be increased by an amount to be determined in accordance  
72 with the following:

73 (A) Divide the state's lowest county student population  
74 density by the county's actual student population density;

75 (B) Multiply the amount derived from the calculation in  
76 paragraph (A) of this subdivision by three hundred;

77 (C) If the increase in net enrollment as determined under  
78 this subdivision plus the county's net enrollment as  
79 determined under all other provisions of this subsection is  
80 greater than one thousand four hundred, the increase in net  
81 enrollment shall be reduced so that the total does not exceed  
82 one thousand four hundred; and

83 (D) During the two thousand eight - two thousand nine  
84 interim period and every three interim periods thereafter, the  
85 Legislative Oversight Commission on Education  
86 Accountability shall review the provisions of this subdivision  
87 to determine whether or not they properly address the needs

88 of counties with low enrollment and a sparse population  
89 density.

90 (j) “Sparse-density county” means a county whose ratio  
91 of net enrollment, excluding any increase in the net  
92 enrollment of counties pursuant to subdivision (5) of the  
93 definition of net enrollment, to the square miles of the county  
94 is less than five.

95 (k) “Low-density county” means a county whose ratio of  
96 net enrollment, excluding any increase in the net enrollment  
97 of counties pursuant to subdivision (5) of the definition of net  
98 enrollment, to the square miles of the county is equal to or  
99 greater than five but less than ten.

100 (l) “Medium-density county” means a county whose ratio  
101 of net enrollment, excluding any increase in the net  
102 enrollment of counties pursuant to subdivision (5) of the  
103 definition of net enrollment, to the square miles of the county  
104 is equal to or greater than ten but less than twenty.

105 (m) “High-density county” means a county whose ratio  
106 of net enrollment, excluding any increase in the net  
107 enrollment of counties pursuant to subdivision (5) of the  
108 definition of net enrollment, to the square miles of the county  
109 is equal to or greater than twenty.

110 (n) “Levies for general current expense purposes” means  
111 ninety-four percent of the levy rate for county boards of  
112 education calculated or set by the Legislature pursuant to the  
113 provisions of section six-f, article eight, chapter eleven of this  
114 code: *Provided*, That beginning the first day of July, two  
115 thousand eight, “levies for general current expense purposes”  
116 means ninety percent of the levy rate for county boards of  
117 education calculated or set by the Legislature pursuant to the  
118 provisions of section six-f, article eight, chapter eleven of this  
119 code: *Provided, however*, That effective the first day of July,

120 two thousand ten, the definitions set forth in this subsection  
121 are subject to the provisions of section two-a of this article.

122 (o) “Technology integration specialist” means a  
123 professional educator who has expertise in the technology  
124 field and is assigned as a resource teacher to provide  
125 information and guidance to classroom teachers on the  
126 integration of technology into the curriculum.

127 (p) “State aid eligible personnel” means all professional  
128 educators and service personnel employed by a county board  
129 in positions that are eligible to be funded under this article  
130 and whose salaries are not funded by a specific funding  
131 source such as a federal or state grant, donation, contribution  
132 or other specific funding source not listed.

**§18-9A-3a. Total state basic foundation program for fiscal  
years 2009 through 2013, only.**

1 (a) Notwithstanding any other provisions of this article to  
2 the contrary, the total basic foundation program for the state  
3 for the fiscal years two thousand nine through two thousand  
4 thirteen shall be the sum of the amounts computed for each  
5 county in accordance with this section, less the county’s local  
6 share:

7 (1) For the fiscal year two thousand nine, the department  
8 of education shall compute the total basic foundation  
9 program for each county in accordance with the provisions of  
10 this article and in accordance with the provisions of this  
11 article in effect for fiscal year two thousand eight. The total  
12 basic foundation program for each county computed in  
13 accordance with this article is limited to a growth of one fifth  
14 above the amount computed for the county in accordance  
15 with the provisions in effect for fiscal year two thousand  
16 eight. The total basic foundation program for the county is  
17 the greater of the two computations.

18       (2) For the fiscal year two thousand ten, the department  
19 of education shall compute the total basic foundation  
20 program for each county in accordance with the provisions of  
21 this article and in accordance with the provisions of this  
22 article in effect for fiscal year two thousand eight. The total  
23 basic foundation program for each county computed in  
24 accordance with this article is limited to a growth of two  
25 fifths above the amount computed for the county in  
26 accordance with the provisions in effect for fiscal year two  
27 thousand eight. The total basic foundation program for the  
28 county is the greater of the two computations.

29       (3) For the fiscal year two thousand eleven, the  
30 department of education shall compute the total basic  
31 foundation program for each county in accordance with the  
32 provisions of this article and in accordance with the  
33 provisions of this article in effect for fiscal year two thousand  
34 eight. The total basic foundation program for each county  
35 computed in accordance with this article is limited to a  
36 growth of three fifths above the amount computed for the  
37 county in accordance with the provisions in effect for fiscal  
38 year two thousand eight. The total basic foundation program  
39 for the county is the greater of the two computations.

40       (4) For the fiscal year two thousand twelve, the  
41 department of education shall compute the total basic  
42 foundation program for each county in accordance with the  
43 provisions of this article and in accordance with the  
44 provisions of this article in effect for fiscal year two thousand  
45 eight. The total basic foundation program for each county  
46 computed in accordance with this article is limited to a  
47 growth of four fifths above the amount computed for the  
48 county in accordance with the provisions in effect for fiscal  
49 year two thousand eight. The total basic foundation program  
50 for the county is the greater of the two computations.

51       (5) For the fiscal year two thousand thirteen and each  
52 year thereafter, the department of education shall compute

53 the total basic foundation program for each county in  
54 accordance with the provisions of this article and in  
55 accordance with the provisions of this article in effect for  
56 fiscal year two thousand eight. For the fiscal year two  
57 thousand thirteen only, the total basic foundation program for  
58 the county is the greater of the two computations.

**§18-9A-4. Foundation allowance for professional educators.**

1 (a) The basic foundation allowance to the county for  
2 professional educators shall be the amount of money required  
3 to pay the state minimum salaries, in accordance with  
4 provisions of article four, chapter eighteen-a of this code, to  
5 the personnel employed, subject to the following:

6 (1) Subject to subdivision (2) of this subsection, in  
7 making this computation no county shall receive an  
8 allowance for the personnel which number is in excess of  
9 professional educators to each one thousand students in net  
10 enrollment as follows:

11 (A) For each high-density county, the number of  
12 personnel for which a county shall receive the allowance  
13 shall not exceed seventy-two and one tenth professional  
14 educators per each one thousand students in net enrollment;

15 (B) For each medium-density county, the number of  
16 personnel for which a county shall receive the allowance  
17 shall not exceed seventy-two and twenty-five one hundredths  
18 professional educators per each one thousand students in net  
19 enrollment;

20 (C) For each low-density county, the number of  
21 personnel for which a county shall receive the allowance  
22 shall not exceed seventy-two and four tenths professional  
23 educators per each one thousand students in net enrollment;  
24 and

25 (D) For each sparse-density county, the number of  
26 personnel for which a county shall receive the allowance  
27 shall not exceed seventy-two and fifty-five one hundredths  
28 professional educators per each one thousand students in net  
29 enrollment;

30 (2) For the ratios applicable to each of the four density  
31 categories set forth in subdivision (1) of this subsection, the  
32 number of professional educators per each one thousand  
33 students in net enrollment increases by five one hundredths  
34 per year for each of fiscal years two thousand ten, two  
35 thousand eleven, two thousand twelve and two thousand  
36 thirteen. For each fiscal year thereafter, the ratios remain at  
37 the two thousand thirteen level.

38 (3) The number of and the allowance for personnel paid  
39 in part by state and county funds shall be prorated; and

40 (4) Where two or more counties join together in support  
41 of a vocational or comprehensive high school or any other  
42 program or service, the professional educators for the school  
43 or program may be prorated among the participating counties  
44 on the basis of each one's enrollment therein and the  
45 personnel shall be considered within the above-stated limit.

46 (b) Subject to subsection (c) of this section, each county  
47 board shall establish and maintain a minimum ratio of  
48 professional instructional personnel per one thousand  
49 students in net enrollment as follows:

50 (1) For each high-density county, the minimum number  
51 of professional instructional personnel per one thousand  
52 students in net enrollment is sixty-five and eight tenths;

53 (2) For each medium-density county, the minimum  
54 number of professional instructional personnel per one  
55 thousand students in net enrollment is sixty-five and nine  
56 tenths;



57 (3) For each low-density county, the minimum number of  
58 professional instructional personnel per one thousand  
59 students in net enrollment is sixty-six;

60 (4) For each sparse-density county, the minimum number  
61 of professional instructional personnel per one thousand  
62 students in net enrollment is sixty-six and five one  
63 hundredths.

64 (c) For the ratios applicable to each of the four density  
65 categories set forth in subsection (b) of this subsection, the  
66 number of professional instructional personnel per each one  
67 thousand students in net enrollment increases by five one  
68 hundredths per year for each of fiscal years two thousand ten,  
69 two thousand eleven, two thousand twelve and two thousand  
70 thirteen. For each fiscal year thereafter, the ratios remain at  
71 the two thousand thirteen level.

72 (d) Any county board which does not establish and  
73 maintain the applicable minimum ratio required in subsection  
74 (b) of this section shall suffer a pro rata reduction in the  
75 allowance for professional educators under this section:  
76 *Provided*, That no county shall be penalized if it has  
77 increases in enrollment during that school year: *Provided*,  
78 *however*, That for the school year two thousand eight - two  
79 thousand nine, only, no county shall be penalized for not  
80 meeting the applicable minimum ratio required in subsection  
81 (b) of this section.

82 (e) No county shall increase the number of administrative  
83 personnel employed as either professional educators or pay  
84 grade "H" service personnel above the number which were  
85 employed, or for which positions were posted, on the thirtieth  
86 day of June, one thousand nine hundred ninety, and,  
87 therefore, county boards shall whenever possible utilize  
88 classroom teachers for curriculum administrative positions  
89 through the use of modified or extended contracts.

90 (f) As the number of professional educators per each one  
91 thousand students in net enrollment increases during fiscal  
92 years two thousand nine through two thousand thirteen, any  
93 additional positions that are created as a result of that  
94 increase shall be positions that will enhance student  
95 achievement and are consistent with the needs as identified  
96 in each county board's electronic county strategic  
97 improvement plan. County boards are encouraged to fill at  
98 least some of the additional positions with technology  
99 integration specialists.

100 (g) During the two thousand eight - two thousand nine  
101 interim period, and every three interim periods thereafter, the  
102 Legislative Oversight Commission on Education  
103 Accountability shall review the four density categories  
104 created in section two of this article, the ratios for  
105 professional educators established in this section and the  
106 ratios for service personnel established in section five of this  
107 article.

**§18-9A-5. Foundation allowance for service personnel.**

1 (a) The basic foundation allowance to the county for  
2 service personnel shall be the amount of money required to  
3 pay the annual state minimum salaries in accordance with the  
4 provisions of article four, chapter eighteen-a of this code, to  
5 such service personnel employed, subject to the following:

6 (1) For the school year beginning on the first day of July,  
7 two thousand eight, and thereafter, no county shall receive an  
8 allowance for an amount in excess of service personnel per  
9 one thousand students in net enrollment, as follows:

10 (A) For each high-density county, the number of  
11 personnel for which a county shall receive the allowance  
12 shall not exceed forty-three and ninety-seven one hundredths  
13 service personnel per one thousand students in net  
14 enrollment;

15 (B) For each medium-density county, the number of  
16 personnel for which a county shall receive the allowance  
17 shall not exceed forty-four and fifty-three one hundredths  
18 service personnel per one thousand students in net  
19 enrollment;

20 (C) For each low-density county, the number of  
21 personnel for which a county shall receive the allowance  
22 shall not exceed forty-five and one tenth service personnel  
23 per one thousand students in net enrollment; and

24 (D) For each sparse-density county, the number of  
25 personnel for which a county shall receive the allowance  
26 shall not exceed forty-five and sixty-eight one hundredths  
27 service personnel per one thousand students in net  
28 enrollment; and

29 (2) Where two or more counties join together in support  
30 of a vocational or comprehensive high school or any other  
31 program or service, the service personnel for the school or  
32 program may be prorated among the participating counties on  
33 the basis of each one's enrollment therein and that the  
34 personnel shall be considered within the above-stated limit.

**§18-9A-6. Foundation allowance for fixed charges.**

1 The total allowance for fixed charges shall be the sum of  
2 the following:

3 (1) The sum of the foundation allowance for professional  
4 educators and the foundation allowance for other personnel,  
5 as determined in sections four, five and eight of this article,  
6 multiplied by the current social security rate of contribution;  
7 plus

8 (2) The sum of the foundation allowance for professional  
9 educators and the foundation allowance for other personnel,  
10 as determined in sections four, five and eight of this article,

11 multiplied by four hundredths of one percent as an allowance  
12 for unemployment compensation contribution; plus

13 (3) The sum of the foundation allowance for professional  
14 educators and the foundation allowance for other personnel,  
15 as determined in sections four, five and eight of this article,  
16 multiplied by the rate which is derived by dividing the total  
17 estimated contributions for workers' compensation for all  
18 county boards by the sum of the foundation allowance for  
19 professional educators and other personnel, as determined in  
20 sections four, five and eight of this article. The total  
21 estimated contribution for workers compensation is  
22 determined by multiplying each county board's allowance for  
23 professional educators and other personnel, as determined by  
24 sections four, five and eight of this article, by the county's  
25 actual contribution rate by using data of the most recent year  
26 for which it is available; plus

27 (4) The teachers retirement fund allowance as determined  
28 in section six-a of this article.

#### **§18-9A-7. Foundation allowance for transportation cost.**

1 (a) The allowance in the foundation school program for  
2 each county for transportation shall be the sum of the  
3 following computations:

4 (1) A percentage of the transportation costs incurred by  
5 the county for maintenance, operation and related costs  
6 exclusive of all salaries, including the costs incurred for  
7 contracted transportation services and public utility  
8 transportation, as follows:

9 (A) For each high-density county, eighty-seven and one-  
10 half percent;

11 (B) For each medium-density county, ninety percent;

12 (C) For each low-density county, ninety-two and one-half  
13 percent;

14 (D) For each sparse-density county, ninety-five percent;

15 (E) For any county for the transportation cost for  
16 maintenance, operation and related costs, exclusive of all  
17 salaries, for transporting students to and from classes at a  
18 multicounty vocational center, the percentage provided in  
19 paragraphs (A) through (D) of this subdivision as applicable  
20 for the county plus an additional ten percent; and

21 (F) For any county for that portion of its school bus  
22 system that uses an alternative fuel such as compressed  
23 natural gas or other acceptable alternative fuel, the  
24 percentage provided in paragraphs (A) through (D) of this  
25 subdivision as applicable for the county plus an additional ten  
26 percent: *Provided*, That any county using an alternative fuel  
27 and qualifying for the additional allowance under this  
28 subdivision shall submit a plan regarding the intended future  
29 use of alternatively fueled school buses;

30 (2) The total cost, within each county, of insurance  
31 premiums on buses, buildings and equipment used in  
32 transportation;

33 (3) An amount equal to eight and one-third percent of the  
34 current replacement value of the bus fleet within each county  
35 as determined by the state board. The amount shall only be  
36 used for the replacement of buses. Buses purchased after the  
37 first day of July, one thousand nine hundred ninety-nine, that  
38 are driven one hundred eighty thousand miles, regardless of  
39 year model, will be subject to the replacement value of eight  
40 and one-third percent as determined by the state board. In  
41 addition, in any school year in which its net enrollment  
42 increases when compared to the net enrollment the year  
43 immediately preceding, a school district may apply to the

44 state superintendent for funding for an additional bus or  
45 buses. The state superintendent shall make a decision  
46 regarding each application based upon an analysis of the  
47 individual school district's net enrollment history and  
48 transportation needs: *Provided*, That the superintendent shall  
49 not consider any application which fails to document that the  
50 county has applied for federal funding for additional buses.  
51 If the state superintendent finds that a need exists, a request  
52 for funding shall be included in the budget request submitted  
53 by the state board for the upcoming fiscal year; and

54 (4) Aid in lieu of transportation equal to the state average  
55 amount per pupil for each pupil receiving the aid within each  
56 county.

57 (b) The total state share for this purpose shall be the sum  
58 of the county shares: *Provided*, That no county shall receive  
59 an allowance which is greater than one-third above the  
60 computed state average allowance per transportation mile  
61 multiplied by the total transportation mileage in the county  
62 exclusive of the allowance for the purchase additional buses.

63 (c) One half of one percent of the transportation  
64 allowance distributed to each county shall be for the purpose  
65 of trips related to academic classroom curriculum and not  
66 related to any extracurricular activity. Any remaining funds  
67 credited to a county for the purpose of trips related to  
68 academic classroom curriculum during the fiscal year shall be  
69 carried over for use in the same manner the next fiscal year  
70 and shall be separate and apart from, and in addition to, the  
71 appropriation for the next fiscal year. The state board may  
72 request a county to document the use of funds for trips  
73 related to academic classroom curriculum if the board  
74 determines that it is necessary.

75 (d) The amendments made to this section during the two  
76 thousand eight regular session of the Legislature are intended

77 to be temporary while the transportation issue is further  
78 studied during the two thousand eight-two thousand nine  
79 interim period.

**§18-9A-8. Foundation allowance for professional student support services.**

1 (a) The basic foundation allowance to the county for  
2 professional student support personnel shall be the amount of  
3 money determined in accordance with the following:

4 (1) The sum of the state minimum salaries, as determined  
5 in accordance with the provisions of article four, chapter  
6 eighteen of this code, for all state aid eligible school nurse  
7 and counselor positions in the county during the two  
8 thousand eight fiscal year which number shall be reduced in  
9 the same proportion as the number of professional educators  
10 allowed to be funded under section four of this article to the  
11 total number of professional educators employed that are  
12 state aid eligible. In performing this calculation, the  
13 numerator shall be the number of professional educators  
14 actually funded under section four of this article and the  
15 denominator shall be the total number of professional  
16 educators employed that are eligible to be funded under  
17 section four of this article;

18 (2) The amount derived from the calculation in  
19 subdivision (1) of this subsection is increased by one-half  
20 percent;

21 (3) The amount derived from the calculation in  
22 subdivision (2) of this subsection is the basic foundation  
23 allowance to the county for professional student support  
24 personnel for the two thousand nine fiscal year;

25 (4) For fiscal years two thousand ten, two thousand  
26 eleven, two thousand twelve and two thousand thirteen, the

27 basic foundation allowance to the county for professional  
28 student support personnel increases by one-half percent per  
29 year over the allowance for the previous year; and

30 (5) For all fiscal years thereafter, the basic foundation  
31 allowance to the county for professional student support  
32 personnel remains the same amount as in the two thousand  
33 thirteen fiscal year.

34 (b) The additional positions for counselors that may be  
35 created as a result of the one percent increase provided  
36 pursuant to this section shall be assigned to schools where the  
37 counselor can:

38 (1) Enhance student achievement;

39 (2) Provide early intervention for students in grades pre-  
40 kindergarten through five; and

41 (3) Enhance student development and career readiness.

**§18-9A-9. Foundation allowance for other current expense and  
substitute employees.**

1 The total allowance for other current expense and  
2 substitute employees shall be the sum of the following:

3 (1) For current expense, ten percent of the sum of the  
4 computed state allocation for professional educators and  
5 service personnel as determined in sections four and five of  
6 this article. Distribution to the counties shall be made  
7 proportional to the average of each county's average daily  
8 attendance for the preceding year and the county's second  
9 month net enrollment; plus

10 (2) For professional educator substitutes or current  
11 expense, two and five-tenths percent of the computed state



12 allocation for professional educators and other professional  
13 personnel as determined in sections four and eight of this  
14 article. Distribution to the counties shall be made  
15 proportional to the number of professional educators and  
16 other professional personnel authorized for the county in  
17 compliance with sections four and eight of this article; plus

18 (3) For service personnel substitutes or current expense,  
19 two and five-tenths percent of the computed state allocation  
20 for service personnel as determined in section five of this  
21 article. Distribution to the counties shall be made proportional  
22 to the number of service personnel authorized for the county in  
23 compliance with section five of this article; plus

24 (4) For academic materials, supplies and equipment for  
25 use in instructional programs, two hundred dollars multiplied  
26 by the number of professional instructional personnel  
27 employed in the schools of the county. Distribution shall be  
28 made to each county for allocation to the faculty senate of  
29 each school in the county on the basis of two hundred dollars  
30 per professional instructional personnel employed at the  
31 school. Faculty senate means a faculty senate created  
32 pursuant to section five, article five-a of this chapter.  
33 Decisions for the expenditure of such funds shall be made at  
34 the school level by the faculty senate in accordance with the  
35 provisions of said section five, article five-a and shall not be  
36 used to supplant the current expense expenditures of the  
37 county. Beginning on the first day of September, one  
38 thousand nine hundred ninety-four, and every September  
39 thereafter, county boards shall forward to each school for the  
40 use by faculty senates the appropriation specified in this  
41 section. Each school shall be responsible for keeping  
42 accurate records of expenditures.

**§18-9A-10. Foundation allowance to improve instructional programs.**

1 (a) The total allowance to improve instructional programs  
2 shall be the sum of the following:

3 (1) For instructional improvement in accordance with  
4 county and school electronic strategic improvement plans  
5 required by section five, article two-e of this chapter, an  
6 amount equal to fifteen percent of the increase in the local  
7 share amount for the next school year above any required  
8 allocation pursuant to section six-b of this article shall be  
9 added to the amount of the appropriation for this purpose for  
10 the immediately preceding school year. The sum of these  
11 amounts shall be distributed to the counties as follows:

12 (A) One hundred fifty thousand dollars shall be allocated  
13 to each county;

14 (B) Distribution to the counties of the remainder of these  
15 funds shall be made proportional to the average of each  
16 county's average daily attendance for the preceding year and  
17 the county's second month net enrollment. Moneys allocated  
18 by provision of this section shall be used to improve  
19 instructional programs according to the county and school  
20 electronic strategic improvement plans required by section  
21 five, article two-e of this chapter and approved by the state  
22 board: *Provided*, That notwithstanding any other provision  
23 of this code to the contrary, moneys allocated by provision of  
24 this section may also be used in the implementation and  
25 maintenance of the uniform integrated regional computer  
26 information system.

27 Up to twenty-five percent of this allocation may be used  
28 to employ professional educators and service personnel in  
29 counties after all applicable provisions of sections four and  
30 five of this article have been fully utilized.

31 Prior to the use of any funds from this section for  
32 personnel costs, the county board must receive authorization

33 from the state superintendent of schools. The state  
34 superintendent shall require the county board to demonstrate:  
35 (1) The need for the allocation; (2) efficiency and fiscal  
36 responsibility in staffing; (3) sharing of services with  
37 adjoining counties and the regional educational service  
38 agency for that county in the use of the total local district  
39 board budget; and (4) employment of technology integration  
40 specialists to meet the needs for implementation of the West  
41 Virginia 21st Century Strategic Technology Learning Plan.  
42 County boards shall make application for available funds for  
43 the next fiscal year by the first day of May of each year. On  
44 or before the first day of June, the state superintendent shall  
45 review all applications and notify applying county boards of  
46 the distribution of the allocation. The funds shall be  
47 distributed during the fiscal year appropriate. The state  
48 superintendent shall require the county board to demonstrate  
49 the need for an allocation for personnel based upon the  
50 county's inability to meet the requirements of state law or  
51 state board policy: *Provided*, That the funds available for  
52 personnel under this section may not be used to increase the  
53 total number of professional noninstructional personnel in the  
54 central office beyond four. The plan shall be made available  
55 for distribution to the public at the office of each affected  
56 county board; plus

57 (2) For the purposes of the West Virginia 21st Century  
58 Strategic Technology Learning Plan provided for in section  
59 seven, article two-e of this chapter, an amount equal to fifteen  
60 percent of the increase in the local share amount for the next  
61 school year above any required allocation pursuant to section  
62 six-b of this article shall be added to the amount of the  
63 appropriation for this purpose for the immediately preceding  
64 school year. The sum of these amounts shall be allocated to  
65 the counties as provided in section seven, article two-e of this  
66 chapter to meet the objectives of the West Virginia 21st  
67 Century Strategic Technology Learning Plan; plus

68 (3) One percent of the state average per pupil state aid  
69 multiplied by the number of students enrolled in dual credit,  
70 advanced placement and international baccalaureate courses,  
71 as defined by the state board, distributed to the counties  
72 proportionate to enrollment in these courses in each county;  
73 plus

74 (4) An amount not less than the amount required to meet  
75 debt service requirements on any revenue bonds issued prior  
76 to the first day of January, one thousand nine hundred ninety-  
77 four, and the debt service requirements on any revenue bonds  
78 issued for the purpose of refunding revenue bonds issued  
79 prior to the first day of January, one thousand nine hundred  
80 ninety-four, shall be paid into the School Building Capital  
81 Improvements Fund created by section six, article nine-d of  
82 this chapter and shall be used solely for the purposes of that  
83 article. The School Building Capital Improvements Fund  
84 shall not be utilized to meet the debt services requirement on  
85 any revenue bonds or revenue refunding bonds for which  
86 moneys contained within the School Building Debt Service  
87 Fund have been pledged for repayment pursuant to that  
88 section.

89 (b) When the school improvement bonds secured by  
90 funds from the School Building Capital Improvements Fund  
91 mature, the State Board of Education shall annually deposit  
92 an amount equal to twenty-four million dollars from the  
93 funds allocated in this section into the School Construction  
94 Fund created pursuant to the provisions of section six, article  
95 nine-d of this chapter to continue funding school facility  
96 construction and improvements.

97 (c) Any project funded by the School Building Authority  
98 shall be in accordance with a comprehensive educational  
99 facility plan which must be approved by the state board and  
100 the School Building Authority.

**§18-9A-21. Funding for alternative education programs.**

1 (a) An appropriation may be made to the state department  
2 to be distributed to county boards for the operation of  
3 alternative education and prevention programs established in  
4 accordance with policies and procedures adopted by the state  
5 board under section six, article two of this chapter. The  
6 appropriation shall be an amount equal to twelve dollars per  
7 student in net enrollment, subject to appropriation by the  
8 Legislature. The state board shall distribute ninety-seven  
9 percent of the total appropriation to the county boards  
10 proportionate to each county's net enrollment. The  
11 remaining three percent of the appropriation shall be retained  
12 by the state department to support the provision of services  
13 to the county boards in administering programs established  
14 in accordance with policies and procedures adopted by the  
15 state board under section six, article two of this chapter:  
16 *Provided*, That nothing in this section shall be construed to  
17 require any specific level of funding by the Legislature.

**ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.****§18-20-5. Powers and duties of state superintendent.**

1 (a) The state superintendent of schools shall organize,  
2 promote, administer and be responsible for:

3 (1) Stimulating and assisting county boards of education  
4 in establishing, organizing and maintaining special schools,  
5 classes, regular class programs, home-teaching and visiting-  
6 teacher services.

7 (2) Cooperating with all other public and private agencies  
8 engaged in relieving, caring for, curing, educating and  
9 rehabilitating exceptional children, and in helping coordinate  
10 the services of such agencies.

11       (3)(A) Preparing the necessary rules, policies, formula for  
12 distribution of available appropriated funds, reporting forms  
13 and procedures necessary to define minimum standards in  
14 providing suitable facilities for education of exceptional  
15 children and ensuring the employment, certification and  
16 approval of qualified teachers and therapists subject to  
17 approval by the State Board of Education: *Provided*, That no  
18 state rule, policy or standard under this article or any county  
19 board rule, policy or standard governing special education  
20 may exceed the requirements of federal law or regulation.

21       (B) The state superintendent shall annually review the  
22 rules, policies and standards of the state and federal law for  
23 serving the needs of exceptional children enrolled in the  
24 public schools and shall report to the Legislative Oversight  
25 Commission on Education Accountability by the first day of  
26 December or as soon thereafter as requested by the  
27 commission, two thousand eight, and in each year thereafter,  
28 the findings of the review along with an accounting of the  
29 services provided and the costs thereof for exceptional  
30 children enrolled in the public schools of this state during the  
31 latest available school year. An appropriation shall be made  
32 to the department of education to be distributed to county  
33 boards to support children with high acuity needs that exceed  
34 the capacity of county to provide with funds available. Each  
35 county board shall apply to the state superintendent for  
36 receipt of this funding in a manner set forth by the state  
37 superintendent that assesses and takes into account varying  
38 acuity levels of the exceptional students. Any remaining  
39 funds at the end of a fiscal year from the appropriation shall  
40 be carried over to the next fiscal year. When possible,  
41 federal funds shall be distributed to county boards for this  
42 purpose before any of the state appropriation is distributed.  
43 The state board shall promulgate a rule in accordance with  
44 the provisions of article three-b, chapter twenty-nine-a of this  
45 code that implements the provisions of this subdivision  
46 relating to distributing the funds to the county boards. The

47 rule at least shall include a definition for “children with high  
48 acuity needs”.

49 (4) Receiving from county boards of education their  
50 applications, annual reports and claims for reimbursement  
51 from such moneys as are appropriated by the Legislature,  
52 auditing such claims and preparing vouchers to reimburse  
53 said counties the amounts reimbursable to them.

54 (5) Assuring that all exceptional children in the state,  
55 including children in mental health facilities, residential  
56 institutions, private schools and correctional facilities as  
57 provided in section thirteen-f, article two of this chapter  
58 receive an education in accordance with state and federal  
59 laws: *Provided*, That the state superintendent shall also  
60 assure that adults in correctional facilities and regional jails  
61 receive an education to the extent funds are provided  
62 therefor.

63 (6) Performing other duties and assuming other  
64 responsibilities in connection with this program as needed.

65 (7) Receive the county plan for integrated classroom  
66 submitted by the county boards of education and submit a  
67 state plan, approved by the State Board of Education, to the  
68 Legislative Oversight Commission on Education  
69 Accountability no later than the first day of December, one  
70 thousand nine hundred ninety-five.

71 (b) Nothing contained in this section shall be construed  
72 to prevent any county board of education from establishing  
73 and maintaining special schools, classes, regular class  
74 programs, home-teaching or visiting-teacher services out of  
75 funds available from local revenue.

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## CHAPTER 72

**(S.B. 595 - By Senators Plymale, Edgell, Stollings, Bailey, Green, Hunter, Wells, White, Boley, Facemyer, Kessler, Hall, Jenkins, McKenzie and Unger)**

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[Passed March 8, 2008; in effect from passage.]

[Approved by the Governor on March 28, 2008.]

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AN ACT to repeal §18B-1-1, §18B-1-1b and §18B-1-1c of the Code of West Virginia, 1931, as amended; to repeal §18B-1A-1 and §18B-1A-2 of said code; to repeal §18B-1B-8 and §18B-1B-9 of said code; to repeal §18B-3B-1 and §18B-3B-2 of said code; to repeal §18B-11-5 of said code; to amend and reenact §18-1-4 of said code; to amend and reenact §18-2E-5c of said code; to amend and reenact §18B-1-1a of said code; to amend said code by adding thereto a new article, designated §18B-1D-1, §18B-1D-2, §18B-1D-3, §18B-1D-4, §18B-1D-5, §18B-1D-6, §18B-1D-7 and §18B-1D-8; and to amend said code by adding thereto a new section, designated §18B-14-9, all relating to education generally; establishing Vision 2020: An Education Blueprint for Two Thousand Twenty; requiring State Board of Education plan that includes goals, objectives, strategies, indicators and benchmarks; specifying certain public education goals and objectives to be included in plan; submission of plan to Process for Improving Education Council; purposes and membership of council; providing legislative findings, intent and purposes; establishing goals for public higher education; creating education partnership to achieve state goals and objectives; establishing elements of higher education accountability system; requiring Higher Education Policy Commission and Council for Community and Technical College Education to propose rules by certain date;



defining terms; specifying objectives and priorities; establishing date to achieve certain objectives and priorities; defining responsibilities of Higher Education Policy Commission, Council for Community and Technical College Education and state institutions of higher education relative to accountability system; requiring system master plans, state compacts, institutional compacts and institutional and system report cards; establishing submission, approval, review and reporting requirements; authorizing implementation plans; assigning geographic areas of responsibility; specifying that certain reports are no longer required to be prepared annually except under certain conditions; providing for committee to examine higher education facility needs; specifying membership; and requiring recommendations to Legislative Oversight Commission on Education Accountability by certain date.

*Be it enacted by the Legislature of West Virginia:*

That §18B-1-1, §18B-1-1b and §18B-1-1c of the Code of West Virginia, 1931, as amended, be repealed; that §18B-1A-1 and §18B-1A-2 of said code be repealed; that §18B-1B-8 and §18B-1B-9 of said code be repealed; that §18B-3B-1 and §18B-3B-2 of said code be repealed; that §18B-11-5 of said code be repealed; that §18-1-4 of said code be amended and reenacted; that §18-2E-5c be amended and reenacted; that §18B-1-1a of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §18B-1D-1, §18B-1D-2, §18B-1D-3, §18B-1D-4, §18B-1D-5, §18B-1D-6, §18B-1D-7 and §18B-1D-8; and that said code be amended by adding thereto a new section, designated §18B-14-9, all to read as follows:

**Chapter**

**18. Education.**

**18B. Higher Education.**

**CHAPTER 18. EDUCATION.**

**Article**

**1. Definitions; Limitations of Chapter; Goals for Education.**

**2E. High Quality Educational Programs.**

**ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER;  
GOALS FOR EDUCATION.**

**§18-1-4. Vision 2020: An Education Blueprint for Two  
Thousand Twenty.**

1 (a) This section, together with section one-a, article one,  
2 chapter eighteen-b of this code and article one-d of said  
3 chapter, shall be known as and may be cited as Vision 2020:  
4 An Education Blueprint for Two Thousand Twenty.

5 (b) For the purposes of this section:

6 (1) "Goals" means those long-term public purposes  
7 which are the desired end result and only may include those  
8 items listed in subsection (e) of this section;

9 (2) "Objectives" means the ends to be accomplished or  
10 attained within a specified period of time for the purpose of  
11 meeting the established goals; and

12 (3) "Strategies" means specific activities carried out by  
13 the public education system which are directed toward  
14 accomplishing specific objectives.

15 (c) The Legislature finds that:

16 (1) The measure of a thorough and efficient system of  
17 education is whether students graduate prepared to meet the  
18 challenges of the future as contributing members of society  
19 and that these challenges change, becoming ever more  
20 complex and involving a global context more than at any  
21 other time in the history of our nation;

22 (2) The state recently has embraced and is implementing  
23 the Partnership for 21st Century Skills model for teaching  
24 and learning including six key elements (core subjects, 21st

25 Century content, learning and thinking skills, information and  
26 communications technology literacy, life skills and 21st  
27 Century assessments) to help better prepare students for the  
28 challenges of the 21st Century;

29 (3) Published national studies by several organizations  
30 routinely examine various elements of state education  
31 systems and selected underlying socioeconomic variables and  
32 rate and rank West Virginia and the other states, the District  
33 of Columbia and the territories based on the measurement  
34 systems and priorities established by the organizations, and  
35 these measurement systems and priorities change;

36 (4) While the state should take pride in studies that show  
37 West Virginia is among the leaders in several of its efforts  
38 and is making progress, its students often outperforming  
39 expectations based on typical indicators of the likelihood for  
40 student success, such as the income and education levels of  
41 their parents, it should also recognize that the state must do  
42 even more to ensure that high school graduates are fully  
43 prepared for post-secondary education or gainful  
44 employment;

45 (5) Therefore, the purpose of this section is to provide for  
46 the establishment of a clear plan that includes goals,  
47 objectives, strategies, indicators and benchmarks to help  
48 guide the state's policymakers on the continuous  
49 development of the state's education system for the 21st  
50 Century.

51 (d) As part of Vision 2020: An Education Blueprint for  
52 Two Thousand Twenty, the state board shall establish a plan  
53 in accordance with the provisions of this section for  
54 submission to and consideration by the Process for  
55 Improving Education Council pursuant to section five-c,  
56 article two-e of this chapter. The plan shall include only the  
57 goals, objectives, strategies, indicators and benchmarks for

58 public education set forth in this section and that meet the  
59 requirements of this section. To add clarity and avoid  
60 confusion, the goals for public education set forth in the plan  
61 pursuant to this section are the exclusive goals for public  
62 education. The plan shall include:

63 (1) The goals set forth in this section and no other goals;

64 (2) At least the objectives set forth in this section and  
65 specified periods of time for achieving those objectives and  
66 any other objectives that may be included in the plan;

67 (3) Strategies for achieving the specific objectives;

68 (4) Indicators for measuring progress toward the goals  
69 and objectives established in this section; and

70 (5) Benchmarks for determining when the goals and  
71 objectives have been achieved.

72 (e) The plan shall include the following list of exclusive  
73 goals for the public education system in West Virginia:

74 (1) Academic achievement according to national and  
75 international measures will exceed national and international  
76 averages. These national and international measures should  
77 include scores on assessments such as the National  
78 Assessment of Educational Progress (NAEP), the ACT, the  
79 SAT and the Programme for International Assessment  
80 (PISA);

81 (2) The public education system will prepare fully all  
82 students for post-secondary education or gainful  
83 employment;

84 (3) All working-age adults will be functionally literate;

85 (4) The public education system will maintain and  
86 promote the health and safety of all students and will develop  
87 and promote responsibility, citizenship and strong character  
88 in all students; and

89 (5) The public education system will provide equitable  
90 education opportunity to all students.

91 (f) The plan also shall include at least the following  
92 policy-oriented objectives:

93 (1) *Rigorous 21st Century curriculum and engaging*  
94 *instruction for all students.* -- All students in West Virginia  
95 public schools should have access to and benefit from a  
96 rigorous 21st Century curriculum that develops proficiency  
97 in core subjects, 21st Century content, learning skills and  
98 technology tools. These students also should have that  
99 curriculum delivered through engaging, research-based  
100 instructional strategies that develop deep understanding and  
101 the ability to apply content to real-world situations;

102 (2) *A 21st Century accountability and accreditation*  
103 *system.* -- The prekindergarten through twelve education  
104 system should have a public accrediting system that: (i)  
105 Holds local school districts accountable for the student  
106 outcomes the state values; and (ii) provides the public with  
107 understandable accountability data for judging the quality of  
108 local schools. The outcomes on which the system is based  
109 should be rigorous and should align with national and  
110 international standards such as the National Assessment of  
111 Educational Progress (NAEP), the ACT, the SAT and the  
112 Programme for International Assessment (PISA). The broad  
113 standards established for these outcomes should include a  
114 focus on: (A) Mastery of basic skills by all students; (B)  
115 closing the achievement gap among student subgroups; and  
116 (C) high levels of proficiency in a wide range of desired 21st  
117 Century measures and processes. The system for

118 determining school and district accreditation should include  
119 school and district self-analysis and generate appropriate  
120 research-based strategies for improvement. It also should  
121 allow opportunities to create innovative approaches to  
122 instructional delivery and design. Thus, the system will  
123 incorporate processes for encouraging innovation, including  
124 streamlined applications for waivers to state board policy,  
125 financial support for successful initiatives and recognition of  
126 those practices that can be brought to a district or statewide  
127 scale. The primary goal of the accreditation system is to  
128 drive school improvement. This 21st Century accountability  
129 and accreditation system also should include the methods of  
130 addressing capacity set forth in section five, article two-e of  
131 this chapter;

132       (3) *A statewide balanced assessment process.* -- State,  
133 district, school and classroom decisionmaking should be  
134 grounded in 21st Century balanced assessment processes that  
135 reflect national and international rigorous performance  
136 standards and examine student proficiency in 21st Century  
137 content, skills and technology tools. A balanced assessment  
138 system includes statewide summative assessments, local  
139 benchmark assessments and classroom assessments for  
140 learning;

141       (4) *A personnel allocation, licensure and funding process*  
142 *that aligns with the needs of 21st Century school systems and*  
143 *is supported by a quality coordinated professional*  
144 *development delivery system.* -- Increased accountability  
145 demands, as well as the focus on 21st Century learning,  
146 require a reexamination of traditional approaches to  
147 personnel allocation, licensure and funding. Creating schools  
148 of the 21st Century requires new staffing roles and staffing  
149 patterns. It also requires ongoing professional development  
150 activities focused on enhancing student achievement and  
151 achieving specific goals of the school and district strategic  
152 plans. Thus, schools should have the ability to access,

153 organize and deliver high quality embedded professional  
154 development that provides staff with in-depth sustained and  
155 supported learning. Effective school improvement should  
156 allow opportunity for staff to collectively learn, plan and  
157 implement curricular and instructional improvements on  
158 behalf of the students they serve;

159       (5) *School environments that promote safe, healthy and*  
160 *responsible behavior and provide an integrated system of*  
161 *student support services.* -- Each school should create an  
162 environment focused on student learning and one where  
163 students know they are valued, respected and safe.  
164 Furthermore, the school should incorporate programs and  
165 processes that instill healthy, safe and responsible behaviors  
166 and prepare students for interactions with individuals of  
167 diverse racial, ethnic and social backgrounds. School and  
168 district processes should include a focus on developing  
169 ethical and responsible character, personal dispositions that  
170 promote personal wellness through planned daily physical  
171 activity and healthy eating habits consistent with high  
172 nutritional guidelines and multicultural experiences that  
173 develop an appreciation of and respect for diversity;

174       (6) *A leadership recruitment, development and support*  
175 *continuum.* -- Quality schools and school systems of the 21st  
176 Century cannot be created without high quality leaders.  
177 Thus, West Virginia should have an aligned leadership  
178 professional development continuum that attracts, develops  
179 and supports educational leadership at the classroom, school  
180 and district level. This leadership development continuum  
181 should focus on creating: (i) Learning-centered schools and  
182 school systems; (ii) collaborative processes for staff learning  
183 and continuous improvement; and (iii) accountability  
184 measures for student achievement;

185       (7) *Equitable access to 21st Century technology and*  
186 *education resources and school facilities conducive to 21st*

187 *Century teaching and learning.* -- A quality educational  
188 system of the 21st Century should have access to technology  
189 tools and processes that enhance effective and efficient  
190 operation. Administrators should have the digital resources  
191 to monitor student performance, manage a variety of data and  
192 communicate effectively. In the classroom, every teacher in  
193 every school should be provided with the instructional  
194 resources and educational technology necessary to deliver the  
195 West Virginia content standards and objectives. Schools of  
196 the 21st Century require facilities that accommodate  
197 changing technologies, 21st Century instructional processes  
198 and 21st Century staffing needs and patterns. These school  
199 facilities should mirror the best in green construction and be  
200 environmentally and educationally responsive to the  
201 communities in which they are located;

202 (8) *Aligned public school with post-secondary and*  
203 *workplace readiness programs and standards.* -- An  
204 educational system in the 21st Century should be seen as a  
205 continuum from the public school (prekindergarten through  
206 twelve) program through post-secondary education. In order  
207 to be successful in a global competitive marketplace, learning  
208 should be an ongoing, life-long experience. Thus, the public  
209 schools and the institutions of post-secondary education in  
210 West Virginia should create a system of common standards,  
211 expectations and accountability. Creating such an aligned  
212 system will enhance opportunities for success and assure a  
213 seamless educational process for West Virginia students; and

214 (9) *A universal prekindergarten system.* -- A high quality,  
215 universal prekindergarten system should be readily available  
216 to every eligible student. The system should promote oral  
217 language and preliteracy skills and reduce the deficit of these  
218 foundational skills through proactive, early intervention.  
219 Research indicates that universal prekindergarten systems  
220 improve graduation rates, reduce grade level retentions and  
221 reduce the number of special education placements.



222 Therefore, local school systems should create the supports  
223 and provide the resources to assure a quality prekindergarten  
224 foundation is available to all eligible students.

225 (g) In addition to the policy-oriented objectives set forth  
226 in subsection (f) of this section, the plan established pursuant  
227 to this section also shall include at least the following  
228 performance-oriented objectives:

229 (1) All children entering the first grade will be ready for  
230 the first grade;

231 (2) The performance of students falling in the lowest  
232 quartile on national and international measures of student  
233 performance will improve by fifty percent;

234 (3) Ninety percent of ninth graders will graduate from  
235 high school;

236 (4) By two thousand twelve, the gap between the county  
237 with the lowest college-going rate and the state average as of  
238 the effective date of this act will decrease by fifty percent and  
239 the college-going rate of the state will equal the college-  
240 going rate of the member states of the Southern Regional  
241 Education Board; and

242 (5) By two thousand twenty, the gap between the county  
243 with the lowest college-going rate and the state average for  
244 school year two thousand twelve will decrease by fifty  
245 percent and the college-going rate of the state will exceed the  
246 college-going rate of the member states of the Southern  
247 Regional Education Board by five percentage points.

## **ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

**§18-2E-5c. Process for Improving Education Council  
established; membership; expenses; meetings;  
powers.**

1       (a) *Process for Improving Education Council.* -- There is  
2 hereby established the Process for Improving Education  
3 Council for the purpose of providing opportunities for  
4 consultation among state policy leaders on the process for  
5 improving education, including, but not limited to,  
6 determination of the things that students should know and be  
7 able to do as the result of a thorough and efficient education,  
8 the performance and progress of students toward meeting the  
9 high quality standards established by the state board,  
10 adopting goals, objectives, strategies, indicators and  
11 benchmarks for public education and any further  
12 improvements necessary to increase the capacity of schools  
13 and school systems to deliver a thorough and efficient  
14 education.

15       (b) *Council membership.* -- The Legislative Oversight  
16 Commission on Education Accountability, together with the  
17 Governor, ex officio, or the Governor's designee, the  
18 Chancellor of the Higher Education Policy Commission, ex  
19 officio, or the chancellor's designee, the Chancellor for  
20 Community and Technical College Education, ex officio, or  
21 the chancellor's designee and the state superintendent  
22 comprise the Process for Improving Education Council. Ex  
23 officio members are entitled to vote. The Governor or the  
24 Governor's designee shall convene the council, as  
25 appropriate, and shall serve as chair. The council may meet  
26 at any time at the call of the Governor or the Governor's  
27 designee.

28       (c) *Compensation.* -- Members of the council shall serve  
29 without compensation, but shall be reimbursed as provided  
30 by law by their respective agencies for all reasonable and  
31 necessary expenses actually incurred in the performance of  
32 their official duties under this section upon presentation of an  
33 itemized sworn statement of their expenses.

34       (d) *Powers of the council.* --

35 The council has the following powers:

36 (1) To meet and consult with the state board, or its  
37 designees, and make recommendations on issues related to  
38 student, school and school system performance. The  
39 following steps are part of the consultation process:

40 (A) The state board shall notify each member of the  
41 council whenever the state board proposes to amend its rules  
42 on any of the following issues:

43 (i) High quality education standards and efficiency  
44 standards established pursuant to section five of this article;

45 (ii) Indicators of efficiency established pursuant to  
46 section five of this article; and

47 (iii) Assessment and accountability of school and school  
48 system performance and processes established pursuant to  
49 section five of this article.

50 (B) The notice to be given pursuant to paragraph (A) of  
51 this subdivision shall contain a summary and explanation of  
52 the proposed changes, including a draft of the proposal when  
53 available, and shall be sent at least fifteen days prior to filing  
54 the proposal with the Secretary of State for public comment.

55 (C) If the Governor, or the Governor's designee, believes  
56 it is necessary for the council to meet and consult with the  
57 state board, or its designees, on changes proposed to any of  
58 the issues outlined in subdivision (1) of this subsection, he or  
59 she may convene a meeting of the council.

60 (D) If both the President of the Senate and the Speaker of  
61 the House of Delegates believe it is necessary for the council  
62 to meet and consult with the state board, or its designees,  
63 they shall notify the Governor who shall convene a meeting  
64 of the council.

65 (E) If the chancellor, or the chancellor's designee believes  
66 that it is necessary for the council to meet and consult with  
67 the state board, or its designees, he or she may request the  
68 Governor to convene a meeting of the council.

69 (2) To require the state board, or its designees, to meet  
70 with the council to consult on issues that lie within the scope  
71 of the council's jurisdiction;

72 (3) To participate as observers in any on-site review of a  
73 school or school system conducted by the Office of  
74 Education Performance Audits; and

75 (4) To authorize any employee of the agencies  
76 represented by council members to participate as observers  
77 in any on-site review of a school or school system conducted  
78 by the Office of Education Performance Audits.

## CHAPTER 18B. HIGHER EDUCATION.

### Article

1. Governance.
- 1D. Higher Education Accountability.
14. Miscellaneous.

### ARTICLE 1. GOVERNANCE.

#### **§18B-1-1a. Legislative intent; findings; establishment of state goals for higher education and education; creation of partnership to achieve state goals and objectives.**

1 (a) It is the intent of the Legislature in enacting this  
2 section to establish state goals for public higher education  
3 which benefit the citizens of the State of West Virginia.

4 (b) It is further the intent of the Legislature that this  
5 section be read and implemented in conjunction with the

6 accountability system established in article one-d of this  
7 chapter and that any reference to this section in this code  
8 includes the provisions of that article.

9       (c) *Findings.* -- The Legislature finds that post-secondary  
10 education is vital to the future of West Virginia. For the state  
11 to realize its considerable potential in the 21st Century, it  
12 must have a system for the delivery of post-secondary  
13 education which is competitive in the changing national and  
14 global environment, is affordable for the state and its  
15 citizenry and has the capacity to deliver the programs and  
16 services necessary to meet regional and statewide needs.

17       The Legislature further finds that it is vitally important  
18 for young people entering the workforce to have the  
19 education and skills to succeed in today's high-technology,  
20 knowledge-based economy. It is equally important for  
21 working-age adults who are the majority of the current and  
22 potential workforce also to possess the requisite education  
23 and skills to compete successfully in the workplace and to  
24 have the opportunity to continue learning throughout their  
25 lives. The future of the state rests not only on how well its  
26 youth are educated, but also on how well it educates its entire  
27 population of any age.

28       The Legislature further finds that providing access to a  
29 high-quality and affordable post-secondary education is a  
30 state responsibility and, while states spent more than seventy  
31 billion dollars on public higher education in two thousand  
32 six, they are not maximizing that investment. The  
33 Legislature recognizes the efforts of the National Conference  
34 of State Legislatures' Blue Ribbon Commission on Higher  
35 Education in producing a report to assist the states in higher  
36 education policymaking. According to the commission  
37 report, "Transforming Higher Education: National Imperative  
38 -- State Responsibility", the United States is losing its  
39 competitive advantage in a new, high-tech, highly mobile

40 global economy. This lack of competitiveness is a matter of  
41 the highest urgency for federal and state policymakers and  
42 higher education is at the center of this discussion. The  
43 report further states that "higher education is both the  
44 problem and the solution" because the nation has failed to  
45 focus on how higher education energizes American  
46 competitiveness and revitalizes the states. Pursuant to these  
47 findings, the commission made some specific  
48 recommendations addressed to the states which include the  
49 following:

- 50 (1) Define clear state goals;
- 51 (2) Identify your state's strengths and weaknesses;
- 52 (3) Know your state demographic trends for the next ten  
53 to thirty years;
- 54 (4) Identify a place or structure to sustain the public  
55 policy agenda;
- 56 (5) Hold institutions accountable for their performance;
- 57 (6) Rethink funding formulas and student aid;
- 58 (7) Make a commitment to access, success and  
59 innovation;
- 60 (8) Encourage partnerships;
- 61 (9) Give special attention to adult learners; and
- 62 (10) Focus on productivity.

63 All of these recommendations are useful in providing  
64 policy guidance and have been given careful consideration in  
65 the development of this section and article one-d of this  
66 chapter.

67       (d) *Establishment of state goals.* -- In recognition of its  
68 importance to the citizens of West Virginia, the Legislature  
69 hereby establishes the following goals for public higher  
70 education in the state:

71       (1) The ultimate goal of public education is to enhance  
72 the quality of life for citizens of the State of West Virginia.

73       (2) The overall focus of public education is on  
74 developing and maintaining a process of lifelong learning  
75 which is as seamless as possible at all levels, encourages  
76 citizens of all ages to increase their knowledge and skills and  
77 provides ample opportunities for them to participate in public  
78 higher education.

79       (3) Higher education collaborates with public education  
80 and other providers to offer education opportunities:

81       (A) To individuals of all ages and socioeconomic  
82 backgrounds in all areas of the state; and

83       (B) To overcome financial barriers to participation for  
84 both traditional and nontraditional students.

85       (4) Higher education seeks to enhance state efforts to  
86 diversify and expand the economy by focusing available  
87 resources on programs and courses which best serve students,  
88 provide the greatest opportunity for job creation and retention  
89 and are most supportive of emerging high-technology and  
90 knowledge-based businesses and industries.

91       (5) Higher education creates a learning environment that  
92 is student-friendly and that encourages and assists students in  
93 the completion of degree requirements, certifications or skill  
94 sets within a reasonable period of time.

95       (6) The learning environment expands participation for  
96 the increasingly diverse student population and responds to

97 the needs of the current workforce and other nontraditional  
98 students.

99 (7) Through the establishment of innovative curricula and  
100 assessment efforts, state institutions of higher education  
101 ensure that students graduate from nationally recognized and  
102 accredited programs and meet or exceed national and  
103 international standards for performance in their chosen fields  
104 as evidenced through placement and professional licensure  
105 examinations.

106 (8) Higher education promotes academic research and  
107 innovation to achieve measurable growth in West Virginia's  
108 knowledge-based economic sector.

109 (9) State institutions of higher education emphasize  
110 productivity and strive to exceed the performance and  
111 productivity levels of peer institutions. In return, and within  
112 the constraints of fiscal responsibility, the state seeks to  
113 invest in institutions so that they may adequately compensate  
114 faculty, classified employees and other employees at a  
115 competitive level to attract and retain high quality personnel.

116 (10) State institutions of higher education are committed  
117 to a shared responsibility with faculty, staff, students and  
118 their communities to provide access to the knowledge and to  
119 promote acquisition of the skills and abilities necessary to  
120 establish and maintain physical fitness and wellness.

121 (A) Programs that encourage healthy lifestyles are  
122 essential for the vibrancy of the institutions of higher  
123 education, for the well-being of the communities they serve  
124 and for the state as a whole.

125 (B) Increasing the fitness levels of adults on college and  
126 university campuses is critically important for the people of  
127 West Virginia, not only for disease prevention, but also, and



128 perhaps most importantly, to enhance the overall quality of  
129 life.

130 (C) While individuals must bear the primary  
131 responsibility for their own health, it is imperative that the  
132 institutions provide appropriate education and support  
133 focused on enriching and expanding the short- and long-term  
134 views and attitudes towards physical activity, understanding  
135 the principles of wellness and their application to a healthy  
136 lifestyle, understanding what components are a necessary part  
137 of an all-around healthy lifestyle and learning how to set and  
138 achieve realistic goals aimed at establishing healthy habits for  
139 the benefit of long-term health and well-being.

140 (e) *Education partnership to achieve state goals and*  
141 *objectives.* -- If public institutions of higher education are to  
142 provide services that meet the needs of state citizens as  
143 outlined in this section and article one-d of this chapter, then  
144 West Virginia must create and participate in a partnership  
145 across various education organizations that recognizes the  
146 valuable contributions each member of the group can make.  
147 In addition to public education as outlined in section four,  
148 article one, chapter eighteen of this code and in addition to  
149 the State of West Virginia, key members of this partnership  
150 include the state institutions of higher education, the Council  
151 for Community and Technical College Education and the  
152 Higher Education Policy Commission.

153 (1) *State institutions of higher education.* -- The  
154 institutions are the cornerstone of efforts to provide higher  
155 education services that meet the needs of state citizens. To  
156 varying degrees, and depending upon their missions, these  
157 institutions serve the state in three major ways:

158 (A) *Instruction.* -- By providing direct instruction to  
159 students along with the student services necessary to support  
160 the instructional mission. These services have two primary  
161 goals:

162 (i) To produce college graduates who have the  
163 knowledge, skills and desire to make valuable contributions  
164 to society; and

165 (ii) To provide opportunities for citizens to engage in life-  
166 long learning to enhance their employability and their overall  
167 quality of life.

168 (B) *Public service.* -- By providing an occupational home  
169 for experts in a variety of fields and by serving as the  
170 educational home for students. In these capacities,  
171 institutions create a large and varied pool of high quality  
172 human resources capable of making valuable contributions to  
173 business and industry, local and state governments and  
174 communities. The following are examples of the types of  
175 public service that higher education institutions have to offer:

176 (i) Workforce development, primarily through  
177 community and technical colleges, to meet the immediate and  
178 long-term needs of employers and employees;

179 (ii) Technical assistance to state and local policymakers  
180 as they work to address challenges as diverse as ensuring that  
181 West Virginia's citizens receive quality health care, assisting  
182 in the development of a solid transportation infrastructure and  
183 ensuring that public school teachers have enriching  
184 professional development opportunities; and

185 (iii) Opportunities to learn and serve in local  
186 communities, to teach civic responsibility and to encourage  
187 civic engagement.

188 (C) *Research.* -- By conducting research at state  
189 institutions of higher education, particularly Marshall  
190 University and West Virginia University, to enhance the  
191 quality of life in West Virginia in the following ways:

192 (i) Targeting cutting-edge research toward solving  
193 pressing societal problems;

194 (ii) Promoting economic development by raising the level  
195 of education and specialization among the population; and

196 (iii) Creating jobs through development of new products  
197 and services.

198 (2) *The Council for Community and Technical College*  
199 *Education and the Higher Education Policy Commission.* --  
200 In their role as state-level coordinating boards, the council  
201 and commission function as important partners with state  
202 policy leaders in providing higher education that meets state  
203 needs. The council and commission provide service to the  
204 state in the following ways:

205 (A) By developing a public policy agenda for various  
206 aspects of higher education that is aligned with state goals  
207 and objectives and the role and responsibilities of each  
208 coordinating board;

209 (B) By ensuring that institutional missions and goals are  
210 aligned with relevant parts of the public policy agenda and  
211 that institutions maximize the resources available to them to  
212 fulfill their missions and make reasonable progress toward  
213 meeting established state goals;

214 (C) By evaluating and reporting on progress in  
215 implementing the public policy agenda;

216 (D) By promoting system efficiencies through  
217 collaboration and cooperation across institutions and through  
218 focusing institutional missions as appropriate; and

219 (E) By conducting research, collecting data and providing  
220 objective recommendations to aid elected state officials in  
221 making policy decisions.

222 (3) *State of West Virginia.* -- Elected state officials  
 223 represent the citizens of West Virginia and are critical  
 224 partners in providing quality higher education. In this  
 225 context, these state-level policymakers serve the state in the  
 226 following ways:

227 (A) By establishing goals, objectives and priorities for  
 228 higher education based on a thoughtful, systematic  
 229 determination of state needs;

230 (B) By providing resources necessary to address state  
 231 goals, objectives and priorities for higher education; and

232 (C) By providing incentives for and removing barriers to  
 233 the achievement of state goals, objectives and priorities.

#### **ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.**

§18B-1D-1. Legislative intent and purpose; short title; rules required.

§18B-1D-2. Definitions.

§18B-1D-3. State vision for public higher education; findings; establishment of objectives.

§18B-1D-4. Responsibilities of Higher Education Policy Commission and Council for  
 Community and Technical College Education; development of public policy  
 agendas; reports; institutional responsibilities.

§18B-1D-5. Master plans; reports; approval process.

§18B-1D-6. State compacts; legislative intent; rule required; implementation plans  
 authorized.

§18B-1D-7. Findings; establishment of institutional compacts; compact elements;  
 submission date; review and approval process; rule required.

§18B-1D-8. Institutional and system report cards.

#### **§18B-1D-1. Legislative intent and purpose; short title; rules required.**

1 (a) The intent of the Legislature in the enactment of this  
 2 article is to outline and organize the elements of  
 3 accountability for public higher education into an effective,  
 4 coherent system to provide guidance to the state institutions  
 5 of higher education, the commission and the council and to  
 6 clarify the roles, relationships and responsibilities between

7 and among these entities, the citizens of West Virginia and  
8 elected state officials. The main purposes of the  
9 accountability system are as follows:

10 (1) To develop agreement on higher education goals,  
11 objectives and priorities through negotiation and  
12 consensus-building between elected officials acting on behalf  
13 of the citizens of the state and the commission and the  
14 council and institutions which receive public funds and  
15 provide education services;

16 (2) To create a seamless education system and hold  
17 boards and institutions accountable for meeting state goals  
18 and objectives.

19 (3) To provide a data-driven, step-by-step process to  
20 determine the progress of public higher education in  
21 addressing established goals, objectives and priorities;

22 (4) To promote cooperation and collaboration among all  
23 entities which are involved in the delivery of public  
24 education in West Virginia; and

25 (5) To provide for generation, collection and  
26 dissemination of data on which sound state-level policy  
27 decisions can be based. Possible uses of this data include the  
28 following:

29 (A) Identifying institutions and systems that increase  
30 quality and productivity; and

31 (B) Creating a mechanism to target a portion of state  
32 appropriations to institutions and systems based on  
33 performance in meeting established state goals and  
34 objectives.

35 (b) This article, together with section one-a, article one of  
36 this chapter and section four, article one, chapter eighteen of

37 this code, shall be known as and may be cited as Vision  
38 2020: An Education Blueprint for Two Thousand Twenty.

39 (c) By the first day of October, two thousand eight, the  
40 commission and the council shall propose rules for legislative  
41 approval in accordance with the provisions of section six,  
42 article one of this chapter and article three-a, chapter  
43 twenty-nine-a of this code concerning the accountability  
44 system for higher education outlined in this article.

45 (1) The commission and the council may propose rules  
46 jointly or separately and may choose to address all of the  
47 accountability system in a single rule or may propose  
48 additional rules to cover specific elements.

49 (2) At a minimum, the rules shall address the respective  
50 responsibilities of the various parties, the development of  
51 statewide master plans, the process of entering into  
52 institutional and state compacts, performance indicators and  
53 institution and state-level reporting to ensure that higher  
54 education is accountable to the citizens of West Virginia.

### **§18B-1D-2. Definitions.**

1 (a) *General.* -- For the purposes of this article and section  
2 one-a, article one of this chapter, terms have the meaning  
3 ascribed to them in section two, article one of this chapter,  
4 unless the context in which the term is used clearly requires  
5 a different meaning or a specific definition is provided in this  
6 section.

7 (b) *Definitions.* --

8 (1) "Accountability system for public higher education"  
9 or "accountability system" means all research, reports,  
10 documents, data and any other materials, the collection,  
11 analysis and dissemination of which are necessary or

12 expedient to accomplish the purposes of this article or section  
13 one-a, article one of this chapter. The system includes  
14 legislative goals, objectives and priorities; public policy  
15 agendas; statewide master plans; state and institutional  
16 compacts; implementation plans; institutional mission  
17 statements and master plans; and the statewide report card.

18 (2) "Education partnership to achieve state goals and  
19 objectives" or "education partnership" means the formal and  
20 informal working relationships established between and  
21 among the State of West Virginia, the commission, the  
22 council, the State Board of Education and State Department  
23 of Education and the state institutions of higher education for  
24 the purpose of achieving state goals and objectives.

25 (3) "Functional literacy rate" means the percentage of  
26 adults over the age of seventeen who are able to read beyond  
27 a fourth grade level and interpret basic information from  
28 sources such as road signs, job applications, newspaper  
29 articles and food and medicine labels.

30 (4) "Goals" means those long-term public purposes  
31 which are the desired and expected end result for which  
32 public higher education is established.

33 (5) "Implementation plan" means a document developed  
34 within the higher education community that identifies a series  
35 of objectives, sets forth performance indicators that can be  
36 used to determine if objectives are being achieved, outlines  
37 strategies for accomplishing the objectives and identifies  
38 benchmarks for evaluating progress in accomplishing the  
39 objectives over the life cycle of the plan.

40 (6) "Institutional compact" means a formal, written  
41 contract between either the commission or council and a state  
42 institution of higher education under its jurisdiction  
43 expressing intent to accomplish state and system goals and  
44 objectives.

45 (7) “Institutions under the jurisdiction of the  
46 commission” relative to the accountability system established  
47 by this article and section one-a, article one of this chapter  
48 means Bluefield State College, Concord University, Fairmont  
49 State University, Glenville State College, Marshall  
50 University, Shepherd University, West Liberty State College,  
51 the West Virginia School of Osteopathic Medicine, West  
52 Virginia State University and West Virginia University,  
53 including Potomac State College of West Virginia University  
54 and the West Virginia University Institute of Technology.

55 (8) “Institutions under the jurisdiction of the council”  
56 relative to the accountability system established by this  
57 article and section one-a, article one of this chapter means  
58 Blue Ridge Community and Technical College, the  
59 Community and Technical College at West Virginia  
60 University Institute of Technology, Eastern West Virginia  
61 Community and Technical College, Marshall Community  
62 and Technical College, New River Community and Technical  
63 College, Pierpont Community and Technical College,  
64 Southern West Virginia Community and Technical College,  
65 West Virginia Northern Community and Technical College,  
66 West Virginia State Community and Technical College and  
67 West Virginia University at Parkersburg.

68 (9) “Net college costs” means the total cost of tuition,  
69 room and board minus the amount of financial aid a student  
70 receives.

71 (10) “Objectives” means the ends to be accomplished or  
72 attained within a specified period of time for the purpose of  
73 meeting the established goals.

74 (11) “Priority” or “priorities” means the order in which  
75 objectives are to be addressed for the purpose of achieving  
76 state goals.



77 (12) “Strategy” or “strategies” means specific activities  
78 carried out by public higher education which are directed  
79 toward accomplishing specific objectives.

80 (13) “Statewide master plan” or “system master plan”  
81 means a document developed by the council or commission  
82 that sets forth system goals, objectives and strategies and is  
83 aligned with, but not limited to, meeting state goals,  
84 objectives and priorities.

85 (14) “STEM courses and programs” means curricula  
86 leading to a degree or other recognized credential in the  
87 science, technology, engineering and mathematics fields of  
88 study or specialization.

89 (15) “State compact” means a formal, written agreement  
90 between the council and/or the commission and at least one  
91 other member of the education partnership to achieve state  
92 goals and objectives where significant collaboration and  
93 commitment of resources between the parties to the  
94 agreement is required in order to achieve the desired results.

**§18B-1D-3. State vision for public higher education; findings;  
establishment of objectives.**

1 (a) The Legislature finds that availability of high-quality  
2 post-secondary education is so important to the well-being of  
3 the citizens of West Virginia that it is in the best interests of  
4 the state to focus attention on areas of particular concern and  
5 within those areas to specify objectives and priorities that  
6 must be addressed by two thousand twenty. The purpose of  
7 these objectives and priorities is to achieve the broad-based  
8 goals for public higher education established in section one-a,  
9 article one of this chapter. Areas of special concern to the  
10 Legislature include economic and workforce development;  
11 education access and affordability; innovation; student  
12 preparation; degree and/or program completion; intra- and

13 inter-system cooperation and collaboration; research; and  
14 teaching and learning.

15 (1) *Economic and workforce development.* --

16 (A) Diversifying and strengthening the economy of the  
17 state;

18 (B) Providing incentives to systems and institutions to  
19 focus attention on those courses and programs which create  
20 and retain jobs in the state, especially among the emerging  
21 high-technology, knowledge-based businesses and industries.

22 (2) *Access and affordability.* --

23 (A) Maintaining geographic access while eliminating  
24 unnecessary duplication;

25 (B) Enhancing education opportunities for the widest  
26 range of state citizens:

27 (i) By establishing tuition and fee levels for in-state  
28 students that do not inhibit access to public education nor  
29 cause students to incur excessive debt. This is particularly  
30 important in West Virginia where about two-thirds of all  
31 students attending college are enrolled in public higher  
32 education institutions and where families devote a very large  
33 share of their incomes to pay the cost of education. The  
34 share of costs paid by families remains very high even after  
35 adjusting for the impact of financial aid; and

36 (ii) By establishing tuition and fee rates for out-of-state  
37 students at levels which, at a minimum, cover the full cost of  
38 instruction unless doing so is inconsistent with a clearly  
39 delineated public policy goal established by the Legislature,  
40 the commission or the council.

41 (iii) *Innovation*. -- Devise innovative programs, delivery  
42 modes, partnerships, research initiatives, curricula and  
43 pedagogy to achieve the needs of the state and its citizens and  
44 carry out the mission and objectives of the state institutions  
45 of higher education. Methods include aligning  
46 entrepreneurial efforts, research and partnerships with  
47 established state goals.

48 (iv) *Student preparation*. -- Ensure that potential students  
49 are academically prepared for college and that graduates are  
50 adequately prepared for careers or further education.

51 (v) *Degree and/or program completion*. -- Despite  
52 significant improvement over the past decade, fewer than  
53 twenty percent of state residents hold a bachelor's degree.  
54 This shortage of highly educated, highly qualified workers  
55 substantially limits the state's ability to compete in the  
56 knowledge-based economy.

57 (vi) *Collaboration and cooperation*. -- Deliver education  
58 services to the extent possible through collaboration,  
59 coordination and brokering, with particular emphasis on the  
60 need for a seamless relationship between public and  
61 post-secondary education.

62 (vii) *Research*. -- Develop a greater research capacity  
63 within public higher education to enhance West Virginia in  
64 the eyes of the larger economic and education community,  
65 develop greater specialized expertise in high technology and  
66 policy fields, create more employment opportunities within  
67 the state and provide a basis for improved capacity to  
68 compete in the new economy through research focused on  
69 meeting state needs.

70 (viii) *Teaching and learning*. -- Develop admission and  
71 exit standards for students and emphasize professional staff  
72 development, program assessment and evaluation and other

73 incentives to improve teaching and learning. Ensure access  
74 to stable and continuing graduate-level programs in every  
75 region of the state, particularly in STEM subject areas and  
76 teacher education related to teaching within a subject area to  
77 improve teacher quality.

78 (b) *Vision 2020: Objectives for public higher education.*  
79 -- In view of the findings outlined in subsection (a) of this  
80 section, the Legislature hereby establishes the following  
81 objectives to be addressed as highest priorities beginning on  
82 the effective date of this article through development of  
83 compacts and/or implementation plans between and among  
84 members of the education partnership as provided in  
85 subsection (e), section one-a, article one of this chapter. The  
86 following is the legislative vision for the years two thousand  
87 eight through two thousand twenty:

88 (1) *Objective.* -- Develop a state-level facilities plan and  
89 funding mechanism to reduce the obligation of students and  
90 parents to bear the cost of higher education capital projects  
91 and facilities maintenance.

92 (A) *Problem statement.* --

93 (i) West Virginia is one of the very few states in the  
94 nation which does not address higher education capital  
95 project and facilities maintenance needs through a statewide  
96 plan.

97 (ii) The burden of paying for capital projects and deferred  
98 maintenance is placed on students and their families through  
99 collection of capital fees at the institution level and  
100 contributes significantly to the poor grade West Virginia  
101 receives each year in the category of "Affordability" on  
102 "Measuring Up: The National Report Card on Higher  
103 Education".

104 (iii) Net college costs for low- and lower middle-income  
105 students to attend state community and technical colleges and  
106 four-year colleges and universities average approximately  
107 forty-five percent of their annual family income.

108 (iv) The high cost of capital fees contributes directly to  
109 the amount of debt incurred by students during their college  
110 years and the necessity to repay student loans severely limits  
111 career choices and areas of residence after graduation.

112 (B) *Expected outcomes.* -- Success in meeting this goal  
113 can be measured in part by benchmarks which include the  
114 following:

115 (i) Development by the council and commission of a  
116 compact with elected state officials to fund a significant  
117 portion of higher education capital project needs from  
118 dedicated state revenues;

119 (ii) Development by the council and commission of a  
120 system to establish priorities for institution capital projects in  
121 a manner that is consistent with state public policy goals for  
122 higher education;

123 (iii) Implementation of facilities maintenance plans by  
124 institutions to ensure that maintenance needs are not deferred  
125 inappropriately;

126 (iv) Efficient use of existing classroom and other space  
127 by institutions:

128 (I) New capital funding is applied effectively to projects  
129 at institutions that have a demonstrated need for new  
130 facilities and major renovations; and

131 (II) The cost of operating and maintaining the facilities  
132 and physical plants of institutions are appropriate for the size  
133 and mission of the institution; and

134 (v) Capital and facilities maintenance planning that gives  
135 careful consideration to the recommendations arising from  
136 the study mandated by section nine, article fourteen of this  
137 chapter.

138 (2) *Objective.* -- Increase academic rigor and improve  
139 learning at higher education institutions.

140 (A) *Problem statement.* -- West Virginia has made  
141 significant progress on certain indicators within the category  
142 of student learning, but lags far behind national and regional  
143 averages on others.

144 (i) The state compares very well in workforce preparation  
145 as reflected in professional licensure examinations, ranking  
146 among the top five states in the country. More West Virginia  
147 graduates take these examinations than is typical nationally  
148 and the passage rate is at the national average.

149 (ii) The state also ranks well above the national average  
150 passage rate on the state teacher's examination when  
151 compared to other states; however, there is serious cause for  
152 concern when the state is compared to the national  
153 benchmark in preparing students for graduate study.

154 (I) West Virginia ranks more than fifty percentage points  
155 below the national average in preparing students to take and  
156 pass graduate admissions examinations.

157 (II) Fewer West Virginia graduates take these  
158 examinations than is typical nationally and the proportion  
159 earning competitive scores is only about seventy-five percent  
160 of the national average.

161 (B) *Expected outcomes.* -- Success in meeting this goal  
162 can be measured in part by benchmarks which include the  
163 following:

164 (i) State institutions of higher education develop or use  
165 existing nationally normed assessments of student learning  
166 outcomes. Data generated through these assessments are  
167 analyzed and the results applied by the institutions to  
168 improve the quality of undergraduate general education  
169 programs; and

170 (ii) Implementation plans at the system and institution  
171 levels are developed to improve student preparation for  
172 graduate study and to expand graduate and professional  
173 education, where appropriate.

174 (3) *Objective.* -- Increase the percentage of entering  
175 students who persist to receive a degree, a certificate or an  
176 industry-recognized credential.

177 (A) *Problem statement.* --

178 (i) This goal is particularly important to West Virginia  
179 where only about one person in five holds an associate degree  
180 or higher.

181 (ii) The lack of a well-trained workforce is reflected in  
182 the most recent score of forty-one received by the state on the  
183 nationally recognized New Economy Index which measures  
184 the extent to which a state is prepared to participate in  
185 knowledge-based industries. This low score places the state  
186 well below the national benchmark of sixty on the index.

187 (iii) State institutions of higher education have placed a  
188 greater emphasis on student recruitment than on student  
189 retention and completion. This strategy alone cannot be  
190 successful in meeting state needs for the following reasons:

191 (I) The number of state high school graduates is expected  
192 to decline over the next several years; therefore, institutions  
193 must improve their performance in retaining the students who  
194 enroll.

195 (II) West Virginia is among the leading states in the  
196 percentage of first-year students at community colleges who  
197 return for their second year and large percentages of  
198 freshmen at four-year colleges and universities return for  
199 their sophomore year; however, when compared with other  
200 states, only a small percentage of these students actually  
201 persist to earn a bachelor's degree or associate degree within  
202 six years.

203 (III) The state performs poorly on international  
204 comparisons of enrolled students who complete certificates  
205 or degrees, trailing behind other industrialized and even some  
206 third world nations.

207 (IV) While the state college-going rate has improved,  
208 most state institutions have made only marginal progress over  
209 the past decade in increasing the percentage of students who  
210 persist to obtain a degree or certificate.

211 (B) *Expected outcomes.* --

212 (i) Enhanced quality of life for West Virginians,  
213 including increased level of per capita income; and

214 (ii) Increased economic development opportunities by  
215 expanding existing high-technology and knowledge-based  
216 businesses and industries and attracting new ones which  
217 demand highly qualified professionals.

218 (4) *Objective.* -- State institutions of higher education,  
219 particularly community and technical colleges, make  
220 maximum effort to recruit and retain adults twenty-five years  
221 old or over.

222 (A) *Problem statement.* --

223 (i) The percentage of West Virginia's working-age adults  
224 enrolled part-time in college-level education or training is



225 very low and the state has experienced one of the largest  
226 declines in the nation on this measure over the past twelve  
227 years.

228 (ii) A large part of preparing workers for the 21st Century  
229 and for a high-quality style of life hinges upon providing  
230 opportunity for adults to acquire a series of skill sets in  
231 addition to obtaining a degree or other credential.

232 (iii) A major focus for community and technical colleges  
233 is upon providing programs to upgrade employee skills  
234 through obtaining industry credentials. Currently, however,  
235 only certificate program degrees (one-year) and associate  
236 degrees (two-year) are counted for funding purposes even  
237 though other types of credentials often are as important in  
238 meeting workforce development goals as providing degree  
239 programs.

240 (B) *Expected outcomes.* --

241 (i) Provide programs of interest to nontraditional  
242 students, including those that afford them the opportunity to  
243 obtain certificates and credentials, enhance career  
244 development and acquire new skill sets;

245 (ii) Develop a high-visibility marketing program which  
246 makes adults aware of the opportunities available to them and  
247 assists them in entering or reentering the learning  
248 environment;

249 (iii) Provide for lower cost tuition and fee rates,  
250 particularly at the community and technical colleges, and/or  
251 greater access to financial aid for adult full- and part-time  
252 students.

253 (iv) Develop open admissions policies which provide  
254 opportunities for adults to participate in public  
255 post-secondary education beginning at any level of

256 preparedness. Most working-age adults cannot or will not  
257 “go back to high school” in order to prepare themselves to  
258 participate in higher education.

259 (v) Tailor institutional policies to meet the needs of  
260 adults, recognizing that these individuals have  
261 responsibilities that are different from those of  
262 traditional-aged college students. High on this list of needs  
263 are flexible class schedules to accommodate work obligations  
264 and waiving dorm residency requirements.

265 (5) *Objective.* -- Provide incentives to state institutions of  
266 higher education to encourage emphasis on STEM courses  
267 and programs leading to degrees in the high-demand fields of  
268 science, technology, engineering and mathematics and to  
269 encourage collaboration with public education to stimulate  
270 interest and prepare students to succeed in these fields.

271 (A) *Problem statement.* --

272 (i) STEM courses often are more expensive to deliver  
273 than traditional programs; therefore, institutions may be  
274 reluctant to start or expand programs in these areas because  
275 of anticipated cost;

276 (ii) Institutions have difficulty recruiting and retaining  
277 faculty members in STEM areas because of competition from  
278 surrounding states and other market forces;

279 (iii) There is insufficient communication between STEM  
280 teachers in public education, STEM faculty in higher  
281 education and professionals employed in STEM-related  
282 careers such as engineering;

283 (iv) Many students have not taken sufficiently rigorous  
284 high school courses to allow them to succeed in  
285 post-secondary STEM courses and programs. A large  
286 percentage of students enrolled in higher education STEM

287 programs either withdraw from the institution or change  
288 majors within the first year; and

289 (v) The transition from high school to college is difficult  
290 for many high school students who lack a family role model  
291 to provide guidance relevant to the higher education  
292 experience.

293 (B) *Expected outcomes.* --

294 (i) Increased capacity for high quality instruction across  
295 public higher education;

296 (ii) Increased student access to high quality  
297 undergraduate and graduate research opportunities in science,  
298 technology, engineering and mathematics;

299 (iii) Enhanced economic development opportunities  
300 through increased numbers of highly-qualified professionals  
301 available to business and industry;

302 (iv) Development of a consistent and effective forum for  
303 communication among STEM faculty in public and higher  
304 education and relevant professional communities to address  
305 the continuing needs of students, educators and industry;

306 (v) Increased percentage of high school students who  
307 have access to and take advantage of rigorous STEM courses;

308 (vi) Alignment of STEM curricula between public and  
309 higher education;

310 (vii) Development of a finance formula that gives greater  
311 weight to courses taken in high-cost disciplines and/or those  
312 that are critical to the state economy; and

313 (viii) Creation of a STEM coordinator position within the  
314 faculty of each state institution of higher education to provide

315 outreach to secondary schools, to mentor freshman students  
316 and to collaborate with coordinators at other institutions.  
317 Because of the size of the student body, the two research  
318 universities may need to create coordinator positions specific  
319 to certain high-demand STEM disciplines such as  
320 engineering and computer science.

321       (6) *Objective.* -- Develop a stable funding stream for state  
322 institutions of higher education to pay for essential programs  
323 which are expensive to deliver, are in high demand and/or are  
324 critical to the state's capacity to replace an aging workforce  
325 as employees retire. This objective has a particular impact on  
326 community and technical colleges which deliver high-cost  
327 technical programs.

328       (A) *Problem statement.* --

329       (i) An educated and technically skilled workforce is vital  
330 to the state's ability to be competitive in the global  
331 marketplace. Currently, West Virginia's employers must  
332 struggle to find a sufficient number of highly qualified  
333 workers to fill the jobs they have available; and

334       (ii) The majority of technical occupations require the  
335 delivery of equipment-intensive, high-cost programs that  
336 state institutions of higher education, especially community  
337 and technical colleges, lack the capacity to provide.

338       (B) *Expected outcomes.* --

339       (i) State institutions delivering community and technical  
340 college education focus on expanding and/or implementing  
341 technical programs to meet the needs of high-demand,  
342 high-wage occupations;

343       (ii) Funding priorities for community and technical  
344 colleges focus on developing and maintaining high-cost  
345 technical programs;

346 (iii) Creation of a strategy to fund the replacement,  
347 upgrading and purchase of equipment to implement and/or  
348 maintain technical education programs; and

349 (iv) Support critical, noncredit programming by  
350 incorporating the number of contact hours delivered into a  
351 formula to distribute funding to community and technical  
352 colleges.

353 (7) *Objective.* -- Develop a mechanism to assure uniform  
354 delivery of community and technical college education for all  
355 regions of the state.

356 (A) *Problem statement.* -- The average education  
357 attainment rate in West Virginia lags eleven percent behind  
358 the national average in part because delivering education  
359 programs to the state's adult, place-bound and rural  
360 populations presents significant challenges.

361 (B) *Expected outcomes.* --

362 (i) All state citizens have access to a minimum of two  
363 years of college education regardless of their place of  
364 residence within the state.

365 (ii) The state institutions increase the innovative use of  
366 technology and distance education to provide general and  
367 technical education access in sparsely populated rural areas.

368 (iii) Creation of a seamless education system and uniform  
369 transfer of credits with special attention to transfers between  
370 community and technical colleges and four-year institutions;

371 (iv) Appropriate use of adjunct faculty; and

372 (v) Where feasible, use of facilities in public schools,  
373 technical centers and other public facilities as classroom  
374 space.

375 (8) *Objective.* -- Develop greater research capacity  
376 throughout public higher education, with a special focus on  
377 the state's two doctoral degree-granting universities.

378 (A) *Problem statement.* --

379 (i) West Virginia ranks near the bottom among all states  
380 in the amount of federal and privately funded sponsored  
381 research it receives. Historically, only the National Science  
382 Foundation's Experimental Program to Stimulate Competitive  
383 Research (EPSCOR) has focused on building research  
384 capacity in the state, but if West Virginia is to benefit from  
385 the increased economic opportunity, better jobs and higher  
386 standard of living associated with more STEM professionals  
387 in the population, the state must invest more to build its  
388 research capacity; and

389 (ii) Low research capacity results in low levels of  
390 intellectual property creation, patenting and licensing of  
391 commercial property.

392 (B) *Expected outcomes.* --

393 (i) Partnering between and among higher education  
394 institutions in West Virginia and between state institutions  
395 and larger, resource-rich higher education institutions outside  
396 the state;

397 (ii) Developing an institutional and/or statewide research  
398 niche and focusing resources on research that contributes  
399 most to meeting state needs;

400 (iii) Leveraging scarce resources to make steady, targeted  
401 investments in research in niche areas where the state can be  
402 a real player at a competitive level;

403 (iv) Developing specific research expertise within the two  
404 state doctoral degree-granting universities to generate and

405 analyze data to provide policy recommendations. The areas  
406 of focus include funding strategies for higher education,  
407 demographic trends and methods to determine and meet  
408 workforce development needs by anticipating job creation  
409 and credential requirements;

410 (v) Improving communication among the research  
411 branches of higher education institutions, including  
412 identification of mutually complementary areas of interest to  
413 increase funding opportunities and collaboration on  
414 intellectual property issues; and

415 (vi) Focusing on economic development through  
416 commercial applications of research and recruitment of new  
417 research faculty members for this purpose.

418 (9) *Objective.* -- Increase the percentage of functionally  
419 literate adults in each region of the state.

420 (A) *Problem statement.* --

421 (i) The literacy attainment of a population is defined at its  
422 most basic level as the percentage of those individuals over  
423 the age of fifteen who can read and write, but such a  
424 definition does not address the realities of the 21st Century.  
425 The National Literacy Act of 1991 and the National  
426 Workforce Investment Act of 1998 both define literacy more  
427 broadly as "an individual's ability to read, write, speak in  
428 English, compute and solve problems at levels of proficiency  
429 necessary to function on the job, in the family of the  
430 individual and in society".

431 Approximately twenty percent of the adult population in  
432 West Virginia cannot meet this definition of functional  
433 literacy. One adult out of every five in the state lacks the  
434 basic literacy skills needed to succeed at work, to enter the  
435 learning environment of post-secondary education, to acquire

436 advanced occupational training or to participate in preparing  
437 his or her own children to learn.

438 (ii) The high rate of illiteracy in West Virginia not only  
439 handicaps adults in seeking employment and achieving their  
440 goals for their own quality of life, but also has serious  
441 implications for the future of their children and for the state.

442 There is a direct, positive correlation between the reading  
443 scores of children and the education level of their parents.  
444 The National Assessment of Education Progress (NAEP) has  
445 concluded that youngsters whose parents are functionally  
446 illiterate are twice as likely to become functionally illiterate  
447 adults.

448 (iii) When the level of functional illiteracy in West  
449 Virginia is compared to the requirements for high-demand  
450 occupations, the negative consequences for the economy of  
451 the state become obvious. The International Adult Literacy  
452 Survey (IALS) established a scale of five levels which is used  
453 extensively to measure the literacy attainment of adults.  
454 When this scale was used to compare the literacy  
455 requirements of projected high-growth occupations with  
456 those in declining occupations such as certain types of  
457 manufacturing, researchers found that level three literacy is  
458 required for the new jobs, while level two is sufficient for the  
459 jobs in the declining occupations. Therefore, workers  
460 displaced from jobs in declining occupations as well as those  
461 seeking to enter or reenter the work place must possess  
462 literacy skills a full level higher than those required for  
463 workers only a few years ago. Documents such as manuals  
464 outlining standard operating procedures, health and safety  
465 manuals, leave forms and retirement options that they  
466 encounter daily require a level of literacy well above level  
467 two.

468 (iv) A highly skilled and literate work force is essential  
469 to the success of state businesses and industry. A ten percent



470 increase in the average education of all workers, equivalent  
471 to approximately one additional year of schooling, is  
472 associated with an increase of about nine percent in the  
473 productivity of that labor force. Additionally, workers who  
474 lack literacy skills cannot provide the data and feedback that  
475 companies need to make informed business decisions. A  
476 company whose employees cannot record reliable production  
477 data cannot assess its performance from year to year or  
478 determine how well it is meeting its long range goals and  
479 objectives.

480 (v) The rate of functional illiteracy in West Virginia also  
481 has a direct impact on the health of state citizens. Residents  
482 with low literacy skills have difficulty in many health areas  
483 including the following:

484 (I) Understanding the correct way to take medication,  
485 interpret test results or perform simple self-testing such as  
486 taking temperatures or checking blood glucose levels;

487 (II) Understanding and following directions given by  
488 physicians or the written instructions provided with  
489 prescription or over-the-counter medication for themselves or  
490 for their children;

491 (III) Reading and understanding information on food  
492 labels and other nutrition information to make sound  
493 decisions necessary to establish and maintain healthy  
494 lifestyles; and

495 (IV) Furnishing correct information in emergencies to  
496 medical providers about illnesses, surgeries and medications  
497 or understanding how to fill out insurance forms and other  
498 health-related documents.

499 (B) *Expected outcomes.* --

500 (i) Develop greater access and capacity to deliver literacy  
501 and remedial education, workforce development training and  
502 other higher education services to place-bound adults  
503 primarily through the community and technical colleges;

504 (ii) Increase the percentage of the working age population  
505 who participate in higher education, either full or part time;

506 (iii) Establish a statewide mechanism to collect data to  
507 provide a baseline for measuring progress toward meeting the  
508 goal of functional literacy for all working-age adults and to  
509 serve as a framework for setting priorities, identifying gaps  
510 in service and targeting services to key populations,  
511 industries, economic sectors and geographic areas;

512 (iv) Develop programs that include, at a minimum, the  
513 following:

514 (I) Learning opportunities within a real-life context, such  
515 as workplace and family literacy programs;

516 (II) Recognition of the diversity of individual abilities,  
517 skill levels, circumstances and life goals; and

518 (III) Strategies to access, promote and accommodate a  
519 variety of instructional methods and learning styles.

520 (v) Develop a culture committed to life-long learning by  
521 creating literacy-rich environments wherever people live and  
522 work that are capable of influencing changes in individual  
523 behavior; and

524 (vi) Create partnerships among schools, employers,  
525 workers, governments and communities to achieve these  
526 objectives and mechanisms to collect, interpret and  
527 disseminate data to assist policymakers in determining the  
528 appropriate level of resources essential to support lifelong  
529 learning systems.

**§18B-1D-4. Responsibilities of Higher Education Policy Commission and Council for Community and Technical College Education; development of public policy agendas; reports; institutional responsibilities.**

1 (a) It is the responsibility of the commission, in  
2 cooperation with the council, to develop, oversee and  
3 advance the public policy agenda mandated by section four,  
4 article one-b of this chapter to address the goals and  
5 objectives established pursuant to this article and section  
6 one-a, article one of this chapter, including, but not limited  
7 to, aligning state and institutional compacts, master plans,  
8 implementation plans and institutional missions with state  
9 goals and objectives to accomplish the purposes of this  
10 article.

11 (b) It is the responsibility of the council, in cooperation  
12 with the commission when applicable, to develop, oversee  
13 and advance the public policy agenda mandated by section  
14 six, article two-b of this chapter to address the goals and  
15 objectives established pursuant to this article and section  
16 one-a, article one of this chapter, including, but not limited  
17 to, aligning state and institutional compacts, master plans,  
18 implementation plans and institutional missions with state  
19 goals and objectives to accomplish the purposes of this  
20 article.

21 (c) It is further the responsibility of the commission and  
22 council to collect the data, assemble it in the appropriate  
23 format and transmit all reports and any other essential  
24 documents as needed to fulfill the purposes of this article.  
25 Each report shall contain a brief, concise executive summary  
26 and shall include trends and recommendations in text format.  
27 Recommendations shall be ranked by order of importance  
28 and shall be supported by objective data available elsewhere  
29 in the report. In addition to those specifically mandated by

30 this chapter or chapter eighteen-c of this code, reporting  
31 responsibilities include, but are not limited to, the following:

32 (1) Ensuring that data systems collect the essential  
33 information state-level policymakers need to answer key  
34 policy questions to fulfill the purposes of the accountability  
35 system established pursuant to this article and section one-a,  
36 article one of this chapter;

37 (2) Collaborating with public education to establish  
38 policies to link existing pre-K, K-12, higher education and  
39 teacher data systems to enable tracking of student progress  
40 and teacher performance over time; and

41 (3) Ensuring that reports provide data analyses to  
42 determine if students entering the public higher education  
43 systems are prepared for post-secondary education and if  
44 students obtaining degrees, certificates or other credentials  
45 are prepared to pursue careers or to continue their education.

46 (d) It is the responsibility of public institutions of higher  
47 education to report to the commission or the council, as  
48 appropriate, on plans, accomplishments and  
49 recommendations to implement the goals and objectives  
50 contained in the institutional and state compacts.

**§18B-1D-5. Master plans; reports; approval process.**

1 (a) The commission and the council each shall develop a  
2 master plan for public higher education that is closely aligned  
3 with the goals and objectives of this article and section one-a,  
4 article one of this chapter as they relate to the missions of  
5 institutions under their respective jurisdictions.

6 (b) The authority of the commission and the council,  
7 respectively, related to developing and implementing  
8 statewide master plans is subject to the following conditions:

9 (1) The master plans shall be established for periods of  
10 not more than five years.

11 (2) The master plans in place on the effective date of this  
12 article continue in effect until the end of the five-year  
13 planning cycle unless amended or rescinded by the  
14 commission or council, respectively, pursuant to this article.

15 (3) Any new master plan proposed by the commission or  
16 council shall be communicated to the Legislative Oversight  
17 Commission on Education Accountability and may not be  
18 adopted or implemented without the approval of that body.

19 (4) The commission and council each shall perform a  
20 comprehensive review of its master plan at least annually and  
21 shall revise it periodically as appropriate to meet state goals  
22 and objectives.

23 (5) The commission and the council each shall review the  
24 progress of its higher education system in meeting the goals  
25 and objectives of the master plan and report to the Legislative  
26 Oversight Commission on Education Accountability, with  
27 detailed recommendations for amending the plan, by the first  
28 day of January, two thousand nine, and annually thereafter.

29 (6) At the end of each five-year planning cycle and as an  
30 integral part of the preparation of a new master plan, the  
31 commission and the council, respectively, shall prepare and  
32 submit to the Legislative Oversight Commission on  
33 Education Accountability a comprehensive report containing  
34 at least the following:

35 (A) A detailed, data-based analysis of the progress of the  
36 system and the institutions within the system toward meeting  
37 each goal and objective included in the current plan; and

38 (B) A strategy for using this data as a basis for  
39 developing the master plan for the next planning cycle.

40 (c) The master plan shall include a detailed set of system  
41 objectives designed to meet the state goals and objectives  
42 outlined in this article and section one-a, article one of this  
43 chapter, including, but not limited to, the following:

44 (A) A well-developed analysis of missions, degree  
45 offerings, resource requirements, physical plant needs,  
46 personnel needs, enrollment levels and other planning  
47 determinants and projections for public higher education and  
48 other matters necessary in such a plan to assure that the needs  
49 of the state for a quality system of higher education are  
50 addressed; and

51 (B) A strategy for cooperation and collaboration with the  
52 State Board of Education and State Department of Education,  
53 state institutions of higher education, the counterpart state  
54 coordinating board and other relevant education providers to  
55 assure that a comprehensive and seamless system of  
56 education is developed and implemented for West Virginia.

**§18B-1D-6. State compacts; legislative intent; rule required;  
implementation plans authorized.**

1 (a) It is the intent of the Legislature that members of the  
2 education partnership to achieve state goals and objectives  
3 engage in developing state compacts between and among  
4 themselves for the purpose of enhancing the well-being of the  
5 citizens of West Virginia. Such a compact constitutes a  
6 formal contract and focuses on the goals and objectives  
7 established pursuant to this article and section one-a, article  
8 one of this chapter. A compact is called for when  
9 achievement of specific goals or objectives requires  
10 significant collaboration and commitment of resources by  
11 more than one member of the partnership.

12 (b) The rules to be proposed relating to state compacts  
13 pursuant to subsection (c), section one of this article shall  
14 include, but are not limited to, the following components:

15 (1) A procedure to determine when a state compact is  
16 necessary or desirable;

17 (2) A procedure for determining the identity of parties to  
18 the compact and for establishing compact terms:

19 (A) Parties to the compact may be any two or more  
20 members of the education partnership to achieve state goals  
21 and objectives who are positioned to make significant  
22 contributions to meeting compact objectives; and

23 (B) The terms of the compact shall focus on achievement  
24 of objectives. The expected outcomes shall be stated in  
25 concrete terms that are measurable.

26 (3) A mechanism for negotiating agreement on compact  
27 objectives. The mechanism shall provide for negotiation and  
28 development of consensus among the parties and must be  
29 reasonable in its operation and outcomes expectations;

30 (4) A procedure for creating and consolidating  
31 commitment between and among parties to the compact.  
32 Most state compacts will extend over multiple years and will  
33 require that negotiation between education partners and  
34 elected state officials take into account the constraints of the  
35 political process and the limits on available resources; and

36 (5) A process for periodic review, assessment and  
37 reporting of progress toward meeting the compact objectives.  
38 The rule shall provide for objective analysis and reporting to  
39 the compact partners and to the elected officials of the state.

40 (c) In addition to authorizing the commission and the  
41 council to enter into state compacts pursuant to subsections  
42 (a) and (b) of this section, it is the intent of the Legislature to  
43 encourage them strongly to develop implementation plans  
44 together with other members of the public higher education  
45 community to achieve system and institutional goals and

46 objectives which are consistent with and supportive of the  
47 goals and objectives established in this article and section  
48 one-a, article one of this chapter.

49 (1) At a minimum, each implementation plan shall  
50 contain the following elements:

51 (A) Identification of the goal and the objectives to be  
52 achieved;

53 (B) Identification of the parties to the implementation  
54 plan and a process for developing consensus among the  
55 parties;

56 (C) A needs assessment or other mechanism to determine  
57 current status of the proposed objectives, including a survey  
58 of available resources and other data relevant to achieving the  
59 objectives;

60 (D) Identification of challenges or barriers to meeting  
61 objectives;

62 (E) Delineation of tasks to be performed;

63 (F) A specific time line for meeting objectives;

64 (G) An evaluation process administered periodically to  
65 determine progress in meeting the objectives during the life  
66 span of the plan; and

67 (H) A method for determining success in achieving the  
68 objectives following the closing date established by the time  
69 line.

70 (2) Implementation plans are internal documents  
71 developed among members of the public higher education  
72 community and are not subject to an external approval  
73 process.



**§18B-1D-7. Findings; establishment of institutional compacts; compact elements; submission date; review and approval process; rule required.**

1 (a) The Legislature finds that West Virginia long has  
2 recognized the value of education and, on a per capita income  
3 basis, ranks very high among the states in its investment to  
4 support public education. The Legislature further finds that  
5 a combination of state and national demographic and  
6 economic factors as well as significant changes in methods  
7 of course and program delivery compel both the state and  
8 public higher education to create a process that will  
9 strengthen institutional capacity to provide the services so  
10 valued by the citizens of the state and so essential to  
11 promoting economic vitality.

12 (b) Therefore, each state college and university shall  
13 prepare an institutional compact for submission to the  
14 commission and each community and technical college shall  
15 prepare an institutional compact for submission to the  
16 council. When the process herein provided is completed, the  
17 resulting institutional compact constitutes a negotiated  
18 contract between the state institution of higher education and  
19 the commission or council, respectively, containing at a  
20 minimum the following basic components:

21 (1) Institutional strategies for focusing resources on  
22 meeting the goals and objectives set forth in this article and  
23 section one-a, article one of this chapter; and

24 (2) Commission or council strategies for promoting and  
25 supporting the institution in fulfilling its mission and  
26 objectives, to make it more competitive with its peers and to  
27 ensure the continuity of academic programs and services to  
28 its students.

29 (c) In addition to the basic contract components described  
30 in subsection (b) of this section, each compact shall contain  
31 at least the following elements:

32 (1) A determination of the mission of the institution  
33 which specifically addresses changes necessary or expedient  
34 to accomplish the goals and objectives articulated by the state  
35 and the appropriate statewide master plan;

36 (2) A detailed statement of how the compact is aligned  
37 with and will be implemented in conjunction with the master  
38 plan of the institution;

39 (3) A comprehensive assessment of education needs  
40 within the institution's geographic area of responsibility;

41 (4) A strategy to ensure access to comprehensive  
42 community and technical college and workforce development  
43 services within each respective region of the state consistent  
44 with the mission of the institution;

45 (5) Provision for collaboration and brokering of  
46 education services as necessary or expedient to carry out the  
47 institutional mission and meet its objectives;

48 (6) Provision of student services at the optimum level to  
49 support the institutional mission and to achieve state goals  
50 and objectives;

51 (7) Strategies for using existing infrastructure and  
52 resources within each region, where feasible, to increase  
53 student access while controlling costs and maintaining  
54 academic quality; and

55 (8) Other public policy objectives or initiatives adopted  
56 by the commission or council pursuant to the intent and  
57 purposes of this article and section one-a, article one of this  
58 chapter.

59 (d) Each institutional compact shall be updated annually  
60 and shall follow the same general guidelines contained in this  
61 section.

62 (e) Development and updating of the institutional  
63 compacts is subject to the following conditions:

64 (1) The ultimate responsibility for developing and  
65 updating the compacts at the institutional level resides with  
66 the board of advisors or the board of governors, as  
67 appropriate. It is the responsibility of the commission or  
68 council to provide technical assistance as requested and to  
69 negotiate with the institution development of the strategies to  
70 promote and support the institution pursuant to subsection (b)  
71 of this section;

72 (2) The commission and the council each shall establish  
73 a date by which institutions under their respective  
74 jurisdictions shall submit their compacts to the commission  
75 or council pursuant to the provisions of this article. The date  
76 established by each state-level coordinating board shall apply  
77 uniformly to all institutions under the jurisdiction of that  
78 coordinating board and shall meet the following additional  
79 conditions:

80 (A) Allow sufficient time for careful analysis of the  
81 compacts by the central office staff and for review by  
82 members of the commission or the council, as appropriate;  
83 and

84 (B) Allow sufficient time for the institutions to make  
85 necessary revisions to the compacts as provided in this  
86 section.

87 (3) The commission and council shall review each  
88 compact from the institutions under their respective  
89 jurisdictions and either adopt the compact or return it with

90 specific comments for change or improvement. The  
91 commission and council, respectively, shall continue this  
92 process as long as each considers advisable;

93 (4) By the first day of May annually, if the institutional  
94 compact of any institution as presented by that institution is  
95 not adopted by the respective commission or council, then the  
96 commission or council is empowered and directed to develop  
97 and adopt the institutional compact for the institution and the  
98 institution is bound by the compact so adopted; and

99 (5) As far as practicable, the commission and council  
100 each shall establish uniform processes and forms for the  
101 development and submission of the institutional compacts by  
102 the institutions under their respective jurisdictions, taking  
103 into consideration the differences in institutional missions  
104 and objectives. As a part of this function, the commission  
105 and council each shall organize the statements of legislative  
106 goals and objectives contained in this article and section  
107 one-a, article one of this chapter in a manner that facilitates  
108 the purposes therein.

109 (f) *Assignment of geographic areas of responsibility.* —

110 (1) The commission shall assign geographic areas of  
111 responsibility to the state institutions of higher education  
112 under its jurisdiction, except for the state institutions of  
113 higher education known as West Virginia School of  
114 Osteopathic Medicine, Marshall University and West  
115 Virginia University. For institutions other than the state  
116 institutions of higher education known as West Virginia  
117 School of Osteopathic Medicine, Marshall University and  
118 West Virginia University, the geographic areas of  
119 responsibility are made a part of their institutional compacts  
120 to ensure that all areas of the state are provided necessary  
121 programs and services to achieve state goals and objectives.  
122 The commission and the council each shall develop

123 data-based measures to determine the extent to which  
124 institutions under their respective jurisdictions are providing  
125 higher education services aligned with state goals and  
126 objectives and institutional missions within their geographic  
127 areas of responsibility. This information shall be reported in  
128 the statewide report card established pursuant to section eight  
129 of this article.

130 (2) The council shall assign geographic areas of  
131 responsibility to the state institutions of higher education  
132 under its jurisdiction, including the administratively linked  
133 institution known as Marshall Community and Technical  
134 College, the administratively linked institution known as the  
135 Community and Technical College at West Virginia  
136 University Institute of Technology and the regional campus  
137 known as West Virginia University at Parkersburg.

138 (3) The geographic areas of responsibility for the state  
139 institutions of higher education known as West Virginia  
140 School of Osteopathic Medicine, Marshall University and  
141 West Virginia University are assigned by the Legislature.

142 (4) The benchmarks established in the institutional  
143 compacts include measures of programs and services by  
144 geographic area throughout the assigned geographic area of  
145 responsibility.

146 (g) The compacts shall contain benchmarks to be used to  
147 determine progress toward meeting the objectives established  
148 in the compacts. The benchmarks shall meet the following  
149 criteria:

150 (1) They shall be objective;

151 (2) They shall be directly linked to the objectives in the  
152 compacts;

153 (3) They shall be measured by the indicators described in  
154 subsection (h) of this section; and

155 (4) Where applicable, they shall be used to measure  
156 progress in geographic areas of responsibility.

157 (h) The rules required by subsection (c), section one of  
158 this article shall include indicators which measure the degree  
159 to which the goals and objectives set forth in this article and  
160 section one-a, article one of this chapter are being met by the  
161 institutions under the jurisdiction of the commission and the  
162 council, respectively.

163 (1) The rules pertaining to benchmarks and indicators in  
164 effect for the commission and the council on the effective  
165 date of this section remain in effect for the institutions under  
166 their respective jurisdictions until amended, modified,  
167 repealed or replaced by the commission or the council,  
168 respectively, pursuant to the provisions of this article, section  
169 six, article one of this chapter and article three-a, chapter  
170 twenty-nine-a of this code.

171 (2) The rules shall set forth at least the following as  
172 pertains to all state institutions of higher education:

173 (A) The indicators used to measure the degree to which  
174 the goals and objectives are being met;

175 (B) Uniform definitions for the various data elements to  
176 be used in establishing the indicators;

177 (C) Guidelines for the collection and reporting of data;  
178 and

179 (D) Sufficient detail within the benchmarks and  
180 indicators to provide the following information:

181 (i) Measurable evidence that the pursuits of the institution  
182 are focused on the education needs of the citizens of the state  
183 and are aligned with the objectives of the institutional  
184 compacts and statewide master plans;

185 (ii) Delineation of the objectives and benchmarks for an  
186 institution so that the commission or council can precisely  
187 measure the degree to which progress is being made toward  
188 achieving the goals and objectives provided in this article and  
189 section one-a, article one of this chapter; and

190 (iii) Identification of specific objectives within the master  
191 plan or compact of an institution that are not being met or  
192 toward which sufficient progress is not being made.

193 (3) In addition to any other requirement, the rule  
194 established by the council shall set forth at least the following  
195 as pertains to community and technical college education:

196 (A) Benchmarks and indicators which are targeted to  
197 identify the following:

198 (i) The degree to which progress is being made by  
199 institutions toward meeting state goals and objectives and the  
200 essential conditions for community and technical college  
201 education pursuant to section three, article three-c of this  
202 chapter;

203 (ii) Information and data necessary to be considered by  
204 the council in making the determination required by section  
205 three, article two-c of this chapter; and

206 (B) Sufficient detail within the benchmarks and  
207 indicators to provide clear evidence to support an objective  
208 determination by the council that an institution's progress  
209 toward achieving state goals and objectives and the essential  
210 conditions for community and technical college education is

211 so deficient that implementation of the provisions of section  
212 four, article two-c of this chapter is warranted and necessary.

213 (i) The commission and the council, respectively, shall  
214 approve the compacts developed for the institutions under  
215 their respective jurisdictions by the boards of governors or  
216 the boards of advisors pursuant to this section and consistent  
217 with the powers and duties prescribed in section four, article  
218 two-a of this chapter and section one, article six of this  
219 chapter.

**§18B-1D-8. Institutional and system report cards.**

1 (a) The purpose of the institutional and statewide report  
2 cards is to make information available to parents, students,  
3 faculty, staff, state policymakers and the general public on  
4 the quality and performance of public higher education. The  
5 focus of the report cards is to determine annual progress of  
6 the commission, the council and institutions under their  
7 respective jurisdictions toward achieving state goals and  
8 objectives identified in this article and section one-a, article  
9 one of this chapter and system goals and objective contained  
10 in the statewide master plans of the commission and council  
11 created pursuant to section five of this article.

12 (b) The information contained in the report cards shall be  
13 consistent and comparable between and among state  
14 institutions of higher education. If applicable, the  
15 information shall allow for easy comparison with higher  
16 education-related data collected and disseminated by the  
17 Southern Regional Education Board, the United States  
18 Department of Education and other education data-gathering  
19 and data-disseminating organizations upon which state  
20 policymakers frequently rely in setting policy.

21 (c) The rules required by subsection (c), section one of  
22 this article shall provide for the collection, analysis and  
23 dissemination of information on the performance of the state



24 institutions of higher education, including health sciences  
25 education, in relation to the findings, goals and objectives set  
26 forth in this article and section one-a, article one of this  
27 chapter and those contained in the statewide master plans of  
28 the commission and council developed pursuant to section  
29 five of this article.

30 (1) The objective of this portion of the rule is to ensure  
31 that the Legislative Oversight Commission on Education  
32 Accountability and others identified in subsection (a) of this  
33 section are provided with full and accurate information while  
34 minimizing the institutional burden of recordkeeping and  
35 reporting.

36 (2) This portion of the rule shall identify various  
37 indicators of student and institutional performance that, at a  
38 minimum, must be reported annually, set forth general  
39 guidelines for the collection and reporting of data and  
40 provide for the preparation, printing and distribution of report  
41 cards under this section.

42 (d) The report cards shall be analysis-driven, rather than  
43 simply data-driven, and shall present information in a format  
44 that can inform education policymaking. They shall include  
45 an executive summary which outlines significant trends,  
46 identifies major areas of concern and discusses progress  
47 toward meeting state and system goals and objectives. They  
48 shall be brief and concise, reporting required information in  
49 nontechnical language. Any technical or supporting material  
50 to be included shall be contained in a separate appendix.

51 (e) The statewide report card shall include the data for  
52 each separately listed, applicable indicator identified in the  
53 rule promulgated pursuant to subsection (c) of this section  
54 and the aggregate of the data for all public institutions of  
55 higher education.

56 (f) The statewide report card shall be prepared using  
57 actual institutional, state, regional and national data, as

58 applicable and available, indicating the present performance  
59 of the individual institutions, the governing boards and the  
60 state systems of higher education. Statewide report cards  
61 shall be based upon information for the current school year  
62 or for the most recent school year for which the information  
63 is available, in which case the year shall be clearly noted.

64 (g) The president or chief executive officer of each state  
65 institution of higher education shall prepare and submit  
66 annually all requested data to the commission at the times  
67 established by the commission.

68 (h) The higher education central office staff, under the  
69 direction of the Vice Chancellor for Administration, shall  
70 provide technical assistance to each institution and governing  
71 board in data collection and reporting and is responsible for  
72 assembling the statewide report card from information  
73 submitted by each governing board.

74 (i) The statewide report card shall be completed and  
75 disseminated with copies to the Legislative Oversight  
76 Commission on Education Accountability prior to the first  
77 day of January of each year and the staff of the commission  
78 and the council shall prepare a report highlighting  
79 specifically the trends, progress toward meeting goals and  
80 objectives and major areas of concern for public higher  
81 education, including medical education, for presentation to  
82 the Legislative Oversight Commission on Education  
83 Accountability at the interim meetings in January, two  
84 thousand nine, and annually thereafter.

85 (j) Notwithstanding any other provisions of this code to  
86 the contrary, the following statutorily mandated reports are  
87 not required to be prepared and submitted annually unless a  
88 member of the Legislature makes a specific request for a  
89 particular report:

90 (1) An annual report, pursuant to subsection (a), section  
91 forty-eight, article three, chapter five-a of this code, on  
92 vehicle fleets;

93 (2) An annual report, pursuant to subsection (e), section  
94 ten, article one of this chapter, on plans, accomplishments  
95 and recommendations in implementing a cooperative  
96 relationship between Potomac State College and Eastern  
97 West Virginia Community and Technical College;

98 (3) An annual report, pursuant to paragraphs (A) and (B),  
99 subdivision (10), subsection (a), section four, article one-b of  
100 this chapter, concerning higher education performance and  
101 enrollment data;

102 (4) An annual report, pursuant to paragraph (A),  
103 subdivision (11), subsection (b), section six, article two-b of  
104 this chapter, concerning community and technical college  
105 performance;

106 (5) An annual report, pursuant to subsection (b), section  
107 seven, article five of this chapter, on all sales of obsolete,  
108 unusable or surplus commodities;

109 (6) An annual report, pursuant to section eight, article  
110 five of this chapter, on purchases from West Virginia  
111 businesses;

112 (7) An annual report, pursuant to subsection (j), section  
113 one, article ten of this chapter, on the amount of auxiliary  
114 fees collected to replace state funds subsidizing auxiliary  
115 services;

116 (8) An annual report, pursuant to subsection (c), section  
117 five, article thirteen of this chapter, on technical assistance  
118 provided to qualified businesses within approved research  
119 parks, research zones or technology centers;

120 (9) An annual report, pursuant to subsection (e), section  
121 six, article eighteen of this chapter, on the status of the  
122 Eminent Scholars Endowment Trust Fund; and

123 (10) An annual report, pursuant to subsection (e), section  
124 one, article three, chapter eighteen-c of this code, relevant to  
125 the health education loan program.

126 (k) For a reasonable fee, the Vice Chancellor for  
127 Administration shall make copies of the report cards,  
128 including any appendices of supporting material, available to  
129 any individual requesting them.

#### **ARTICLE 14. MISCELLANEOUS.**

##### **§18B-14-9. Legislative findings; establishment of study committee; membership; recommendations on higher education facilities.**

1 (a) The Legislature finds that it is in the best interest of  
2 the state to have an effective and comprehensive system for  
3 the delivery of public higher education programs. West  
4 Virginia is one of the very few states in the nation which does  
5 not address higher education capital project and facilities  
6 maintenance needs through a statewide plan. State  
7 institutions of higher education vary widely in their ability to  
8 incur debt for capital projects and the conditions of their  
9 facilities infrastructure. Some institutions have incurred  
10 substantial amounts of debt to address capital needs, while  
11 other institutions have not.

12 The Legislature further finds that average tuition and fees  
13 for current and former administratively linked community  
14 and technical colleges rank well above the national average  
15 primarily because of the capital fees that students at those  
16 institutions have to pay. The large amount of capital fees that  
17 students must pay at the institution level contributes  
18 significantly to the poor grade the state receives each year in  
19 the category of “Affordability” on “Measuring Up: The

20 National Report Card on Higher Education”. Net college  
21 costs for state students who come from families in the lowest  
22 forty percent of the population in terms of income to attend  
23 community and technical colleges and four-year colleges and  
24 universities in West Virginia represent about forty-five  
25 percent of their family’s annual income and there are few  
26 low-cost college opportunities.

27 The Legislature further finds that the high cost of capital  
28 fees contributes directly to the amount of debt incurred by  
29 students during their college years. The debt load, in turn,  
30 severely limits students’ career choices and often dictates  
31 their place of residence after graduation.

32 (b) It is the responsibility of the Legislature to determine  
33 how to make the best use of available resources and how best  
34 to address the problems outlined in subsection (a) of this  
35 section. Therefore, the Joint Committee on Government and  
36 Finance shall create a committee for the purposes of making  
37 a specific and detailed analysis of higher education capital  
38 project and facilities maintenance needs and providing  
39 recommendations to the Legislature.

40 (c) The committee consists of the following members:

41 (1) The President of the Senate or designee;

42 (2) The Speaker of the House of Delegates or designee;

43 (3) The chairs of the Senate and House of Delegates  
44 Committees on Education, who shall cochair the committee;

45 (4) The vice chairs of the Senate and House of Delegates  
46 Committees on Education;

47 (5) The chairs of the Senate and House of Delegates  
48 Committees on Finance or their designees;

49 (6) The cochairs of the Joint Commission on Economic  
50 Development or their designees;

51 (7) Two members each from the Senate Committees on  
52 Finance and Education appointed by the President of the  
53 Senate; and

54 (8) Two members each from the House Committees on  
55 Finance and Education appointed by the Speaker of the  
56 House.

57 (d) The committee shall develop and recommend a  
58 state-level facilities plan which includes, but is not limited to,  
59 the following:

60 (1) A review of capital project and facilities maintenance  
61 needs of all state institutions of higher education and  
62 recommendations for addressing those needs;

63 (2) Recommendations concerning the appropriate capital  
64 debt load that reasonably should be maintained by the  
65 commission, council and state institutions of higher  
66 education;

67 (3) Recommendations for a funding mechanism to reduce  
68 the obligation of students and parents to bear the cost of  
69 higher education capital projects and facilities maintenance;

70 (4) Recommendations for maximizing changes in  
71 bonding capacity that will occur in two thousand twelve;

72 (5) Development of a uniform definition of deferred  
73 maintenance;

74 (6) Recommendations for an appropriate mechanism to  
75 target a percentage of state capital contributions to address  
76 deferred maintenance needs; and

77 (7) Recommendations for a transparent methodology to  
78 set priorities for funding capital projects.

79 (e) The committee shall commence its work on or before  
80 the fifteenth day of May, two thousand eight, and shall

81 deliver its recommendations, together with draft legislation  
82 to implement the recommendations, to the Legislative  
83 Oversight Commission on Education Accountability and the  
84 Joint Committee on Government and Finance by the first day  
85 of December, two thousand eight.



## CHAPTER 73

**(Com. Sub. for S.B. 9 - By Senators Bailey and Love)**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §18-2-8a of the Code of West Virginia, 1931, as amended, relating to hunter safety orientation programs in the public schools; providing for state board rule; minimum requirements; permissive implementation; and certification of program completers.

*Be it enacted by the Legislature of West Virginia:*

That §18-2-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 2. STATE BOARD OF EDUCATION.**

#### **§18-2-8a. Hunter safety orientation program.**

- 1 (a) The Legislature finds that:
- 2 (1) Firearms and hunting are important parts of West
- 3 Virginia's history, culture and economy;

4 (2) Unfortunately, the use of firearms while hunting or at  
5 any other time can be dangerous when the firearms are not  
6 handled in a careful and safe manner; and

7 (3) Therefore, the opportunity of participating in a hunter  
8 safety orientation program should be offered to students in  
9 certain grades.

10 (b) The State Board of Education shall, with the advice of  
11 the State Superintendent of Schools and the Director of the  
12 Division of Natural Resources, promulgate a rule in  
13 accordance with the provisions of article three-b, chapter  
14 twenty-nine-a of this code for the implementation of a hunter  
15 safety orientation program for use in the public schools of  
16 this state. The rule shall include at least the following  
17 provisions:

18 (1) The hunter safety orientation program may be offered  
19 to students in any of the grade levels sixth through twelfth  
20 grades over a two-week period during the school year as part  
21 of physical education classes, or as part of the general  
22 curriculum offered to students in any of these grade levels, or  
23 at the end of the school day;

24 (2) The hunter safety orientation program is voluntary to  
25 students and any student may choose not to participate in the  
26 program. If a student chooses not to participate in the  
27 program, he or she shall participate in another education  
28 activity;

29 (3) The hunter safety orientation program shall include  
30 instruction relating to:

31 (A) The protection of lives and property against loss or  
32 damage as a result of the improper use of firearms; and

33 (B) The proper use of firearms in hunting, sport  
34 competition and the care and safety of firearms in the home;



35 (4) The hunter safety orientation program may use  
36 materials prepared by any national nonprofit membership  
37 organization which has as one of its purposes the training of  
38 people in marksmanship and the safe handling and use of  
39 firearms; and

40 (5) The hunter safety orientation program shall be  
41 conducted by an instructor certified by the Division of  
42 Natural Resources or who has other training necessary to  
43 conduct the program as determined by the state board.

44 (c) The county superintendent may implement the hunter  
45 safety orientation program in accordance with the rule  
46 required by this section in each school in the county that  
47 includes any of grades six through twelve at which, in the  
48 sole judgement of the superintendent, sufficient student  
49 interest in program enrollment justifies the program offering  
50 and an appropriately certified instructor is available.

51 (d) The Division of Natural Resources shall issue a  
52 certificate of training, required by section thirty-a, article  
53 two, chapter twenty of this code, to any student who  
54 completes the hunter safety orientation program.

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## CHAPTER 74

**(Com. Sub. for H.B. 4124 - By Delegates Staggers, M. Poling,  
Moye, Perry, Fleischauer, Hamilton, Paxton,  
Long, Canterbury, Campbell and Crosier)**

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[Passed March 5, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 13, 2008.]

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AN ACT to amend and reenact §18-2-9 of the Code of West Virginia, 1931, as amended, relating to including education

concerning CPR and First Aid in the health education curriculum in any grades six through twelve.

*Be it enacted by the Legislature of West Virginia:*

That §18-2-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 2. STATE BOARD OF EDUCATION.**

### **§18-2-9. Required courses of instruction; violation and penalty.**

1 (a) In all public, private, parochial and denominational  
2 schools located within this state, there shall be given prior to  
3 the completion of the eighth grade at least one year of  
4 instruction in the history of the State of West Virginia. The  
5 schools shall require regular courses of instruction by the  
6 completion of the twelfth grade in the history of the United  
7 States, in civics, in the Constitution of the United States, and  
8 in the government of the State of West Virginia for the  
9 purpose of teaching, fostering and perpetuating the ideals,  
10 principles and spirit of political and economic democracy in  
11 America and increasing the knowledge of the organization  
12 and machinery of the government of the United States and of  
13 the State of West Virginia. The state board shall, with the  
14 advice of the state superintendent, prescribe the courses of  
15 study covering these subjects for the public schools. It shall  
16 be the duty of the officials or boards having authority over  
17 the respective private, parochial and denominational schools  
18 to prescribe courses of study for the schools under their  
19 control and supervision similar to those required for the  
20 public schools. To further such study, every high school  
21 student eligible by age for voter registration shall be afforded  
22 the opportunity to register to vote pursuant to section  
23 twenty-two, article two, chapter three of this code.

24 (b) The state board shall cause to be taught in all of the  
25 public schools of this state the subject of health education,

26 including instruction in any of the grades six through twelve  
27 as considered appropriate by the county board, on: (1) The  
28 prevention, transmission and spread of acquired immune  
29 deficiency syndrome and other sexually transmitted diseases;  
30 (2) substance abuse, including the nature of alcoholic drinks  
31 and narcotics, tobacco products, and other potentially  
32 harmful drugs, with special instruction as to their effect upon  
33 the human system and upon society in general; (3) the  
34 importance of healthy eating and physical activity to  
35 maintaining healthy weight; and (4) education concerning  
36 CPR and First Aid. The course curriculum requirements and  
37 materials for the instruction shall be adopted by the state  
38 board by rule in consultation with the Department of Health  
39 and Human Resources. The state board shall prescribe a  
40 standardized health education assessment to be administered  
41 within health education classes to measure student health  
42 knowledge and program effectiveness.

43 An opportunity shall be afforded to the parent or guardian  
44 of a child subject to instruction in the prevention,  
45 transmission and spread of acquired immune deficiency  
46 syndrome and other sexually transmitted diseases to examine  
47 the course curriculum requirements and materials to be used  
48 in the instruction. The parent or guardian may exempt the  
49 child from participation in the instruction by giving notice to  
50 that effect in writing to the school principal.

51 (c) Any person violating the provisions of this section  
52 shall be guilty of a misdemeanor and, upon conviction  
53 thereof, shall be fined not exceeding ten dollars for each  
54 violation, and each week during which there is a violation  
55 shall constitute a separate offense. If the person so convicted  
56 occupy a position in connection with the public schools, that  
57 person shall automatically be removed from that position and  
58 shall be ineligible for reappointment to that or a similar  
59 position for the period of one year.

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## CHAPTER 75

**(Com. Sub. for H.B. 2967 - By Delegates Armstead, DeLong,  
Border, C. Miller, Ireland, Swartzmiller, Azinger, Iaquina,  
Romine, M. Poling and J. Miller)**

[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-8f, relating to establishing “West Virginia Remembers Program” program in public schools; requiring state board rule; and specifying certain parameters.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2E-8f, to read as follows:

### **ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

#### **§18-2E-8f. Creating the “West Virginia Remembers Program;” rules.**

1       (a) There is hereby created the “West Virginia  
2 Remembers Program.” The objective of the West Virginia  
3 Remembers Program is to provide a forum wherein children  
4 in the public schools may learn about military service,  
5 patriotism and courage in the defense of our country from  
6 veterans who volunteer to share their experiences in the  
7 educational setting. The state board shall promulgate a rule  
8 for implementation of the program, including, but not limited  
9 to, the following:

10       (1) The program is not a part of the required curriculum;

- 11 (2) Presentation of the program in any classroom is the  
12 option of the classroom teacher; and
- 13 (3) A process is established for soliciting speakers from  
14 veterans groups and identifying available speakers.

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## CHAPTER 76

**(H.B. 4477 - By Delegates Frederick, M. Poling, Paxton,  
Rowan, Williams, Sumner, Crosier, Fragale,  
Browning, Rodighiero and Wysong)**

[Passed March 8, 2008; in effect July 1, 2008.]  
[Approved by the Governor on March 31, 2008.]

[CLERK'S NOTE: The title of this Act was amended, but the amended language was inadvertently omitted during the enrollment process. Therefore, the Governor not having received and signed a true and correct copy of the Act as passed by both houses, H. B. 4477 did not become law.

The text of the proposed Act has intentionally been omitted.]

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## CHAPTER 77

**(Com. Sub. for H.B. 4368 - By Delegates DeLong, Caputo,  
Fragale, M. Poling, D. Poling and Tucker)**

[Passed March 6, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 17, 2008.]

AN ACT to amend and reenact §18-5A-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-5-1 of said code; and to further amend said code by adding thereto a

new section, designated §18A-5-1c, all relating to student behavior and discipline in schools; reducing school violence and disorderly conduct; alternative learning settings; establishing and implementing consistent and effective discipline policies; legislative findings; and establishing the Bill of Rights and Responsibilities for Students and School Personnel.

*Be it enacted by the Legislature of West Virginia:*

That §18-5A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-5-1 of said code be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §18A-5-1c, all to read as follows:

**Chapter.**

**18. Education.**

**18A. School Personnel.**

**CHAPTER 18. EDUCATION.**

**ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.**

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

1 (a) A local school improvement council shall be  
2 established at every school consisting of the following:

3 (1) The principal, who serves as an ex officio member of  
4 the council and is entitled to vote;

5 (2) Three teachers elected by the faculty senate of the  
6 school;

7 (3) One bus operator who transports students enrolled at  
8 the school and one school service person, each elected by the  
9 school service personnel employed at the school;

10 (4) Three parent(s), guardian(s) or custodian(s) of  
11 students enrolled at the school elected by the parent(s),  
12 guardian(s) or custodian(s) members of the school's parent  
13 teacher organization. If there is no parent teacher  
14 organization, the parent(s), guardian(s) or custodian(s)  
15 members shall be elected by the parent(s), guardian(s) or  
16 custodian(s) of students enrolled at the school in such manner  
17 as may be determined by the principal;

18 (5) Two at-large members appointed by the principal, one  
19 of whom resides in the school's attendance area and one of  
20 whom represents business or industry, neither of whom is  
21 eligible for membership under any of the other elected  
22 classes of members;

23 (6) In the case of vocational-technical schools, the  
24 vocational director. If there is no vocational director, then  
25 the principal may appoint no more than two additional  
26 representatives, one of whom represents business and one of  
27 whom represents industry;

28 (7) In the case of a school with students in grade seven or  
29 higher, the student body president or other student in grade  
30 seven or higher elected by the student body in those grades.

31 (b) Under no circumstances may more than one parent  
32 member of the council be then employed at that school in any  
33 capacity.

34 (c) The principal shall arrange for such elections to be  
35 held prior to the fifteenth day of September of each school  
36 year to elect a council and shall give notice of the elections  
37 at least one week prior to the elections being held. To the  
38 extent practicable, all elections to select council members  
39 shall be held within the same week.

40 (d) Parent(s), guardian(s) or custodian(s), teachers and  
41 service personnel elected to the council shall serve a two-year

42 term and elections shall be arranged in such a manner that no  
43 more than two teachers, no more than two parent(s),  
44 guardian(s) or custodian(s) and no more than one service  
45 person are elected in a given year. All other non-ex officio  
46 members shall serve one-year terms.

47 (e) Council members may only be replaced upon death,  
48 resignation, failure to appear at three consecutive meetings of  
49 the council for which notice was given, or a change in  
50 personal circumstances so that the person is no longer  
51 representative of the class of members from which appointed.  
52 In the case of a vacancy in an elected position, the chair of  
53 the council shall appoint another qualified person to serve the  
54 unexpired term of the person being replaced or, in the case of  
55 an appointed member of the council, the principal shall  
56 appoint a replacement as soon as practicable.

57 (f) As soon as practicable after the election of council  
58 members, and no later than the first day of October of each  
59 school year, the principal shall convene an organizational  
60 meeting of the school improvement council. The principal  
61 shall notify each member in writing at least two employment  
62 days in advance of the organizational meeting. At this  
63 meeting, the principal shall provide each member with the  
64 following:

65 (1) A copy of the current applicable sections of this code;

66 (2) Any state board rule or regulation promulgated  
67 pursuant to the operation of these councils; and

68 (3) Any information as may be developed by the  
69 department of education on the operation and powers of local  
70 school improvement councils and their important role in  
71 improving student and school performance and progress.

72 (g) The council shall elect from its membership a chair  
73 and two members to assist the chair in setting the agenda for



74 each council meeting. The chair shall serve a term of one  
75 year and a person may not serve as chair for more than two  
76 consecutive terms. If the chair's position becomes vacant for  
77 any reason, the principal shall call a meeting of the council to  
78 elect another qualified person to serve the unexpired term.  
79 Once elected, the chair is responsible for notifying each  
80 member of the school improvement council in writing two  
81 employment days in advance of any council meeting.

82 (h) School improvement councils shall meet at least once  
83 every nine weeks or equivalent grading period at the call of  
84 the chair or by three fourths of its members.

85 (1) The school improvement council shall schedule any  
86 meeting that involves the issue of student discipline pursuant  
87 to subdivision (2), subsection (1) of this section, outside the  
88 regularly scheduled working hours of any school employee  
89 member of the council.

90 (2) The school improvement council annually shall  
91 conduct a meeting to engage parents, students, school  
92 employees and other interested parties in a positive and  
93 interactive dialogue regarding effective discipline policies.  
94 The meeting shall afford ample time for the dialogue and  
95 comply with any applicable provision of state, federal or  
96 county board policy, rule or law, as appropriate, regarding  
97 student privacy rights.

98 (i) The local school improvement council shall meet at  
99 least annually with the county board, in accordance with the  
100 provisions in section fourteen, article five of this chapter. At  
101 this annual meeting, the local school improvement council  
102 chair, or another member designated by the chair, shall be  
103 prepared to address any matters as may be requested by the  
104 county board as specified in the meeting agenda provided to  
105 the council and may further provide any other information,  
106 comments or suggestions the local school improvement

107 council wishes to bring to the county board's attention.  
108 Anything presented under this subsection shall be submitted  
109 to the county board in writing.

110 (j) School improvement councils shall be considered for  
111 the receipt of school of excellence awards under section three  
112 of this article and competitive grant awards under section  
113 twenty-nine, article two of this chapter and may receive and  
114 expend such grants for the purposes provided in such section.  
115 In any and all matters which may fall within the scope of  
116 both the school improvement councils and the school  
117 curriculum teams authorized in section five of this article, the  
118 school curriculum teams have jurisdiction.

119 (k) In order to promote innovations and improvements in  
120 the environment for teaching and learning at the school, a  
121 school improvement council shall receive cooperation from  
122 the school in implementing policies and programs it may  
123 adopt to:

124 (1) Encourage the involvement of parent(s), guardian(s)  
125 or custodian(s) in their child's educational process and in the  
126 school;

127 (2) Encourage businesses to provide time for their  
128 employees who are parent(s), guardian(s) or custodian(s) to  
129 meet with teachers concerning their child's education;

130 (3) Encourage advice and suggestions from the business  
131 community;

132 (4) Encourage school volunteer programs and mentorship  
133 programs; and

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

136 (l) Each local school improvement council annually shall  
137 develop and deliver a report to the countywide council on  
138 productive and safe schools. The report shall include:

139 (1) Guidelines for the instruction and rehabilitation of  
140 students who have been excluded from the classroom,  
141 suspended from the school or expelled from the school, the  
142 description and recommendation of in-school suspension  
143 programs, a description of possible alternative settings,  
144 schedules for instruction and alternative education programs  
145 and an implementation schedule for such guidelines. The  
146 guidelines shall include the following:

147 (A) A system to provide for effective communication and  
148 coordination between school and local emergency services  
149 agencies;

150 (B) A preventive discipline program which may include  
151 the responsible students program devised by the West  
152 Virginia board of education as adopted by the county board,  
153 pursuant to the provisions of subsection (e), section one,  
154 article five, chapter eighteen-a of this code; and

155 (C) A student involvement program, which may include  
156 the peer mediation program or programs devised by the West  
157 Virginia board of education as adopted by the county board,  
158 pursuant to the provisions of subsection (e), section one,  
159 article five, chapter eighteen-a of this code; and

160 (2) The local school improvement council's findings  
161 regarding its examination of the following, which also shall  
162 be reported to the county superintendent:

163 (A) Disciplinary measures at the school; and

164 (B) The fairness and consistency of disciplinary actions  
165 at the school. If the council believes that student discipline

166 at the school is not enforced fairly or consistently, it shall  
167 transmit that determination in writing, along with supporting  
168 information, to the county superintendent. Within ten days  
169 of receiving the report, the superintendent, or designee, shall  
170 respond in writing to the council. The county board shall  
171 retain and file all such correspondence and maintain it for  
172 public review.

173 (C) Any report or communication made as required by  
174 this subdivision shall comply with any applicable provision  
175 of state, federal or county board policy, rule or law, as  
176 appropriate, regarding student privacy rights.

177 (m) The council may include in its report to the county-  
178 wide council on productive and safe schools provisions of the  
179 State Board of Education policy 4373, student code of  
180 conduct, or any expansion of such policy which increases the  
181 safety of students in schools in this state and is consistent  
182 with the policies and other laws of this state.

183 (n) Councils may adopt their own guidelines established  
184 under this section. In addition, the councils may adopt all or  
185 any part of the guidelines proposed by other local school  
186 improvement councils, as developed under this section,  
187 which are not inconsistent with the laws of this state, the  
188 policies of the West Virginia board of education or the  
189 policies of the county board.

190 (o) The State Board of Education shall provide assistance  
191 to a local school improvement council upon receipt of a  
192 reasonable request for that assistance. The state board also  
193 may solicit proposals from other parties or entities to provide  
194 orientation training for local school improvement council  
195 members and may enter into contracts or agreements for that  
196 purpose. Any training for members shall meet the guidelines  
197 established by the state board.

**CHAPTER 18A. SCHOOL PERSONNEL.****ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.

§18A-5-1c. Bill of Rights and Responsibilities for Students and School Personnel.

**§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.**

1 (a) The teacher shall stand in the place of the parent(s),  
2 guardian(s) or custodian(s) in exercising authority over the  
3 school and has control of all students enrolled in the school  
4 from the time they reach the school until they have returned  
5 to their respective homes, except that where transportation of  
6 students is provided, the driver in charge of the school bus or  
7 other mode of transportation shall exercise such authority and  
8 control over the students while they are in transit to and from  
9 the school.

10 (b) Subject to the rules of the State Board of Education,  
11 the teacher shall exclude from the school any student known  
12 to have or suspected of having any infectious disease, or any  
13 student who has been exposed to any infectious disease, and  
14 shall immediately notify the proper health officer or medical  
15 inspector of the exclusion. Any student so excluded may not  
16 be readmitted to the school until he or she has complied with  
17 all the requirements of the rules governing those cases or has  
18 presented a certificate of health signed by the medical  
19 inspector or other proper health officer.

20 (c) The teacher may exclude from his or her classroom or  
21 school bus any student who is guilty of disorderly conduct;  
22 who in any manner interferes with an orderly educational  
23 process; who threatens, abuses or otherwise intimidates or  
24 attempts to intimidate a school employee or a student; who

25 willfully disobeys a school employee; or who uses abusive or  
26 profane language directed at a school employee. Any student  
27 excluded shall be placed under the control of the principal of  
28 the school or a designee. The excluded student may be  
29 admitted to the classroom or school bus only when the  
30 principal, or a designee, provides written certification to the  
31 teacher that the student may be readmitted and specifies the  
32 specific type of disciplinary action, if any, that was taken. If  
33 the principal finds that disciplinary action is warranted, he or  
34 she shall provide written and, if possible, telephonic notice of  
35 the action to the parent(s), guardian(s) or custodian(s). When  
36 a student is excluded from a classroom or a school bus two  
37 times in one semester, and after exhausting all reasonable  
38 methods of classroom discipline provided in the school  
39 discipline plan, the student may be readmitted to the  
40 classroom or the school bus only after the principal, teacher  
41 and, if possible, the parent(s), guardian(s) or custodian(s) of  
42 the student have held a conference to discuss the student's  
43 disruptive behavior patterns, and the teacher and the principal  
44 agree on a course of discipline for the student and inform the  
45 parent(s), guardian(s) or custodian(s) of the course of action.  
46 Thereafter, if the student's disruptive behavior persists, upon  
47 the teacher's request, the principal may, to the extent feasible,  
48 transfer the student to another setting. The Legislature finds  
49 that isolating students or placing them in alternative learning  
50 centers may be the best setting for chronically disruptive  
51 students. The county board shall create more alternative  
52 learning centers or expand its capacity for alternative  
53 placements, subject to funding, to correct these students'  
54 behaviors so they can return to a regular classroom without  
55 engaging in further disruptive behavior.

56 (d) The Legislature finds that suspension from school is  
57 not appropriate solely for a student's failure to attend class.  
58 Therefore, a student may not be suspended from school  
59 solely for not attending class. Other methods of discipline  
60 may be used for the student which may include, but are not  
61 limited to, detention, extra class time or alternative class  
62 settings.

63 (e) Corporal punishment of any student by a school  
64 employee is prohibited.

65 (f) Each county board is solely responsible for the  
66 administration of proper discipline in the public schools of  
67 the county and shall adopt policies consistent with the  
68 provisions of this section to govern disciplinary actions.  
69 These policies shall encourage the use of alternatives to  
70 corporal punishment, providing for the training of school  
71 personnel in alternatives to corporal punishment and for the  
72 involvement of parent(s), guardian(s) or custodian(s) in the  
73 maintenance of school discipline. The county boards shall  
74 provide for the immediate incorporation and implementation  
75 in the schools of a preventive discipline program which may  
76 include the responsible student program and a student  
77 involvement program which may include the peer mediation  
78 program, devised by the West Virginia Board of Education.  
79 Each county board may modify those programs to meet the  
80 particular needs of the county. The county boards shall  
81 provide in-service training for teachers and principals relating  
82 to assertive discipline procedures and conflict resolution.  
83 The county boards also may establish cooperatives with  
84 private entities to provide middle educational programs  
85 which may include programs focusing on developing  
86 individual coping skills, conflict resolution, anger control,  
87 self-esteem issues, stress management and decision making  
88 for students and any other program related to preventive  
89 discipline.

90 (g) For the purpose of this section:

91 (1) " Student" includes any child, youth or adult who is  
92 enrolled in any instructional program or activity conducted  
93 under board authorization and within the facilities of or in  
94 connection with any program under public school direction:  
95 *Provided*, That, in the case of adults, the student-teacher  
96 relationship shall terminate when the student leaves the  
97 school or other place of instruction or activity;

98 (2) "Teacher" means all professional educators as defined  
99 in section one, article one of this chapter and includes the  
100 driver of a school bus or other mode of transportation; and

101 (3) "Principal" means the principal, assistant principal,  
102 vice principal or the administrative head of the school or a  
103 professional personnel designee of the principal or the  
104 administrative head of the school.

105 (h) Teachers shall exercise other authority and perform  
106 other duties prescribed for them by law or by the rules of the  
107 state board not inconsistent with the provisions of this  
108 chapter and chapter eighteen of this code.

**§18A-5-1c. Bill of Rights and Responsibilities for Students and  
School Personnel.**

1 (a) The Legislature finds that:

2 (1) The mission of public schools is to prepare students  
3 for equal and responsible citizenship and productive  
4 adulthood;

5 (2) Democratic citizenship and productive adulthood  
6 begin with standards of conduct in schools;

7 (3) Schools should be safe havens for learning with high  
8 standards of conduct for students; and

9 (4) Rights necessarily carry responsibilities.

10 (b) In recognition of the findings in this section, the  
11 following Bill of Rights and Responsibilities for Students and  
12 School Personnel is established:

13 (1) The right to attend a school and ride a bus that is safe,  
14 orderly and drug free;



15 (2) The right to learn and work in a school that has clear  
16 discipline codes with fair and consistently enforced  
17 consequences for misbehavior;

18 (3) The right to learn and work in a school that has  
19 alternative educational placements for violent or chronically  
20 disruptive students;

21 (4) The right to be treated with courtesy and respect;

22 (5) The right to attend a school and ride on a bus that  
23 is free from bullying;

24 (6) The right to support from school administrators when  
25 enforcing discipline policies;

26 (7) The right to support from parents, the community,  
27 public officials and businesses in their efforts to uphold high  
28 standards of conduct; and

29 (8) The responsibility to adhere to the principles in this  
30 Bill of Rights and Responsibilities for Students and School  
31 Personnel, and to behave in a manner that guarantees that  
32 other students and school personnel enjoy the same rights.



## CHAPTER 78

**(Com. Sub. for S.B. 593 - By Senators McCabe and Foster)**

[Passed March 8, 2008; in effect from passage.]  
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §18-9A-11 of the Code of West Virginia, 1931, as amended, relating to school finance; computation of local share; limit on certain library funding

obligations; and transfer of a library funding obligation to an excess levy.

*Be it enacted by the Legislature of West Virginia:*

That §18-9A-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

##### **§18-9A-11. Computation of local share; appraisal and assessment of property; public library support.**

1 (a) On the basis of each county's certificates of valuation  
2 as to all classes of property as determined and published by  
3 the assessors pursuant to section six, article three, chapter  
4 eleven of this code for the next ensuing fiscal year in reliance  
5 upon the assessed values annually developed by each county  
6 assessor pursuant to the provisions of articles one-c and three  
7 of said chapter, the state board shall for each county compute  
8 by application of the levies for general current expense  
9 purposes, as defined in section two of this article, the amount  
10 of revenue which the levies would produce if levied upon one  
11 hundred percent of the assessed value of each of the several  
12 classes of property contained in the report or revised report  
13 of the value, made to it by the Tax Commissioner as follows:

14 (1) The state board shall first take ninety-five percent of  
15 the amount ascertained by applying these rates to the total  
16 assessed public utility valuation in each classification of  
17 property in the county; and

18 (2) The state board shall then apply these rates to the  
19 assessed taxable value of other property in each classification  
20 in the county as determined by the Tax Commissioner and  
21 shall deduct therefrom five percent as an allowance for the

22 usual losses in collections due to discounts, exonerations,  
23 delinquencies and the like. All of the amount so determined  
24 shall be added to the ninety-five percent of public utility  
25 taxes computed as provided in subdivision (1) of this  
26 subsection and this total shall be further reduced by the  
27 amount due each county assessor's office pursuant to the  
28 provisions of section eight, article one-c, chapter eleven of  
29 this code and this amount shall be the local share of the  
30 particular county.

31 As to any estimations or preliminary computations of  
32 local share required prior to the report to the Legislature by  
33 the Tax Commissioner, the state shall use the most recent  
34 projections or estimations that may be available from the Tax  
35 Department for that purpose.

36 (b) Effective the first day of July, two thousand thirteen,  
37 subsection (a) of this section is void and local share shall be  
38 calculated in accordance with the following:

39 (1) The state board shall for each county compute by  
40 application of the levies for general current expense  
41 purposes, as defined in sections two and two-a of this article,  
42 the amount of revenue which the levies would produce if  
43 levied upon one hundred percent of the assessed value  
44 calculated pursuant to section five-b, article one-c, chapter  
45 eleven of this code;

46 (2) Five percent shall be deducted from the revenue  
47 calculated pursuant to subdivision (1) of this subsection as an  
48 allowance for the usual losses in collections due to discounts,  
49 exonerations, delinquencies and the like; and

50 (3) The amount calculated in subdivision (2) of this  
51 subsection shall further be reduced by the sum of money due  
52 each assessor's office pursuant to the provisions of section  
53 eight, article one-c, chapter eleven of this code and this

54 reduced amount shall be the local share of the particular  
55 county.

56 (c) Whenever in any year a county assessor or a county  
57 commission fails or refuses to comply with the provisions of  
58 this section in setting the valuations of property for  
59 assessment purposes in any class or classes of property in the  
60 county, the State Tax Commissioner shall review the  
61 valuations for assessment purposes made by the county  
62 assessor and the county commission and shall direct the  
63 county assessor and the county commission to make  
64 corrections in the valuations as necessary so that they comply  
65 with the requirements of chapter eleven of this code and this  
66 section and the Tax Commissioner shall enter the county and  
67 fix the assessments at the required ratios. Refusal of the  
68 assessor or the county commission to make the corrections  
69 constitutes grounds for removal from office.

70 (d) For the purposes of any computation made in  
71 accordance with the provisions of this section, in any taxing  
72 unit in which tax increment financing is in effect pursuant to  
73 the provisions of article eleven-b, chapter seven of this code,  
74 the assessed value of a related private project shall be the  
75 base-assessed value as defined in section two of said article.

76 (e) For purposes of any computation made in accordance  
77 with the provisions of this section, in any county where the  
78 county board of education has adopted a resolution choosing  
79 to use the provisions of the Growth County School Facilities  
80 Act set forth in section six-f, article eight, chapter eleven of  
81 this code, estimated school board revenues generated from  
82 application of the regular school board levy rate to new  
83 property values, as that term is designated in said section,  
84 may not be considered local share funds and shall be  
85 subtracted before the computations in subdivisions (1) and  
86 (2), subsection (a) of this section or in subdivisions (2) and  
87 (3), subsection (b) of this section, as applicable, are made.

88 (f) The Legislature finds that public school systems  
89 throughout the state provide support in varying degrees to  
90 public libraries through a variety of means including  
91 budgeted allocations, excess levy funds and portions of their  
92 regular school board levies as may be provided by special  
93 act. A number of public libraries are situated on the  
94 campuses of public schools and several are within public  
95 school buildings serving both the students and public patrons.  
96 To the extent that public schools recognize and choose to  
97 avail the resources of public libraries toward developing  
98 within their students such legally recognized elements of a  
99 thorough and efficient education as literacy, interests in  
100 literature, knowledge of government and the world around  
101 them and preparation for advanced academic training, work  
102 and citizenship, public libraries serve a legitimate school  
103 purpose and may do so economically. For the purposes of  
104 any computation made in accordance with the provisions of  
105 this section, the library funding obligation on the regular  
106 school board levies which is created by a special act and is  
107 due and payable from the levy revenues to a library shall be  
108 paid from the county school board's discretionary retainage,  
109 which is hereby defined as the amount by which the regular  
110 school board levies exceeds the local share as determined  
111 hereunder. If the library funding obligation which is created  
112 by a special act and is due and payable to a library is greater  
113 than the county school board's discretionary retainage, the  
114 library funding obligation created by the special act is  
115 amended and is reduced to the amount of the discretionary  
116 retainage, notwithstanding any provisions of the special act  
117 to the contrary. Any excess of the discretionary retainage  
118 over the library funding obligation shall be available for  
119 expenditure by the county board in its discretion for its  
120 properly budgeted purposes.

121 (g) It is the intent of the Legislature that whenever a  
122 provision of subsection (f) of this section is contrary to any  
123 special act of the Legislature which has been or may in the

124 future be enacted by the Legislature that creates a library  
125 funding obligation on the regular school board levy of a  
126 county, subsection (f) of this section controls over the special  
127 act. Specifically, the special acts which are subject to said  
128 subsection upon the enactment of this section during the two  
129 thousand seven regular session of the Legislature include:

130 (1) Enrolled Senate Bill No. 11, passed on the twelfth  
131 day of February, one thousand nine hundred seventy,  
132 applicable to the Berkeley County Board of Education;

133 (2) Enrolled House Bill No. 1352, passed on the seventh  
134 day of April, one thousand nine hundred eighty-one,  
135 applicable to the Hardy County Board of Education;

136 (3) Enrolled Committee Substitute for House Bill No.  
137 2833, passed on the fourteenth day of March, one thousand  
138 nine hundred eighty-seven, applicable to the Harrison County  
139 Board of Education;

140 (4) Enrolled House Bill No. 161, passed on the sixth day  
141 of March, one thousand nine hundred fifty-seven, applicable  
142 to the Kanawha County Board of Education;

143 (5) Enrolled Senate Bill No. 313, passed on the twelfth  
144 day of March, one thousand nine hundred thirty-seven, as  
145 amended by Enrolled House Bill No. 1074, passed on the  
146 eighth day of March, one thousand nine hundred sixty-seven,  
147 and as amended by Enrolled House Bill No. 1195, passed on  
148 the eighteenth day of January, one thousand nine hundred  
149 eighty-two, applicable to the Ohio County Board of  
150 Education;

151 (6) Enrolled House Bill No. 938, passed on the  
152 twenty-eighth day of February, one thousand nine hundred  
153 sixty-nine, applicable to the Raleigh County Board of  
154 Education;

155 (7) Enrolled House Bill No. 398, passed on the first day  
156 of March, one thousand nine hundred thirty-five, applicable  
157 to the Tyler County Board of Education;

158 (8) Enrolled Committee Substitute for Senate Bill No.  
159 450, passed on the eleventh day of March, one thousand nine  
160 hundred ninety-four, applicable to the Upshur County Board  
161 of Education; and

162 (9) Enrolled House Bill No. 2994, passed on the  
163 thirteenth day of March, one thousand nine hundred  
164 eighty-seven, applicable to the Wood County Board of  
165 Education.

166 (h) Notwithstanding any provision of any special act set  
167 forth in subsection (g) of this section to the contrary, the  
168 county board of any county with a special act creating a  
169 library obligation out of the county's regular school levy  
170 revenues may transfer that library obligation so that it  
171 becomes a continuing obligation of its excess levy revenues  
172 instead of an obligation of its regular school levy revenues,  
173 subject to the following:

174 (1) If a county board chooses to transfer the library  
175 obligation pursuant to this subsection, the library funding  
176 obligation shall remain an obligation of the regular school  
177 levy revenues until the fiscal year in which the excess levy is  
178 effective or would have been effective if it had been passed  
179 by the voters;

180 (2) If a county board chooses to transfer the library  
181 obligation pursuant to this subsection, the county board shall  
182 include the funding of the public library obligation in the  
183 same amount as its library funding obligation which exists or  
184 had existed on its regular levy revenues as one of the  
185 purposes for the excess levy to be voted on as a specifically  
186 described line item of the excess levy: *Provided*, That if the  
187 county board has transferred the library obligation to the

188 excess levy and the excess levy fails to be passed by the  
189 voters or the excess levy passes and thereafter expires upon  
190 the time limit for continuation as set forth in section sixteen,  
191 article eight, chapter eleven of this code, then in any  
192 subsequent excess levy which the county board thereafter  
193 submits to the voters the library funding obligation again  
194 shall be included as one of the purposes of the subsequent  
195 excess levy as a specifically described line item of the excess  
196 levy;

197 (3) If a county board chooses to transfer the library  
198 obligation pursuant to this subsection, regardless of whether  
199 or not the excess levy passes, effective the fiscal year in  
200 which the excess levy is effective or would have been  
201 effective if it had been passed by the voters, a county's  
202 library obligation on its regular levy revenues is void  
203 notwithstanding any provision of the special acts set forth in  
204 subsection (g) of this section to the contrary; and

205 (4) Nothing in subdivision (3) of this subsection prohibits  
206 a county board from funding its public library obligation  
207 voluntarily.

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## CHAPTER 79

**(S.B. 297 - By Senators Tomblin, Mr. President, and Caruth)  
[By Request of the Executive]**

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[Passed March 7, 2008; in effect from passage.]  
[Approved by the Governor on March 27, 2008.]

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AN ACT to amend and reenact §18-9D-2, §18-9D-6, §18-9D-8,  
§18-9D-13 and §18-9D-15 of the Code of West Virginia, 1931,  
as amended; to amend said code by adding thereto a new  
section, designated §18-9D-4b; and to amend and reenact



§29-22-18a of said code, all relating generally to the School Building Authority; modifying definitions and qualifications of construction projects and major improvement projects; authorizing the School Building Authority to issue bonds by using moneys deposited in the Excess Lottery School Building Debt Service Fund from the State Excess Lottery Fund; providing that moneys from the State Excess Lottery Fund are deposited into the Excess Lottery School Building Debt Service Fund; and clarifying the powers of the authority in issuing bonds.

*Be it enacted by the Legislature of West Virginia:*

That §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-13 and §18-9D-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-9D-4b; and that §29-22-18a of said code be amended and reenacted, all to read as follows:

**Chapter**

**18. Education.**

**29. Miscellaneous Boards and Officers.**

**CHAPTER 18. EDUCATION.**

§18-9D-2. Definitions.

§18-9D-6. School Building Capital Improvements Fund in State Treasury; School Construction Fund in State Treasury; School Building Debt Service Fund in State Treasury; School Improvement Fund in State Treasury; collections to be paid into special funds; Excess Lottery School Building Debt Service Fund in State Treasury; authority to pledge the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

§18-9D-13. Sinking fund for payment of bonds.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

§18-9D-4b. School Building Authority authorized to issue bonds and pay debt service on bonds with funds distributed from State Excess Lottery Fund.

**ARTICLE 9D. SCHOOL BUILDING AUTHORITY.****\*§18-9D-2. Definitions.**

1 For the purposes of this article, unless a different  
2 meaning clearly appears from the context:

3 (1) "Authority" means the School Building Authority of  
4 West Virginia;

5 (2) "Bonds" means bonds issued by the authority  
6 pursuant to this article;

7 (3) "Construction project" means a project in the  
8 furtherance of a facilities plan with a cost greater than one  
9 million dollars for the new construction, expansion or major  
10 renovation of facilities, buildings and structures for school  
11 purposes, including:

12 (A) The acquisition of land for current or future use in  
13 connection with the construction project;

14 (B) New or substantial upgrading of existing equipment,  
15 machinery and furnishings;

16 (C) Installation of utilities and other similar items related  
17 to making the construction project operational;

18 (D) Construction project does not include such items as  
19 books, computers or equipment used for instructional  
20 purposes; fuel; supplies; routine utility services fees; routine  
21 maintenance costs; ordinary course of business  
22 improvements; other items which are customarily considered

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\*CLERK'S NOTE: This section was also amended by H.B. 4406 (Chapter 192),  
which passed subsequent to this act.

23 to result in a current or ordinary course of business operating  
24 charge or a major improvement project;

25 (4) "Cost of project" means the cost of construction,  
26 expansion, renovation, repair and safety upgrading of  
27 facilities, buildings and structures for school purposes; the  
28 cost of land, equipment, machinery, furnishings, installation  
29 of utilities and other similar items related to making the  
30 project operational; and the cost of financing, interest during  
31 construction, professional service fees and all other charges  
32 or expenses necessary, appurtenant or incidental to the  
33 foregoing, including the cost of administration of this article;

34 (5) "Facilities plan" means the ten-year countywide  
35 comprehensive educational facilities plan established by a  
36 county board in accordance with guidelines adopted by the  
37 authority to meet the goals and objectives of this article that:

38 (A) Addresses the existing school facilities and facility  
39 needs of the county to provide a thorough and efficient  
40 education in accordance with the provisions of this code and  
41 policies of the state board;

42 (B) Best serves the needs of individual students, the  
43 general school population and the communities served by the  
44 facilities;

45 (C) Includes the school major improvement plan;

46 (D) Includes the county board's school access safety plan  
47 required by section three, article nine-f of this chapter;

48 (E) Is updated annually to reflect projects completed,  
49 current enrollment projections and new or continuing needs;  
50 and

51 (F) Is approved by the state board and the authority prior  
52 to the distribution of state funds pursuant to this article to any  
53 county board or other entity applying for funds;

54 (6) "Project" means a construction project or a major  
55 improvement project;

56 (7) "Region" means the area encompassed within and  
57 serviced by a regional educational service agency established  
58 pursuant to section twenty-six, article two of this chapter;

59 (8) "Revenue" or "revenues" means moneys:

60 (A) Deposited in the School Building Capital  
61 Improvements Fund pursuant to section ten, article nine-a of  
62 this chapter;

63 (B) Deposited in the School Construction Fund pursuant  
64 to section thirty, article fifteen, chapter eleven of this code  
65 and section eighteen, article twenty-two, chapter twenty-nine  
66 of this code;

67 (C) Deposited in the School Building Debt Service Fund  
68 pursuant to section eighteen, article twenty-two, chapter  
69 twenty-nine of this code;

70 (D) Deposited in the School Major Improvement Fund  
71 pursuant to section thirty, article fifteen, chapter eleven of  
72 this code;

73 (E) Received, directly or indirectly, from any source for  
74 use in any project completed pursuant to this article;

75 (F) Received by the authority for the purposes of this  
76 article; and

77 (G) Deposited in the Excess Lottery School Building  
78 Debt Service Fund pursuant to section eighteen-a, article  
79 twenty-two, chapter twenty-nine of this code;

80 (9) "School major improvement plan" means a ten-year  
81 school maintenance plan that:

82 (A) Is prepared by a county board in accordance with the  
83 guidelines established by the authority and incorporated in its  
84 Countywide Comprehensive Educational Facilities Plan, or  
85 is prepared by the state board or the administrative council of  
86 an area vocational educational center in accordance with the  
87 guidelines if the entities seek funding from the authority for  
88 a major improvement project;

89 (B) Addresses the regularly scheduled maintenance for  
90 all school facilities of the county or under the jurisdiction of  
91 the entity seeking funding;

92 (C) Includes a projected repair and replacement schedule  
93 for all school facilities of the county or of the entity seeking  
94 funding;

95 (D) Addresses the major improvement needs of each  
96 school within the county or under the jurisdiction of the  
97 entity seeking funding; and

98 (E) Is required prior to the distribution of state funds for  
99 a major improvement project pursuant to this article to the  
100 county board, state board or administrative council; and

101 (10) "School major improvement project" means a project  
102 with a cost greater than fifty thousand dollars and less than  
103 one million dollars for the renovation, expansion, repair and  
104 safety upgrading of existing school facilities, buildings and  
105 structures, including the substantial repair or upgrading of  
106 equipment, machinery, building systems, utilities and other

107 similar items related to the renovation, repair or upgrading in  
108 the furtherance of a school major improvement plan. A  
109 major improvement project does not include such items as  
110 books, computers or equipment used for instructional  
111 purposes; fuel; supplies; routine utility services fees; routine  
112 maintenance costs; ordinary course of business  
113 improvements; or other items which are customarily  
114 considered to result in a current or ordinary course of  
115 business operating charge.

**§18-9D-4b. School Building Authority authorized to issue  
bonds and pay debt service on bonds with funds  
distributed from State Excess Lottery Fund.**

1 The School Building Authority is expressly authorized to  
2 issue bonds and pay debt service on bonds pursuant to the  
3 provisions of this article with funds distributed from the State  
4 Excess Lottery Fund under section eighteen-a, article twenty-  
5 two, chapter twenty-nine of this code and deposited into the  
6 Excess Lottery School Building Debt Service Fund.

**§18-9D-6. School Building Capital Improvements Fund in State  
Treasury; School Construction Fund in State  
Treasury; School Building Debt Service Fund in  
State Treasury; School Improvement Fund in State  
Treasury; collections to be paid into special funds;  
Excess Lottery School Building Debt Service Fund  
in State Treasury; authority to pledge the  
collections as security for refunding revenue  
bonds; authority to finance projects on a cash  
basis.**

1 (a) There is continued in the State Treasury a School  
2 Building Capital Improvements Fund to be expended by the  
3 authority as provided in this article. The School Building  
4 Capital Improvements Fund shall be an interest-bearing  
5 account with interest credited to and deposited in the School

6 Building Capital Improvements Fund and expended in  
7 accordance with the provisions of this article.

8 The School Building Authority may pledge all or any part  
9 of the revenues paid into the School Building Capital  
10 Improvements Fund that are needed to meet the requirements  
11 of any revenue bond issue or issues authorized by this article  
12 prior to the twentieth day of July, one thousand nine hundred  
13 ninety-three, or revenue bonds issued to refund revenue  
14 bonds issued prior to that date, including the payment of  
15 principal of, interest and redemption premium, if any, on the  
16 revenue bonds and the establishing and maintaining of a  
17 reserve fund or funds for the payment of the principal of,  
18 interest and redemption premium, if any, on the revenue bond  
19 issue or issues when other moneys pledged may be  
20 insufficient for the payment of the principal, interest and  
21 redemption premium, including any additional protective  
22 pledge of revenues that the authority in its discretion has  
23 provided by resolution authorizing the issuance of the bonds  
24 or in any trust agreement made in connection with the bond  
25 issue. Additionally, the authority may provide in the  
26 resolution and in the trust agreement for priorities on the  
27 revenues paid into the School Building Capital Improvements  
28 Fund that are necessary for the protection of the prior rights  
29 of the holders of bonds issued at different times under the  
30 provisions of this article.

31 Any balance remaining in the School Building Capital  
32 Improvements Fund after the authority has issued bonds  
33 authorized by this article and after the requirements of all  
34 funds, including reserve funds established in connection with  
35 the bonds issued prior to the twentieth day of July, one  
36 thousand nine hundred ninety-three, pursuant to this article  
37 have been satisfied may be used for the redemption of any of  
38 the outstanding bonds issued under this article which by their  
39 terms are then redeemable, or for the purchase of the bonds  
40 at the market price, but not exceeding the price, if any, at

41 which the bonds are in the same year redeemable and all  
42 bonds redeemed or purchased shall immediately be canceled  
43 and shall not again be issued.

44 The School Building Authority, in its discretion, may use  
45 the moneys in the School Building Capital Improvements  
46 Fund to finance the cost of projects authorized in accordance  
47 with the provisions of section sixteen of this article on a cash  
48 basis. Any pledge of moneys in the fund for revenue bonds  
49 issued prior to the twentieth day of July, one thousand nine  
50 hundred ninety-three, is a prior and superior charge on the  
51 fund over the use of any of the moneys in the fund to pay for  
52 the cost of any project on a cash basis: *Provided*, That any  
53 expenditures from the fund, other than for the retirement of  
54 revenue bonds, may only be made by the authority in  
55 accordance with the provisions of this article.

56 (b) There is continued in the State Treasury a special  
57 revenue fund named the School Building Debt Service Fund  
58 into which shall be deposited the amounts specified in section  
59 eighteen, article twenty-two, chapter twenty-nine of this  
60 code. All amounts deposited in the fund shall be pledged to  
61 the repayment of the principal, interest and redemption  
62 premium, if any, on any revenue bonds or refunding revenue  
63 bonds authorized by this article for which moneys deposited  
64 in the School Building Debt Service Fund have been pledged  
65 by the authority: *Provided*, That deposited moneys may not  
66 be pledged to the repayment of any revenue bonds issued  
67 prior to the first day of January, one thousand nine hundred  
68 ninety-four, or with respect to revenue bonds issued for the  
69 purpose of refunding revenue bonds issued prior to the first  
70 day of January, one thousand nine hundred ninety-four.  
71 Additionally, the authority may provide in the resolution and  
72 in the trust agreement for priorities on the revenues paid into  
73 the School Building Debt Service Fund that are necessary for  
74 the protection of the prior rights of the holders of bonds  
75 issued at different times under the provisions of this article.



76 On or prior to the first day of May of each year, the authority  
77 shall certify to the State Lottery Director the principal and  
78 interest and coverage ratio requirements for the following  
79 fiscal year on any revenue bonds issued on or after the first  
80 day of January, one thousand nine hundred ninety-four, and  
81 for which moneys deposited in the School Building Debt  
82 Service Fund have been pledged, or will be pledged, for  
83 repayment pursuant to this section.

84 After the authority has issued bonds authorized by this  
85 article for which moneys deposited in the School Building  
86 Debt Service Fund have been pledged and after the  
87 requirements of all funds have been satisfied, including  
88 coverage and reserve funds established in connection with the  
89 bonds issued pursuant to this article, any balance remaining  
90 in the School Building Debt Service Fund may be used for  
91 the redemption of any of the outstanding bonds issued under  
92 this article, for which moneys deposited in the School  
93 Building Debt Service Fund have been pledged, which, by  
94 their terms, are then redeemable or for the purchase of the  
95 outstanding bonds at the market price, but not to exceed the  
96 price, if any, at which the bonds are redeemable and all bonds  
97 redeemed or purchased shall be immediately canceled and  
98 shall not again be issued: *Provided*, That after the authority  
99 has issued bonds authorized by this article and after the  
100 requirements of debt service and all associated funds have  
101 been satisfied for the fiscal year for which moneys deposited  
102 in the School Building Debt Service Fund have been pledged,  
103 including coverage and reserve funds established in  
104 connection with the bonds issued pursuant to this article, any  
105 remaining balance in the School Building Debt Service Fund  
106 may be transferred to the School Construction Fund created  
107 in subsection (c) of this section and used by the School  
108 Building Authority in its discretion to finance the cost of  
109 school construction or improvement projects authorized in  
110 accordance with the provisions of section sixteen of this  
111 article on a cash basis.

112 (c) There is continued in the State Treasury a special  
113 revenue fund named the School Construction Fund into  
114 which shall be deposited the amounts specified in section  
115 thirty, article fifteen, chapter eleven of this code, together  
116 with any moneys appropriated to the fund by the Legislature:  
117 *Provided*, That for the school year beginning the first day of  
118 July, two thousand four, only, funds from the excess lottery  
119 allocated in section eighteen-a, article twenty-two, chapter  
120 twenty-nine of this code shall not be transferred to the School  
121 Construction Fund and, in lieu thereof, made available for  
122 legislative appropriation: *Provided, however*, That for the  
123 school year beginning the first day of July, two thousand  
124 four, only, up to five million dollars of the amounts in the  
125 fund may be appropriated by the Legislature for budget  
126 shortfalls.

127 Expenditures from the School Construction Fund shall be  
128 for the purposes set forth in this article, including lease-  
129 purchase payments under agreements made pursuant to  
130 subsection (e), section fifteen of this article and section nine,  
131 article five of this chapter and are authorized from collections  
132 in accordance with the provisions of article three, chapter  
133 twelve of this code and from other revenues annually  
134 appropriated by the Legislature from lottery revenues as  
135 authorized by section eighteen, article twenty-two, chapter  
136 twenty-nine of this code pursuant to the provisions set forth  
137 in article two, chapter five-a of this code. Amounts collected  
138 which are found, from time to time, to exceed the funds  
139 needed for purposes set forth in this article may be  
140 transferred to other accounts or funds and redesignated for  
141 other purposes by appropriation of the Legislature. The  
142 School Construction Fund shall be an interest-bearing  
143 account, with the interest credited to and deposited in the  
144 School Construction Fund and expended in accordance with  
145 the provisions of this article. Deposits to and expenditures  
146 from the School Construction Fund are subject to the  
147 provisions of subsection (k), section fifteen of this article.

148 (d) There is continued in the State Treasury a special  
149 revenue fund named the School Major Improvement Fund  
150 into which shall be deposited the amounts specified in section  
151 thirty, article fifteen, chapter eleven of this code, together  
152 with any moneys appropriated to the fund by the Legislature.  
153 Expenditures from the School Major Improvement Fund shall  
154 be for the purposes set forth in this article and are authorized  
155 from collections in accordance with the provisions of article  
156 three, chapter twelve of this code and from other revenues  
157 annually appropriated by the Legislature from lottery  
158 revenues as authorized by section eighteen, article  
159 twenty-two, chapter twenty-nine of this code pursuant to the  
160 provisions set forth in article two, chapter five-a of this code.  
161 Amounts collected which are found, from time to time, to  
162 exceed the funds needed for purposes set forth in this article  
163 may be transferred to other accounts or funds and  
164 redesignated for other purposes by appropriation of the  
165 Legislature. The School Major Improvement Fund shall be  
166 an interest-bearing account, with interest being credited to  
167 and deposited in the School Major Improvement Fund and  
168 expended in accordance with the provisions of this article.

169 (e) There is created in the State Treasury a special  
170 revenue fund named the Excess Lottery School Building  
171 Debt Service Fund into which shall be deposited the amounts  
172 specified in section eighteen-a, article twenty-two, chapter  
173 twenty-nine of this code. All amounts deposited in the fund  
174 shall be pledged, as designated by the authority, to the  
175 repayment of the principal, interest and redemption premium,  
176 if any, on revenue bonds or refunding revenue bonds  
177 authorized by section four-b of this article. On or prior to the  
178 first day of May of each year, the authority shall certify to the  
179 State Lottery Director the principal and interest and coverage  
180 ratio requirements for the following fiscal year on any  
181 revenue bonds issued for which moneys deposited in the  
182 Excess Lottery School Building Debt Service Fund have been  
183 pledged, or will be pledged, for repayment pursuant to this  
184 section.

185       After the authority has issued bonds authorized by this  
186 article for which moneys deposited in the Excess Lottery  
187 School Building Debt Service Fund have been pledged and  
188 after the requirements of all funds have been satisfied,  
189 including coverage and reserve funds established in  
190 connection with the bonds issued pursuant to this article, any  
191 balance remaining in the Excess Lottery School Building  
192 Debt Service Fund may be used for the redemption of any of  
193 the outstanding bonds issued under this article, for which  
194 moneys deposited in the Excess Lottery School Building  
195 Debt Service Fund have been pledged, which, by their terms,  
196 are then redeemable or for the purchase of the outstanding  
197 bonds at the market price, but not to exceed the price, if any,  
198 at which the bonds are redeemable and all bonds redeemed or  
199 purchased shall be immediately canceled and shall not again  
200 be issued: *Provided*, That after the authority has issued bonds  
201 authorized by this article and after the requirements of debt  
202 service and all associated funds have been satisfied for the  
203 fiscal year, including coverage and reserve funds established  
204 in connection with the bonds issued pursuant to this article  
205 for which moneys deposited in the Excess Lottery School  
206 Building Debt Service Fund have been pledged, any  
207 remaining balance in the Excess Lottery School Building  
208 Debt Service Fund may be transferred to the School  
209 Construction Fund created in subsection (c) of this section  
210 and used by the School Building Authority in its discretion to  
211 finance the cost of school construction or improvement  
212 projects authorized in accordance with the provisions of  
213 section sixteen of this article on a cash basis.

214       (f) The Legislature finds and declares that the Supreme  
215 Court of Appeals of West Virginia has held that the issuance  
216 of additional revenue bonds authorized under the School  
217 Building Authority Act, as enacted in this article prior to the  
218 twentieth day of July, one thousand nine hundred ninety-  
219 three, constituted an indebtedness of the state in violation of  
220 section four, article X of the Constitution of West Virginia,

221 but that revenue bonds issued under this article prior to the  
222 twentieth day of July, one thousand nine hundred ninety-  
223 three, are not invalid.

224 The Legislature further finds and declares that the  
225 financial capacity of a county to construct, lease and improve  
226 school facilities depends upon the county's bonding capacity  
227 (local property wealth), voter willingness to pass bond issues  
228 and the county's ability to reallocate other available county  
229 funds instead of criteria related to educational needs or upon  
230 the ability of the School Building Authority created in this  
231 article to issue bonds that comply with the holding of the  
232 West Virginia Supreme Court of Appeals or otherwise assist  
233 counties with the financing of facilities construction and  
234 improvement. The Legislature further finds and declares that  
235 this section, as well as section eighteen, article twenty-two,  
236 chapter twenty-nine of this code, had been reenacted during  
237 the first extraordinary session of the West Virginia  
238 Legislature in the year one thousand nine hundred ninety-four  
239 in an attempt to comply with the holding of the Supreme  
240 Court of Appeals of West Virginia.

241 The Legislature further finds and declares that it intends,  
242 through the reenactment of this section and section eighteen,  
243 article twenty-two, chapter twenty-nine of this code, to  
244 dedicate a source of state revenues to special revenue funds  
245 for the purposes of paying the debt service on bonds and  
246 refunding bonds issued subsequent to the first day of January,  
247 one thousand nine hundred ninety-four, the proceeds of  
248 which will be used for the construction and improvement of  
249 school building facilities. The Legislature further finds and  
250 declares that it intends, through the reenactment of this  
251 section and section thirty, article fifteen, chapter eleven of  
252 this code and section eighteen, article twenty-two, chapter  
253 twenty-nine of this code, to appropriate revenues to two  
254 special revenue funds for the purposes of construction and  
255 improvement of school building facilities. Furthermore, the

256 Legislature intends to encourage county boards to maintain  
257 existing levels of county funding for construction,  
258 improvement and maintenance of school building facilities  
259 and to generate additional county funds for those purposes  
260 through bonds and special levies whenever possible. The  
261 Legislature further encourages the School Building  
262 Authority, the state board and county boards of education to  
263 propose uniform project specifications for comparable  
264 projects whenever possible to meet county needs at the  
265 lowest possible cost.

266 The Legislature further finds and declares that it intends,  
267 through the reenactment of this section and section eighteen,  
268 article twenty-two, chapter twenty-nine of this code, to  
269 comply with the provisions of sections four and six, article X  
270 of the Constitution of West Virginia; and section one, article  
271 XII of said constitution.

**§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.**

1 (a) The maximum aggregate face value of bonds that may  
2 be issued by the authority, for which the moneys in the  
3 School Building Debt Service Fund or the Excess Lottery  
4 School Building Debt Service Fund are to be pledged, is  
5 five hundred million dollars. The issuance of revenue bonds  
6 under the provisions of this article shall be authorized, from  
7 time to time, by resolution or resolutions of the School  
8 Building Authority which shall set forth the proposed  
9 projects authorized in accordance with the provisions of  
10 section sixteen of this article and provide for the issuance of  
11 bonds in amounts sufficient, when sold as provided in this  
12 section, to provide moneys considered sufficient by the  
13 authority to pay the costs, less the amounts of any other funds  
14 available for the costs or from any appropriation, grant or gift  
15 for the costs: *Provided*, That bond issues from which bond  
16 revenues are to be distributed in accordance with section  
17 fifteen of this article for projects authorized pursuant to the

18 provisions of section sixteen of this article are not required to  
19 set forth the proposed projects in the resolution. The  
20 resolution shall prescribe the rights and duties of the  
21 bondholders and the School Building Authority and, for that  
22 purpose, may prescribe the form of the trust agreement  
23 referred to in this section. The bonds may be issued, from  
24 time to time, in such amounts; shall be of such series; bear  
25 such date or dates; mature at such time or times not  
26 exceeding forty years from their respective dates; bear  
27 interest at such rate or rates; be in such denominations; be in  
28 such form, either coupon or registered, carrying such  
29 registration, exchangeability and interchangeability  
30 privileges; be payable in such medium of payment and at  
31 such place or places within or without the state; be subject to  
32 such terms of redemption at such prices not exceeding one  
33 hundred five percent of the principal amount of the bonds;  
34 and be entitled to such priorities on the revenues paid into the  
35 fund pledged for repayment of the bonds as may be provided  
36 in the resolution authorizing the issuance of the bonds or in  
37 any trust agreement made in connection with the bonds:  
38 *Provided, however,* That revenue bonds issued on or after the  
39 first day of January, one thousand nine hundred ninety-four,  
40 and prior to the first day of January, two thousand eight,  
41 which are secured by lottery proceeds from section eighteen  
42 article twenty-two, chapter twenty-nine of this code shall  
43 mature at such time or times not exceeding ten years from  
44 their respective dates: *Provided further,* That revenue bonds  
45 issued on or after the first day of January, two thousand eight,  
46 which are secured by lottery proceeds from section eighteen  
47 or eighteen-a, article twenty-two, chapter twenty-nine of this  
48 code, shall mature at such time or times not exceeding twenty  
49 years from their respective dates.

50 (b) The bonds shall be signed by the Governor, and by  
51 the president or vice president of the authority, under the  
52 great seal of the state, attested by the Secretary of State, and  
53 the coupons attached to the bonds shall bear the facsimile

54 signature of the president or vice president of the authority.  
55 In case any of the officers whose signatures appear on the  
56 bonds or coupons cease to be officers before the delivery of  
57 the bonds, the signatures shall nevertheless be valid and  
58 sufficient for all purposes the same as if the officers had  
59 remained in office until the delivery. The revenue bonds  
60 shall be sold in the manner determined by the authority to be  
61 for the best interests of the state.

62 (c) Any pledge of revenues made by the School Building  
63 Authority for revenue bonds issued prior to the twentieth day  
64 of July, one thousand nine hundred ninety-three, pursuant to  
65 this article is valid and binding between the parties from the  
66 time the pledge is made; and the revenues pledged shall  
67 immediately be subject to the lien of the pledge without any  
68 further physical delivery of the revenues pledged or further  
69 act. The lien of the pledge is valid and binding against all  
70 parties having claims of any kind in tort, contract or  
71 otherwise, irrespective of whether the parties have notice of  
72 the lien of the pledge and the pledge shall be a prior and  
73 superior charge over any other use of the revenues pledged.

74 (d) The proceeds of any bonds shall be used solely for the  
75 purpose or purposes as may be generally or specifically set  
76 forth in the resolution authorizing those bonds and shall be  
77 disbursed in the manner and with the restrictions, if any, that  
78 the authority provides in the resolution authorizing the  
79 issuance of the bonds or in the trust agreement referred to in  
80 this section securing the bonds. If the proceeds of the bonds,  
81 by error in calculations or otherwise, are less than the cost of  
82 any projects specifically set forth in the resolution, additional  
83 bonds may in like manner be issued to provide the amount of  
84 the deficiency; and unless otherwise provided for in the  
85 resolution or trust agreement hereinafter mentioned, the  
86 additional bonds shall be considered to be of the same issue  
87 and are entitled to payment from the same fund, without  
88 preference or priority, as the bonds before issued for the



89 projects. If the proceeds of bonds issued for the projects  
90 specifically set forth in the resolution authorizing the bonds  
91 issued by the authority exceed the cost of the bonds, the  
92 surplus may be used for any other projects authorized in  
93 accordance with the provisions of section sixteen of this  
94 article or in any other manner that the resolution authorizing  
95 the bonds provides. Prior to the preparation of definitive  
96 bonds, the authority may, under like restrictions, issue  
97 temporary bonds with or without coupons, exchangeable for  
98 definitive bonds upon the issuance of the definitive bonds.

99 (e) After the issuance of any revenue bonds, the revenues  
100 pledged for the revenue bonds shall not be reduced as long as  
101 any of the revenue bonds are outstanding and unpaid except  
102 under the terms, provisions and conditions that are contained  
103 in the resolution, trust agreement or other proceedings under  
104 which the revenue bonds were issued.

105 (f) The revenue bonds and the revenue refunding bonds  
106 and bonds issued for combined purposes, together with the  
107 interest on the bonds, are exempt from all taxation by the  
108 State of West Virginia, or by any county, school district,  
109 municipality or political subdivision thereof.

110 (g) To meet the operational costs of the School Building  
111 Authority, the School Building Authority may transfer to a  
112 special revenue account in the State Treasury interest on any  
113 debt service reserve funds created within any resolution  
114 authorizing the issue of bonds or any trust agreement made  
115 in connection with the bonds for expenditure in accordance  
116 with legislative appropriation or allocation of appropriation.

117 (h) Any school construction bonds issued under this  
118 section shall be issued on parity with any existing School  
119 Building Authority bonds previously issued under this article.

**§18-9D-13. Sinking fund for payment of bonds.**

1 (a) From the School Building Capital Improvements  
2 Fund the School Building Authority shall make periodic  
3 payments in an amount sufficient to meet the requirements of  
4 any issue of bonds sold under the provisions of this article  
5 prior to the first day of January, one thousand nine hundred  
6 ninety-four, or for refunding bonds issued prior to that date  
7 as may be specified in the resolution of the authority  
8 authorizing the issue thereof and in any trust agreement  
9 entered into in connection therewith. The payments so made  
10 shall be placed as specified in such resolution or trust  
11 agreement in a special sinking fund which is hereby pledged  
12 to and charged with the payment of the principal of the bonds  
13 of such issue and the interest thereon, and to the redemption  
14 or repurchase of such bonds, such sinking fund to be a fund  
15 for all bonds of such issue without distinction or priority of  
16 one over another, except as may be provided in the resolution  
17 authorizing such issue of bonds. The moneys in the special  
18 sinking fund, less such reserve for payment of principal and  
19 interest and redemption premium, if any, as may be required  
20 by the resolution of the School Building Authority,  
21 authorizing the issue or any trust agreement made in  
22 connection therewith, may be used for the redemption of any  
23 of the outstanding bonds payable from such fund which by  
24 their terms are then redeemable, or for the purchase of bonds  
25 at the market price, but not exceeding the price, if any, at  
26 which such bonds shall in the same year be redeemable; and  
27 all bonds redeemed or purchased shall forthwith be canceled  
28 and shall not again be issued.

29 (b) From the School Building Debt Service Fund or the  
30 Excess Lottery School Building Debt Service Fund, the  
31 authority shall make periodic payments in an amount  
32 sufficient to meet the requirements of any issue of bonds sold  
33 under the provisions of this article on or after the first day of  
34 January, one thousand nine hundred ninety-four, and for  
35 which the authority has pledged revenues in such fund for the  
36 payment of such bonds, as may be specified in the resolution

37 of the authority authorizing the issue thereof or in any trust  
38 agreement entered into in connection therewith. The  
39 payments so made shall be placed as specified in the  
40 resolution or trust agreement in a special sinking fund which  
41 is hereby pledged to and charged with the payment of the  
42 principal of the bonds of the issue and the interest thereon,  
43 and to the redemption or repurchase of the bonds, the sinking  
44 fund to be a fund for all bonds of the particular issue without  
45 distinction or priority of one over another, except as may be  
46 provided in the resolution authorizing the issuance of the  
47 bonds. The moneys in the special sinking fund, less the  
48 reserve for payment of principal and interest and redemption  
49 premium, if any, as may be required by the resolution of the  
50 School Building Authority authorizing the issue or any trust  
51 agreement made in connection therewith, may be used for  
52 redemption of any of the outstanding bonds payable from the  
53 fund which by their terms are then redeemable, or for the  
54 purchase of bonds at the market price, but not exceeding the  
55 price, if any, at which such bonds shall in the same year be  
56 redeemable; and all bonds redeemed or purchased shall  
57 forthwith be canceled and shall not again be issued.

**§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.**

1 (a) It is the intent of the Legislature to empower the  
2 School Building Authority to facilitate and provide state  
3 funds and to administer all federal funds provided for the  
4 construction and major improvement of school facilities so as  
5 to meet the educational needs of the people of this state in an  
6 efficient and economical manner. The authority shall make

7 funding determinations in accordance with the provisions of  
8 this article and shall assess existing school facilities and each  
9 facility's school major improvement plan in relation to the  
10 needs of the individual student, the general school  
11 population, the communities served by the facilities and  
12 facility needs statewide.

13 (b) An amount that is not more than three percent of the  
14 sum of moneys that are determined by the authority to be  
15 available for distribution during the then current fiscal year  
16 from:

17 (1) Moneys paid into the School Building Capital  
18 Improvements Fund pursuant to section ten, article nine-a of  
19 this chapter;

20 (2) The issuance of revenue bonds for which moneys in  
21 the School Building Debt Service Fund or the Excess Lottery  
22 School Building Debt Service Fund are pledged as security;

23 (3) Moneys paid into the School Construction Fund  
24 pursuant to section six of this article; and

25 (4) Any other moneys received by the authority, except  
26 moneys paid into the School Major Improvement Fund  
27 pursuant to section six of this article and moneys deposited  
28 into the School Access Safety Fund pursuant to section five,  
29 article nine-f of this chapter, may be allocated and may be  
30 expended by the authority for projects authorized in  
31 accordance with the provisions of section sixteen of this  
32 article that service the educational community statewide or,  
33 upon application by the state board, for educational programs  
34 that are under the jurisdiction of the state board. In addition,  
35 upon application by the state board or the administrative  
36 council of an area vocational educational center established  
37 pursuant to article two-b of this chapter, the authority may  
38 allocate and expend under this subsection moneys for school

39 major improvement projects authorized in accordance with  
40 the provisions of section sixteen of this article proposed by  
41 the state board or an administrative council for school  
42 facilities under the direct supervision of the state board or an  
43 administrative council, respectively. Furthermore, upon  
44 application by a county board, the authority may allocate and  
45 expend under this subsection moneys for school major  
46 improvement projects for vocational programs at  
47 comprehensive high schools, vocational schools cooperating  
48 with community and technical college programs, or both.  
49 Each county board is encouraged to cooperate with  
50 community and technical colleges in the use of existing or  
51 development of new vocational technical facilities. All  
52 projects eligible for funds from this subsection shall be  
53 submitted directly to the authority which shall be solely  
54 responsible for the project's evaluation, subject to the  
55 following:

56 (A) The authority may not expend any moneys for a  
57 school major improvement project proposed by the state  
58 board or the administrative council of an area vocational  
59 educational center unless the state board or an administrative  
60 council has submitted a ten-year facilities plan; and

61 (B) The authority shall, before allocating any moneys to  
62 the state board or the administrative council of an area  
63 vocational educational center for a school improvement  
64 project, consider all other funding sources available for the  
65 project.

66 (c) An amount that is not more than two percent of the  
67 moneys that are determined by the authority to be available  
68 for distribution during the current fiscal year from:

69 (1) Moneys paid into the School Building Capital  
70 Improvements Fund pursuant to section ten, article nine-a of  
71 this chapter;

72 (2) The issuance of revenue bonds for which moneys in  
73 the School Building Debt Service Fund or the Excess Lottery  
74 School Building Debt Service Fund are pledged as security;

75 (3) Moneys paid into the School Construction Fund  
76 pursuant to section six of this article; and

77 (4) Any other moneys received by the authority, except  
78 moneys deposited into the School Major Improvement Fund  
79 and moneys deposited into the School Access Safety Fund  
80 pursuant to section five, article nine-f of this chapter, shall be  
81 set aside by the authority as an emergency fund to be  
82 distributed in accordance with the guidelines adopted by the  
83 authority.

84 (d) An amount that is not more than five percent of the  
85 moneys that are determined by the authority to be available  
86 for distribution during the current fiscal year from:

87 (1) Moneys paid into the School Building Capital  
88 Improvements Fund pursuant to section ten, article nine-a of  
89 this chapter;

90 (2) The issuance of revenue bonds for which moneys in  
91 the School Building Debt Service Fund or the Excess Lottery  
92 School Building Debt Service Fund are pledged as security;

93 (3) Moneys paid into the School Construction Fund  
94 pursuant to section six of this article; and

95 (4) Any other moneys received by the authority, except  
96 moneys deposited into the School Major Improvement Fund  
97 and moneys deposited into the School Access Safety Fund  
98 pursuant to section five, article nine-f of this chapter, may be  
99 reserved by the authority for multiuse vocational-technical  
100 education facilities projects that may include post-secondary  
101 programs as a first priority use. The authority may allocate

102 and expend under this subsection moneys for any purposes  
103 authorized in this article on multiuse vocational-technical  
104 education facilities projects, including equipment and  
105 equipment updates at the facilities, authorized in accordance  
106 with the provisions of section sixteen of this article. If the  
107 projects approved under this subsection do not require the  
108 full amount of moneys reserved, moneys above the amount  
109 required may be allocated and expended in accordance with  
110 other provisions of this article. A county board, the state  
111 board, an administrative council or the joint administrative  
112 board of a vocational-technical education facility which  
113 includes post-secondary programs may propose projects for  
114 facilities or equipment, or both, which are under the direct  
115 supervision of the respective body: *Provided*, That the  
116 authority shall, before allocating any moneys for a project  
117 under this subsection, consider all other funding sources  
118 available for the project.

119 (e) The remaining moneys determined by the authority to  
120 be available for distribution during the then current fiscal  
121 year from:

122 (1) Moneys paid into the School Building Capital  
123 Improvements Fund pursuant to section ten, article nine-a of  
124 this chapter;

125 (2) The issuance of revenue bonds for which moneys in  
126 the School Building Debt Service Fund or the Excess Lottery  
127 School Building Debt Service Fund are pledged as security;

128 (3) Moneys paid into the School Construction Fund  
129 pursuant to section six of this article; and

130 (4) Any other moneys received by the authority, except  
131 moneys deposited into the School Major Improvement Fund  
132 and moneys deposited into the School Access Safety Fund  
133 pursuant to section five, article nine-f of this chapter, shall be  
134 allocated and expended on the basis of need and efficient use

135 of resources for projects funded in accordance with the  
136 provisions of section sixteen of this article.

137 (f) If a county board proposes to finance a project that is  
138 authorized in accordance with section sixteen of this article  
139 through a lease with an option to purchase leased premises  
140 upon the expiration of the total lease period pursuant to an  
141 investment contract, the authority may not allocate moneys  
142 to the county board in connection with the project: *Provided,*  
143 That the authority may transfer moneys to the state board  
144 which, with the authority, shall lend the amount transferred  
145 to the county board to be used only for a one-time payment  
146 due at the beginning of the lease term, made for the purpose  
147 of reducing annual lease payments under the investment  
148 contract, subject to the following conditions:

149 (1) The loan shall be secured in the manner required by  
150 the authority, in consultation with the state board, and shall  
151 be repaid in a period and bear interest at a rate as determined  
152 by the state board and the authority and shall have any terms  
153 and conditions that are required by the authority, all of which  
154 shall be set forth in a loan agreement among the authority, the  
155 state board and the county board;

156 (2) The loan agreement shall provide for the state board  
157 and the authority to defer the payment of principal and  
158 interest upon any loan made to the county board during the  
159 term of the investment contract, and annual renewals of the  
160 investment contract, among the state board, the authority, the  
161 county board and a lessor, subject to the following:

162 (A) In the event a county board which has received a loan  
163 from the authority for a one-time payment at the beginning of  
164 the lease term does not renew the lease annually until  
165 performance of the investment contract in its entirety is  
166 completed, the county board is in default and the principal of  
167 the loan, together with all unpaid interest accrued to the date  
168 of the default, shall, at the option of the authority, in



169 consultation with the state board, become due and payable  
170 immediately or subject to renegotiation among the state  
171 board, the authority and the county board;

172 (B) If a county board renews the lease annually through  
173 the performance of the investment contract in its entirety, the  
174 county board shall exercise its option to purchase the leased  
175 premises;

176 (C) The failure of the county board to make a scheduled  
177 payment pursuant to the investment contract constitutes an  
178 event of default under the loan agreement;

179 (D) Upon a default by a county board, the principal of the  
180 loan, together with all unpaid interest accrued to the date of  
181 the default, shall, at the option of the authority, in  
182 consultation with the state board, become due and payable  
183 immediately or subject to renegotiation among the state  
184 board, the authority and the county board; and

185 (E) If the loan becomes due and payable immediately, the  
186 authority, in consultation with the state board, shall use all  
187 means available under the loan agreement and law to collect  
188 the outstanding principal balance of the loan, together with  
189 all unpaid interest accrued to the date of payment of the  
190 outstanding principal balance; and

191 (3) The loan agreement shall provide for the state board  
192 and the authority to forgive all principal and interest of the  
193 loan upon the county board purchasing the leased premises  
194 pursuant to the investment contract and performance of the  
195 investment contract in its entirety.

196 (g) To encourage county boards to proceed promptly with  
197 facilities planning and to prepare for the expenditure of any  
198 state moneys derived from the sources described in this  
199 section, any county board or other entity to whom moneys  
200 are allocated by the authority that fails to expend the money

201 within three years of the allocation shall forfeit the allocation  
202 and thereafter is ineligible for further allocations pursuant to  
203 this section until it is ready to expend funds in accordance  
204 with an approved facilities plan: *Provided*, That the authority  
205 may authorize an extension beyond the three-year forfeiture  
206 period not to exceed an additional two years. Any amount  
207 forfeited shall be added to the total funds available in the  
208 School Construction Fund of the authority for future  
209 allocation and distribution. Funds may not be distributed for  
210 any project under this article unless the responsible entity has  
211 a facilities plan approved by the state board and the School  
212 Building Authority and is prepared to commence expenditure  
213 of the funds during the fiscal year in which the moneys are  
214 distributed.

215 (h) The remaining moneys that are determined by the  
216 authority to be available for distribution during the then  
217 current fiscal year from moneys paid into the School Major  
218 Improvement Fund pursuant to section six of this article shall  
219 be allocated and distributed on the basis of need and efficient  
220 use of resources for projects authorized in accordance with  
221 the provisions of section sixteen of this article, subject to the  
222 following:

223 (1) The moneys may not be distributed for any project  
224 under this section unless the responsible entity has a facilities  
225 plan approved by the state board and the authority and is to  
226 commence expenditures of the funds during the fiscal year in  
227 which the moneys are distributed;

228 (2) Any moneys allocated to a project and not distributed  
229 for that project shall be deposited in an account to the credit  
230 of the project, the principal amount to remain to the credit of  
231 and available to the project for a period of two years; and

232 (3) Any moneys which are unexpended after a two-year  
233 period shall be redistributed on the basis of need from the  
234 School Major Improvement Fund in that fiscal year.

235 (i) Local matching funds may not be required under the  
236 provisions of this section. However, this article does not  
237 negate the responsibilities of the county boards to maintain  
238 school facilities. To be eligible to receive an allocation of  
239 school major improvement funds from the authority, a county  
240 board must have expended in the previous fiscal year an  
241 amount of county moneys equal to or exceeding the lowest  
242 average amount of money included in the county board's  
243 maintenance budget over any three of the previous five years  
244 and must have budgeted an amount equal to or greater than  
245 the average in the current fiscal year: *Provided*, That the state  
246 board shall promulgate rules relating to county boards'  
247 maintenance budgets, including items which shall be  
248 included in the budgets.

249 (j) Any county board may use moneys provided by the  
250 authority under this article in conjunction with local funds  
251 derived from bonding, special levy or other sources.  
252 Distribution to a county board, or to the state board or the  
253 administrative council of an area vocational educational  
254 center pursuant to subsection (b) of this section, may be in a  
255 lump sum or in accordance with a schedule of payments  
256 adopted by the authority pursuant to guidelines adopted by  
257 the authority.

258 (k) Funds in the School Construction Fund shall first be  
259 transferred and expended as follows:

260 (1) Any funds deposited in the School Construction Fund  
261 shall be expended first in accordance with an appropriation  
262 by the Legislature.

263       (2) To the extent that funds are available in the School  
264 Construction Fund in excess of that amount appropriated in  
265 any fiscal year, the excess funds may be expended for  
266 projects authorized in accordance with the provisions of  
267 section sixteen of this article.

268       (l) It is the intent of the Legislature to encourage county  
269 boards to explore and consider arrangements with other  
270 counties that may facilitate the highest and best use of all  
271 available funds, which may result in improved transportation  
272 arrangements for students or which otherwise may create  
273 efficiencies for county boards and the students. In order to  
274 address the intent of the Legislature contained in this  
275 subsection, the authority shall grant preference to those  
276 projects which involve multicounty arrangements as the  
277 authority shall determine reasonable and proper.

278       (m) County boards shall submit all designs for  
279 construction of new school buildings to the School Building  
280 Authority for review and approval prior to preparation of  
281 final bid documents. A vendor who has been debarred  
282 pursuant to the provisions of sections thirty-three-a through  
283 thirty-three-f, inclusive, article three, chapter five-a of this  
284 code may not bid on or be awarded a contract under this  
285 section.

286       (n) The authority may elect to disburse funds for  
287 approved construction projects over a period of more than  
288 one year subject to the following:

289       (1) The authority may not approve the funding of a  
290 school construction project over a period of more than three  
291 years;

292       (2) The authority may not approve the use of more than  
293 fifty percent of the revenue available for distribution in any  
294 given fiscal year for projects that are to be funded over a  
295 period of more than one year; and

296 (3) In order to encourage local participation in funding  
297 school construction projects, the authority may set aside  
298 limited funding, not to exceed five hundred thousand dollars,  
299 in reserve for one additional year to provide a county the  
300 opportunity to complete financial planning for a project prior  
301 to the allocation of construction funds. Any funding shall be  
302 on a reserve basis and converted to a part of the construction  
303 grant only after all project budget funds have been secured  
304 and all county commitments have been fulfilled. Failure of  
305 the county to solidify the project budget and meet its  
306 obligations to the state within eighteen months of the date the  
307 funding is set aside by the authority will result in expiration  
308 of the reserve and the funds shall be reallocated by the  
309 authority in the succeeding funding cycle.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 22. STATE LOTTERY ACT.**

#### **§29-22-18a. State Excess Lottery Revenue Fund.**

1 (a) There is continued a special revenue fund within the  
2 State Lottery Fund in the State Treasury which is designated  
3 and known as the State Excess Lottery Revenue Fund. The  
4 fund consists of all appropriations to the fund and all interest  
5 earned from investment of the fund and any gifts, grants or  
6 contributions received by the fund. All revenues received  
7 under the provisions of sections ten-b and ten-c, article  
8 twenty-two-a of this chapter and under article twenty-two-b  
9 of this chapter, except the amounts due the commission under  
10 subdivision (1), subsection (a), section one thousand four  
11 hundred eight, article twenty-two-b of this chapter, shall be  
12 deposited in the State Treasury and placed into the State  
13 Excess Lottery Revenue Fund. The revenue shall be  
14 disbursed in the manner provided in this section for the  
15 purposes stated in this section and shall not be treated by the

16 Auditor and the State Treasurer as part of the general revenue  
17 of the state.

18 (b) For the fiscal year beginning the first day of July, two  
19 thousand two, the commission shall deposit: (1) Sixty-five  
20 million dollars into the subaccount of the State Excess  
21 Lottery Revenue Fund hereby created in the State Treasury  
22 to be known as the General Purpose Account to be expended  
23 pursuant to appropriation of the Legislature; (2) ten million  
24 dollars into the Education Improvement Fund for  
25 appropriation by the Legislature to the PROMISE  
26 Scholarship Fund created in section seven, article seven,  
27 chapter eighteen-c of this code; (3) nineteen million dollars  
28 into the Economic Development Project Fund created in  
29 subsection (d) of this section for the issuance of revenue  
30 bonds and to be spent in accordance with the provisions of  
31 said subsection; (4) twenty million dollars into the School  
32 Building Debt Service Fund created in section six, article  
33 nine-d, chapter eighteen of this code for the issuance of  
34 revenue bonds; (5) forty million dollars into the West  
35 Virginia Infrastructure Fund created in section nine, article  
36 fifteen-a, chapter thirty-one of this code to be spent in  
37 accordance with the provisions of said article; (6) ten million  
38 dollars into the Higher Education Improvement Fund for  
39 Higher Education; and (7) five million dollars into the State  
40 Park Improvement Fund for Park Improvements. For the  
41 fiscal year beginning the first day of July, two thousand three,  
42 the commission shall deposit: (1) Sixty-five million dollars  
43 into the General Purpose Account to be expended pursuant to  
44 appropriation of the Legislature; (2) seventeen million dollars  
45 into the Education Improvement Fund for appropriation by  
46 the Legislature to the PROMISE Scholarship Fund created in  
47 section seven, article seven, chapter eighteen-c of this code;  
48 (3) nineteen million dollars into the Economic Development  
49 Project Fund created in subsection (d) of this section for the  
50 issuance of revenue bonds and to be spent in accordance with  
51 the provisions of said subsection; (4) twenty million dollars

52 into the School Building Debt Service Fund created in  
53 section six, article nine-d, chapter eighteen of this code for  
54 the issuance of revenue bonds; (5) forty million dollars into  
55 the West Virginia Infrastructure Fund created in section nine,  
56 article fifteen-a, chapter thirty-one of this code to be spent in  
57 accordance with the provisions of said article; (6) ten million  
58 dollars into the Higher Education Improvement Fund for  
59 Higher Education; and (7) five million dollars into the State  
60 Park Improvement Fund for Park Improvements.

61 (c) For the fiscal year beginning the first day of July, two  
62 thousand four, and subsequent fiscal years, the commission  
63 shall deposit: (1) Sixty-five million dollars into the General  
64 Purpose Account to be expended pursuant to appropriation of  
65 the Legislature; (2) twenty-seven million dollars into the  
66 Education Improvement Fund for appropriation by the  
67 Legislature to the PROMISE Scholarship Fund created in  
68 section seven, article seven, chapter eighteen-c of this code;  
69 (3) nineteen million dollars into the Economic Development  
70 Project Fund created in subsection (d) of this section for the  
71 issuance of revenue bonds and to be spent in accordance with  
72 the provisions of said subsection; (4) nineteen million dollars  
73 into the School Building Debt Service Fund created in  
74 section six, article nine-d, chapter eighteen of this code for  
75 the issuance of revenue bonds: *Provided*, That for the fiscal  
76 year beginning the first day of July, two thousand eight, and  
77 subsequent fiscal years, no moneys shall be deposited in the  
78 School Building Debt Service Fund pursuant to this  
79 subsection and instead nineteen million dollars shall be  
80 deposited into the Excess Lottery School Building Debt  
81 Service Fund; (5) forty million dollars into the West Virginia  
82 Infrastructure Fund created in section nine, article fifteen-a,  
83 chapter thirty-one of this code to be spent in accordance with  
84 the provisions of said article; (6) ten million dollars into the  
85 Higher Education Improvement Fund for Higher Education;  
86 and (7) five million dollars into the State Park Improvement  
87 Fund for Park Improvements. No portion of the distributions

88 made as provided in this subsection and subsection (b) of this  
89 section, except distributions made in connection with bonds  
90 issued under subsection (d) of this section, may be used to  
91 pay debt service on bonded indebtedness until after the  
92 Legislature expressly authorizes issuance of the bonds and  
93 payment of debt service on the bonds through statutory  
94 enactment or the adoption of a concurrent resolution by both  
95 houses of the Legislature. Until subsequent legislative  
96 enactment or adoption of a resolution that expressly  
97 authorizes issuance of the bonds and payment of debt service  
98 on the bonds with funds distributed under this subsection and  
99 subsection (b) of this section, except distributions made in  
100 connection with bonds issued under subsection (d) of this  
101 section, the distributions may be used only to fund capital  
102 improvements that are not financed by bonds and only  
103 pursuant to appropriation of the Legislature.

104 (d) The Legislature finds and declares that in order to  
105 attract new business, commerce and industry to this state, to  
106 retain existing business and industry providing the citizens of  
107 this state with economic security and to advance the business  
108 prosperity of this state and the economic welfare of the  
109 citizens of this state, it is necessary to provide public  
110 financial support for constructing, equipping, improving and  
111 maintaining economic development projects, capital  
112 improvement projects and infrastructure which promote  
113 economic development in this state.

114 (1) The West Virginia Economic Development Authority  
115 created and provided for in article fifteen, chapter thirty-one  
116 of this code shall, by resolution, in accordance with the  
117 provisions of this article and article fifteen, chapter thirty-one  
118 of this code, and upon direction of the Governor, issue  
119 revenue bonds of the Economic Development Authority in no  
120 more than two series to pay for all or a portion of the cost of  
121 constructing, equipping, improving or maintaining projects  
122 under this section or to refund the bonds at the discretion of



123 the authority. Any revenue bonds issued on or after the first  
124 day of July, two thousand two, which are secured by state  
125 excess lottery revenue proceeds shall mature at a time or  
126 times not exceeding thirty years from their respective dates.  
127 The principal of and the interest and redemption premium, if  
128 any, on the bonds shall be payable solely from the special  
129 fund provided in this section for the payment.

130 (2) There is continued in the State Treasury a special  
131 revenue fund named the Economic Development Project  
132 Fund into which shall be deposited on and after the first day  
133 of July, two thousand two, the amounts to be deposited in  
134 said fund as specified in subsections (b) and (c) of this  
135 section. The Economic Development Project Fund shall  
136 consist of all such moneys, all appropriations to the fund, all  
137 interest earned from investment of the fund and any gifts,  
138 grants or contributions received by the fund. All amounts  
139 deposited in the fund shall be pledged to the repayment of the  
140 principal, interest and redemption premium, if any, on any  
141 revenue bonds or refunding revenue bonds authorized by this  
142 section, including any and all commercially customary and  
143 reasonable costs and expenses which may be incurred in  
144 connection with the issuance, refunding, redemption or  
145 defeasance thereof. The West Virginia Economic  
146 Development Authority may further provide in the resolution  
147 and in the trust agreement for priorities on the revenues paid  
148 into the Economic Development Project Fund as may be  
149 necessary for the protection of the prior rights of the holders  
150 of bonds issued at different times under the provisions of this  
151 section. The bonds issued pursuant to this subsection shall be  
152 separate from all other bonds which may be or have been  
153 issued, from time to time, under the provisions of this article.

154 (3) After the West Virginia Economic Development  
155 Authority has issued bonds authorized by this section and  
156 after the requirements of all funds have been satisfied,  
157 including any coverage and reserve funds established in

158 connection with the bonds issued pursuant to this subsection,  
159 any balance remaining in the Economic Development Project  
160 Fund may be used for the redemption of any of the  
161 outstanding bonds issued under this subsection which, by  
162 their terms, are then redeemable or for the purchase of the  
163 outstanding bonds at the market price, but not to exceed the  
164 price, if any, at which redeemable, and all bonds redeemed or  
165 purchased shall be immediately canceled and shall not again  
166 be issued.

167 (4) Bonds issued under this subsection shall state on their  
168 face that the bonds do not constitute a debt of the State of  
169 West Virginia; that payment of the bonds, interest and  
170 charges thereon cannot become an obligation of the State of  
171 West Virginia; and that the bondholders' remedies are limited  
172 in all respects to the Special Revenue Fund established in this  
173 subsection for the liquidation of the bonds.

174 (5) The West Virginia Economic Development Authority  
175 shall expend the bond proceeds from the revenue bond issues  
176 authorized and directed by this section for such projects as  
177 may be certified under the provision of this subsection:  
178 *Provided*, That the bond proceeds shall be expended in  
179 accordance with the requirements and provisions of article  
180 five-a, chapter twenty-one of this code and either article  
181 twenty-two or twenty-two-a, chapter five of this code, as the  
182 case may be: *Provided, however*, That if such bond proceeds  
183 are expended pursuant to article twenty-two-a, chapter five of  
184 this code and if the Design-Build Board created under said  
185 article determines that the execution of a design-build  
186 contract in connection with a project is appropriate pursuant  
187 to the criteria set forth in said article and that a competitive  
188 bidding process was used in selecting the design builder and  
189 awarding such contract, such determination shall be  
190 conclusive for all purposes and shall be deemed to satisfy all  
191 the requirements of said article.

192 (6) For the purpose of certifying the projects that will  
193 receive funds from the bond proceeds, a committee is hereby  
194 established and comprised of the Governor, or his or her  
195 designee, the Secretary of the Department of Revenue, the  
196 Executive Director of the West Virginia Development Office  
197 and six persons appointed by the Governor: *Provided*, That  
198 at least one citizen member must be from each of the state's  
199 three congressional districts. The committee shall meet as  
200 often as necessary and make certifications from bond  
201 proceeds in accordance with this subsection. The committee  
202 shall meet within thirty days of the effective date of this  
203 section.

204 (7) Applications for grants submitted on or before the  
205 first day of July, two thousand two, shall be considered  
206 refiled with the committee. Within ten days from the  
207 effective date of this section as amended in the year two  
208 thousand three, the lead applicant shall file with the  
209 committee any amendments to the original application that  
210 may be necessary to properly reflect changes in facts and  
211 circumstances since the application was originally filed with  
212 the committee.

213 (8) When determining whether or not to certify a project,  
214 the committee shall take into consideration the following:

215 (A) The ability of the project to leverage other sources of  
216 funding;

217 (B) Whether funding for the amount requested in the  
218 grant application is or reasonably should be available from  
219 commercial sources;

220 (C) The ability of the project to create or retain jobs,  
221 considering the number of jobs, the type of jobs, whether  
222 benefits are or will be paid, the type of benefits involved and  
223 the compensation reasonably anticipated to be paid persons

224 filling new jobs or the compensation currently paid to  
225 persons whose jobs would be retained;

226 (D) Whether the project will promote economic  
227 development in the region and the type of economic  
228 development that will be promoted;

229 (E) The type of capital investments to be made with bond  
230 proceeds and the useful life of the capital investments; and

231 (F) Whether the project is in the best interest of the  
232 public.

233 (9) No grant may be awarded to an individual or other  
234 private person or entity. Grants may be awarded only to an  
235 agency, instrumentality or political subdivision of this state  
236 or to an agency or instrumentality of a political subdivision  
237 of this state.

238 The project of an individual or private person or entity  
239 may be certified to receive a low-interest loan paid from bond  
240 proceeds. The terms and conditions of the loan, including,  
241 but not limited to, the rate of interest to be paid and the  
242 period of the repayment, shall be determined by the  
243 Economic Development Authority after considering all  
244 applicable facts and circumstances.

245 (10) Prior to making each certification, the committee  
246 shall conduct at least one public hearing, which may be held  
247 outside of Kanawha County. Notice of the time, place, date  
248 and purpose of the hearing shall be published in at least one  
249 newspaper in each of the three congressional districts at least  
250 fourteen days prior to the date of the public hearing.

251 (11) The committee may not certify a project unless the  
252 committee finds that the project is in the public interest and  
253 the grant will be used for a public purpose. For purposes of

254 this subsection, projects in the public interest and for a public  
255 purpose include, but are not limited to:

256 (A) Sports arenas, fields, parks, stadiums and other sports  
257 and sports-related facilities;

258 (B) Health clinics and other health facilities;

259 (C) Traditional infrastructure, such as water and  
260 wastewater treatment facilities, pumping facilities and  
261 transmission lines;

262 (D) State-of-the-art telecommunications infrastructure;

263 (E) Biotechnical incubators, development centers and  
264 facilities;

265 (F) Industrial parks, including construction of roads,  
266 sewer, water, lighting and other facilities;

267 (G) Improvements at state parks, such as construction,  
268 expansion or extensive renovation of lodges, cabins,  
269 conference facilities and restaurants;

270 (H) Railroad bridges, switches and track extension or  
271 spurs on public or private land necessary to retain existing  
272 businesses or attract new businesses;

273 (I) Recreational facilities, such as amphitheaters, walking  
274 and hiking trails, bike trails, picnic facilities, restrooms, boat  
275 docking and fishing piers, basketball and tennis courts, and  
276 baseball, football and soccer fields;

277 (J) State-owned buildings that are registered on the  
278 National Register of Historic Places;

279 (K) Retail facilities, including related service, parking  
280 and transportation facilities, appropriate lighting, landscaping  
281 and security systems to revitalize decaying downtown areas;  
282 and

283 (L) Other facilities that promote or enhance economic  
284 development, educational opportunities or tourism  
285 opportunities thereby promoting the general welfare of this  
286 state and its residents.

287 (12) Prior to the issuance of bonds under this subsection,  
288 the committee shall certify to the Economic Development  
289 Authority a list of those certified projects that will receive  
290 funds from the proceeds of the bonds. Once certified, the list  
291 may not thereafter be altered or amended other than by  
292 legislative enactment.

293 (13) If any proceeds from sale of bonds remain after  
294 paying costs and making grants and loans as provided in  
295 this subsection, the surplus may be deposited in an account  
296 created in the State Treasury to be known as the Economic  
297 Development Project Bridge Loan Fund to be administered  
298 by the Economic Development Authority created in article  
299 fifteen, chapter thirty-one of this code. Expenditures from  
300 the fund are not authorized from collections but are to be  
301 made only in accordance with appropriation by the  
302 Legislature and in accordance with the provisions of article  
303 three, chapter twelve of this code and upon fulfillment of  
304 the provisions of article two, chapter five-a of this code.  
305 Loan repayment amounts including the portion attributable  
306 to interest shall be paid into the fund created in this  
307 subdivision.

308 (e) If the commission receives revenues in an amount that  
309 is not sufficient to fully comply with the requirements of  
310 subsections (b), (c) and (h) of this section, the commission  
311 shall first make the distribution to the Economic

312 Development Project Fund; second, make the distribution or  
313 distributions to the other funds from which debt service is to  
314 be paid; third, make the distribution to the Education  
315 Improvement Fund for appropriation by the Legislature to the  
316 PROMISE Scholarship Fund; and fourth, make the  
317 distribution to the General Purpose Account: *Provided, That,*  
318 subject to the provisions of this subsection, to the extent such  
319 revenues are not pledged in support of revenue bonds which  
320 are or may be issued, from time to time, under this section,  
321 the revenues shall be distributed on a pro rata basis.

322 (f) For the fiscal year beginning on the first day of July,  
323 two thousand two, and each fiscal year thereafter, the  
324 commission shall, after meeting the requirements of  
325 subsections (b), (c) and (h) of this section and after  
326 transferring to the State Lottery Fund created under section  
327 eighteen of this article an amount equal to any transfer from  
328 the State Lottery Fund to the Excess Lottery Fund pursuant  
329 to subsection (f), section eighteen of this article, deposit fifty  
330 percent of the amount by which annual gross revenue  
331 deposited in the State Excess Lottery Revenue Fund exceeds  
332 two hundred twenty-five million dollars in a fiscal year in a  
333 separate account in the State Lottery Fund to be available for  
334 appropriation by the Legislature.

335 (g) When bonds are issued for projects under subsection  
336 (d) of this section or for the School Building Authority,  
337 infrastructure, higher education or park improvement  
338 purposes described in this section that are secured by profits  
339 from lotteries deposited in the State Excess Lottery Revenue  
340 Fund, the Lottery Director shall allocate first to the Economic  
341 Development Project Fund an amount equal to one tenth of  
342 the projected annual principal, interest and coverage  
343 requirements on any and all revenue bonds issued, or to be  
344 issued, on or after the first day of July, two thousand two, as  
345 certified to the Lottery Director; and second, to the fund or  
346 funds from which debt service is paid on bonds issued under  
347 this section for the School Building Authority, infrastructure,

348 higher education and park improvements an amount equal to  
349 one tenth of the projected annual principal, interest and  
350 coverage requirements on any and all revenue bonds issued,  
351 or to be issued, on or after the first day of April, two  
352 thousand two, as certified to the Lottery Director. In the  
353 event there are insufficient funds available in any month to  
354 transfer the amounts required pursuant to this subsection, the  
355 deficiency shall be added to the amount transferred in the  
356 next succeeding month in which revenues are available to  
357 transfer the deficiency.

358 (h) In fiscal year two thousand four and thereafter, prior  
359 to the distributions provided in subsection (c) of this section,  
360 the Lottery Commission shall deposit into the General  
361 Revenue Fund amounts necessary to provide reimbursement  
362 for the refundable credit allowable under section twenty-one,  
363 article twenty-one, chapter eleven of this code.

364 (i) (1) The Legislature considers the following as  
365 priorities in the expenditure of any surplus revenue funds:

366 (A) Providing salary and/or increment increases for  
367 professional educators and public employees;

368 (B) Providing adequate funding for the Public Employees  
369 Insurance Agency; and

370 (C) Providing funding to help address the shortage of  
371 qualified teachers and substitutes in areas of need, both in  
372 number of teachers and in subject matter areas.

373 (2) The provisions of this subsection may not be  
374 construed by any court to require any appropriation or any  
375 specific appropriation or level of funding for the purposes set  
376 forth in this subsection.

377 (j) The Legislature further directs the Governor to focus  
378 resources on the creation of a prescription drug program for



379 senior citizens by pursuing a Medicaid waiver to offer  
380 prescription drug services to senior citizens; by investigating  
381 the establishment of purchasing agreements with other  
382 entities to reduce costs; by providing discount prices or  
383 rebate programs for seniors; by coordinating programs  
384 offered by pharmaceutical manufacturers that provide  
385 reduced cost or free drugs; by coordinating a collaborative  
386 effort among all state agencies to ensure the most efficient  
387 and cost-effective program possible for the senior citizens of  
388 this state; and by working closely with the state's  
389 congressional delegation to ensure that a national program is  
390 implemented. The Legislature further directs that the  
391 Governor report his progress back to the Joint Committee on  
392 Government and Finance on an annual basis beginning in  
393 November of the year two thousand one until a  
394 comprehensive program has been fully implemented.

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## CHAPTER 80

**(S.B. 459 - By Senators Plymale, Edgell, Bailey, Green, Hunter,  
Oliverio, Stollings, Wells, Boley, Guills and Hall)**

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[Passed February 8, 2008; in effect from passage.]  
[Approved by the Governor on February 19, 2008.]

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AN ACT to amend and reenact §18-9D-20 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-9D-21; and to amend and reenact §18B-17-2 of said code, all relating to education rules; authority of School Building Authority to promulgate rules; determining effective dates; waiving technical deficiencies; and authorizing rules of the School Building Authority and the Higher Education Policy Commission.

*Be it enacted by the Legislature of West Virginia:*

That §18-9D-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-9D-21; and that §18B-17-2 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 18. Education.**
- 18B. Higher Education.**

**CHAPTER 18. EDUCATION.**

**Article**

- 9D. School Building Authority.**
- 17. Legislative Rules.**

**ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

§18-9D-20. Authority to promulgate rules; legislative authorization; effective date of rules; technical deficiencies waived.

§18-9D-21. Authorizing rules of School Building Authority.

**§18-9D-20. Authority to promulgate rules; legislative authorization; effective date of rules; technical deficiencies waived.**

1 (a) The authority is hereby empowered to promulgate,  
2 adopt, amend or repeal rules in accordance with the  
3 provisions of article three-a, chapter twenty-nine-a of this  
4 code.

5 (b) All rules adopted or promulgated by the authority and  
6 in effect on the eighth day of June, two thousand seven, shall  
7 be refiled pursuant to the provisions of article three-a, chapter  
8 twenty-nine-a of this code on or before the first day of  
9 September, two thousand seven.

10 (1) Any interpretive or procedural rule shall continue in  
11 effect until rescinded or appropriately refiled by the  
12 authority.

13 (2) Any legislative rule shall continue in effect until  
14 approved or rejected by the Legislature or rescinded by the  
15 authority.

16 (c) Under the provisions of article three-a, chapter  
17 twenty-nine-a of this code, the Legislature expressly  
18 authorizes the promulgation of the rules described in this  
19 article, subject only to the limitations with respect to each  
20 rule set forth by law authorizing its promulgation. The  
21 Legislature further declares that all rules now or hereafter  
22 authorized in this article are within the legislative intent of  
23 the statute which the rule is intended to implement, extend,  
24 apply or interpret.

25 (d) The effective date of a legislative rule authorized in  
26 section twenty-one of this article is governed by the  
27 provisions of section fourteen, article three-a, chapter twenty-  
28 nine-a of this code under the following conditions:

29 (1) The School Building Authority, in promulgating the  
30 rule, establishes an effective date which is earlier than that  
31 provided by that section, in which case the effective date  
32 established by the authority controls; or

33 (2) The Legislature, in the bill authorizing the rule,  
34 establishes an effective date for the rule, in which case the  
35 effective date established by the Legislature controls.

36 (e) The Legislature further declares each legislative rule  
37 now or hereafter authorized under this article to have been  
38 validly promulgated, notwithstanding any failure to comply  
39 with any requirement of article three-a, chapter twenty-nine-a  
40 of this code relating to the promulgation of rules at any stage  
41 of the promulgation process prior to authorization by the  
42 Legislature in this article.

**§18-9D-21. Authorizing rules of School Building Authority.**

1 (a) The legislative rule filed in the State Register on the  
2 twenty-seventh day of September, two thousand seven,

3 relating to the School Building Authority (School Building  
4 Authority requirements for Comprehensive Educational  
5 Facility Plan rule) is authorized.

6 (b) The legislative rule filed in the State Register on the  
7 twenty-seventh day of September, two thousand seven,  
8 relating to the School Building Authority (funding School  
9 Building Authority projects rule) is authorized.

10 (c) The legislative rule filed in the State Register on the  
11 twenty-seventh day of September, two thousand seven,  
12 relating to the School Building Authority (School Building  
13 Authority school planning and design criteria rule) is  
14 authorized.

15 (d) The legislative rule filed in the State Register on the  
16 twenty-seventh day of September, two thousand seven, relating  
17 to the School Building Authority (School Building Authority  
18 project administration and review rule) is authorized.

19 (e) The legislative rule filed in the State Register on the  
20 twenty-seventh day of September, two thousand seven, and  
21 amended by the School Building Authority and refiled on the  
22 tenth day of December, two thousand seven, relating to the  
23 School Building Authority (School Building Authority  
24 contract and agreements rule) is authorized.

25 (f) The legislative rule filed in the State Register on the  
26 twenty-seventh day of September, two thousand seven,  
27 relating to the School Building Authority (School Building  
28 Authority reporting procedures rule) is authorized.

29 (g) The legislative rule filed in the State Register on the  
30 twelfth day of July, two thousand seven, and amended by the  
31 School Building Authority and refiled on the twenty-eighth day  
32 of December, two thousand seven, relating to the School  
33 Building Authority (School Access Safety Act rule) is  
34 authorized.

**CHAPTER 18B. HIGHER EDUCATION.****ARTICLE 17. LEGISLATIVE RULES.****§18B-17-2. Authorizing rules of Higher Education Policy Commission.**

1 (a) The legislative rule filed in the State Register on the  
2 fifteenth day of October, two thousand four, relating to the  
3 Higher Education Policy Commission (Underwood-Smith  
4 Teacher Scholarship Program rule) is authorized.

5 (b) The legislative rule filed in the State Register on the  
6 fifteenth day of October, two thousand four, relating to the  
7 Higher Education Policy Commission (West Virginia  
8 Engineering, Science and Technology Scholarship Program  
9 rule) is authorized.

10 (c) The legislative rule filed in the State Register on the  
11 fifteenth day of October, two thousand four, relating to the  
12 Higher Education Policy Commission (Medical Education  
13 Fee and Medical Student Loan Program rule) is authorized.

14 (d) The legislative rule filed in the State Register on the  
15 twenty-seventh day of October, two thousand five, relating to  
16 the Higher Education Policy Commission (authorization of  
17 degree-granting institutions) is authorized.

18 (e) The legislative rule filed in the State Register on the  
19 twenty-third day of August, two thousand six, relating to the  
20 Higher Education Policy Commission (West Virginia Higher  
21 Education Grant Program) is authorized.

22 (f) The legislative rule filed in the State Register on the  
23 fourth day of January, two thousand eight, relating to the  
24 Higher Education Policy Commission (Providing Real  
25 Opportunities for Maximizing In-state Student Excellence -  
26 PROMISE) is authorized.

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## CHAPTER 81

**(Com. Sub. for S.B. 564 - By Senators Edgell, Plymale,  
Kessler and Stollings)**

[Passed March 8, 2008; in effect July 1, 2008.]  
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §18-19-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-10-1, §18B-10-5, §18B-10-6 and §18B-10-7 of said code, all relating to higher education tuition and fees; clarifying eligibility requirements for tuition and fee waivers for certain applicants; allowing increases in existing tuition and fees at institutions that are below the state average; changing method of calculating limits on waivers of tuition and fees; exempting tuition and fee waivers granted to higher education employees, spouses and dependents and all tuition and fee waivers authorized by statute from calculation of limits on percentage of tuition and fee waivers granted by state institutions of higher education; and requiring waivers of tuition and fees for certain individuals.

*Be it enacted by the Legislature of West Virginia:*

That §18-19-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18B-10-1, §18B-10-5, §18B-10-6 and §18B-10-7 of said code be amended and reenacted, all to read as follows:

**Chapter**

**18. Education.**

**18B. Higher Education.**

**CHAPTER 18. EDUCATION.****ARTICLE 19. EDUCATIONAL OPPORTUNITIES FOR SPOUSES AND CHILDREN OF DECEASED SOLDIERS, SAILORS, MARINES AND AIRMEN.****§18-19-2. Eligibility of applicant for benefits; application forms; preference.**

1 (a) To be eligible for the benefits of this article, a child or  
2 spouse set forth in section one of this article shall meet the  
3 following conditions:

4 (1) In the case of a child, is at least sixteen and not more  
5 than twenty-five years of age;

6 (2) Is enrolled in a post-secondary education or training  
7 institution in this state; and

8 (3) Is the child or spouse of an enlistee who designated  
9 West Virginia as his or her state of record.

10 (b) The application shall be made to, and upon forms  
11 provided by, the West Virginia Division of Veterans' Affairs.  
12 The division shall determine the eligibility of those who  
13 apply and the yearly amount to be allotted each applicant.  
14 The amount, in the discretion of the division, may vary from  
15 year to year, but may not exceed the sum of one thousand  
16 dollars in any one semester or a total of two thousand dollars  
17 in any one year. In selecting those to receive the benefits of  
18 this article, preference shall be given those who are otherwise  
19 financially unable to secure the educational opportunities.

**CHAPTER 18B. HIGHER EDUCATION.**

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED  
AT STATE INSTITUTIONS OF HIGHER  
EDUCATION.**

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

§18B-10-5. Fee waivers -- Undergraduate schools.

§18B-10-6. Fee waivers -- Professional and graduate schools.

§18B-10-7. Tuition and fee waivers for children and spouses of officers, firefighters, National Guard personnel, reserve personnel and active military duty personnel killed in the line of duty.

**§18B-10-1. Enrollment, tuition and other fees at education  
institutions; refund of fees.**

1 (a) Each governing board shall fix tuition and other fees  
2 for each school term for the different classes or categories of  
3 students enrolling at each state institution of higher education  
4 under its jurisdiction and may include among the tuition and  
5 fees any one or more of the following as defined in section  
6 one-b of this article:

7 (1) Tuition and required educational and general fees;

8 (2) Auxiliary and auxiliary capital fees; and

9 (3) Required educational and general capital fees.

10 (b) An institution may establish a single special revenue  
11 account for each of the following classifications of fees:

12 (1) All tuition and required educational and general fees  
13 collected;

14 (2) All auxiliary and auxiliary capital fees collected; and

15 (3) All required educational and general capital fees  
16 collected to support existing systemwide and institutional  
17 debt service and future systemwide and institutional debt



18 service, capital projects and campus renewal for educational  
19 and general facilities.

20 (4) Subject to any covenants or restrictions imposed with  
21 respect to revenue bonds payable from the accounts, an  
22 institution may expend funds from each special revenue  
23 account for any purpose for which funds were collected  
24 within that account regardless of the original purpose for  
25 which the funds were collected.

26 (c) The purposes for which tuition and fees may be  
27 expended include, but are not limited to, health services,  
28 student activities, recreational, athletic and extracurricular  
29 activities. Additionally, tuition and fees may be used to  
30 finance a student's attorney to perform legal services for  
31 students in civil matters at the institutions: *Provided*, That the  
32 legal services are limited only to those types of cases,  
33 programs or services approved by the administrative head of  
34 the institution where the legal services are to be performed.

35 (d) The commission and council jointly shall propose a  
36 rule for legislative approval in accordance with the provisions  
37 of article three-a, chapter twenty-nine-a of this code to  
38 govern the fixing, collection and expenditure of tuition and  
39 other fees.

40 (e) The schedule of all tuition and fees, and any changes  
41 in the schedule, shall be entered in the minutes of the meeting  
42 of the appropriate governing board and the board shall file  
43 with the commission or council, or both, as appropriate, and  
44 the Legislative Auditor a certified copy of the schedule and  
45 changes.

46 (f) The boards shall establish the rates to be charged  
47 full-time students, as defined in section one-b of this article,  
48 who are enrolled during a regular academic term.

49 (1) Undergraduate students taking fewer than twelve  
50 credit hours in a regular term shall have their fees reduced  
51 pro rata based upon one twelfth of the full-time rate per credit  
52 hour and graduate students taking fewer than nine credit  
53 hours in a regular term shall have their fees reduced pro rata  
54 based upon one ninth of the full-time rate per credit hour.

55 (2) Fees for students enrolled in summer terms or other  
56 nontraditional time periods shall be prorated based upon the  
57 number of credit hours for which the student enrolls in  
58 accordance with the provisions of this subsection.

59 (g) All fees are due and payable by the student upon  
60 enrollment and registration for classes except as provided in  
61 this subsection:

62 (1) The governing boards shall permit fee payments to be  
63 made in installments over the course of the academic term.  
64 All fees shall be paid prior to the awarding of course credit at  
65 the end of the academic term.

66 (2) The governing boards also shall authorize the  
67 acceptance of credit cards or other payment methods which  
68 may be generally available to students for the payment of  
69 fees. The governing boards may charge the students for the  
70 reasonable and customary charges incurred in accepting  
71 credit cards and other methods of payment.

72 (3) If a governing board determines that a student's  
73 finances are affected adversely by a legal work stoppage, it  
74 may allow the student an additional six months to pay the  
75 fees for any academic term. The governing board shall  
76 determine on a case-by-case basis if the finances of a student  
77 are affected adversely.

78 (4) The commission and council jointly shall propose a  
79 rule in accordance with the provisions of article three-a,

80 chapter twenty-nine-a of this code defining conditions under  
81 which an institution may offer tuition and fee deferred  
82 payment plans through the institution or through third parties.

83 (5) An institution may charge interest or fees for any  
84 deferred or installment payment plans.

85 (h) In addition to the other fees provided in this section,  
86 each governing board may impose, collect and distribute a  
87 fee to be used to finance a nonprofit, student-controlled  
88 public interest research group if the students at the institution  
89 demonstrate support for the increased fee in a manner and  
90 method established by that institution's elected student  
91 government. The fee may not be used to finance litigation  
92 against the institution.

93 (i) Institutions shall retain tuition and fee revenues not  
94 pledged for bonded indebtedness or other purposes in  
95 accordance with the tuition rule proposed by the commission  
96 and council jointly pursuant to this section. The tuition rule  
97 shall:

98 (1) Provide a basis for establishing nonresident tuition  
99 and fees;

100 (2) Allow institutions to charge different tuition and fees  
101 for different programs;

102 (3) Provide that a board of governors may propose to the  
103 commission, council or both, as appropriate, a mandatory  
104 auxiliary fee under the following conditions:

105 (A) The fee shall be approved by the commission, council  
106 or both, as appropriate, and either the students below the  
107 senior level at the institution or the Legislature before  
108 becoming effective;

109 (B) Increases may not exceed previous state subsidies by  
110 more than ten percent;

111 (C) The fee may be used only to replace existing state  
112 funds subsidizing auxiliary services such as athletics or  
113 bookstores;

114 (D) If the fee is approved, the amount of the state subsidy  
115 shall be reduced annually by the amount of money generated  
116 for the institution by the fees. All state subsidies for the  
117 auxiliary services shall cease five years from the date the  
118 mandatory auxiliary fee is implemented;

119 (E) The commission, council or both, as appropriate,  
120 shall certify to the Legislature annually by the first day of  
121 October the amount of fees collected for each of the five  
122 years;

123 (4) Establish methodology, where applicable, to ensure  
124 that, within the appropriate time period under the compact,  
125 community and technical college tuition rates for community  
126 and technical college students in all independently accredited  
127 community and technical colleges will be commensurate with  
128 the tuition and fees charged by their peer institutions.

129 (j) A penalty may not be imposed by the commission or  
130 council upon any institution based upon the number of  
131 nonresidents who attend the institution unless the  
132 commission or council determines that admission of  
133 nonresidents to any institution or program of study within the  
134 institution is impeding unreasonably the ability of resident  
135 students to attend the institution or participate in the  
136 programs of the institution. The institutions shall report  
137 annually to the commission or council on the numbers of  
138 nonresidents and such other enrollment information as the  
139 commission or council may request.

140 (k) Tuition and fee increases of the governing boards,  
141 except for the governing boards of the state institutions of  
142 higher education known as Marshall University and West  
143 Virginia University, are subject to rules adopted by the  
144 commission and council jointly pursuant to this section and  
145 in accordance with the provisions of article three-a, chapter  
146 twenty-nine-a of this code.

147 (1) Subject to the provisions of subdivisions (4) and (8)  
148 of this subsection, a governing board of an institution under  
149 the jurisdiction of the commission may propose tuition and  
150 fee increases of up to nine and one-half percent for  
151 undergraduate resident students for any fiscal year. The nine  
152 and one-half percent total includes the amount of increase  
153 over existing tuition and fees, combined with the amount of  
154 any newly established specialized fee which may be proposed  
155 by a governing board.

156 (2) A governing board of an institution under the  
157 jurisdiction of the council may propose tuition and fee  
158 increases of up to four and three-quarters percent for  
159 undergraduate resident students for any fiscal year, except a  
160 governing board may propose increases in excess of four and  
161 three-quarters percent if existing tuition and fee rates at the  
162 institution are below the state average for tuition and fees at  
163 institutions under the jurisdiction of the council. The four  
164 and three-quarters percent total includes the amount of  
165 increase over existing tuition and fees, combined with the  
166 amount of any newly established, specialized fee which may  
167 be proposed by a governing board.

168 (3) The commission or council, as appropriate, shall  
169 examine individually each request from a governing board  
170 for an increase.

171 (4) Subject to the provisions of subdivision (8) of this  
172 subsection, the governing boards of Marshall University and

173 West Virginia University, as these provisions relate to the  
174 state institutions of higher education known as Marshall  
175 University and West Virginia University, each may annually:

176 (A) Increase tuition and fees for undergraduate resident  
177 students to the maximum allowed by this section without  
178 seeking approval from the commission; and

179 (B) Set tuition and fee rates for post-baccalaureate  
180 resident students and for all nonresident students, including  
181 establishing regional tuition and fee rates, reciprocity  
182 agreements or both.

183 (C) The provisions of this subdivision do not apply to  
184 tuition and fee rates of the administratively linked institution  
185 known as Marshall Community and Technical College, the  
186 administratively linked institution known as the Community  
187 and Technical College at West Virginia University Institute  
188 of Technology, the regional campus known as West Virginia  
189 University at Parkersburg and, until the first day of July, two  
190 thousand seven, the regional campus known as West Virginia  
191 University Institute of Technology.

192 (5) Any proposed tuition and fee increase for state  
193 institutions of higher education other than the state  
194 institutions of higher education known as Marshall  
195 University and West Virginia University requires the  
196 approval of the commission or council, as appropriate. In  
197 determining whether to approve or deny the governing  
198 board's request, the commission or council shall determine  
199 the progress the institution has made toward meeting the  
200 conditions outlined in this subdivision and shall make this  
201 determination the predominate factor in its decision. The  
202 commission or council shall consider the degree to which  
203 each institution has met the following conditions:

204 (A) Has maximized resources available through  
205 nonresident tuition and fee charges to the satisfaction of the  
206 commission or council;

207 (B) Is consistently achieving the benchmarks established  
208 in the compact of the institution pursuant to the provisions of  
209 article one-a of this chapter;

210 (C) Is continuously pursuing the statewide goals for  
211 post-secondary education and the statewide compact  
212 established in articles one and one-a of this chapter;

213 (D) Has demonstrated to the satisfaction of the  
214 commission or council that an increase will be used to  
215 maintain high-quality programs at the institution;

216 (E) Has demonstrated to the satisfaction of the  
217 commission or council that the institution is making adequate  
218 progress toward achieving the goals for education established  
219 by the southern regional education board; and

220 (F) To the extent authorized, will increase by up to five  
221 percent the available tuition and fee waivers provided by the  
222 institution. The increased waivers may not be used for  
223 athletics.

224 (6) This section does not require equal increases among  
225 institutions or require any level of increase at an institution.

226 (7) The commission and council shall report to the  
227 Legislative Oversight Commission on Education  
228 Accountability regarding the basis for each approval or denial  
229 as determined using the criteria established in subdivision (5)  
230 of this subsection.

231 (8) Notwithstanding the provisions of subdivisions (1)  
232 and (4) of this subsection, tuition and fee increases at state  
233 institutions of higher education which are under the

234 jurisdiction of the commission, including the state institutions  
235 of higher education known as Marshall University and West  
236 Virginia University, are subject to the following conditions:

237 (A) Institutions may increase tuition and fees for resident,  
238 undergraduate students by no more than an average of seven  
239 and one-half percent per year during any period covering four  
240 consecutive fiscal years, with the first fiscal year of the first  
241 four fiscal-year cycle beginning on the first day of July, two  
242 thousand seven;

243 (B) The seven and one-half percent average cap does not  
244 apply to an institution for any fiscal year in which the total  
245 state base operating budget appropriations to that institution  
246 are less than the total state base operating budget  
247 appropriations in the fiscal year immediately preceding;

248 (C) A new capital fee or an increase in an existing capital  
249 fee is excluded from the tuition and fee increase calculation  
250 in this subdivision:

251 (i) If the new fee or fee increase is approved by an  
252 institutional governing board or by a referendum of an  
253 institution's undergraduate students, or both, on or before the  
254 first day of February, two thousand six; or

255 (ii) If the following conditions are met:

256 (I) The new fee or fee increase was approved by an  
257 institutional governing board or by a referendum of an  
258 institution's undergraduate students, or both, on or before the  
259 first day of July, two thousand six;

260 (II) The institution for which the capital fee is approved  
261 has been designated a university pursuant to the provisions of  
262 section six, article two-a of this chapter by the effective date  
263 of this section; and



264 (III) The institutional board of governors previously  
265 oversaw a community and technical college that achieved  
266 independent accreditation and consequently acquired its own  
267 board of governors;

268 (D) Institutions shall provide, in a timely manner, any  
269 data on tuition and fee increases requested by the staff of the  
270 commission. The commission shall:

271 (i) Collect the data from any institution under its  
272 jurisdiction; and

273 (ii) Annually by the first day of July, provide a detailed  
274 analysis of the institutions' compliance with the provisions of  
275 this subdivision to the Legislative Oversight Commission on  
276 Education Accountability.

**§18B-10-5. Fee waivers -- Undergraduate schools.**

1 Each governing board periodically may establish fee  
2 waivers for students in undergraduate studies at institutions  
3 under its jurisdiction entitling recipients to waiver of tuition,  
4 capital and other fees subject to the following conditions and  
5 limitations:

6 (a) Undergraduate fee waivers established by the  
7 governing boards of Marshall University and West Virginia  
8 University, respectively, for the state institutions of higher  
9 education known as Marshall University and West Virginia  
10 University, are subject to the provisions of section six-a of  
11 this article;

12 (b) For the governing boards of state institutions of  
13 higher education other than the state institutions of higher  
14 education known as Marshall University and West Virginia  
15 University, the following conditions apply:

16 (1) An institution may not have in effect at any time  
17 undergraduate fee waivers totaling more in value than five  
18 percent of the tuition and required fees assessed for all  
19 full-time equivalent undergraduate students registered during  
20 the fall semester of the immediately preceding academic  
21 year.

22 (2) Each undergraduate fee waiver entitles the recipient  
23 of the waiver to attend a designated state institution of higher  
24 education without payment of the tuition, capital and other  
25 fees as may be prescribed by the governing board and is for  
26 a period of time not to exceed eight semesters of  
27 undergraduate study.

28 (3) The governing board shall make rules pursuant to the  
29 provisions of section six, article one of this chapter governing  
30 the award of undergraduate fee waivers; the issuance and  
31 cancellation of certificates entitling the recipients to the  
32 benefits of the waiver; the use of the fee waivers by the  
33 recipients; and the rights and duties of the recipients with  
34 respect to the fee waivers. These rules may not be  
35 inconsistent with the provisions of this section.

36 (4) The awarding of undergraduate fee waivers shall be  
37 entered in the minutes of the meetings of the governing  
38 board.

39 (5) Students enrolled in an administratively linked  
40 community and technical college shall be awarded a  
41 proportionate share of the total number of undergraduate fee  
42 waivers awarded by a governing board. The number to be  
43 awarded to students of the community and technical college  
44 is based upon the full-time equivalent enrollment of that  
45 institution.

46 (6) An institution may grant fee waivers to its employees,  
47 their spouses and dependents and these waivers are not

48 counted when determining the maximum percentage of  
49 waivers permitted by this section.

50 (7) Any fee waivers mandated by this article or by section  
51 three, article nineteen, chapter eighteen of this code are not  
52 counted when determining the maximum percentage of  
53 waivers permitted by this section.

**§18B-10-6. Fee waivers -- Professional and graduate schools.**

1 In addition to the fee waivers authorized for  
2 undergraduate study by the provisions of section five of this  
3 article, each governing board periodically may establish fee  
4 waivers for study in graduate and professional schools under  
5 its jurisdiction, including medicine and dentistry, entitling the  
6 recipients to waiver of tuition, capital and other fees subject  
7 to the following conditions and limitations:

8 (a) Graduate and professional fee waivers established by  
9 the governing boards of Marshall University and West  
10 Virginia University, respectively, are subject to the  
11 provisions of section six-a of this article;

12 (b) For the governing boards of state institutions of  
13 higher education other than the state institutions of higher  
14 education known as Marshall University and West Virginia  
15 University, the following conditions apply:

16 (1) An institution may not have in effect at any time  
17 graduate and professional school fee waivers totaling more in  
18 value than five percent of the tuition and required fees  
19 assessed for all full-time equivalent graduate and professional  
20 students registered during the corresponding fall semester,  
21 spring semester and summer term of the immediately  
22 preceding academic year. In addition to the five percent in  
23 this subdivision, all graduate assistants employed by these  
24 institutions shall be granted a fee waiver.

25 (2) Each graduate or professional school fee waiver  
26 entitles the recipient to waiver of the tuition, capital and other  
27 fees as may be prescribed by the governing boards and is for  
28 a period of time not to exceed the number of semesters  
29 normally required in the recipient's academic discipline.

30 (3) The governing boards shall make rules pursuant to the  
31 provisions of section six, article one of this chapter governing  
32 the award of graduate and professional school fee waivers;  
33 the issuance and cancellation of certificates entitling the  
34 recipients to the benefits of the waivers; the use of the fee  
35 waivers by the recipients; and the rights and duties of the  
36 recipients with respect to the fee waivers. These rules may  
37 not be inconsistent with the provisions of this section.

38 (4) The awarding of graduate and professional school fee  
39 waivers shall be entered in the minutes of the meeting of each  
40 governing board.

41 (5) An institution may grant fee waivers to its employees,  
42 their spouses and dependents, and these waivers are not  
43 counted when determining the maximum percentage of  
44 waivers permitted by this section.

45 (6) Any fee waivers mandated by this article or by section  
46 three, article nineteen, chapter eighteen of this code are not  
47 counted when determining the maximum percentage of  
48 waivers permitted by this section.

**§18B-10-7. Tuition and fee waivers for children and spouses of officers, firefighters, National Guard personnel, reserve personnel and active military duty personnel killed in the line of duty.**

1 (a) Each state institution of higher education shall waive  
2 tuition and fees for any person who is the child or spouse of  
3 an individual who:

4 (1) Was employed or serving as:

5 (A) A law-enforcement officer as defined in section one,  
6 article twenty-nine, chapter thirty of this code;

7 (B) A correctional officer at a state penal institution;

8 (C) A parole officer;

9 (D) A probation officer;

10 (E) A conservation officer; or

11 (F) A registered firefighter; and

12 (2) Was killed in the line of duty while:

13 (A) Employed by the state or any political subdivision of  
14 the state; or

15 (B) A member of a volunteer fire department serving a  
16 political subdivision of this state.

17 (b) Each state institution of higher education shall waive  
18 tuition and fees for any person who is the child or spouse of:

19 (1) A National Guard member or a member of a reserve  
20 component of the armed forces of the United States killed in  
21 the line of duty. The member is considered to have been  
22 killed in the line of duty if death resulted from performing a  
23 duty required by his or her orders or commander while in an  
24 official duty status, other than on federal active duty,  
25 authorized under federal or state law; or

26 (2) A person on federal or state active military duty who  
27 is a resident of this state and is killed in the line of duty. The  
28 person is considered to have been killed in the line of duty if

29 death resulted from performance of a duty required by his or  
30 her orders or commander while in an official duty status.

31 (c) Any waiver granted pursuant to this section is subject  
32 to the following:

33 (1) The recipient may attend any undergraduate course if  
34 classroom space is available;

35 (2) The recipient has applied and been admitted to the  
36 institution;

37 (3) The recipient has applied for and submitted the Free  
38 Application for Federal Student Aid;

39 (4) The recipient has exhausted all other sources of  
40 student financial assistance dedicated solely to tuition and  
41 fees that exceed other grant assistance that are available to  
42 him or her, excluding student loans;

43 (5) Waiver renewal is contingent upon the recipient  
44 continuing to meet the academic progress standards  
45 established by the institution.

46 (d) The state institution of higher education may require  
47 the person to pay:

48 (1) Special fees, including any laboratory fees, if the fees  
49 are required of all other students taking a single course or that  
50 particular course; and

51 (2) Parking fees.

52 (e) The governing boards may promulgate rules:

53 (1) For determining the availability of classroom space;

54 (2) As it considers necessary to implement this section;  
55 and

56 (3) Regarding requirements for attendance, which may  
57 not exceed the requirements for other persons.

58 (f) The governing boards may extend to persons  
59 attending courses and classes under this section any rights,  
60 privileges or benefits extended to other students which it  
61 considers appropriate.



## CHAPTER 82

**(H.B. 4623 - By Delegates Morgan, C. Miller and Craig)**

[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §18-23-4a of the Code of West Virginia, 1931, as amended, relating to the Higher Education Policy Commission; the Council for Community and Technical College Education; governing boards of state institutions of higher education; establishing minimum employer contributions; and allowing contributions to employee retirement plans by certain higher education employers to exceed the percentage contributions of employees.

*Be it enacted by the Legislature of West Virginia:*

That §18-23-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**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 (a) Any reference in this code to the “additional  
2 retirement plan” relating to state higher education employees,  
3 means the “higher education retirement plan” provided in this  
4 section. Any state higher education employee participating  
5 in a retirement plan upon the effective date of this section  
6 continues to participate in that plan and may not elect to  
7 participate in any other state retirement plan. Any retirement  
8 plan continues to be governed by the provisions of law  
9 applicable on the effective date of this section.

10 (b) The Higher Education Policy Commission, on behalf  
11 of the governing boards, Council for Community and  
12 Technical College Education and itself, shall contract for a  
13 retirement plan for its employees, to be known as the “Higher  
14 Education Retirement Plan”. The governing boards, Council  
15 for Community and Technical College Education and Higher  
16 Education Policy Commission shall make periodic  
17 deductions from the salary payments due the employees in  
18 the amount they are required to contribute to the Higher  
19 Education Retirement Plan, which deductions shall be six  
20 percent.

21 (c) The Higher Education Policy Commission, Council  
22 for Community and Technical College Education and the  
23 governing boards, may contract for supplemental retirement  
24 plans for any or all of their employees to supplement the  
25 benefits the employees otherwise receive. The governing



26 boards, Council for Community and Technical College  
27 Education and Higher Education Policy Commission may  
28 make additional periodic deductions from the salary  
29 payments due the employees in the amount they are required  
30 to contribute for the supplemental retirement plan.

31 (d) Each governing board, the Council for Community  
32 and Technical College Education and the Higher Education  
33 Policy Commission, by way of additional compensation to  
34 their employees, shall pay an amount, which, at a minimum,  
35 equals the contributions of the employees into the higher  
36 education retirement plan from funds appropriated to the  
37 board or commission for personal services.

38 (e) As part of an overall compensation plan, the Higher  
39 Education Policy Commission, the Council for Community  
40 and Technical College Education or an institutional  
41 governing board, each at its sole discretion, may increase its  
42 contributions to any employee retirement plan to an amount  
43 that exceeds the contributions of employees.

44 (f) Each participating employee has a full and immediate  
45 vested interest in the retirement and death benefits accrued  
46 from all the moneys paid into the Higher Education  
47 Retirement Plan or a supplemental retirement plan for his or  
48 her benefit. Upon proper requisition of a board, the Council  
49 for Community and Technical College Education or the  
50 Higher Education Policy Commission, the Auditor  
51 periodically shall issue a warrant, payable as specified in the  
52 requisition, for the total contributions so withheld from the  
53 salaries of all participating employees and for the matching  
54 funds of the governing board, Council for Community and  
55 Technical College Education or Higher Education Policy  
56 Commission.

57 (g) Any person whose employment commences on or  
58 after the first day of July, one thousand nine hundred ninety-

59 one, and who is eligible to participate in the Higher  
60 Education Retirement Plan, shall participate in that plan and  
61 is not eligible to participate in any other state retirement  
62 system: *Provided*, That the foregoing provision does not  
63 apply to a person designated as a 21st Century Learner  
64 Fellow pursuant to section eleven, article three, chapter  
65 eighteen-a of this code. The additional retirement plan  
66 contracted for by the governing boards prior to the first day  
67 of July, one thousand nine hundred ninety-one, remains in  
68 effect unless changed by the Higher Education Policy  
69 Commission. Nothing in this section may be construed to  
70 consider employees of the governing boards or the Council  
71 for Community and Technical College Education as  
72 employees of the Higher Education Policy Commission, nor  
73 is the Higher Education Policy Commission responsible or  
74 liable for retirement benefits contracted by, or on behalf of,  
75 the governing boards or the Council for Community and  
76 Technical College Education.



## CHAPTER 83

**(Com. Sub. for H.B. 4059 - By Delegates Border, Perdue, Staggers,  
Long, Schadler, Ennis, Moye, Stalnaker and Stephens)**

[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §18A-2-4 of the Code of West Virginia, 1931, as amended, relating to employment of school bus operators issued passenger endorsement on commercial driver license through intrastate waiver program for diabetes; eligibility for employment; conditions; negating negligence for noncompliance.

*Be it enacted by the Legislature of West Virginia:*

That §18A-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 2. SCHOOL PERSONNEL.**

### **§18A-2-4. Commercial driver's license for school personnel; intrastate waiver for bus operators diagnosed with diabetes mellitus requiring insulin; reimbursement of electrician's and commercial driver's license when required.**

1       (a) If a commercial driver's license is required as a  
2 condition of employment for any school employee or  
3 qualified applicant who becomes an employee by a county  
4 board of education, the cost shall be paid in full by the  
5 employer.

6       It is unlawful for any county board of education to  
7 require any employee or applicant who becomes an employee  
8 of the board to pay the cost of acquiring a commercial  
9 driver's license as a condition of employment.

10       (b) The Division of Motor Vehicles shall accept the West  
11 Virginia Department of Education physical and psychomotor  
12 test result forms in lieu of the Division of Motor Vehicles  
13 vision report form.

14       (c) A school bus operator who is currently employed by  
15 a county board of education or who is otherwise subject to  
16 state board rules governing school bus operators and who is  
17 diagnosed with diabetes mellitus requiring insulin is not  
18 ineligible for employment as a school bus operator because  
19 of the diagnosis if the operator is issued a passenger

20 endorsement for his or her commercial driver license through  
21 the intrastate waiver program pertaining to diabetes of the  
22 West Virginia Division of Motor Vehicles, subject to the  
23 following:

24 (1) A copy of the information required to be submitted to  
25 the Division of Motor Vehicles for waiver application and  
26 proof of passenger endorsement under the waiver program is  
27 submitted to his or her employer; and

28 (2) The operator remains in compliance with the  
29 stipulations of and grounds for eligibility for the intrastate  
30 waiver.

31 (d) If a county board of education requires of any  
32 employee who is employed as an electrician any license  
33 renewal when the employee is exempt from renewing the  
34 license pursuant to section three, article three-b, chapter  
35 twenty-nine of this code, the cost of such license renewal  
36 shall be paid in full by the county board of education.

37 (e) Compliance with or failure to comply by a health care  
38 provider licensed and authorized pursuant to chapter thirty of  
39 this code, with the reporting requirements of the Division of  
40 Motor Vehicles regarding the provisions of subsection (c) of  
41 this section does not constitute negligence, nor may  
42 compliance or noncompliance with the requirements of this  
43 section be admissible as evidence of negligence in any civil  
44 or criminal action..

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**CHAPTER 84****(Com. Sub. for H.B. 4117 - By Delegate Browning)**

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[Passed March 8, 2008; in effect July 1, 2008.]  
[Approved by the Governor on March 28, 2008.]

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AN ACT to amend and reenact §18A-4-2b of the Code of West Virginia, 1931, as amended, relating to providing the state minimum salary supplement and the reimbursement of educational expenses to school psychologists and school nurses for achieving certain national certifications; increasing the number of certificate holders who are eligible for the supplements and reimbursements each year; and requiring State Board of Education rule.

*Be it enacted by the Legislature of West Virginia:*

That §18A-4-2b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

**§18A-4-2b. State minimum salary supplement and educational expense reimbursement for professional personnel with recognized national certification in speech-language pathology, audiology, counseling, school psychology or school nursing.**

- 1 (a)(1) The Legislature finds that achieving a nationally
- 2 recognized professional certification in speech-language
- 3 pathology or audiology involves a rigorous process of
- 4 demonstrating both knowledge and skills and results in

5 highly trained and capable employees. Individuals who  
6 attain national professional certification by the American  
7 Speech-Language-Hearing Association provide needed and  
8 essential services to the school students of this state.  
9 Individuals should be encouraged to achieve and maintain the  
10 national professional certification through reimbursement of  
11 expenses and a salary bonus which reflects their additional  
12 certification.

13 (2) The Legislature finds that the rigorous standards and  
14 processes for advanced certification by either the National  
15 Board of Certified Counselors or the West Virginia Board of  
16 Examiners in Counseling helps to promote the quality of  
17 counseling in schools. Counselors in the public schools of  
18 West Virginia should be encouraged to achieve and maintain  
19 the advanced certification through reimbursement of  
20 expenses and a salary bonus that reflects their additional  
21 certification.

22 (3) The Legislature finds that achieving a nationally  
23 recognized professional certification in school psychology  
24 involves a rigorous process of demonstrating competencies  
25 in scientific research-based knowledge and skills. School  
26 psychologists provide assessment, counseling and  
27 consultation to students, teachers, school administrators and  
28 parents. Individuals who attain national professional  
29 certification by the National Association of School  
30 Psychologists provide services to students, families and  
31 school systems in this state. School psychologists should be  
32 encouraged to achieve and maintain this national professional  
33 certification through reimbursement of expenses and a salary  
34 bonus which reflects their additional certification.

35 (4) The Legislature finds that achieving a nationally  
36 recognized professional certification in school nursing  
37 involves a rigorous process of demonstrating competencies  
38 in health care and nursing applications, knowledge and skills.

39 School nurses provide assessment, counseling and  
40 consultation to students, teachers, school administrators and  
41 parents. School nurses who attain national professional  
42 certification by the National Board for Certification of School  
43 Nurses provide services to students, families and school  
44 systems in this state. School nurses should be encouraged to  
45 achieve and maintain this national professional certification  
46 through reimbursement of expenses and a salary bonus which  
47 reflects their additional certification.

48 (5) Therefore, the purpose of this section is:

49 (A) To provide a statewide salary supplement for certain  
50 professional personnel employed in the public schools who  
51 hold nationally recognized professional certification in  
52 speech-language pathology, audiology, counseling, school  
53 psychology or school nursing;

54 (B) To treat these professional certifications equally;

55 (C) To encourage others to attain such a certification; and

56 (D) To help school systems recruit these highly qualified  
57 professionals.

58 (b) In addition to any amounts prescribed in the  
59 applicable state minimum salary schedule, any professional  
60 personnel who hold national certification or other credential  
61 as provided in this section shall be paid an annual salary  
62 supplement of two thousand five hundred dollars. The  
63 payment is:

64 (1) To be made in equal monthly installments;

65 (2) To be considered a part of the state minimum salaries  
66 for teachers; and

67 (3) To continue for the life of the certification, or for ten  
68 years for any one certification, whichever first expires.

69 (c) Professional personnel employed as speech-language  
70 pathologists, audiologists, counselors, school psychologists  
71 or school nurses are eligible upon enrollment for  
72 reimbursement for one-half of the fee for certification in  
73 accordance with this section. In addition, these personnel are  
74 eligible upon attainment of the certification for  
75 reimbursement of the remainder of the application fee plus  
76 other expenses actually incurred toward attainment of the  
77 certification, not exceeding six hundred dollars, upon  
78 approval by the department of education. Not more than one  
79 hundred fifteen speech-language pathologists, audiologists,  
80 counselors, school psychologists and school nurses,  
81 combined total, are eligible for reimbursement in any one  
82 fiscal year.

83 (d) Notwithstanding subsection (b) of this section, for the  
84 school year beginning the first day of July, two thousand  
85 eight, the number of speech-language pathologists,  
86 audiologists, counselors, school psychologists and school  
87 nurses paid the annual salary supplement provided for in said  
88 subsection may not exceed the number of speech-language  
89 pathologists, audiologists and counselors eligible to be paid  
90 the annual salary supplement under the provisions of this  
91 section in effect during the school year beginning the first  
92 day of July, two thousand seven, by more than one hundred  
93 fifteen qualified recipients, and the total amount of qualified  
94 recipients may not increase thereafter by more than one  
95 hundred fifteen in each subsequent fiscal year.

96 (e) The state board shall promulgate a legislative rule  
97 establishing criteria for selection of the individuals eligible  
98 for reimbursement and a salary supplement in accordance  
99 with this section. The selection criteria shall prioritize the  
100 length of time the certification has been held and the years of  
101 experience of the holder in determining eligibility.



102 (f) The state board shall report the rule to the Legislative  
103 Oversight Commission on Education Accountability by the  
104 January, two thousand nine, legislative interim meeting  
105 period and shall report on its progress in developing the rule  
106 to the commission during prior interim meetings as  
107 requested.

108 (g) No provision of this section may be construed to  
109 require any appropriation, or any specific level of  
110 appropriation, by the Legislature, or payment of any  
111 supplement or reimbursement described in this section for  
112 which a specific appropriation has not been made.

113 (h) Notwithstanding any other provision of this section or  
114 the provisions of section two-a of this article, professional  
115 personnel may not be paid a salary supplement pursuant to  
116 the provisions of both said sections.

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## CHAPTER 85

**(Com. Sub. for H.B. 4472 - By Delegate Fragale)**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new section, designated §18A-4-21,  
relating to school personnel; and providing that a board of  
education must wait ten days before posting a new job opening  
following the death of an employee.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18A-4-21, to read as follows:

**ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

**§18A-4-21. Posting of position opening following death of incumbent.**

- 1 A county board may not declare a position vacant and
- 2 post a job opening sooner than ten days following the death
- 3 of an individual employed in that position.



**CHAPTER 86**

**(H.B. 4478 - By Delegates M. Poling, Paxton, Wysong,  
Rodighiero, Ellis, Duke, Rowan, Gall and Wells)**

[Passed March 4, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 12, 2008.]

AN ACT to amend and reenact §18A-5-8 of the Code of West Virginia, 1931, as amended, relating to authority of certain aides to exercise control over students; compensation; transfers and limitations thereof; and expanding the classifications of service personnel for which transfers during the instructional term are limited.

*Be it enacted by the Legislature of West Virginia:*

That §18A-5-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

**§18A-5-8. Authority of certain aides to exercise control over students; compensation; transfers.**

1 (a) Within the limitations provided in this section, any  
2 aide who agrees to do so shall stand in the place of the parent  
3 or guardian and shall exercise such authority and control over  
4 students as is required of a teacher as provided in section one  
5 of this article. The principal shall designate aides in the  
6 school who agree to exercise that authority on the basis of  
7 seniority as an aide and shall enumerate the instances in  
8 which the authority shall be exercised by an aide when  
9 requested by the principal, assistant principal or professional  
10 employee to whom the aide is assigned.

11 (b) The authority provided for in subsection (a) of this  
12 section does not extend to suspending or expelling any  
13 student, participating in the administration of corporal  
14 punishment or performing instructional duties as a teacher or  
15 substitute teacher. However, the authority extends to  
16 supervising students undergoing in-school suspension if the  
17 instructional duties required by the supervision are limited  
18 solely to handing out class work and collecting class work.  
19 The authority to supervise students undergoing in-school  
20 suspension does not include actual instruction.

21 (c) An aide designated by the principal under subsection  
22 (a) of this section shall receive a salary not less than one pay  
23 grade above the highest pay grade held by the service person  
24 under section eight-a, article four of this chapter and any  
25 county salary schedule in excess of the minimum  
26 requirements of this article.

27 (d) An aide may not be required by the operation of this  
28 section to perform noninstructional duties for an amount of  
29 time which exceeds that required under the aide's contract of  
30 employment or that required of other aides in the same school  
31 unless the assignment of the duties is mutually agreed upon  
32 by the aide and the county superintendent, or the

33 superintendent's designated representative, subject to county  
34 board approval.

35 (1) The terms and conditions of the agreement shall be in  
36 writing, signed by both parties, and may include additional  
37 benefits.

38 (2) The agreement shall be uniform as to aides assigned  
39 similar duties for similar amounts of time within the same  
40 school.

41 (3) Aides have the option of agreeing to supervise  
42 students and of renewing related assignments annually. If an  
43 aide elects not to renew the previous agreement to supervise  
44 students, the minimum salary of the aide shall revert to the  
45 pay grade specified in section eight-a, article four of this  
46 chapter for the classification title held by the aide and any  
47 county salary schedule in excess of the minimum  
48 requirements of this article.

49 (e) For the purposes of this section, aide means any aide  
50 class title as defined in section eight, article four of this  
51 chapter regardless of numeric classification.

52 (f) Subject to the limitations set forth in subsection (g) of  
53 this section, an aide may transfer to another position of  
54 employment one time only during any one half of a school  
55 term, unless otherwise mutually agreed upon by the aide and  
56 the county superintendent, or the superintendent's designee,  
57 subject to county board approval. During the first year of  
58 employment as an aide, an aide may not transfer to another  
59 position of employment during the first one-half school term  
60 of employment unless mutually agreed upon by the aide and  
61 county superintendent, subject to county board approval.

62 (g) Autism mentors and aides providing services to  
63 children diagnosed as autistic or with autism spectrum  
64 disorder; and paraprofessionals, interpreters and aides

65 providing one-on-one services to students with  
66 exceptionalities as required by the students' individualized  
67 education programs (IEP).

68 (1) Legislative findings and intent.

69 (A) The Legislature finds that it is not in the best interest  
70 of a student with autism or a student with an exceptionality  
71 whose IEP requires one-on-one services to have multiple  
72 teachers, mentors, aides, paraprofessionals, interpreters or  
73 any combination thereof during the instructional term; and

74 (B) It is the intent of the Legislature that filling positions  
75 through transfers of personnel from one position to another  
76 after the fifth day prior to the beginning of the instructional  
77 term be kept to a minimum for autism mentors and aides who  
78 work with students with autism and for paraprofessionals,  
79 interpreters and aides who work with students with  
80 exceptionalities whose IEPs require one-on-one services.

81 (2) Transfer limitations and conditions.

82 (A) Notwithstanding the provisions of subsection (f) of  
83 this section, after the fifth day prior to the beginning of the  
84 instructional term, a service person may not transfer to  
85 another position in the county during that instructional term,  
86 unless he or she does not have valid certification, if the  
87 service person is employed and assigned as an autism mentor  
88 or aide who works with students with autism, or as a  
89 paraprofessional, interpreter or aide who works with a  
90 student with an exceptionality whose IEP requires one-on-  
91 one services.

92 (B) The provisions of this subsection are subject to the  
93 following conditions:

94 (i) The aide, autism mentor, paraprofessional or  
95 interpreter may apply for any posted, vacant position with

96 the successful applicant assuming the position at the  
97 beginning of the next instructional term;

98 (ii) The county board, upon recommendation of the  
99 superintendent, may fill a position before the beginning of the  
100 next instructional term when it is determined to be in the best  
101 interest of the students; and

102 (iii) The county superintendent shall notify the State  
103 Board when a service person who is subject to the provisions  
104 of this subsection is transferred to another position after the  
105 fifth day prior to the beginning of the instructional term;

106 (h) Regular service personnel employed in a category of  
107 employment other than aide who seek employment as an aide  
108 shall hold a high school diploma or shall have received a  
109 general educational development certificate and shall have  
110 the opportunity to receive appropriate training pursuant to  
111 subsection (j), section thirteen, article five, chapter eighteen  
112 of this code and section two, article twenty of said chapter.



## CHAPTER 87

**(Com. Sub. for H.B. 3215 - By Delegates Doyle,  
Wysong and Tabb)**

[Passed March 8, 2008; in effect July 1, 2008.]  
[Approved by the Governor on March 28, 2008.]

AN ACT to repeal §18B-1-7 of the Code of West Virginia, 1931, as amended; to repeal §18B-1A-7 of said code; to repeal §18B-1B-11 of said code; to repeal §18B-2B-6a of said code; to repeal §18B-6-1 of said code; to repeal §18B-14-8 of said code; to amend and reenact §18B-1-2 and §18B-1-8 of said code; to

amend and reenact §18B-1B-6 of said code; to amend and reenact §18B-1C-2 of said code; to amend and reenact §18B-2A-1, §18B-2A-2 and §18B-2A-4 of said code; to amend said code by adding thereto a new section, designated §18B-2A-7a; to amend and reenact §18B-2B-6 of said code; to amend and reenact §18B-2C-1 and §18B-2C-3 of said code; to amend and reenact §18B-3-3 of said code; to amend and reenact §18B-3C-5, §18B-3C-8, §18B-3C-12, §18B-3C-13 and §18B-3C-14; to amend said code by adding thereto a new section, designated §18B-3C-15; and to amend and reenact §18B-8-3 of said code, all relating to higher education generally; state institutions of higher education; statewide network of independently accredited community and technical colleges; modifying certain powers and duties of West Virginia Council for Community and Technical College Education, Higher Education Policy Commission and institutional boards of governors; defining terms; designating certain community and technical colleges as independent state institutions of higher education and removing administrative link to former sponsoring institutions; clarifying student rights under certain circumstances; providing for appointment of institutional presidents; specifying contract terms and evaluation procedures; modifying title of certain institutional employees; providing for continuation in office; abolishing institutional boards of advisors and establishing boards of governors for certain community and technical colleges; providing for initial appointments to boards of governors; quorums; establishing eligibility criteria and defining membership; requiring institutional master plans and compacts focused on achieving state goals, objectives and priorities; providing for transfer of certain orders, resolutions, rules and obligations from former sponsoring institutions to certain boards of governors; requiring division of assets and liabilities by date certain; providing guidelines for division of assets and liabilities; providing mechanism and time lines for resolution of disputes; prohibiting challenge of certain decisions in state courts; modifying requirements for certain rules; requiring certain

legislative and emergency rules; specifying approval procedure for emergency rules; clarifying certain reporting requirements; modifying procedure for establishing priorities for certain capital projects; modifying specifications for development of certain budgets; clarifying and redefining relationships between and among certain higher education boards and institutions; making legislative findings and specifying legislative intent; defining statewide network of independently accredited community and technical colleges; establishing core mission, objectives and priorities for independent community and technical colleges; authorizing certain governing boards to change institutional name by date certain; modifying number of lay members on certain governing boards; authorizing certain governing boards to maintain association with former sponsoring institutions under certain circumstances; continuing certain contracts related to program delivery and provision of certain services; making certain governing boards responsible for maintaining or achieving independent accreditation and essential conditions; requiring former sponsoring institutions to provide certain services for specified period; modifying fee requirements and limitations; specifying contract terms; providing for contract modification under certain circumstances; establishing Pierpont Community and Technical College as an independent state institution of higher education; defining institutional mission and duties and responsibilities of governing boards; requiring independent accreditation by date certain; providing for program accreditation by Fairmont State University under contract until certain date and requiring approval of contract terms by Council for Community and Technical College Education; directing council to take steps necessary to achieve independent accreditation status; providing for severing accreditation contract between institutions under certain circumstances; establishing advanced technology centers; defining mission, goals and objectives; establishing boards of advisors; specifying membership and terms of office; providing for transition oversight and implementation by Legislative Oversight Commission on



Education Accountability; providing for salary increase when faculty member is promoted in rank; making technical corrections; and deleting obsolete provisions.

*Be it enacted by the Legislature of West Virginia:*

That §18B-1-7 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-1A-7 of said code be repealed; that §18B-1B-11 of said code be repealed; that §18B-2B-6a of said code be repealed; that §18B-6-1 of said code be repealed; that §18B-14-8 of said code be repealed; that §18B-1-2 and §18B-1-8 of said code be amended and reenacted; that §18B-1B-6 of said code be amended and reenacted; that §18B-1C-2 of said code be amended and reenacted; that §18B-2A-1, §18B-2A-2 and §18B-2A-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-2A-7a; that §18B-2B-6 of said code be amended and reenacted; that §18B-2C-1 and §18B-2C-3 of said code be amended and reenacted; that §18B-3-3 of said code be amended and reenacted; that §18B-3C-5, §18B-3C-8, §18B-3C-12, §18B-3C-13 and §18B-3C-14 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-3C-15; and that §18B-8-3 of said code be amended and reenacted, all to read as follows:

#### **Article**

1. **Governance.**
- 1B. **Higher Education Policy Commission.**
- 1C. **West Virginia University Institute of Technology.**
- 2A. **Institutional Boards of Governors.**
- 2B. **West Virginia Council for Community and Technical College Education.**
- 2C. **West Virginia Community and Technical College.**
3. **Additional Powers and Duties of Research Doctoral-Granting Public Universities.**
- 3C. **Community and Technical College System.**
8. **Higher Education Full-Time Faculty Salaries.**

### **ARTICLE 1. GOVERNANCE.**

§18B-1-2. Definitions.

§18B-1-8. Student rights when institutional affiliations or governance structures change.

#### **§18B-1-2. Definitions.**

1 The following words when used in this chapter and  
2 chapter eighteen-c of this code have the meanings ascribed to  
3 them unless the context clearly indicates a different meaning:

4 (a) "Governing boards" or "boards" means the  
5 institutional boards of governors created pursuant to section  
6 one, article two-a of this chapter;

7 (b) "Free-standing community and technical colleges"  
8 means Southern West Virginia Community and Technical  
9 College, West Virginia Northern Community and Technical  
10 College, and Eastern West Virginia Community and  
11 Technical College, which may not be operated as branches or  
12 off-campus locations of any other state institution of higher  
13 education;

14 (c) "Community and technical college", in the singular or  
15 plural, means the free-standing community and technical  
16 colleges and other state institutions of higher education which  
17 deliver community and technical college education. This  
18 definition includes Southern West Virginia Community and  
19 Technical College, West Virginia Northern Community and  
20 Technical College, Eastern West Virginia Community and  
21 Technical College, New River Community and Technical  
22 College, West Virginia University at Parkersburg, The  
23 Community and Technical College at West Virginia  
24 University Institute of Technology, Blue Ridge Community  
25 and Technical College, Marshall Community and Technical  
26 College, West Virginia State Community and Technical  
27 College and Pierpont Community and Technical College;

28 (d) "Community and technical college education" means  
29 the programs, faculty, administration and funding associated  
30 with the delivery of community and technical college  
31 education programs;

32 (e) "Essential conditions" means those conditions which  
33 shall be met by community and technical colleges as  
34 provided in section three, article three-c of this chapter;

35 (f) "Higher education institution" means any institution  
36 as defined by Sections 401(f), (g) and (h) of the federal  
37 Higher Education Facilities Act of 1963, as amended;

38 (g) "Higher Education Policy Commission", "Policy  
39 Commission" or "Commission" means the commission  
40 created pursuant to section one, article one-b of this chapter;

41 (h) "Chancellor for Higher Education" means the chief  
42 executive officer of the Higher Education Policy Commission  
43 employed pursuant to section five, article one-b of this  
44 chapter;

45 (i) "Chancellor for Community and Technical College  
46 Education" means the chief executive officer of the West  
47 Virginia Council for Community and Technical College  
48 Education employed pursuant to section three, article two-b  
49 of this chapter;

50 (j) "Chancellor" means the Chancellor for Higher  
51 Education where the context refers to a function of the  
52 Higher Education Policy Commission. "Chancellor" means  
53 Chancellor for Community and Technical College Education  
54 where the context refers to a function of the West Virginia  
55 Council for Community and Technical College Education;

56 (k) "Institutional operating budget" or "operating budget"  
57 means for any fiscal year an institution's total unrestricted  
58 education and general funding from all sources in the prior  
59 fiscal year, including, but not limited to, tuition and fees and  
60 legislative appropriation, and any adjustments to that funding  
61 as approved by the commission or council based on  
62 comparisons with peer institutions or to reflect consistent  
63 components of peer operating budgets;

64 (l) "Community and technical college education  
65 program" means any college-level course or program beyond  
66 the high school level provided through a public institution of  
67 higher education resulting in or which may result in a  
68 two-year associate degree award including an associate of  
69 arts, an associate of science and an associate of applied  
70 science; certificate programs and skill sets; developmental  
71 education; continuing education; collegiate credit and  
72 noncredit workforce development programs; and transfer and  
73 baccalaureate parallel programs. All programs are under the  
74 jurisdiction of the council. Any reference to "post-secondary  
75 vocational education programs" means community and  
76 technical college education programs as defined in this  
77 subsection;

78 (m) "Rule" or "rules" means a regulation, standard, policy  
79 or interpretation of general application and future effect;

80 (n) "Vice Chancellor for Administration" means the  
81 person employed in accordance with section two, article four  
82 of this chapter. Any reference in this chapter or chapter  
83 eighteen-c of this code to "Senior Administrator" means Vice  
84 Chancellor for Administration;

85 (o) "State college" means Bluefield State College,  
86 Concord University, Fairmont State University, Glenville  
87 State College, Shepherd University, West Liberty State  
88 College or West Virginia State University;

89 (p) "State institution of higher education" means any  
90 university, college or community and technical college under  
91 the jurisdiction of a governing board as that term is defined  
92 in this section;

93 (q) "Board of visitors" means the advisory board  
94 previously appointed for the West Virginia Graduate College  
95 and the advisory board previously appointed for West

96 Virginia University Institute of Technology, which provide  
97 guidance to the Marshall University Graduate College and  
98 West Virginia University Institute of Technology,  
99 respectively;

100 (r) "Institutional compact" means the compact between  
101 the commission or council and a state institution of higher  
102 education under its jurisdiction, as described in section six,  
103 article one-d of this chapter;

104 (s) "Peer institutions", "peer group" or "peers" means  
105 public institutions of higher education used for comparison  
106 purposes and selected by the commission pursuant to section  
107 three, article one-a of this chapter;

108 (t) "Administratively linked community and technical  
109 college" means a state institution of higher education  
110 delivering community and technical college education and  
111 programs which has maintained a contractual agreement to  
112 receive essential services from another accredited state  
113 institution of higher education prior to the first day of July,  
114 two thousand eight;

115 (u) "Sponsoring institution" means a state institution of  
116 higher education that maintained an administrative link to a  
117 community and technical college providing essential services  
118 prior to the first day of July, two thousand eight. This  
119 definition includes institutions whose governing boards had  
120 under their jurisdiction a community and technical college,  
121 regional campus or a division delivering community and  
122 technical college education and programs;

123 (v) "Collaboration" means entering into an agreement  
124 with one or more providers of education services in order to  
125 enhance the scope, quality or efficiency of education  
126 services;

127 (w) "Broker" or "brokering" means serving as an agent on  
128 behalf of students, employers, communities or responsibility  
129 areas to obtain education services not offered at that  
130 institution. These services include courses, degree programs  
131 or other services contracted through an agreement with a  
132 provider of education services either in-state or out-of-state;

133 (x) "Council" means the West Virginia Council for  
134 Community and Technical College Education created  
135 pursuant to article two-b of this chapter;

136 (y) "West Virginia Consortium for Undergraduate  
137 Research and Engineering" or "West Virginia CURE" means  
138 the collaborative planning group established pursuant to  
139 article one-c of this chapter;

140 (z) "Advanced technology center" means a facility  
141 established under the direction of an independent community  
142 and technical college for the purpose of implementing and  
143 delivering education and training programs for high-skill,  
144 high-performance Twenty-first Century workplaces;

145 (aa) "Statewide network of independently accredited  
146 community and technical colleges" or "community and  
147 technical college network" means the state institutions of  
148 higher education under the jurisdiction of the West Virginia  
149 Council for Community and Technical College Education  
150 which are independently accredited or are seeking  
151 independent accreditation by the regional accrediting agency,  
152 each governed by its own independent governing board, and  
153 each having a core mission of providing affordable access to  
154 and delivering high quality community and technical  
155 education in every region of the state; and

156 (bb) "Independent community and technical college"  
157 means a state institution of higher education under the  
158 jurisdiction of the council which is independently accredited

159 or seeking independent accreditation, is governed by its own  
160 independent governing board, and may not be operated as a  
161 branch or off-campus location of any other state institution of  
162 higher education. This definition includes Blue Ridge  
163 Community and Technical College, The Community and  
164 Technical College at West Virginia University Institute of  
165 Technology, Eastern West Virginia Community and  
166 Technical College, Marshall Community and Technical  
167 College, New River Community and Technical College,  
168 Pierpont Community and Technical College, Southern West  
169 Virginia Community and Technical College, West Virginia  
170 Northern Community and Technical College, West Virginia  
171 State Community and Technical College, and West Virginia  
172 University at Parkersburg.

173 (cc) “Dual credit course” or “dual enrollment course” is  
174 a credit-bearing college-level course offered in a high school  
175 by a state institution of higher education for high school  
176 students in which the students are concurrently enrolled and  
177 receiving credit at the secondary level.

**§18B-1-8. Student rights when institutional affiliations or  
governance structures change.**

1 (a) When a conflict exists between academic program  
2 requirements at an institution to be consolidated, merged,  
3 separated from, or administratively linked to another state  
4 institution of higher education, the requirements of the  
5 institution at which the student initially enrolled prevail. A  
6 student may not be required to earn additional credits toward  
7 the degree pursued, or to take additional courses, that were  
8 not included in the program of study at the time the student  
9 declared that major at the enrolling institution.

10 (b) A student enrolled in an institution to be consolidated,  
11 merged, separated from, or administratively linked to another  
12 state institution of higher education shall continue to receive

13 any state-funded student financial aid for which he or she  
14 would otherwise be eligible.

## **ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

### **§18B-1B-6. Appointment of institutional presidents; evaluation.**

1 (a) *Appointment of institutional presidents.* --  
2 Appointment of presidents of the state institutions of higher  
3 education shall be made as follows:

4 (1) The initial contract term for a president of a state  
5 institution of higher education may not exceed two years. At  
6 the end of the initial contract period, and subject to the  
7 provisions of subsection (c) of this section, the governing  
8 board may offer the president a contract of longer duration,  
9 but not to exceed five years.

10 (A) The provisions relating to initial contract periods do  
11 not affect the terms of a current contract for any person  
12 holding a multiyear contract and serving as president of a  
13 state institution of higher education or division of a state  
14 institution of higher education delivering community and  
15 technical education on the thirtieth day of June, two thousand  
16 eight;

17 (B) At the end of the current contract period and  
18 thereafter, the governing board shall make presidential  
19 appointments in accordance with the provisions of this  
20 section.

21 (2) The person who is president, provost, or divisional  
22 administrative head of the community and technical college  
23 on the thirtieth day of June, two thousand eight, becomes the  
24 president of the institution on the effective date of this  
25 section.



26       (3) The president of a state institution of higher education  
27 serves at the will and pleasure of the appointing governing  
28 board.

29       (4) Subject to the approval of the commission, the  
30 governing board of the institution appoints a president for  
31 Bluefield State College, Concord University, Fairmont State  
32 University, Glenville State College, Marshall University,  
33 Shepherd University, West Liberty State College, West  
34 Virginia School of Osteopathic Medicine, West Virginia  
35 State University and West Virginia University.

36       (5) Subject to the approval of the council, the governing  
37 board of the community and technical college appoints a  
38 president for Blue Ridge Community and Technical College,  
39 The Community and Technical College at West Virginia  
40 University Institute of Technology, Eastern West Virginia  
41 Community and Technical College, Marshall Community  
42 and Technical College, New River Community and Technical  
43 College, Pierpont Community and Technical College,  
44 Southern West Virginia Community and Technical College,  
45 West Virginia Northern Community and Technical College,  
46 West Virginia State Community and Technical College, and  
47 West Virginia University at Parkersburg.

48       (b) *Other appointments.* -- The institutional president  
49 appoints a provost to be the administrative head of the  
50 Potomac campus of West Virginia University and a provost  
51 to be the administrative head of West Virginia University  
52 Institute of Technology.

53       (c) *Evaluation of presidents.* --

54       (1) The appointing governing board shall conduct written  
55 performance evaluations of the institution's president.  
56 Evaluations shall be done at the end of the initial two-year  
57 contract period and in every third year of employment as

58 president thereafter, recognizing unique characteristics of the  
59 institution and using institutional personnel, boards of  
60 advisors as appropriate, staff of the appropriate governing  
61 board and persons knowledgeable in higher education matters  
62 who are not otherwise employed by a governing board. A  
63 part of the evaluation shall be a determination of the success  
64 of the institution in meeting the requirements of its  
65 institutional compact and in achieving the goals, objectives  
66 and priorities established in articles one and one-d of this  
67 chapter.

68 (2) After reviewing the evaluations, the board of  
69 governors shall make a determination by majority vote of its  
70 members on continuing employment and the compensation  
71 level for the president in accordance with the provisions of  
72 subsection (a) of this section.

73 (d) The commission and council each shall propose a rule  
74 for legislative approval in accordance with the provisions of  
75 section six, article one of this chapter and article three-a,  
76 chapter twenty-nine-a of this code by the first day of  
77 September, two thousand eight, to provide guidance for the  
78 institutional governing boards in filling vacancies in the  
79 office of president in accordance with the provisions of this  
80 chapter. The rule shall include, but is not limited to,  
81 clarifying the powers, duties and roles of the governing  
82 boards, the commission, the council, and the chancellors in  
83 the presidential appointment process.

84 (e) The Legislature finds that an emergency exists and,  
85 therefore, the commission and the council each shall file a  
86 rule to implement the provisions of this section as an  
87 emergency rule by the first day of September, two thousand  
88 eight, pursuant to the provisions of article three-a, chapter  
89 twenty-nine-a of this code. The emergency rule may not be  
90 implemented without prior approval of the Legislative  
91 Oversight Commission on Education Accountability.

**ARTICLE 1C. WEST VIRGINIA UNIVERSITY INSTITUTE  
OF TECHNOLOGY.**

**§18B-1C-2. West Virginia University Institute of Technology;  
division of West Virginia University.**

1 (a) West Virginia University Institute of Technology is a  
2 fully integrated division of West Virginia University. All  
3 administrative and academic units are consolidated with  
4 primary responsibility for direction and support assigned to  
5 West Virginia University. The advisory board previously  
6 appointed for West Virginia University Institute of  
7 Technology is known as the board of visitors and shall  
8 provide guidance to the division in fulfilling its mission. The  
9 chairperson of the board of visitors serves as an ex-officio,  
10 voting member of the West Virginia University Board of  
11 Governors.

12 (b) The fully integrated division is named West Virginia  
13 University Institute of Technology. The headquarters of  
14 West Virginia University Institute of Technology remains in  
15 Montgomery, West Virginia.

16 (c) The provisions of this section do not affect the  
17 independent accreditation or continued operation of The  
18 Community and Technical College at West Virginia  
19 University Institute of Technology. Effective the first day of  
20 July, two thousand eight, the institution becomes an  
21 independent community and technical college administered  
22 by its own governing board under the jurisdiction and  
23 authority of the council and is subject to all applicable  
24 provisions of this chapter and chapter eighteen-c of this code.

25 (d) Auxiliary enterprises shall be incorporated into the  
26 West Virginia University auxiliary enterprise system. The  
27 West Virginia University Board of Governors shall determine  
28 if operations at West Virginia University Institute of

29 Technology can be operated on a self-sufficient basis when  
30 establishing rates for auxiliary services and products.

31 (e) West Virginia University Institute of Technology has  
32 a strong reputation in engineering and other scientific  
33 disciplines. These programs shall be maintained, cultivated  
34 and emphasized further as its sustaining mission over the  
35 next decade.

36 (f) By the first day of April, two thousand seven, the  
37 West Virginia University Board of Governors shall develop  
38 and approve a plan to implement the provisions of this  
39 article. Beginning the first day of July, two thousand six, the  
40 board of governors may begin implementing appropriate  
41 changes in the operations of West Virginia University  
42 Institute of Technology to further the purposes of this article.

43 (g) By the first day of November, two thousand six, and  
44 annually thereafter for a period of four years, the West  
45 Virginia University Board of Governors shall prepare and  
46 submit a report to the commission and Legislative Oversight  
47 Commission on Education Accountability on progress being  
48 made to implement the provisions of this article.

49 (h) West Virginia University Institute of Technology  
50 shall develop or maintain baccalaureate degree programs as  
51 a permanent component of its curriculum.

## **ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.**

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment; establishment of boards for independent community and technical colleges.

§18B-2A-2. Meetings.

§18B-2A-4. Powers and duties of governing boards generally.

§18B-2A-7a. Transfer of orders, resolutions, policies and rules, obligations, etc.

### **§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for**

**reappointment; establishment of boards for  
independent community and technical colleges.**

1 (a) A board of governors is continued at each of the  
2 following institutions: Bluefield State College, Blue Ridge  
3 Community and Technical College, Concord University,  
4 Eastern West Virginia Community and Technical College,  
5 Fairmont State University, Glenville State College, Marshall  
6 University, New River Community and Technical College,  
7 Shepherd University, Southern West Virginia Community  
8 and Technical College, West Liberty State College, West  
9 Virginia Northern Community and Technical College, the  
10 West Virginia School of Osteopathic Medicine, West  
11 Virginia State University and West Virginia University.

12 (b) *Independent community and technical colleges*  
13 *established --*

14 (1) Effective the first day of July, two thousand eight, the  
15 board of advisors is abolished and a board of governors is  
16 established for Marshall Community and Technical College;  
17 Pierpont Community and Technical College, formerly a  
18 division of Fairmont State University; The Community and  
19 Technical College at West Virginia University Institute of  
20 Technology; West Virginia State Community and Technical  
21 College; and West Virginia University at Parkersburg.

22 (A) In making the initial appointments to these boards of  
23 governors, the Governor shall appoint those persons who are  
24 lay members of the boards of governors by the thirtieth day  
25 of June, two thousand eight.

26 (B) At the end of the initial term, and thereafter, an  
27 appointment to fill a vacancy on the board or reappointment  
28 of a member who is eligible to serve an additional term is  
29 made in accordance with the provisions of this section.

30 (c) The institutional boards of governors for Marshall  
31 University and West Virginia University consist of sixteen  
32 persons. The boards of governors of the other state  
33 institutions of higher education consist of twelve persons.

34 (d) Each board of governors includes the following  
35 members:

36 (1) A full-time member of the faculty with the rank of  
37 instructor or above duly elected by the faculty of the  
38 respective institution;

39 (2) A member of the student body in good academic  
40 standing, enrolled for college credit work and duly elected by  
41 the student body of the respective institution;

42 (3) A member from the institutional classified employees  
43 duly elected by the classified employees of the respective  
44 institution; and

45 (4) For the institutional Board of Governors at Marshall  
46 University, thirteen lay members appointed by the Governor,  
47 by and with the advice and consent of the Senate, pursuant to  
48 this section.

49 (5) For the institutional Board of Governors at West  
50 Virginia University, twelve lay members appointed by the  
51 Governor, by and with the advice and consent of the Senate,  
52 pursuant to this section and, additionally, the chairperson of  
53 the Board of Visitors of West Virginia University Institute of  
54 Technology.

55 (6) For each institutional board of governors of the other  
56 state institutions of higher education, nine lay members  
57 appointed by the Governor, by and with the advice and  
58 consent of the Senate, pursuant to this section.

59 (e) Of the nine members appointed by the Governor, no  
60 more than five may be of the same political party. Of the  
61 thirteen members appointed by the Governor to the governing  
62 board of Marshall University, no more than eight may be of  
63 the same political party. Of the twelve members appointed  
64 by the Governor to the governing board of West Virginia  
65 University, no more than seven may be of the same political  
66 party. Of the nine members appointed by the Governor, at  
67 least six shall be residents of the state. Of the thirteen  
68 members appointed by the Governor to the governing board  
69 of Marshall University, at least eight shall be residents of the  
70 state. Of the twelve members appointed by the Governor to  
71 the governing board of West Virginia University, at least  
72 eight shall be residents of the state.

73 (f) The student member serves for a term of one year.  
74 Each term begins on the first day of July.

75 (g) The faculty member serves for a term of two years.  
76 Each term begins on the first day of July. Faculty members  
77 are eligible to succeed themselves for three additional terms,  
78 not to exceed a total of eight consecutive years.

79 (h) The member representing classified employees serves  
80 for a term of two years. Each term begins on the first day of  
81 July. Members representing classified employees are eligible  
82 to succeed themselves for three additional terms, not to  
83 exceed a total of eight consecutive years.

84 (i) The appointed lay citizen members serve terms of up  
85 to four years each and are eligible to succeed themselves for  
86 no more than one additional term.

87 (j) A vacancy in an unexpired term of a member shall be  
88 filled for the unexpired term within thirty days of the  
89 occurrence of the vacancy in the same manner as the original  
90 appointment or election. Except in the case of a vacancy, all

91 elections shall be held and all appointments shall be made no  
92 later than the thirtieth day of June preceding the  
93 commencement of the term. Each board of governors shall  
94 elect one of its appointed lay members to be chairperson in  
95 June of each year except for the fiscal year beginning on the  
96 first day of July, two thousand eight only, when the board  
97 shall elect the chairperson in July. A member may not serve  
98 as chairperson for more than four consecutive years.

99 (k) The appointed members of the institutional boards of  
100 governors serve staggered terms of up to four years except  
101 that four of the initial appointments to the governing boards  
102 of community and technical colleges which become  
103 independent on the first day of July, two thousand eight are  
104 for terms of two years and five of the initial appointments are  
105 for terms of four years.

106 (l) A person is ineligible for appointment to membership  
107 on a board of governors of a state institution of higher  
108 education under the following conditions:

109 (1) For a baccalaureate institution or university, a person  
110 is ineligible for appointment who is an officer, employee or  
111 member of any other board of governors, an employee of any  
112 institution of higher education; an officer or member of any  
113 political party executive committee; the holder of any other  
114 public office or public employment under the government of  
115 this state or any of its political subdivisions; an employee of  
116 any affiliated research corporation created pursuant to article  
117 twelve of this chapter; an employee of any affiliated  
118 foundation organized and operated in support of one or more  
119 state institutions of higher education; or a member of the  
120 council or commission. This subsection does not prevent the  
121 representative from the faculty, classified employees,  
122 students, or the superintendent of a county board of education  
123 from being members of the governing boards.



124       (2) For a community and technical college, a person is  
125 ineligible for appointment who is an officer, employee or  
126 member of any other board of governors; a member of a  
127 board of visitors of any public institution of higher education;  
128 an employee of any institution of higher education; an officer  
129 or member of any political party executive committee; the  
130 holder of any other public office, other than an elected county  
131 office, or public employment, other than employment by the  
132 county board of education, under the government of this state  
133 or any of its political subdivisions; an employee of any  
134 affiliated research corporation created pursuant to article  
135 twelve of this chapter; an employee of any affiliated  
136 foundation organized and operated in support of one or more  
137 state institutions of higher education; or a member of the  
138 council or commission. This subsection does not prevent the  
139 representative from the faculty, classified employees,  
140 students, or chairpersons of the boards of advisors from being  
141 members of the governing boards.

142       (m) Before exercising any authority or performing any  
143 duties as a member of a governing board, each member shall  
144 qualify as such by taking and subscribing to the oath of office  
145 prescribed by section five, article IV of the Constitution of  
146 West Virginia and the certificate thereof shall be filed with  
147 the Secretary of State.

148       (n) A member of a governing board appointed by the  
149 Governor may not be removed from office by the Governor  
150 except for official misconduct, incompetence, neglect of duty  
151 or gross immorality and then only in the manner prescribed  
152 by law for the removal of the state elective officers by the  
153 Governor.

154       (o) The president of the institution shall make available  
155 resources of the institution for conducting the business of its  
156 board of governors. The members of the board of governors  
157 serve without compensation, but are reimbursed for all

158 reasonable and necessary expenses actually incurred in the  
159 performance of official duties under this article upon  
160 presentation of an itemized sworn statement of expenses. All  
161 expenses incurred by the board of governors and the  
162 institution under this section are paid from funds allocated to  
163 the institution for that purpose.

**§18B-2A-2. Meetings.**

1 (a) The boards of governors shall hold at least six  
2 meetings in every fiscal year, including an annual meeting  
3 each June for the purpose of electing officers.

4 Of the sixteen voting members of the boards of governors  
5 of Marshall University and West Virginia University, nine  
6 shall constitute a quorum. Of the twelve voting members of  
7 the boards of governors of the other state institutions of  
8 higher education, seven shall constitute a quorum. A  
9 majority vote of the quorum shall be necessary to pass upon  
10 matters before the institutional board of governors.

11 (b) The boards of governors may set aside time as they  
12 consider appropriate to afford administrators, faculty,  
13 students and classified staff an opportunity to discuss issues  
14 affecting these groups.

**§18B-2A-4. Powers and duties of governing boards generally.**

1 Each governing board separately has the following  
2 powers and duties:

3 (a) Determine, control, supervise and manage the  
4 financial, business and education policies and affairs of the  
5 state institution of higher education under its jurisdiction;

6 (b) Develop a master plan for the institution under its  
7 jurisdiction.

8 (1) The ultimate responsibility for developing and  
9 updating the master plans at the institutional level resides  
10 with the board of governors, but the ultimate responsibility  
11 for approving the final version of the institutional master  
12 plans, including periodic updates, resides with the  
13 commission or council, as appropriate.

14 (2) Each master plan shall include, but not be limited to,  
15 the following:

16 (A) A detailed demonstration of how the master plan will  
17 be used to meet the goals and objectives of the institutional  
18 compact;

19 (B) A well-developed set of goals outlining missions,  
20 degree offerings, resource requirements, physical plant needs,  
21 personnel needs, enrollment levels and other planning  
22 determinates and projections necessary in a plan to assure  
23 that the needs of the institution's area of responsibility for a  
24 quality system of higher education are addressed;

25 (C) Document the involvement of the commission or  
26 council, as appropriate, institutional constituency groups,  
27 clientele of the institution and the general public in the  
28 development of all segments of the institutional master plan.

29 (3) The plan shall be established for periods of not less  
30 than three nor more than five years and shall be revised  
31 periodically as necessary, including the addition or deletion  
32 of degree programs as, in the discretion of the appropriate  
33 governing board, are necessary;

34 (c) Prescribe for the institution under its jurisdiction, in  
35 accordance with its master plan and compact, specific  
36 functions and responsibilities to achieve the goals, objectives  
37 and priorities established in articles one and one-d of this  
38 chapter to meet the higher education needs of its area of  
39 responsibility and to avoid unnecessary duplication;

40 (d) Direct the preparation of a budget request for the  
41 institution under its jurisdiction, which relates directly to  
42 missions, goals and projections as found in the institutional  
43 master plan and the institutional compact;

44 (e) Consider, revise and submit to the commission or  
45 council, as appropriate, a budget request on behalf of the  
46 institution under its jurisdiction;

47 (f) Review, at least every five years, all academic  
48 programs offered at the institution under its jurisdiction. The  
49 review shall address the viability, adequacy and necessity of  
50 the programs in relation to established state goals, objectives  
51 and priorities, the institutional master plan, the institutional  
52 compact and the education and workforce needs of its  
53 responsibility district. As a part of the review, each  
54 governing board shall require the institution under its  
55 jurisdiction to conduct periodic studies of its graduates and  
56 their employers to determine placement patterns and the  
57 effectiveness of the education experience. Where  
58 appropriate, these studies should coincide with the studies  
59 required of many academic disciplines by their accrediting  
60 bodies;

61 (g) Ensure that the sequence and availability of academic  
62 programs and courses offered by the institution under its  
63 jurisdiction is such that students have the maximum  
64 opportunity to complete programs in the time frame normally  
65 associated with program completion. Each governing board  
66 is responsible to see that the needs of nontraditional  
67 college-age students are appropriately addressed and, to the  
68 extent it is possible for the individual governing board to  
69 control, to assure core course work completed at the  
70 institution under its jurisdiction is transferable to any other  
71 state institution of higher education for credit with the grade  
72 earned;

73 (h) Subject to the provisions of article one-b of this  
74 chapter, approve the teacher education programs offered in  
75 the institution under its control. In order to permit graduates  
76 of teacher education programs to receive a degree from a  
77 nationally accredited program and in order to prevent  
78 expensive duplication of program accreditation, the  
79 commission may select and use one nationally recognized  
80 teacher education program accreditation standard as the  
81 appropriate standard for program evaluation;

82 (i) Use faculty, students and classified employees in  
83 institutional-level planning and decisionmaking when those  
84 groups are affected;

85 (j) Subject to the provisions of federal law and pursuant  
86 to the provisions of article nine of this chapter and to rules  
87 adopted by the commission and the council, administer a  
88 system for the management of personnel matters, including,  
89 but not limited to, personnel classification, compensation and  
90 discipline for employees at the institution under its  
91 jurisdiction;

92 (k) Administer a system for hearing employee grievances  
93 and appeals. Notwithstanding any other provision of this  
94 code to the contrary, the procedure established in article two,  
95 chapter six-c of this code is the exclusive mechanism for  
96 hearing prospective employee grievances and appeals;

97 (l) Solicit and use or expend voluntary support, including  
98 financial contributions and support services, for the  
99 institution under its jurisdiction;

100 (m) Appoint a president for the institution under its  
101 jurisdiction subject to the provisions of section six, article  
102 one-b of this chapter;

103 (n) Conduct written performance evaluations of the  
104 president pursuant to section six, article one-b of this chapter;

105 (o) Employ all faculty and staff at the institution under its  
106 jurisdiction. The employees operate under the supervision of  
107 the president, but are employees of the governing board;

108 (p) Submit to the commission or council, as appropriate,  
109 no later than the first day of November of each year an  
110 annual report of the performance of the institution under its  
111 jurisdiction during the previous fiscal year as compared to  
112 established state goals, objectives, and priorities, and goals  
113 stated in its master plan and institutional compact;

114 (q) Enter into contracts or consortium agreements with  
115 the public schools, private schools or private industry to  
116 provide technical, vocational, college preparatory, remedial  
117 and customized training courses at locations either on  
118 campuses of the public institution of higher education or at  
119 off-campus locations in the institution's responsibility  
120 district. To accomplish this goal, the boards may share  
121 resources among the various groups in the community;

122 (r) Provide and transfer funding and property to certain  
123 corporations pursuant to section ten, article twelve of this  
124 chapter;

125 (s) Delegate, with prescribed standards and limitations,  
126 the part of its power and control over the business affairs of  
127 the institution to the president in any case where it considers  
128 the delegation necessary and prudent in order to enable the  
129 institution to function in a proper and expeditious manner and  
130 to meet the requirements of its master plan and institutional  
131 compact. If a governing board elects to delegate any of its  
132 power and control under the provisions of this subsection, it  
133 shall enter the delegation in the minutes of the meeting when  
134 the decision was made and shall notify the commission or  
135 council, as appropriate. Any delegation of power and control  
136 may be rescinded by the appropriate governing board, the  
137 commission or council, as appropriate, at any time, in whole  
138 or in part, except that the commission may not revoke

139 delegations of authority made by the governing boards of  
140 Marshall University or West Virginia University as they  
141 relate to the state institutions of higher education known as  
142 Marshall University and West Virginia University;

143 (t) Unless changed by the commission or the council, as  
144 appropriate, continue to abide by existing rules setting forth  
145 standards for acceptance of advanced placement credit for the  
146 institution under its jurisdiction. Individual departments at a  
147 state institution of higher education may, upon approval of  
148 the institutional faculty senate, require higher scores on the  
149 advanced placement test than scores designated by the  
150 governing board when the credit is to be used toward meeting  
151 a requirement of the core curriculum for a major in that  
152 department;

153 (u) Consult, cooperate and work with the State Treasurer  
154 and the State Auditor to update as necessary and maintain an  
155 efficient and cost-effective system for the financial  
156 management and expenditure of special revenue and  
157 appropriated state funds at the institution under its  
158 jurisdiction that ensures that properly submitted requests for  
159 payment be paid on or before due date but, in any event,  
160 within fifteen days of receipt in the State Auditor's office;

161 (v) In consultation with the appropriate chancellor and  
162 the Secretary of the Department of Administration, develop,  
163 update as necessary and maintain a plan to administer a  
164 consistent method of conducting personnel transactions,  
165 including, but not limited to, hiring, dismissal, promotions  
166 and transfers at the institution under its jurisdiction. Each  
167 personnel transaction shall be accompanied by the  
168 appropriate standardized system or forms which shall be  
169 submitted to the respective governing board and the  
170 Department of Finance and Administration;

171 (w) Notwithstanding any other provision of this code to  
172 the contrary, transfer funds from any account specifically

173 appropriated for its use to any corresponding line item in a  
174 general revenue account at any agency or institution under its  
175 jurisdiction as long as such transferred funds are used for the  
176 purposes appropriated;

177 (x) Transfer funds from appropriated special revenue  
178 accounts for capital improvements under its jurisdiction to  
179 special revenue accounts at agencies or institutions under its  
180 jurisdiction as long as such transferred funds are used for the  
181 purposes appropriated;

182 (y) Notwithstanding any other provision of this code to  
183 the contrary, acquire legal services that are necessary,  
184 including representation of the governing board, its  
185 institution, employees and officers before any court or  
186 administrative body. The counsel may be employed either on  
187 a salaried basis or on a reasonable fee basis. In addition, the  
188 governing board may, but is not required to, call upon the  
189 Attorney General for legal assistance and representation as  
190 provided by law; and

191 (z) Contract and pay for disability insurance for a class or  
192 classes of employees at a state institution of higher education  
193 under its jurisdiction.

**§18B-2A-7a. Transfer of orders, resolutions, policies and rules,  
obligations, etc.**

1 (a) Effective the first day of July, two thousand eight, a  
2 governing board is established for the following state  
3 institutions of higher education pursuant to section one of this  
4 article:

5 (1) Marshall Community and Technical College;

6 (2) Pierpont Community and Technical College, formerly  
7 a division of Fairmont State University;



8 (3) The Community and Technical College at West  
9 Virginia University Institute of Technology;

10 (4) West Virginia State Community and Technical  
11 College; and

12 (5) West Virginia University at Parkersburg.

13 (b) All orders, resolutions, policies and rules adopted or  
14 promulgated by a governing board of a former  
15 administratively linked community and technical college,  
16 regional campus, or division within an accredited institution  
17 on behalf of an institution named in subsection (a) of this  
18 section relating to the community and technical college or  
19 community and technical college education, or which the  
20 newly-established board of governors finds necessary or  
21 expedient for the exercise of its lawful powers and duties  
22 pursuant to the provisions of this chapter, shall continue in  
23 effect until rescinded, revised, altered or amended by the  
24 newly-established board of governors. Nothing in this  
25 section requires the initial rules or policies of a community  
26 and technical college to be promulgated again under the rule  
27 adopted by the council pursuant to section six, article one of  
28 this chapter unless such rules or policies are rescinded,  
29 revised, altered or amended.

30 (c) Each valid agreement and obligation, undertaken or  
31 agreed to by the former sponsoring institution or governing  
32 board of a division, regional campus or administratively-  
33 linked community and technical college before the first day  
34 of July, two thousand eight, on behalf of a community and  
35 technical college named in subsection (a) of this section is  
36 hereby transferred to the board of governors of that  
37 community and technical college.

38 (d) Each newly established board of governors and each  
39 appropriate institution formerly sponsoring a community and

40 technical college shall jointly agree on a division of all assets  
41 and liabilities. If the boards of governors are unable to reach  
42 agreement concerning a division of assets and liabilities on  
43 or before the first day of December, two thousand eight, the  
44 boards of governors shall submit a summary of issues in  
45 dispute to the commission and the council which shall jointly  
46 resolve all outstanding issues concerning the division of  
47 assets and liabilities.

48 (e) For purposes of generating audited financial  
49 statements for inclusion in the higher education fund and  
50 state single audits, the division of all assets and liabilities  
51 shall be effective retroactively to the first day of July, two  
52 thousand eight.

53 (f) Any other disputes between an independent  
54 community and technical college and its former sponsoring  
55 institution, regarding their respective rights and  
56 responsibilities under this chapter of the code, which cannot  
57 be resolved by the governing boards, shall be resolved as  
58 follows:

59 (1) The matters in dispute shall be summarized in writing  
60 and submitted to the chancellors jointly for resolution;

61 (2) If the matters in dispute cannot be resolved by the  
62 chancellors within thirty days, they shall be submitted to the  
63 council and commission for resolution;

64 (3) If the commission and council jointly cannot reach a  
65 resolution following their first regularly scheduled meeting  
66 or within sixty days, whichever is sooner, the chairpersons of  
67 the commission and council respectively shall establish a  
68 three-person panel to hear the matters and issue a decision  
69 within thirty days:

70 (A) The three-person panel is comprised of one person  
71 appointed by the chairperson of the commission, one person

72 appointed by the chairperson of the council, and one person  
73 appointed jointly by the two chairpersons.

74 (B) The decision rendered by the three-person panel is  
75 binding on the governing boards, commission and council,  
76 and may not be challenged in the courts of this state.

77 (g) Each former sponsoring institution and community  
78 and technical college shall enter into a comprehensive  
79 agreement to address the division of assets and liabilities and  
80 the allocation of revenues and expenditures between former  
81 sponsoring institutions and newly independent community  
82 and technical colleges.

83 (h) Absent manifest injustice as determined jointly by the  
84 council and commission, the following general principles  
85 apply to the division of assets and liabilities and allocation of  
86 revenues and expenditures between former sponsoring  
87 institutions and the newly independent community and  
88 technical colleges:

89 (1) For accounting purposes, the institution that assumes  
90 responsibility for any asset also shall assume responsibility  
91 for any associated liabilities.

92 (2) Although one institution may assume responsibility  
93 for an asset and associated liabilities for accounting purposes,  
94 both institutions shall agree on their respective  
95 responsibilities for reducing and ultimately eliminating the  
96 liability over time if the asset was originally acquired and/or  
97 is being used for the benefit of both institutions.

98 (A) Any agreement to allocate system and institution  
99 educational and general and auxiliary debt service payments  
100 shall be consistent with the provisions of all applicable bond  
101 covenants.

102 (B) Absent a controlling bond covenant or other  
103 agreement, debt service payments associated with bonded  
104 indebtedness presumptively shall be allocated based on the  
105 relative full-time equivalent student enrollment of the two  
106 institutions either as a whole or on the campus where the  
107 asset is located and may be adjusted annually to reflect  
108 enrollment changes at the two institutions.

109 (3) The institutions shall agree to allocate educational and  
110 general and auxiliary capital fees in excess of those needed  
111 to cover bonded indebtedness to ensure that assets of both  
112 institutions are maintained in proper repair and that the  
113 institutions assume responsibility for a reasonable share of  
114 the total costs of maintaining the facilities.

115 (4) The institutions shall develop a plan that ensures the  
116 financial stability of auxiliary enterprises, including, but not  
117 limited to, student housing, student centers, dining services,  
118 parking, and athletics through fiscal year two thousand  
119 twelve.

120 (A) If community and technical college students pay a  
121 mandatory athletics fee for the benefit of a former sponsoring  
122 institution, but receive no direct benefit from that fee, the  
123 community and technical college may phase out that fee over  
124 a five-year period.

125 (B) If certain community and technical college students  
126 were required to live in institution housing consistent with  
127 rules or policies in effect on the effective date of this section,  
128 the former sponsoring institution may continue to require  
129 these students to live in institution housing for at least one  
130 year.

131 (i) If either institution proposes to reduce the services that  
132 it provides or purchases from the other institution by more  
133 than ten percent in any one year and the reduction exceeds

134 two hundred thousand dollars, the institution shall obtain the  
135 approval of both the council and the commission before  
136 doing so. In evaluating the proposal, the council and  
137 commission shall consider the following:

138 (1) The benefit to be obtained for the institution seeking  
139 to reduce the services it provides or purchases;

140 (2) The impact of the proposed reduction on the  
141 institution currently providing the services;

142 (3) Any additional costs that might be incurred as a result  
143 of the reduction in services; and

144 (4) The adequacy of the transition plan.

145 (j) To the extent practicable, state financial systems shall  
146 be set up for higher education institutions which participate  
147 in shared services agreements to facilitate ease of processing  
148 while ensuring that data from the two institutions are readily  
149 segregable at the state level.

**ARTICLE 2B. WEST VIRGINIA COUNCIL FOR  
COMMUNITY AND TECHNICAL  
COLLEGE EDUCATION.**

**§18B-2B-6. Powers and duties of the council.**

1 (a) The council is the sole agency responsible for  
2 administration of vocational-technical-occupational  
3 education and community and technical college education in  
4 the state. The council has jurisdiction and authority over the  
5 community and technical colleges and the statewide network  
6 of independently accredited community and technical  
7 colleges as a whole, including community and technical  
8 college education programs as defined in section two, article  
9 one of this chapter.

10 (b) The council shall propose rules pursuant to section  
11 six, article one of this chapter and article three-a, chapter  
12 twenty-nine-a of this code to implement the provisions of this  
13 section and applicable provisions of article one-d of this  
14 chapter:

15 (1) To implement the provisions of article one-d of this  
16 chapter relevant to community and technical colleges, the  
17 council may propose rules jointly with the commission or  
18 separately and may choose to address all components of the  
19 accountability system in a single rule or may propose  
20 additional rules to cover specific components;

21 (2) The rules pertaining to financing policy and  
22 benchmarks and indicators required by this section shall be  
23 filed with the Legislative Oversight Commission on  
24 Education Accountability by the first day of October, two  
25 thousand eight. Nothing in this subsection requires other  
26 rules of the council to be promulgated again under the  
27 procedure set forth in article three-a, chapter twenty-nine-a of  
28 this code unless such rules are rescinded, revised, altered or  
29 amended; and

30 (3) The Legislature finds that an emergency exists and,  
31 therefore, the council shall propose an emergency rule or  
32 rules to implement the provisions of this section relating to  
33 the financing policy and benchmarks and indicators in  
34 accordance with section six, article one of this chapter and  
35 article three-a, chapter twenty-nine-a of this code by the first  
36 day of October, two thousand eight. The emergency rule or  
37 rules may not be implemented without prior approval of the  
38 Legislative Oversight Commission on Education  
39 Accountability.

40 (c) The council has the following powers and duties  
41 relating to the authority established in subsection (a) of this  
42 section:

43 (1) Develop, oversee and advance the public policy  
44 agenda for community and technical college education for the  
45 purpose of accomplishing the mandates of this section,  
46 including, but not limited to, the following:

47 (A) Achieving the goals and objectives established in  
48 articles one and one-d of this chapter;

49 (B) Addressing the goals and objectives contained in the  
50 institutional compacts created pursuant to section seven,  
51 article one-d of this chapter; and

52 (C) Developing and implementing the master plan  
53 described in section five, article one-d of this chapter;

54 (2) Propose a legislative rule pursuant to subsection (b)  
55 of this section and article three-a, chapter twenty-nine-a of  
56 this code to develop and implement a financing policy for  
57 community and technical college education in West Virginia.  
58 The rule shall meet the following criteria:

59 (A) Provide an adequate level of education and general  
60 funding for institutions pursuant to section five, article one-a  
61 of this chapter;

62 (B) Serve to maintain institutional assets, including, but  
63 not limited to, human and physical resources and deferred  
64 maintenance;

65 (C) Establish a plan for strategic funding to strengthen  
66 capacity for support of community and technical college  
67 education; and

68 (D) Establish a plan that measures progress and provides  
69 performance-based funding to institutions which make  
70 significant progress in the following specific areas:

71 (i) Achieving the objectives and priorities established in  
72 article one-d of this chapter;

73 (ii) Serving targeted populations, especially working age  
74 adults twenty-five years of age and over;

75 (iii) Providing access to high cost, high demand technical  
76 programs in every region of the state;

77 (iv) Increasing the percentage of functionally literate  
78 adults in every region of the state; and

79 (v) Providing high quality community and technical  
80 college education services to residents of every region of the  
81 state.

82 (3) Create a policy leadership structure relating to  
83 community and technical college education capable of the  
84 following actions:

85 (A) Developing, building public consensus around and  
86 sustaining attention to a long-range public policy agenda. In  
87 developing the agenda, the council shall seek input from the  
88 Legislature and the Governor and specifically from the State  
89 Board of Education and local school districts in order to  
90 create the necessary linkages to assure smooth, effective and  
91 seamless movement of students through the public education  
92 and post-secondary education systems and to ensure that the  
93 needs of public school courses and programs can be fulfilled  
94 by the graduates produced and the programs offered;

95 (B) Ensuring that the governing boards of the institutions  
96 under the council's jurisdiction carry out their duty  
97 effectively to govern the individual institutions of higher  
98 education; and

99 (C) Holding each community and technical college and  
100 the statewide network of independently accredited



101 community and technical colleges as a whole accountable for  
102 accomplishing their missions and achieving the goals and  
103 objectives established in articles one, one-d, and three-c of  
104 this chapter;

105 (4) Develop for inclusion in the statewide public agenda,  
106 a plan for raising education attainment, increasing adult  
107 literacy, promoting workforce and economic development  
108 and ensuring access to advanced education for the citizens of  
109 West Virginia;

110 (5) Provide statewide leadership, coordination, support,  
111 and technical assistance to the community and technical  
112 colleges and to provide a focal point for visible and effective  
113 advocacy for their work and for the public policy agendas  
114 approved by the commission and council.

115 (6) Review and adopt annually all institutional compacts  
116 for the community and technical colleges pursuant to the  
117 provisions of section seven, article one-d of this chapter;

118 (7) Fulfill the mandates of the accountability system  
119 established in article one-d of this chapter and report on  
120 progress in meeting established goals, objectives, and  
121 priorities to the elected leadership of the state;

122 (8) Propose a legislative rule pursuant to subsection (b)  
123 of this section and article three-a, chapter twenty-nine-a of  
124 this code to establish benchmarks and indicators in  
125 accordance with the provisions of this subsection;

126 (9) Establish and implement the benchmarks and  
127 performance indicators necessary to measure institutional  
128 progress:

129 (A) In meeting state goals, objectives, and priorities  
130 established in articles one and one-d of this chapter;

131 (B) In carrying out institutional missions; and

132 (C) In meeting the essential conditions established in  
133 article three-c of this chapter;

134 (10) Collect and analyze data relating to the performance  
135 of community and technical colleges in every region of West  
136 Virginia and report periodically or as directed to the  
137 Legislative Oversight Commission on Education  
138 Accountability on the progress in meeting the goals and  
139 objectives established in articles one and one-d of this  
140 chapter.

141 Additionally, the council shall report annually during the  
142 January interim meetings on a date and at a time and location  
143 to be determined by the President of the Senate and the  
144 Speaker of the House of Delegates.

145 The annual report shall address at least the following:

146 (A) The performance of the community and technical  
147 college network during the previous fiscal year, including,  
148 but not limited to, progress in meeting goals stated in the  
149 compacts and progress of the institutions and the network as  
150 a whole in meeting the goals and objectives established in  
151 articles one and one-d of this chapter;

152 (B) The priorities established for capital investment needs  
153 pursuant to subdivision (11) of this subsection and the  
154 justification for such priority; and

155 (C) Recommendations of the council for statutory  
156 changes necessary or expedient to achieve established state  
157 goals and objectives.

158 (11) Establish a formal process for identifying needs for  
159 capital investments and for determining priorities for these

160 investments for consideration by the Governor and the  
161 Legislature as part of the appropriation request process.  
162 Notwithstanding the language in subdivision eleven,  
163 subsection a, section four, article one-b of this chapter, the  
164 commission is not a part of the process for identifying needs  
165 for capital investments for the statewide network of  
166 independently accredited community and technical colleges.

167 (12) Draw upon the expertise available within the  
168 Governor's Workforce Investment Office and the West  
169 Virginia Development Office as a resource in the area of  
170 workforce development and training;

171 (13) Acquire legal services that are considered necessary,  
172 including representation of the council, its institutions,  
173 employees and officers before any court or administrative  
174 body, notwithstanding any other provision of this code to the  
175 contrary. The counsel may be employed either on a salaried  
176 basis or on a reasonable fee basis. In addition, the council  
177 may, but is not required to, call upon the Attorney General  
178 for legal assistance and representation as provided by law;

179 (14) Employ a chancellor for community and technical  
180 college education pursuant to section three of this article;

181 (15) Employ other staff as necessary and appropriate to  
182 carry out the duties and responsibilities of the council  
183 consistent with the provisions of section two, article four of  
184 this chapter;

185 (16) Employ other staff as necessary and appropriate to  
186 carry out the duties and responsibilities of the council who  
187 are employed solely by the council;

188 (17) Provide suitable offices in Charleston for the  
189 chancellor and other staff;

190 (18) Approve the total compensation package from all  
191 sources for presidents of community and technical colleges,  
192 as proposed by the governing boards. The governing boards  
193 must obtain approval from the council of the total  
194 compensation package both when presidents are employed  
195 initially and subsequently when any change is made in the  
196 amount of the total compensation package;

197 (19) Establish and implement policies and procedures to  
198 ensure that students may transfer and apply toward the  
199 requirements for a degree the maximum number of credits  
200 earned at any regionally accredited in-state or out-of-state  
201 higher education institution with as few requirements to  
202 repeat courses or to incur additional costs as is consistent  
203 with sound academic policy;

204 (20) Establish and implement policies and programs,  
205 jointly with the community and technical colleges, through  
206 which students who have gained knowledge and skills  
207 through employment, participation in education and training  
208 at vocational schools or other education institutions, or  
209 internet-based education programs, may demonstrate by  
210 competency-based assessment that they have the necessary  
211 knowledge and skills to be granted academic credit or  
212 advanced placement standing toward the requirements of an  
213 associate degree or a bachelor's degree at a state institution  
214 of higher education;

215 (21) Seek out and attend regional and national meetings  
216 and forums on education and workforce development-related  
217 topics, as council members consider critical for the  
218 performance of their duties. The council shall keep abreast of  
219 national and regional community and technical college  
220 education trends and policies to aid members in developing  
221 the policies for this state that meet the education goals and  
222 objectives established in articles one and one-d of this  
223 chapter;

224 (22) Assess community and technical colleges for the  
225 payment of expenses of the council or for the funding of  
226 statewide services, obligations or initiatives related  
227 specifically to the provision of community and technical  
228 college education;

229 (23) Promulgate rules allocating reimbursement of  
230 appropriations, if made available by the Legislature, to  
231 community and technical colleges for qualifying noncapital  
232 expenditures incurred in the provision of services to students  
233 with physical, learning or severe sensory disabilities;

234 (24) Assume the prior authority of the commission in  
235 examining and approving tuition and fee increase proposals  
236 submitted by community and technical college governing  
237 boards as provided in section one, article ten of this chapter.

238 (25) Develop and submit to the commission, a single  
239 budget for community and technical college education that  
240 reflects recommended appropriations for community and  
241 technical colleges and that meets the following conditions:

242 (A) Incorporates the provisions of the financing rule  
243 mandated by this section to measure and provide  
244 performance funding to institutions which achieve or make  
245 significant progress toward achieving established state  
246 objectives and priorities;

247 (B) Considers the progress of each institution toward  
248 meeting the essential conditions set forth in section three,  
249 article three-c of this chapter, including independent  
250 accreditation; and

251 (C) Considers the progress of each institution toward  
252 meeting the goals objectives, and priorities established in  
253 article one-d of this chapter and its approved institutional  
254 compact.

255 (26) Administer and distribute the independently  
256 accredited community and technical college development  
257 account;

258 (27) Establish a plan of strategic funding to strengthen  
259 capacity for support and assure delivery of high quality  
260 community and technical college education in all regions of  
261 the state;

262 (28) Foster coordination among all state-level, regional  
263 and local entities providing post-secondary vocational  
264 education or workforce development and coordinate all  
265 public institutions and entities that have a community and  
266 technical college mission;

267 (29) Assume the principal responsibility for oversight of  
268 those community and technical colleges seeking independent  
269 accreditation and for holding governing boards accountable  
270 for meeting the essential conditions pursuant to article three-c  
271 of this chapter;

272 (30) Advise and consent in the appointment of the  
273 presidents of the community and technical colleges pursuant  
274 to section six, article one-b of this chapter. The role of the  
275 council in approving a president is to assure through personal  
276 interview that the person selected understands and is  
277 committed to achieving the goals and objectives established  
278 in the institutional compact and in articles one, one-d, and  
279 three-c of this chapter;

280 (31) Provide a single, statewide link for current and  
281 prospective employers whose needs extend beyond one  
282 locality;

283 (32) Provide a mechanism capable of serving two or  
284 more institutions to facilitate joint problem-solving in areas  
285 including, but not limited to the following:

- 286 (A) Defining faculty roles and personnel policies;
- 287 (B) Delivering high-cost technical education programs  
288 across the state;
- 289 (C) Providing one-stop service for workforce training to  
290 be delivered by multiple institutions; and
- 291 (D) Providing opportunities for resource-sharing and  
292 collaborative ventures;
- 293 (33) Provide support and technical assistance to develop,  
294 coordinate, and deliver effective and efficient community and  
295 technical college education programs and services in all  
296 regions of the state;
- 297 (34) Assist the community and technical colleges in  
298 establishing and promoting links with business, industry and  
299 labor in the geographic areas for which each community and  
300 technical college is responsible;
- 301 (35) Develop alliances among the community and  
302 technical colleges for resource sharing, joint development of  
303 courses and courseware, and sharing of expertise and staff  
304 development;
- 305 (36) Serve aggressively as an advocate for development  
306 of a seamless curriculum;
- 307 (37) Cooperate with all providers of education services in  
308 the state to remove barriers relating to a seamless system of  
309 public and higher education and to transfer and articulation  
310 between and among community and technical colleges, state  
311 colleges and universities and public education, preschool  
312 through grade twelve;
- 313 (38) Encourage the most efficient use of available  
314 resources;

315 (39) Coordinate with the commission in informing public  
316 school students, their parents and teachers of the academic  
317 preparation that students need in order to be prepared  
318 adequately to succeed in their selected fields of study and  
319 career plans, including presentation of academic career fairs;

320 (40) Jointly with the commission, approve and implement  
321 a uniform standard, as developed by the chancellors, to  
322 determine which students shall be placed in remedial or  
323 developmental courses. The standard shall be aligned with  
324 college admission tests and assessment tools used in West  
325 Virginia and shall be applied uniformly by the governing  
326 boards throughout the public higher education system. The  
327 chancellors shall develop a clear, concise explanation of the  
328 standard which the governing boards shall communicate to  
329 the State Board of Education and the State Superintendent of  
330 Schools;

331 (41) Develop and implement strategies and curriculum  
332 for providing developmental education which shall be  
333 applied by any state institution of higher education providing  
334 developmental education.

335 (42) Develop a statewide system of community and  
336 technical college programs and services in every region of  
337 West Virginia for competency-based certification of  
338 knowledge and skills, including a statewide  
339 competency-based associate degree program;

340 (43) Review and approve all institutional master plans for  
341 the community and technical colleges pursuant to section  
342 four, article two-a of this chapter;

343 (44) Propose rules for promulgation pursuant to  
344 subsection (b) of this section and article three-a, chapter  
345 twenty-nine-a of this code that are necessary or expedient for  
346 the effective and efficient performance of community and  
347 technical colleges in the state;



348 (45) In its sole discretion, transfer any rule under its  
349 jurisdiction, other than a legislative rule, to the jurisdiction of  
350 the governing boards who may rescind, revise, alter or amend  
351 any rule transferred pursuant to rules adopted by the council  
352 and provide technical assistance to the institutions under its  
353 jurisdiction to aid them in promulgating rules;

354 (46) Develop for inclusion in the higher education report  
355 card, as defined in section eight, article one-d of this chapter,  
356 a separate section on community and technical colleges. This  
357 section shall include, but is not limited to, evaluation of the  
358 institutions based upon the benchmarks and indicators  
359 developed in subdivision (9) of this subsection;

360 (47) Facilitate continuation of the Advantage Valley  
361 Community College Network under the leadership and  
362 direction of Marshall Community and Technical College;

363 (48) Initiate and facilitate creation of other regional  
364 networks of affiliated community and technical colleges that  
365 the council finds to be appropriate and in the best interests of  
366 the citizens to be served;

367 (49) Develop with the State Board of Education plans for  
368 secondary and post-secondary vocational-technical-occupational  
369 and adult basic education, including, but not limited to the  
370 following:

371 (A) Policies to strengthen vocational-technical-  
372 occupational and adult basic education; and

373 (B) Programs and methods to assist in the improvement,  
374 modernization and expanded delivery of  
375 vocational-technical- occupational and adult basic education  
376 programs;

377 (50) Distribute federal vocational education funding  
378 provided under the Carl D. Perkins Vocational and Technical

379 Education Act of 1998, PL 105-332, with an emphasis on  
380 distributing financial assistance among secondary and  
381 post-secondary vocational- technical-occupational and adult  
382 basic education programs to help meet the public policy  
383 agenda.

384 In distributing funds the council shall use the following  
385 guidelines:

386 (A) The State Board of Education shall continue to be the  
387 fiscal agent for federal vocational education funding;

388 (B) The percentage split between the State Board of  
389 Education and the council shall be determined by rule  
390 promulgated by the council under the provisions of article  
391 three-a, chapter twenty-nine-a of this code. The council shall  
392 first obtain the approval of the State Board of Education  
393 before proposing a rule;

394 (51) Collaborate, cooperate and interact with all secondary  
395 and post-secondary vocational-technical-occupational and adult  
396 basic education programs in the state, including the programs  
397 assisted under the federal Carl D. Perkins Vocational and  
398 Technical Education Act of 1998, PL 105-332, and the  
399 Workforce Investment Act of 1998, to promote the  
400 development of seamless curriculum and the elimination of  
401 duplicative programs;

402 (52) Coordinate the delivery of vocational-technical-  
403 occupational and adult basic education in a manner designed  
404 to make the most effective use of available public funds to  
405 increase accessibility for students;

406 (53) Analyze and report to the State Board of Education  
407 on the distribution of spending for vocational-technical-  
408 occupational and adult basic education in the state and on the  
409 availability of vocational-technical-occupational and adult  
410 basic education activities and services within the state;

411 (54) Promote the delivery of vocational  
412 -technical-occupational education, adult basic education and  
413 community and technical college education programs in the  
414 state which emphasize the involvement of business, industry  
415 and labor organizations;

416 (55) Promote public participation in the provision of  
417 vocational-technical-occupational education, adult basic  
418 education and community and technical education at the local  
419 level, emphasizing programs which involve the participation  
420 of local employers and labor organizations;

421 (56) Promote equal access to quality vocational-  
422 technical-occupational education, adult basic education and  
423 community and technical college education programs to  
424 handicapped and disadvantaged individuals, adults in need of  
425 training and retraining, single parents, homemakers,  
426 participants in programs designed to eliminate sexual bias  
427 and stereotyping and criminal offenders serving in  
428 correctional institutions;

429 (57) Meet annually between the months of October and  
430 December with the Advisory Committee of Community and  
431 Technical College Presidents created pursuant to section  
432 eight of this article to discuss those matters relating to  
433 community and technical college education in which  
434 advisory committee members or the council may have an  
435 interest;

436 (58) Accept and expend any gift, grant, contribution,  
437 bequest, endowment or other money for the purposes of this  
438 article;

439 (59) Assume the powers set out in section nine of this  
440 article. The rules previously promulgated by the State  
441 College System Board of Directors pursuant to that section  
442 and transferred to the commission are hereby transferred to

443 the council and shall continue in effect until rescinded,  
444 revised, altered or amended by the council;

445 (60) Pursuant to the provisions of subsection (b) of this  
446 section and article three-a, chapter twenty-nine-a of this code,  
447 promulgate a uniform joint legislative rule with the  
448 commission for the purpose of standardizing, as much as  
449 possible, the administration of personnel matters among the  
450 institutions of higher education;

451 (61) Determine when a joint rule among the governing  
452 boards of the community and technical colleges is necessary  
453 or required by law and, in those instances and in consultation  
454 with the governing boards, promulgate the joint rule;

455 (62) Promulgate a joint rule with the commission  
456 establishing tuition and fee policy for all institutions of  
457 higher education. The rule shall include, but is not limited to,  
458 the following:

459 (A) Comparisons with peer institutions;

460 (B) Differences among institutional missions;

461 (C) Strategies for promoting student access;

462 (D) Consideration of charges to out-of-state students; and

463 (E) Any other policies the commission and council  
464 consider appropriate;

465 (63) In cooperation with the West Virginia Division of  
466 Highways, study a method for increasing the signage  
467 signifying community and technical college locations along  
468 the state interstate highways, and report to the Legislative  
469 Oversight Commission on Education Accountability  
470 regarding any recommendations and required costs; and

471 (64) Implement a policy jointly with the commission  
472 whereby any course credit earned at a community and  
473 technical college transfers for program credit at any other  
474 state institution of higher education and is not limited to  
475 fulfilling a general education requirement.

476 (d) In addition to the powers and duties listed in  
477 subsections (a), (b) and (c) of this section, the council has the  
478 following general powers and duties related to its role in  
479 developing, articulating and overseeing the implementation  
480 of the public policy agenda for community and technical  
481 colleges:

482 (1) Planning and policy leadership including a distinct  
483 and visible role in setting the state's policy agenda for the  
484 delivery of community and technical college education and  
485 in serving as an agent of change;

486 (2) Policy analysis and research focused on issues  
487 affecting the community and technical college network as a  
488 whole or a geographical region thereof;

489 (3) Development and implementation of each community  
490 and technical college mission definition including use of  
491 incentive and performance funds to influence institutional  
492 behavior in ways that are consistent with achieving  
493 established state goals, objectives, and priorities;

494 (4) Academic program review and approval for the  
495 institutions under its jurisdiction, including the use of  
496 institutional missions as a template to judge the  
497 appropriateness of both new and existing programs and the  
498 authority to implement needed changes;

499 (5) Development of budget and allocation of resources  
500 for institutions delivering community and technical college  
501 education, including reviewing and approving institutional

502 operating and capital budgets and distributing incentive and  
503 performance-based funding;

504 (6) Acting as the agent to receive and disburse public  
505 funds related to community and technical college education  
506 when a governmental entity requires designation of a  
507 statewide higher education agency for this purpose;

508 (7) Development, establishment and implementation of  
509 information, assessment and internal accountability systems,  
510 including maintenance of statewide data systems that  
511 facilitate long-term planning and accurate measurement of  
512 strategic outcomes and performance indicators for  
513 community and technical colleges;

514 (8) Jointly with the commission, development,  
515 establishment and implementation of policies for licensing  
516 and oversight of both public and private degree-granting and  
517 nondegree-granting institutions that provide post-secondary  
518 education courses or programs.

519 (9) Development, implementation and oversight of  
520 statewide and regionwide projects and initiatives related  
521 specifically to providing community and technical college  
522 education such as those using funds from federal categorical  
523 programs or those using incentive and performance-based  
524 funding from any source; and

525 (10) Quality assurance that intersects with all other duties  
526 of the council particularly in the areas of planning, policy  
527 analysis, program review and approval, budgeting and  
528 information and accountability systems.

529 (e) The council may withdraw specific powers of a  
530 governing board under its jurisdiction for a period not to  
531 exceed two years if the council makes a determination that  
532 any of the following conditions exist:

533 (1) The governing board has failed for two consecutive  
534 years to develop an institutional compact as required in  
535 section seven, article one-d of this chapter;

536 (2) The council has received information, substantiated  
537 by independent audit, of significant mismanagement or  
538 failure to carry out the powers and duties of the board of  
539 governors according to state law; or

540 (3) Other circumstances which, in the view of the  
541 council, severely limit the capacity of the board of governors  
542 to carry out its duties and responsibilities.

543 The period of withdrawal of specific powers may not  
544 exceed two years during which time the council is authorized  
545 to take steps necessary to reestablish the conditions for  
546 restoration of sound, stable and responsible institutional  
547 governance.

548 (f) In addition to the powers and duties provided for in  
549 subsections (a), (b), (c) and (d) of this section and any others  
550 assigned to it by law, the council has those powers and duties  
551 necessary or expedient to accomplish the purposes of this  
552 article; and

553 (g) When the council and commission, each, is required  
554 to consent, cooperate, collaborate or provide input into the  
555 actions of the other the following conditions apply:

556 (1) The body acting first shall convey its decision in the  
557 matter to the other body with a request for concurrence in the  
558 action;

559 (2) The commission or the council, as the receiving body,  
560 shall place the proposal on its agenda and shall take final  
561 action within sixty days of the date when the request for  
562 concurrence is received; and

563 (3) If the receiving body fails to take final action within  
564 sixty days, the original proposal stands and is binding on both  
565 the commission and the council.

## ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

§18B-2C-1. Legislative findings; intent.

§18B-2C-3. Authority and duty of council to determine progress of community and technical colleges; conditions; authority to create West Virginia community and technical college.

### §18B-2C-1. Legislative findings; intent.

1 (a) *Legislative findings.* --

2 (1) The Legislature hereby finds that for nearly two  
3 decades legislation has been enacted having as a principal  
4 goal creation of a strong, effective system of community and  
5 technical education capable of meeting the needs of the  
6 citizens of the state. In furtherance of that goal, the  
7 Legislature has passed the following major pieces of  
8 legislation:

9 (A) Enrolled Senate Bill 420, passed during the regular  
10 session of one thousand nine hundred eighty-nine,  
11 reorganized the governance structure of public higher  
12 education and created the Joint Commission for  
13 Vocational-technical-occupational Education to bridge the  
14 gap between secondary and post-secondary vocational,  
15 technical, and occupational education;

16 (B) Enrolled Senate Bill 377, passed during the regular  
17 session of one thousand nine hundred ninety-three, adopted  
18 goals and objectives for public post-secondary education,  
19 addressed the needs of nontraditional students, directed the  
20 institutions to include an assessment of work force  
21 development needs in their master plans and established the  
22 resource allocation model and policies to aid governing



23 boards and institutions in meeting the established goals and  
24 objectives;

25 (C) Enrolled Senate Bill 547, passed during the regular  
26 session of one thousand nine hundred ninety-five, established  
27 goals and funding for faculty and staff salaries, required the  
28 governing boards to establish community and technical  
29 education with the administrative, programmatic and  
30 budgetary control necessary to respond to local needs and  
31 provided that community and technical college budgets be  
32 appropriated to a separate control account;

33 (D) Enrolled Senate Bill 653, passed during the regular  
34 session of two thousand, established the commission to  
35 develop a public policy agenda for higher education in  
36 conjunction with state leaders, set forth the essential  
37 conditions that must be met by each community and technical  
38 college in the state, and mandated that most component  
39 community and technical colleges move to independent  
40 accreditation.

41 (E) Enrolled Senate Bill 703, passed during the regular  
42 session of two thousand one, authorized the creation of a  
43 statewide community and technical college to provide  
44 leadership and technical support to the community and  
45 technical colleges to aid them in achieving independent  
46 accreditation, enhance their ability to serve the interests of  
47 the people of West Virginia, and focus attention on achieving  
48 established state goals.

49 (F) Enrolled House Bill 2224, passed during the regular  
50 session of two thousand three, created New River  
51 Community and Technical College of Bluefield State College  
52 as a multicampus institution from existing community and  
53 technical college components, branches and off-campus  
54 delivery sites in order to give greater cohesiveness, emphasis  
55 and priority to meeting the essential conditions pursuant to

56 section three, article three-c of this chapter and to provide  
57 greater access to high-quality programs in the institution's  
58 expanded service district.

59 (G) Enrolled Senate Bill 448, passed during the regular  
60 session of two thousand four, established the West Virginia  
61 Council for Community and Technical College Education as  
62 a separate coordinating agency with authority over state  
63 community and technical colleges, branches, centers,  
64 regional centers, and other delivery sites with a community  
65 and technical college mission.

66 (2) The *Market Street Report*, the *McClenney Report*, and  
67 the *Implementation Board Report*, cited in article two-b of  
68 this chapter, each reflects recent research and indicates that,  
69 while these legislative actions cited above have helped the  
70 state to make progress in certain areas of higher education,  
71 they have not offered a complete solution to the problems of  
72 community and technical colleges.

73 (b) *Intent*. -- Therefore, the intent of the Legislature in  
74 enacting these pieces of legislation is as follows:

75 (1) To provide logical steps in the process of developing  
76 strong institutions capable of delivering community and  
77 technical education to meet the needs of the state. Each act  
78 may be viewed as a building block added to the foundation  
79 laid by earlier legislation;

80 (2) To create a mechanism whereby the council, if  
81 necessary, can assure through its own direct action that the  
82 goals established in articles one, one-d, and three-c of this  
83 chapter are met; and

84 (3) To authorize the council to create the West Virginia  
85 Community and Technical College to serve the interests of  
86 the people of West Virginia by advancing the public policy

87 agenda developed pursuant to article two-b of this chapter.  
88 If the council makes a determination under the provisions of  
89 this section that it is necessary or expedient to create the  
90 statewide community and technical college, the following  
91 goals are the specific focus of the college and its governing  
92 board:

93 (A) To encourage development of a statewide mission  
94 that raises education attainment, increases adult literacy,  
95 promotes work force and economic development, and ensures  
96 access to post-secondary education for every region of the  
97 state;

98 (B) To provide oversight or governance of the  
99 community and technical colleges, branches, centers,  
100 regional centers, and other delivery sites with a community  
101 and technical college mission;

102 (C) To provide leadership, support and coordination; and

103 (D) To protect and expand the local autonomy and  
104 flexibility necessary for community and technical colleges to  
105 succeed.

**§18B-2C-3. Authority and duty of council to determine  
progress of community and technical colleges;  
conditions; authority to create West Virginia  
community and technical college.**

1 (a) The council annually shall review and analyze all the  
2 state community and technical colleges, and any branches,  
3 centers, regional centers or other delivery sites with a  
4 community and technical college mission, to determine their  
5 progress toward meeting the goals, objectives, priorities, and  
6 essential conditions established in articles one, one-d and  
7 three-c of this chapter.

8 (b) The analysis required in subsection (a) of this section  
9 shall be based, in whole or in part, upon the findings made  
10 pursuant to the rule establishing benchmarks and indicators  
11 promulgated by the council pursuant to section six, article  
12 two-b of this chapter.

13 (c) Based upon their analysis in subsections (a) and (b) of  
14 this section, the council shall make a determination whether  
15 any one or more of the following conditions exists:

16 (1) A community and technical college required to do so  
17 has not achieved or is not making sufficient, satisfactory  
18 progress toward achieving the essential conditions, including  
19 independent accreditation;

20 (2) One or more of the public community and technical  
21 colleges, branches, centers, regional centers and other  
22 delivery sites with a community and technical college  
23 mission requires financial assistance or other support to meet  
24 the goals and essential conditions set forth in this chapter;

25 (3) It is in the best interests of the people of the state or  
26 a region within the state to have a single, accredited  
27 institution which can provide an umbrella of statewide  
28 accreditation;

29 (4) One or more of the state community and technical  
30 colleges, branches, centers, regional centers or other delivery  
31 sites with a community and technical college mission  
32 requests from the council the type of assistance which can  
33 best be delivered through implementation of the provisions  
34 of section four of this article. Institutional requests that may  
35 be considered by the council include, but are not limited to,  
36 assistance in seeking and/or attaining independent  
37 accreditation, in meeting the goals, priorities and essential  
38 conditions established in articles one, one-d and three-c of

39 this chapter, or in establishing and implementing regional  
40 networks.

41 (5) One or more state community and technical colleges,  
42 branches, centers, regional centers or other delivery sites with  
43 a community and technical college mission has not achieved,  
44 or is not making sufficient, satisfactory progress toward  
45 achieving, the goals, objectives and essential conditions  
46 established in articles one, one-d, and three-c of this chapter;  
47 and

48 (6) The council determines that it is in the best interests  
49 of the people of the state or a region of the state to create a  
50 statewide, independently accredited community and technical  
51 college.

52 (d) The council may not make a determination subject to  
53 the provisions of this section that a condition does not exist  
54 based upon a finding that the higher education entity lacks  
55 sufficient funds to make sufficient, satisfactory progress.

56 (e) By the first day of December annually, the council  
57 shall prepare and file with the Legislative Oversight  
58 Commission on Education Accountability a written report on  
59 the findings and determinations required by this section,  
60 together with a detailed history of any actions taken by the  
61 council under the authority of this article.

### **ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF RESEARCH DOCTORAL-GRANTING PUBLIC UNIVERSITIES.**

#### **§18B-3-3. Relationship of governing boards to the commission and the council.**

1 (a) *Relationship between the commission and the*  
2 *governing boards. —*

3 (1) The commission functions as a state-level  
4 coordinating board exercising its powers and duties in  
5 relation to the governing boards of Marshall University and  
6 West Virginia University only as specifically prescribed by  
7 law;

8 (2) The primary responsibility of the commission is to  
9 work collaboratively with the governing boards to research,  
10 develop and propose policy that will achieve the established  
11 goals and objectives set forth in this chapter and chapter  
12 eighteen-c of this code; and

13 (3) The commission has specific responsibilities which  
14 include, but are not limited to, the following:

15 (A) Advocating for public higher education at the state  
16 level; and

17 (B) Collecting and analyzing data, researching,  
18 developing recommendations, and advising the Legislature  
19 and the Governor on broad policy initiatives, use of incentive  
20 funding, national and regional trends in higher education and  
21 issues of resource allocation involving multiple governing  
22 boards.

23 (b) *Relationship between the council and the governing*  
24 *boards. —*

25 (1) The council maintains all powers and duties assigned  
26 to it by law or policy relating to the institution known as  
27 Marshall Community and Technical College, the institution  
28 known as The Community and Technical College at West  
29 Virginia University Institute of Technology and the  
30 institution known as West Virginia University at  
31 Parkersburg;

32 (2) The council functions as a coordinating board for the  
33 institutions under its jurisdiction which make up the

34 statewide network of independently-accredited community  
35 and technical colleges. In addition to recognizing the  
36 authority assigned by law to the council and abiding by rules  
37 duly promulgated by the council relating to the community  
38 and technical colleges, it is the responsibility of the  
39 governing boards of Marshall University and West Virginia  
40 University to exercise their authority and carry out their  
41 responsibilities in a manner that is consistent with and  
42 complementary to the powers and duties assigned by law or  
43 policy to the community and technical colleges or to the  
44 council;

45 (c) The governing boards shall work collaboratively with  
46 the commission, the council and their staff to provide any and  
47 all information requested by the commission or the council  
48 in an appropriate format and in a timely manner.

### **ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.**

- §18B-3C-5. Appointment of community and technical college presidents.
- §18B-3C-8. Legislative findings and intent; statewide network of independently accredited community and technical colleges; operations and administration.
- §18B-3C-12. Relationship between independent community and technical colleges and former sponsoring institutions.
- §18B-3C-13. Legislative intent; Pierpont Community and Technical College established as independent state institution of higher education; governing board; institutional organization, structure, accreditation status.
- §18B-3C-14. Findings; intent; advanced technology centers established; administration; boards of advisors.
- §18B-3C-15. Transition oversight.

#### **§18B-3C-5. Appointment of community and technical college presidents.**

1 (a) The administrative head of a community and technical  
2 college is the president who is chosen pursuant to the terms  
3 of section six, article one-b of this chapter.

4 (b) Any individual employed as provost, president, or  
5 divisional administrative head of a community and technical

6 college on the thirtieth day of June, two thousand eight,  
7 which institution becomes independent on the effective date  
8 of this section, continues as the administrative head of the  
9 institution and becomes the community and technical college  
10 president on the first day of July, two thousand eight, subject  
11 to the provisions of section six, article one-b of this chapter.

**§18B-3C-8. Legislative findings and intent; statewide network  
of independently accredited community and  
technical colleges; operations and administration.**

1 (a) *Legislative findings.* --

2 (1) The Legislature has enacted legislation, beginning  
3 with Enrolled Senate Bill No. 653, passed during the two  
4 thousand regular session, and continuing with Enrolled  
5 Senate Bill No. 703, passed during the two thousand one  
6 regular session, Enrolled House Bill No. 2224, passed during  
7 the two thousand three regular session, and Enrolled Senate  
8 Bill No. 448, passed during the two thousand four regular  
9 session, the purpose of which is to strengthen the state's  
10 community and technical colleges, clarify their core mission  
11 and establish essential conditions to be met, and ensure the  
12 most effective delivery of services to business, industry, and  
13 West Virginia citizens in every region of the state.

14 (2) The primary goal of the Legislature is to create a  
15 statewide network of independently accredited community  
16 and technical colleges that focuses on technical education,  
17 work force training, and lifelong learning for the Twenty-first  
18 Century, consistent with the goals, objectives, priorities and  
19 essential conditions established in articles one, one-d and  
20 three-c of this chapter.

21 (3) A necessary precedent to accomplishing the  
22 legislative goal is to change the way that leaders at all levels  
23 of education, including institutional governing boards, view



24 community and technical colleges. Specifically, that the  
25 mission of community and technical colleges is different  
26 from that of traditional four-year colleges in what they seek  
27 to accomplish and how they can achieve it effectively and  
28 that the state can not compete successfully in today's  
29 information-driven, technology-based economy if community  
30 and technical colleges continue to be viewed as add-ons or  
31 afterthoughts attached to the baccalaureate institutions.

32 (b) *Legislative intent.* --

33 (1) Therefore, it is the intent of the Legislature that the  
34 statewide network of independently-accredited community  
35 and technical colleges as a whole and each independent  
36 community and technical college individually provide the  
37 following types of services as part of the core institutional  
38 mission:

39 (A) Career and technical education certificate, associate  
40 of applied science, and selected associate of science degree  
41 programs for students seeking immediate employment,  
42 individual entrepreneurship skills, occupational development,  
43 skill enhancement and career mobility;

44 (B) Transfer education associate of arts and associate of  
45 science degree programs for students whose educational goal  
46 is to transfer into a baccalaureate degree program with  
47 particular emphasis on reaching beyond traditional college-  
48 age students to unserved or underserved adult populations;

49 (C) Developmental/remedial education courses, tutorials,  
50 skills development labs, and other services for students who  
51 need to improve their skills in mathematics, English, reading,  
52 study skills, computers and other basic skill areas;

53 (D) Work force development education contracted with  
54 business and industry to train or retrain employees;

55 (E) Continuing development assistance and education  
56 credit and noncredit courses for professional and self-  
57 development, certification and licensure, and literacy  
58 training; and

59 (F) Community service workshops, lectures, seminars,  
60 clinics, concerts, theatrical performances and other noncredit  
61 activities to meet the cultural, civic and personal interests and  
62 needs of the community the institution serves.

63 (2) It is further the intent of the Legislature that each  
64 community and technical college focus special attention on  
65 programmatic delivery of their core mission services to  
66 unserved and underserved populations to achieve established  
67 state objectives. These include the following as highest  
68 priorities:

69 (A) Increasing the number of adults age twenty-five and  
70 above who participate in post-secondary education;

71 (B) Developing technical programs that meet the  
72 documented occupational needs of West Virginia's  
73 employers;

74 (C) Providing work force development programs by  
75 implementing the Adult Career Pathways Model, which  
76 provides opportunities for the following:

77 (i) Adults to earn certifications through the completion  
78 of skill-sets;

79 (ii) Ordered progression from skill-sets and certifications  
80 to one-year certificate programs and progression from one-  
81 year certificate degrees to Associate of Applied Science  
82 Degree programs, and

83 (iii) Students to exit at any stage of completion in order  
84 to enter employment with the option of continuing the

85 pathway progression at a later time and/or on a part-time  
86 basis.

87 (D) Offering programs in various time frames other than  
88 the traditional semester delivery model and at different  
89 locations, including work sites, convenient to working adults;

90 (E) Providing technical programs in modules or  
91 “chunks”, defined in competencies required for employment,  
92 and tied to certification and licensing requirements.

93 (F) Entering into collaborative programs that recognize  
94 high-quality training programs provided through labor  
95 unions, registered apprenticeships, and industry-sponsored  
96 training programs with the goal of enabling more adults to  
97 earn a college credential;

98 (G) Developing innovative approaches to improve the  
99 basic and functional literacy rates of West Virginians in all  
100 regions of the state;

101 (H) Developing “bridge programs” for disadvantaged  
102 youth and adults to enable them to acquire the skills  
103 necessary to be successful in education and training programs  
104 that lead to high-skills, high-wage jobs; and

105 (I) Providing access to post-secondary education through  
106 the delivery of developmental education for those individuals  
107 academically under-prepared for college-level work.

108 (c) In fulfillment of the purposes and intent defined in  
109 subsections (a) and (b) of this section, there is continued a  
110 statewide network of independently accredited community  
111 and technical colleges serving every region of the state. Each  
112 free-standing and independent community and technical  
113 college is strongly encouraged to serve as a higher education  
114 center for its region by brokering with other colleges,

115 universities and providers, in-state and out-of-state, both  
116 public and private, to afford the most coordinated access to  
117 needed programs and services by students, employers and  
118 other clients, to achieve the goals, objectives, and essential  
119 conditions established in articles one, one-d, and three-c of  
120 this chapter, and to ensure the most efficient use of scarce  
121 resources.

122 (d) *Statewide network of independently accredited*  
123 *community and technical colleges.* --

124 (1) By the first day of July, two thousand nine, each  
125 governing board of a community and technical college which  
126 became independent on the first day of July, two thousand  
127 eight, shall make a determination by majority vote of the  
128 board whether to keep the current name for its respective  
129 institution or to select a new name. If a governing board  
130 chooses to select a new name, any reference in this code to  
131 that institution by a name in use prior to the first day of July,  
132 two thousand nine, means the institution under the name  
133 designated by its board of governors.

134 (2) The statewide network of independently accredited  
135 community and technical colleges is comprised of the  
136 following independent state institutions of higher education  
137 under the jurisdiction of the council:

138 (A) *Blue Ridge Community and Technical College.* --

139 Blue Ridge Community and Technical College is an  
140 independently accredited state institution of higher education.  
141 The president and the governing board of the community and  
142 technical college are responsible for maintaining independent  
143 accreditation and adhering to the essential conditions  
144 pursuant to section three of this article.

145 (B) *The Community and Technical College at West*  
146 *Virginia University Institute of Technology.* --

147 (i) The Community and Technical College at West  
148 Virginia University Institute of Technology is an  
149 independently accredited state institution of higher education  
150 which may maintain an association with West Virginia  
151 University Institute of Technology, a division of West  
152 Virginia University, or directly with West Virginia  
153 University, subject to the provisions of section twelve of this  
154 article. The president and the governing board of the  
155 community and technical college are responsible for  
156 maintaining independent accreditation and adhering to the  
157 essential conditions pursuant to section three of this article.

158 (ii) West Virginia University Institute of Technology may  
159 continue associate degree programs in areas of particular  
160 institutional strength which are closely articulated to its  
161 baccalaureate programs and missions or which are of a  
162 high-cost nature and can best be provided in direct  
163 coordination with a baccalaureate institution. Any such  
164 program shall be delivered under the authority of the council  
165 and through contract with the community and technical  
166 college. The terms of the contract shall be negotiated  
167 between the governing boards of the community and  
168 technical college and West Virginia University Institute of  
169 Technology or directly with West Virginia University, as  
170 appropriate. The final contract may not be implemented until  
171 approved by the council except that any contract between the  
172 community and technical college and West Virginia  
173 University Institute of Technology or West Virginia  
174 University related to program delivery under the terms of this  
175 section in effect on the first day of July, two thousand eight,  
176 shall continue in effect until the first day of July, two  
177 thousand nine, unless amended or revoked before that date by  
178 mutual agreement of the contract parties with approval by the  
179 council. Such a program shall be evaluated according to the  
180 benchmarks and indicators for community and technical  
181 college education developed by the council. If the council  
182 determines that the program is making insufficient progress

183 toward accomplishing the benchmarks, the program shall  
184 thereafter be delivered by the community and technical  
185 college.

186 (iii) *Dual credit course delivery agreements.* --

187 (I) Nothing in this article alters or abrogates any  
188 agreement in place on the effective date of this section  
189 between West Virginia University Institute of Technology  
190 and The Community and Technical College at West Virginia  
191 University Institute of Technology relating to delivery of dual  
192 credit courses as defined in section two, article one of this  
193 chapter;

194 (II) The community and technical college may deliver  
195 technical courses that are part of a certificate or associate  
196 degree program as early entrance or dual credit courses for  
197 high school students; and

198 (III) Subject to an agreement between the baccalaureate  
199 institution and the community and technical college, the latter  
200 may deliver early entrance and dual credit courses as defined  
201 in section two, article one of this chapter to students in high  
202 schools which are not served by the baccalaureate institution.

203 (C) *Eastern West Virginia Community and Technical*  
204 *College.* --

205 Eastern West Virginia Community and Technical College  
206 is a free-standing state institution of higher education seeking  
207 independent accreditation. The president and the governing  
208 board of Eastern Community and Technical College are  
209 responsible for achieving independent accreditation and  
210 adhering to the essential conditions pursuant to section three  
211 of this article.

212 (D) *Marshall Community and Technical College.* --

213 (i) Marshall Community and Technical College is an  
214 independently accredited state institution of higher education  
215 which may maintain an association with Marshall University  
216 subject to the provisions of section twelve of this article. The  
217 president and the governing board of the community and  
218 technical college are responsible for maintaining independent  
219 accreditation and adhering to the essential conditions  
220 pursuant to section three of this article.

221 (ii) Marshall University may continue associate degree  
222 programs in areas of particular institutional strength which  
223 are closely articulated to its baccalaureate programs and  
224 missions or which are of a high-cost nature and can best be  
225 provided in direct coordination with a baccalaureate  
226 institution. Any such program shall be delivered under the  
227 authority of the council and through contract with Marshall  
228 Community and Technical College. The terms of the  
229 contract shall be negotiated between the governing boards of  
230 the community and technical college and Marshall  
231 University. The final contract may not be implemented until  
232 approved by the council except that any contract between the  
233 community and technical college and Marshall University  
234 related to program delivery under the terms of this section in  
235 effect on the first day of July, two thousand eight, shall  
236 continue in effect until the first day of July, two thousand  
237 nine, unless amended or revoked before that date by mutual  
238 agreement of the contract parties with approval by the  
239 council. Such a program shall be evaluated according to the  
240 benchmarks and indicators for community and technical  
241 college education developed by the council. If the council  
242 determines that the program is making insufficient progress  
243 toward accomplishing the benchmarks, the program shall  
244 thereafter be delivered by Marshall Community and  
245 Technical College.

246 (iii) *Dual credit course delivery agreements.* --

247 (I) Nothing in this article alters or abrogates any  
248 agreement in place on the effective date of this section  
249 between Marshall University and Marshall Community and  
250 Technical College relating to delivery of dual credit courses  
251 as defined in section two, article one of this chapter;

252 (II) The community and technical college may deliver  
253 technical courses that are part of a certificate or associate  
254 degree program as early entrance or dual credit courses for  
255 high school students; and

256 (III) Subject to an agreement between the baccalaureate  
257 institution and the community and technical college, the latter  
258 may deliver early entrance and dual credit courses as defined  
259 in section two, article one of this chapter to students in high  
260 schools which are not served by the baccalaureate institution.

261 (E) *New River Community and Technical College. --*

262 (i) New River Community and Technical College is an  
263 independently accredited state institution of higher education  
264 which may maintain an association with Bluefield State  
265 College subject to the provisions of section twelve of this  
266 article. The community and technical college is  
267 headquartered in Beckley and incorporates the campuses of  
268 Greenbrier Community College Center of New River  
269 Community and Technical College and Nicholas Community  
270 College Center of New River Community and Technical  
271 College.

272 (ii) The president and the governing board of New River  
273 Community and Technical College are responsible for  
274 maintaining independent accreditation and adhering to the  
275 essential conditions pursuant to section three of this article.

276 (iii) Bluefield State College may continue associate  
277 degree programs in areas of particular institutional strength



278 which are closely articulated to its baccalaureate programs  
279 and missions or which are of a high-cost nature and can best  
280 be provided through direct coordination with a baccalaureate  
281 institution. Any such program shall be delivered under the  
282 authority of the council and through contract with the  
283 community and technical college. The terms of the contract  
284 shall be negotiated between the governing boards of the  
285 community and technical college and Bluefield State College.  
286 The final contract may not be implemented until approved by  
287 the council except that any contract between the community  
288 and technical college and Bluefield State College related to  
289 program delivery under the terms of this section in effect on  
290 the first day of July, two thousand eight, shall continue in  
291 effect until the first day of July, two thousand nine, unless  
292 amended or revoked before that date by mutual agreement of  
293 the contract parties with approval by the council. Such a  
294 program shall be evaluated according to the benchmarks and  
295 indicators for community and technical college education  
296 developed by the council. If the council determines that the  
297 program is making insufficient progress toward  
298 accomplishing the benchmarks, the program shall thereafter  
299 be delivered by New River Community and Technical  
300 College.

301 (iv) Bluefield State College may continue the associate of  
302 science degree in nursing which is an existing nationally  
303 accredited associate degree program in an area of particular  
304 institutional strength and which is closely articulated to the  
305 baccalaureate program and mission. The program is of a  
306 high-cost nature and can best be provided through direct  
307 administration by a baccalaureate institution. This program  
308 may not be transferred to New River Community and  
309 Technical College or any other community and technical  
310 college as long as the program maintains national  
311 accreditation and is seamlessly coordinated into the  
312 baccalaureate program at the institution.

313 (v) New River Community and Technical College  
314 participates in the planning and development of a unified  
315 effort involving multiple providers to meet the documented  
316 education and work force development needs in the region.  
317 Nothing in this subdivision prohibits or limits any existing,  
318 or the continuation of any existing, affiliation between  
319 Mountain State University, West Virginia University Institute  
320 of Technology and West Virginia University. The objective  
321 is to assure students and employers in the area that there is  
322 coordination and efficient use of resources among the  
323 separate programs and facilities, existing and planned, in the  
324 Beckley area.

325 (F) *Pierpont Community and Technical College.* --

326 (i) Pierpont Community and Technical College is an  
327 independent state institution of higher education seeking  
328 independent accreditation. The president and the governing  
329 board of Pierpont Community and Technical College,  
330 assisted by the president and governing board of Fairmont  
331 State University, are responsible for the community and  
332 technical college achieving independent accreditation and  
333 adhering to the essential conditions pursuant to sections three  
334 and thirteen of this article.

335 (ii) Fairmont State University may continue associate  
336 degree programs in areas of particular institutional strength  
337 which are closely articulated to their baccalaureate programs  
338 and missions or which are of a high-cost nature and can best  
339 be provided in direct coordination with a baccalaureate  
340 institution. Any such program shall be delivered under the  
341 authority of the council and through contract with the  
342 community and technical college. The terms of the contract  
343 shall be negotiated between the council and the governing  
344 board of Fairmont State University. The final contract may  
345 not be implemented until approved by the council except that  
346 any contract between the community and technical college

347 and Fairmont State University related to program delivery  
348 under the terms of this section in effect on the first day of  
349 July, two thousand eight, shall continue in effect until the  
350 first day of July, two thousand nine, unless amended or  
351 revoked before that date by mutual agreement of the contract  
352 parties with approval by the council. Such a program shall be  
353 evaluated according to the benchmarks and indicators for  
354 community and technical college education developed by the  
355 council. Such a program shall be evaluated according to the  
356 benchmarks and indicators for community and technical  
357 college education developed by the council. If the council  
358 determines that the program is making insufficient progress  
359 toward accomplishing the benchmarks, the program shall  
360 thereafter be delivered by the community and technical  
361 college.

362 (iii) *Dual credit course delivery agreements.* --

363 (I) Nothing in this article alters or abrogates any  
364 agreement in place on the effective date of this section  
365 between Fairmont State University and Pierpont Community  
366 and Technical College relating to delivery of dual credit  
367 courses as defined in section two, article one of this chapter;

368 (II) The community and technical college may deliver  
369 technical courses that are part of a certificate or associate  
370 degree program as early entrance or dual credit courses for  
371 high school students; and

372 (III) Subject to an agreement between the baccalaureate  
373 institution and the community and technical college, the latter  
374 may deliver early entrance and dual credit courses as defined  
375 in section two, article one of this chapter to students in high  
376 schools which are not served by the baccalaureate institution.

377 (G) *Southern West Virginia Community and Technical*  
378 *College.* -- Southern West Virginia Community and

379 Technical College is an independently-accredited, free-  
380 standing state institution of higher education. The president  
381 and the governing board of Southern West Virginia  
382 Community and Technical College are responsible for  
383 maintaining independent accreditation and adhering to the  
384 essential conditions pursuant to section three of this article.

385 (H) *West Virginia Northern Community and Technical*  
386 *College.* -- West Virginia Northern Community and  
387 Technical College is an independently-accredited, free-  
388 standing state institution of higher education. The president  
389 and the governing board of the community and technical  
390 college are responsible for maintaining independent  
391 accreditation and adhering to the essential conditions  
392 pursuant to section three of this article.

393 (I) *West Virginia State Community and Technical*  
394 *College.* --

395 (i) West Virginia State Community and Technical  
396 College is an independently accredited state institution of  
397 higher education which may maintain an association with  
398 West Virginia State University subject to the provisions of  
399 section twelve of this article. The president and the  
400 governing board of the community and technical college are  
401 responsible for maintaining independent accreditation and  
402 adhering to the essential conditions pursuant to section three  
403 of this article.

404 (ii) West Virginia State University may continue  
405 associate degree programs in areas of particular institutional  
406 strength which are closely articulated to its baccalaureate  
407 programs and missions or which are of a high-cost nature and  
408 can best be provided in direct coordination with a  
409 baccalaureate institution. Any such program shall be  
410 delivered under the authority of the council and through  
411 contract with the community and technical college. The

412 terms of the contract shall be negotiated between the  
413 governing boards of the community and technical college and  
414 West Virginia State University. The final contract may not  
415 be implemented until approved by the council except that any  
416 contract between the community and technical college and  
417 West Virginia State University related to program delivery  
418 under the terms of this section in effect on the first day of  
419 July, two thousand eight, shall continue in effect until the  
420 first day of July, two thousand nine, unless amended or  
421 revoked before that date by mutual agreement of the contract  
422 parties with approval by the council. Such a program shall be  
423 evaluated according to the benchmarks and indicators for  
424 community and technical college education developed by the  
425 council. If the council determines that the program is making  
426 insufficient progress toward accomplishing the benchmarks,  
427 the program shall thereafter be delivered by the community  
428 and technical college.

429 (iii) *Dual credit course delivery agreements.* --

430 (I) Nothing in this article alters or abrogates any  
431 agreement in place on the effective date of this section  
432 between West Virginia State University and West Virginia  
433 State Community and Technical College relating to delivery  
434 of dual credit courses as defined in section two, article one of  
435 this chapter;

436 (II) The community and technical college may deliver  
437 technical courses that are part of a certificate or associate  
438 degree program as early entrance or dual credit courses for  
439 high school students; and

440 (III) Subject to an agreement between the baccalaureate  
441 institution and the community and technical college, the latter  
442 may deliver early entrance and dual credit courses as defined  
443 in section two, article one of this chapter to students in high  
444 schools which are not served by the baccalaureate institution.

445 (J) *West Virginia University at Parkersburg.* --

446 (i) West Virginia University at Parkersburg is an  
447 independently accredited state institution of higher education  
448 which may maintain an association with West Virginia  
449 University subject to the provisions of section twelve of this  
450 article. The president and the governing board of the  
451 community and technical college are responsible for  
452 maintaining independent accreditation and adhering to the  
453 essential conditions pursuant to section three of this article.

454 (ii) Any contract between the community and technical  
455 college and West Virginia University related to program  
456 delivery under the authority of the council or related to  
457 delivery of baccalaureate programs, in effect on the first day  
458 of July, two thousand eight, shall continue in effect unless  
459 amended or revoked by mutual agreement of the contract  
460 parties with approval by the council.

461 (iii) In recognition of the unique and essential part West  
462 Virginia University at Parkersburg plays in providing  
463 education services in its region, the community and technical  
464 college may continue delivering baccalaureate degree  
465 programs offered at the institution on the effective date of  
466 this section, may implement additional baccalaureate  
467 programs with the approval of the commission and is  
468 strongly encouraged:

469 (I) To continue and expand its role as a higher education  
470 center pursuant to subsection (c) of this section; and

471 (II) To broker from West Virginia University and other  
472 higher education institutions, as appropriate, additional  
473 baccalaureate level degree programs the community and  
474 technical college determines are needed in its service region.

475 (III) Any baccalaureate degree programs offered at the  
476 community and technical college shall be delivered under the

477 authority of the commission. The program shall be evaluated  
478 according to the benchmarks and indicators for baccalaureate  
479 education developed by the commission.

**§18B-3C-12. Relationship between independent community  
and technical colleges and former sponsoring  
institutions.**

1 (a) *Intent and purposes.* --

2 (1) It is the intent of the Legislature to establish  
3 community and technical colleges in every region of the state  
4 that meet the essential conditions of section three of this  
5 article and focus on achieving established state goals and  
6 objectives.

7 (2) This section defines the relationship between a  
8 community and technical college which was administratively  
9 linked to a sponsoring institution prior to the first day of July,  
10 two thousand eight.

11 (b) Where an independent community and technical  
12 college was linked administratively to a sponsoring state  
13 college or university, or was designated as a regional campus  
14 or a division of another accredited state institution of higher  
15 education, prior to the first day of July, two thousand eight  
16 the following conditions apply:

17 (1) The community and technical college shall be  
18 accredited separately from the former sponsoring institution;

19 (2) All state funding allocations for the community and  
20 technical college shall be transferred directly to the  
21 community and technical college.

22 (3) The former sponsoring institution and the community  
23 and technical college shall agree to the fees the former

24 sponsoring institution may charge for administrative  
25 overhead costs.

26 (A) The fee schedule model agreed to by the institutions  
27 shall delineate services to be provided and the fees to be  
28 charged to the community and technical colleges for the  
29 services;

30 (B) The fee schedule shall be based upon the reasonable  
31 and customary fee for any service, shall bear a rational  
32 relationship to the cost of providing the service.

33 (C) Any contract between a community and technical  
34 college and its former sponsoring institution related to  
35 provision of services pursuant to subsection (c) of this section  
36 in effect on the first day of July, two thousand eight, shall  
37 continue in effect until the first day of July, two thousand  
38 nine, unless amended or revoked before that date by mutual  
39 agreement of the contracting parties.

40 (D) The former sponsoring institution shall continue to  
41 provide services pursuant to subsection (c) of this section as  
42 the governing board of the community and technical college  
43 considers appropriate under a negotiated contractual  
44 arrangement until the first day of July, two thousand eleven  
45 or the governing boards of both institutions mutually agree to  
46 end the contract arrangement.

47 (4) An independent community and technical college and  
48 the institution from which it obtains services may customize  
49 the fee schedule model to fit their needs.

50 (5) Policies shall be formally established to ensure the  
51 separation of academic and faculty personnel policies of the  
52 community and technical college from those of the former  
53 sponsoring institution. These policies include, but are not  
54 limited to, appointment, promotion, workload and, if  
55 appropriate, tenure; and



56 (c) The former sponsoring institution which was  
57 administratively linked to a community and technical college  
58 prior to the first day of July, two thousand eight, shall  
59 provide the following services subject to the provisions of  
60 subsection (b) of this section:

61 (1) Personnel management;

62 (2) Recordkeeping;

63 (3) Payroll;

64 (4) Accounting;

65 (5) Legal services;

66 (6) Registration;

67 (7) Student aid;

68 (8) Student records; and

69 (9) Any other services determined to be necessary and  
70 appropriate by the board of governors of the former  
71 sponsoring institution and the board of governors of the  
72 community and technical college.

73 (d) Any disputes between an independent community and  
74 technical college and its former sponsoring institution,  
75 regarding their respective rights and responsibilities under  
76 this chapter of the code, which cannot be resolved by the  
77 governing boards, shall be resolved as follows:

78 (1) The matters in dispute shall be summarized in writing  
79 and submitted to the chancellors jointly for resolution;

80 (2) If the matters in dispute cannot be resolved by the  
81 chancellors within thirty days, they shall be submitted to the  
82 council and commission for resolution;

83 (3) If the commission and council jointly cannot reach a  
84 resolution following their first regularly scheduled meeting  
85 or within sixty days, whichever is sooner, the chairpersons of  
86 the commission and council respectively shall establish a  
87 three-person panel to hear the matters and issue a decision  
88 within thirty days:

89 (A) The three-person panel is comprised of one person  
90 appointed by the chairperson of the commission, one person  
91 appointed by the chairperson of the council, and one person  
92 appointed jointly by the two chairpersons.

93 (B) The decision rendered by the three-person panel is  
94 binding on the governing boards, commission and council,  
95 and may not be challenged in the courts of this state.

96 (e) The governing board of the community and technical  
97 college and the council are responsible for the development  
98 of the community and technical college and for compliance  
99 with the essential conditions, all as required by this article.

100 (f) The president of the community and technical college  
101 has such responsibilities, powers and duties in the  
102 development of the community and technical college and in  
103 compliance with the essential conditions, as directed by the  
104 governing board or as are necessary for the proper  
105 implementation of the provisions of this act.

106 (g) Notwithstanding any other provision of this code to  
107 the contrary, the commission shall take necessary steps to  
108 ensure that institutional bonded indebtedness is secure and  
109 that each community and technical college assumes its fair  
110 share of any institutional debt acquired while it was part of  
111 the baccalaureate institution.

112 (h) The community and technical college is encouraged  
113 to secure academic services from the former sponsoring  
114 institution when it is in their best interests and beneficial to  
115 the students to be served. In determining whether or not to  
116 secure services from the former sponsoring institution, the  
117 community and technical college shall consider the  
118 following:

119 (1) The cost of the academic services;

120 (2) The quality of the academic services;

121 (3) The availability, both as to time and place, of the  
122 academic services; and

123 (4) Such other considerations as the community and  
124 technical college finds appropriate taking into account the  
125 best interests of the students to be served, the community and  
126 technical college, and the former sponsoring institution.  
127 Nothing in this article prohibits any state institution of higher  
128 education from purchasing or brokering remedial or  
129 developmental courses from a community and technical  
130 college.

**§18B-3C-13. Legislative intent; Pierpont Community and  
Technical College established as independent  
state institution of higher education;  
governing board; institutional organization,  
structure, accreditation status.**

1 (a) The intent of the Legislature in enacting this section  
2 is to provide for the most effective education delivery system  
3 for community and technical education programs to the entire  
4 region to be served by Pierpont Community and Technical  
5 College and to focus the institutional mission on achieving  
6 state goals, objectives, priorities, and essential conditions as  
7 established in articles one, one-d, and three-c of this chapter.

8 (b) Pierpont Community and Technical College is  
9 established as an independent state institution of higher  
10 education. Any reference in this code to Fairmont State  
11 Community and Technical College or to Pierpont  
12 Community and Technical College, a division of Fairmont  
13 State University, means the independent state institution of  
14 higher education known as Pierpont Community and  
15 Technical College.

16 (c) Effective the first day of July, two thousand eight, the  
17 board of advisors for Pierpont Community and Technical  
18 College is the governing board for that institution subject to  
19 the provisions of article two-a of this chapter. The  
20 administrative head of Pierpont Community and Technical  
21 College on the thirtieth day of June, two thousand eight, is  
22 the president of the independent community and technical  
23 college subject to the provisions of section five of this article.

24 (d) In the delivery of community and technical college  
25 education and programs, Pierpont Community and Technical  
26 College shall adhere to all provisions set forth in this code  
27 and rules promulgated by the council for the delivery of  
28 education and programs, including, but not limited to, council  
29 review and approval of academic programs, institutional  
30 compacts, master plans and tuition and fee rates, including  
31 capital fees.

32 (e) Pierpont Community and Technical College shall  
33 pursue independent accreditation status and the board of  
34 governors of the community and technical college shall  
35 provide through contractual arrangement for the  
36 administration and operation of Pierpont Community and  
37 Technical College by Fairmont State University while the  
38 community and technical college seeks appropriate  
39 independent accreditation. The contractual arrangement may  
40 not be implemented until approved by the council and shall  
41 include provisions to ensure that the programs offered at

42 Pierpont Community and Technical College are accredited  
43 while independent accreditation is being sought. Fairmont  
44 State University shall continue to provide services to the  
45 community and technical college which the community and  
46 technical college or the council considers necessary or  
47 expedient in carrying out its mission under the terms of an  
48 agreement between the two institutions pursuant to the  
49 provisions of section twelve of this article.

50 (f) The council has the authority and the duty to take all  
51 steps necessary to assure that the institution acquires  
52 independent accreditation status as quickly as possible. If the  
53 community and technical college fails to achieve independent  
54 accreditation by the first day of July, two thousand eleven,  
55 the council shall sever any contractual agreement between  
56 Pierpont Community and Technical College and Fairmont  
57 State University and assign the responsibility for achieving  
58 independent accreditation to another state institution of  
59 higher education.

**§18B-3C-14. Findings; intent; advanced technology centers  
established; administration; boards of advisors.**

1 (a) *Findings.* --

2 (1) The Legislature finds that ninety percent of the high-  
3 demand, high-wage new economy occupations require  
4 education and training beyond high school. Technology has  
5 permeated every industry requiring higher skill levels for  
6 technician-level occupations. Technician skills, learning  
7 capacities and adaptability to changing technologies affect  
8 the viability both of individual employers and entire  
9 industries. Unless West Virginia takes immediate steps to  
10 produce additional skilled workers to replace the aging and  
11 retiring work force, the state faces a critical shortage of  
12 technician-level workers which it must have to ensure  
13 economic growth. State employers must have access to a

14 technically proficient work force able to keep pace with the  
15 changing nature of occupations in the global economy and  
16 educating and training this technician-level work force is a  
17 vital component in the state's plan for economic  
18 development.

19 (2) The Legislature further finds that establishment of  
20 advanced technology centers will increase the capacity of  
21 West Virginia's community and technical colleges to deliver  
22 state-of-the-art technical education and training. The centers  
23 will serve as models for the most effective delivery of  
24 technician-level education and training with the potential to  
25 develop programs of excellence that attract participants from  
26 outside the state adding to their value as an economic  
27 stimulus. The centers serve as catalysts for state and regional  
28 economic development by educating and training a highly  
29 skilled technical work force capable of meeting both the  
30 current and emerging needs of West Virginia employers.

31 (b) *Legislative intent.* --

32 (1) It is the intent of the Legislature to establish advanced  
33 technology centers to provide advanced instruction capable  
34 of meeting the current and future demands of occupations  
35 requiring technical skills including the following:

36 (A) Addressing skills sets needed for emerging and high  
37 technology businesses and industries which are of vital  
38 importance to expanding the economy of the state;

39 (B) Training and retraining personnel for West Virginia's  
40 new and existing business and industries;

41 (C) Providing instruction in strategic technical program  
42 areas that advances the economic development initiatives of  
43 the state and regions within the state by providing access to  
44 a skilled work force for companies expanding or locating in  
45 West Virginia;

46 (D) Providing a setting for collaboration in the delivery  
47 of technical programs among community and technical  
48 colleges, secondary career-technical education and  
49 baccalaureate institutions;

50 (E) Invigorating teaching by providing models for  
51 program delivery that can be shared and replicated at all state  
52 community and technical colleges; and

53 (F) Developing student interest in pursuing technical  
54 occupations through exposure to advanced technologies.

55 (2) It is further the intent of the Legislature that  
56 programming offered by the centers be driven by the needs  
57 of state and local employers and economic development  
58 considerations. Centers shall be constructed with the  
59 flexibility to accommodate various programs simultaneously  
60 and to react quickly to adjust programming as employer and  
61 economic development demands change. They are furnished  
62 with state-of-the-art equipment conducive to delivering  
63 advanced technology programs and to providing students  
64 with real-world experiences that reflect industry standards.  
65 Education and training at the centers includes delivery of  
66 credit and noncredit instruction, seminars, skill sets, industry  
67 recognized certifications, certificates and associate degree  
68 programs. Curricula is designed in modular and other  
69 innovative formats allowing for open entry and open exit,  
70 compressed time frames, skill upgrades, and easy transfer  
71 from career-technical centers and other education providers.  
72 Centers shall embrace and promote collaborative  
73 programming among community and technical colleges and  
74 other providers of education and training programs and serve  
75 as receiving sites for programs to be delivered by community  
76 and technical colleges utilizing distance education,  
77 simulation and other collaborative, innovative approaches to  
78 increase the capacity of the community and technical college  
79 network to deliver technical education.

80 (c) *Boards of Advisors.* --

81 (1) There is hereby established a board of advisors for  
82 each advanced technology center in the state specifically to  
83 provide advice, assistance and programmatic oversight to the  
84 president of the community and technical college, director of  
85 the center, and others involved in its operation in areas  
86 relevant to program delivery and general operation of the  
87 center. In order to be successful, each center must act  
88 assertively to develop collaborative partnerships with  
89 employers, community and technical colleges in its service  
90 region, and local economic development entities. It is the  
91 responsibility of the board of advisors to promote this vital  
92 participation.

93 (A) For a center which has a single participating  
94 community and technical college in its service region, the  
95 board of governors of the institution is designated as the  
96 board of advisors for the center.

97 (B) For a center which has more than one participating  
98 community and technical college in its service region, the  
99 board of advisors consists of eleven members, of which a  
100 minimum of seven shall represent employers located in the  
101 region served by the center.

102 (i) The advisory board provides guidance to all governing  
103 boards and consists of the following members:

104 (I) Two members from the board of governors of each  
105 participating community and technical college which is  
106 located in the center's service region, appointed by the board  
107 of governors of each institution.

108 (II) One member representing regional economic  
109 development entities, appointed by the council, with advice



110 from the governing boards of the appropriate community and  
111 technical colleges; and

112 (III) Sufficient at-large members appointed by the  
113 council, with advice from the governing boards of the  
114 appropriate community and technical colleges, to fill the  
115 remaining seats equal to a membership of eleven.

116 (ii) Members of an advisory board serve staggered terms  
117 of up to four years beginning on the first day of September,  
118 two thousand eight, except that five of the initial  
119 appointments to an advisory board are for terms of two years  
120 and six of the initial appointments are for terms of four years.  
121 Each member who qualifies under the provisions of this  
122 section may serve for no more than one additional term. The  
123 council shall fill a vacancy in an unexpired term of a member  
124 for the unexpired term within thirty days of the occurrence of  
125 the vacancy in the same manner as the original appointment.

126 (iii) The chancellor for community and technical college  
127 education shall call the first meeting of the board of advisors  
128 and shall serve as chairperson until a permanent chairperson  
129 is elected.

130 (iv) The president of each community and technical  
131 college located in the center's service region shall make  
132 resources available for conducting the business of the  
133 center's board of advisors. The presidents of the institutions  
134 shall work collaboratively to provide support for conducting  
135 board business.

136 (2) Each board of advisors, including each board of  
137 governors when sitting as a board of advisors, shall hold at  
138 least one regular meeting during each quarter of the fiscal  
139 year including an annual meeting in June for the purpose of  
140 electing a chairperson and other officers as the board  
141 considers appropriate.

142 (A) Additional meetings may be held at the call of the  
143 chairperson or upon written request of five or more members  
144 of the advisory board.

145 (B) Officers serve a term of one year beginning on the  
146 first day of July and ending on the thirtieth day of June,  
147 except for the fiscal year beginning on the first day of July,  
148 two thousand eight, terms begin on the first day of  
149 September, two thousand eight and end on the thirtieth day of  
150 June, two thousand nine.

151 (C) One of the members representing employers shall be  
152 elected to serve as chairperson at the annual meeting in June  
153 except, for the fiscal year beginning on the first day of July,  
154 two thousand eight, the chairperson and other officers shall  
155 be elected in September, two thousand eight, and their terms  
156 shall expire on the thirtieth day of June, two thousand nine.  
157 A member may not serve as chairperson for more than two  
158 consecutive terms.

**§18B-3C-15. Transition oversight.**

1 (a) The Legislative Oversight Commission on Education  
2 Accountability is charged with responsibility to monitor and  
3 oversee implementation of the policy changes required by  
4 this act.

5 (b) The responsibilities include, but are not limited to, the  
6 following:

7 (1) Reviewing the overall progress of the council, the  
8 commission and state institutions of higher education in  
9 implementing the provisions of this act;

10 (2) Monitoring the development of the rules related to  
11 financing policy and benchmarks and indicators pursuant to  
12 section six, article two-b of this chapter;

13 (3) Monitoring the development of the statewide master  
14 plan for community and technical college education and the  
15 institutional compacts pursuant to sections five and seven,  
16 article one-d of this chapter;

17 (4) Monitoring the development of the council's state  
18 compact pursuant to section six, article one-d of this chapter;  
19 and

20 (5) Monitoring the changes in institutional relationships  
21 including development or changes in contractual  
22 arrangements for services pursuant to section twelve of this  
23 article and delivery of dual credit and baccalaureate-level  
24 courses;

25 (c) The provisions of this section expire the thirtieth day  
26 of June, two thousand nine.

## **ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.**

### **§18B-8-3. Faculty salary policies; reductions in salary prohibited; salary increase upon promotion in rank.**

1 (a) Each governing board shall establish and maintain a  
2 faculty salary policy that is competitive and which furthers  
3 the goals of attracting, retaining and rewarding high quality  
4 faculty.

5 (b) The salary of any full-time faculty member may not  
6 be reduced by the provisions of this article.

7 (c) Upon promotion in rank, each faculty member shall  
8 receive a salary increase of ten percent.

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## CHAPTER 88

**(H.B. 4449 - By Delegates M. Poling and Paxton)**

[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §18B-5-4 of the Code of West Virginia, 1931, as amended, relating to purchase or acquisition of materials, supplies, equipment, services and printing; and extending to the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education the authority to enter into lease-purchase agreements for capital improvements, including equipment.

*Be it enacted by the Legislature of West Virginia:*

That §18B-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.**

**§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.**

1 (a) The council, commission and each governing board,  
2 through the Vice Chancellor for Administration, shall  
3 purchase or acquire all materials, supplies, equipment,  
4 services and printing required for that governing board or the  
5 council or commission, as appropriate, and the state  
6 institutions of higher education under their jurisdiction,  
7 except the governing boards of Marshall University and West

8 Virginia University, respectively, are subject to the  
9 provisions of subsection (d) of this section.

10 (b) The commission and council jointly shall adopt rules  
11 governing and controlling acquisitions and purchases in  
12 accordance with the provisions of this section. The rules  
13 shall assure that the council, commission and governing  
14 boards:

15 (1) Do not preclude any person from participating and  
16 making sales thereof to the governing board or to the council  
17 or commission except as otherwise provided in section five  
18 of this article. Provision of consultant services such as  
19 strategic planning services does not preclude or inhibit the  
20 governing boards, council or commission from considering  
21 any qualified bid or response for delivery of a product or a  
22 commodity because the consultant services are rendered;

23 (2) Establish and prescribe specifications, in all proper  
24 cases, for materials, supplies, equipment, services and  
25 printing to be purchased;

26 (3) Adopt and prescribe such purchase order, requisition  
27 or other forms as may be required;

28 (4) Negotiate for and make purchases and acquisitions in  
29 such quantities, at such times and under contract, in the open  
30 market or through other accepted methods of governmental  
31 purchasing as may be practicable in accordance with general  
32 law;

33 (5) Advertise for bids on all purchases exceeding twenty-  
34 five thousand dollars, to purchase by means of sealed bids  
35 and competitive bidding or to effect advantageous purchases  
36 through other accepted governmental methods and practices;

37 (6) Post notices of all acquisitions and purchases for  
38 which competitive bids are being solicited in the purchasing

39 office of the specified institution involved in the purchase, at  
40 least two weeks prior to making such purchases and ensure  
41 that the notice is available to the public during business  
42 hours;

43 (7) Provide for purchasing in the open market;

44 (8) Provide for vendor notification of bid solicitation and  
45 emergency purchasing;

46 (9) Provide that competitive bids are not required for  
47 purchases of twenty-five thousand dollars or less; and

48 (10) Provide for not fewer than three bids where bidding  
49 is required. If fewer than three bids are submitted, an award  
50 may be made from among those received.

51 (c) When a state institution of higher education submits  
52 a contract, agreement or other document to the Attorney  
53 General for approval as to form as required by this chapter  
54 the following conditions apply:

55 (1) "Form" means compliance with the Constitution and  
56 statutes of the State of West Virginia.

57 (2) The Attorney General does not have the authority to  
58 reject a contract, agreement or other document based on the  
59 substantive provisions therein or any extrinsic matter so long  
60 as it complies with the Constitution and statutes of this state.

61 (3) Within fifteen days of receipt, the Attorney General  
62 shall notify the appropriate state institution of higher  
63 education in writing that the contract, agreement or other  
64 document is approved or disapproved as to form. If the  
65 contract, agreement or other document is disapproved as to  
66 form, the notice of disapproval shall identify each defect that  
67 supports the disapproval.

68 (4) If the state institution elects to challenge the  
69 disapproval by filing a Writ of Mandamus or other action and  
70 prevails, then the Attorney General shall pay reasonable  
71 attorney fees and costs incurred.

72 (d) Pursuant to this subsection, the governing boards of  
73 Marshall University and West Virginia University,  
74 respectively, may:

75 (1) Purchase or acquire all materials, supplies, equipment,  
76 services and printing required for the governing board  
77 without approval from the Commission or the Vice  
78 Chancellor for Administration and may issue checks in  
79 advance to cover postage as provided in subsection (f) of this  
80 section;

81 (2) Make purchases from cooperative buying groups,  
82 consortia, the federal government or from federal government  
83 contracts if the materials, supplies, services, equipment or  
84 printing to be purchased is available from these groups and  
85 if this would be the most financially advantageous manner of  
86 making the purchase;

87 (3) Select and acquire by contract or lease all grounds,  
88 buildings, office space or other space, and capital  
89 improvements, including equipment, the rental of which is  
90 necessarily required by the governing board; and

91 (4) Use purchase cards under terms approved for the  
92 commission, the council and governing boards of state  
93 institutions of higher education and participate in any  
94 expanded program of use as provided in subsection (w) of  
95 this section.

96 (e) The governing boards shall adopt sufficient  
97 accounting and auditing procedures and promulgate and  
98 adopt appropriate rules subject to the provisions of section  
99 six, article one of this chapter to govern and control

100 acquisitions, purchases, leases and other instruments for  
101 grounds, buildings, office or other space, and capital  
102 improvements, including equipment, or lease-purchase  
103 agreements.

104 (f) The council, commission or each governing board,  
105 through the Vice Chancellor for Administration, may issue a  
106 check in advance to a company supplying postage meters for  
107 postage used by that board, the council or commission and by  
108 the state institutions of higher education under their  
109 jurisdiction.

110 (g) When a purchase is to be made by bid, any or all bids  
111 may be rejected. However, all purchases based on advertised  
112 bid requests shall be awarded to the lowest responsible bidder  
113 taking into consideration the qualities of the articles to be  
114 supplied, their conformity with specifications, their suitability  
115 to the requirements of the governing boards, council or  
116 commission and delivery terms. The preference for resident  
117 vendors as provided in section thirty-seven, article three,  
118 chapter five-a of this code apply to the competitive bids made  
119 pursuant to this section.

120 (h) The governing boards, council and commission shall  
121 maintain a purchase file, which shall be a public record and  
122 open for public inspection. After the award of the order or  
123 contract, the governing boards, council and commission shall  
124 indicate upon the successful bid that it was the successful bid  
125 and shall further indicate why bids are rejected and, if the  
126 mathematical low vendor is not awarded the order or  
127 contract, the reason therefor. A record in the purchase file  
128 may not be destroyed without the written consent of the  
129 Legislative Auditor. Those files in which the original  
130 documentation has been held for at least one year and in  
131 which the original documents have been reproduced and  
132 archived on microfilm or other equivalent method of  
133 duplication may be destroyed without the written consent of  
134 the Legislative Auditor. All files, no matter the storage



135 method, shall be open for inspection by the Legislative  
136 Auditor upon request.

137 (i) The commission and council also jointly shall adopt  
138 rules to prescribe qualifications to be met by any person who  
139 is to be employed as a buyer pursuant to this section. These  
140 rules shall require that a person may not be employed as a  
141 buyer unless that person, at the time of employment, either is:

142 (1) A graduate of an accredited college or university; or

143 (2) Has at least four years' experience in purchasing for  
144 any unit of government or for any business, commercial or  
145 industrial enterprise.

146 (j) Any person making purchases and acquisitions  
147 pursuant to this section shall execute a bond in the penalty of  
148 fifty thousand dollars, payable to the State of West Virginia,  
149 with a corporate bonding or surety company authorized to do  
150 business in this state as surety thereon, in form prescribed by  
151 the Attorney General and conditioned upon the faithful  
152 performance of all duties in accordance with this section and  
153 sections five through eight, inclusive, of this article and the  
154 rules of the governing board and the council and commission.  
155 In lieu of separate bonds for such buyers, a blanket surety  
156 bond may be obtained. Any such bond shall be filed with the  
157 Secretary of State. The cost of any such bond shall be paid  
158 from funds appropriated to the applicable governing board or  
159 the council or commission.

160 (k) All purchases and acquisitions shall be made in  
161 consideration and within limits of available appropriations  
162 and funds and in accordance with applicable provisions of  
163 article two, chapter five-a of this code relating to expenditure  
164 schedules and quarterly allotments of funds.  
165 Notwithstanding any other provision of this code to the  
166 contrary, only those purchases exceeding the dollar amount  
167 for competitive sealed bids in this section are required to be

168 encumbered and they may be entered into the state's  
169 centralized accounting system by the staff of the commission,  
170 council or governing boards to satisfy the requirements of  
171 article two, chapter five-a of this code and specifically  
172 sections twenty-six, twenty-seven and twenty-eight of said  
173 article to determine whether the amount of the purchase is  
174 within the commission's, council's or governing board's  
175 quarterly allotment, is in accordance with the approved  
176 expenditure schedule and otherwise conforms to the  
177 provisions of said article.

178 (l) The governing boards, council and commission may  
179 make requisitions upon the Auditor for a sum to be known as  
180 an advance allowance account, not to exceed five percent of  
181 the total of the appropriations for the governing board,  
182 council or commission, and the Auditor shall draw a warrant  
183 upon the Treasurer for such accounts. All advance allowance  
184 accounts shall be accounted for by the applicable governing  
185 board or the council or commission once every thirty days or  
186 more often if required by the State Auditor.

187 (m) Contracts entered into pursuant to this section shall  
188 be signed by the applicable governing board or the council or  
189 commission in the name of the state and shall be approved as  
190 to form by the Attorney General. A contract which requires  
191 approval as to form by the Attorney General is considered  
192 approved if the Attorney General has not responded within  
193 fifteen days of presentation of the contract. A contract or a  
194 change order for that contract and notwithstanding any other  
195 provision of this code to the contrary, associated documents  
196 such as performance and labor/material payments, bonds and  
197 certificates of insurance which use terms and conditions or  
198 standardized forms previously approved by the Attorney  
199 General and do not make substantive changes in the terms  
200 and conditions of the contract do not require approval as to  
201 form by the Attorney General. The Attorney General shall  
202 make a list of those changes which he or she considers to be  
203 substantive and the list, and any changes thereto, shall be

204 published in the State Register. A contract that exceeds the  
205 dollar amount requiring competitive sealed bids in this  
206 section shall be filed with the State Auditor. If requested to  
207 do so, the governing boards, council or commission shall  
208 make all contracts available for inspection by the State  
209 Auditor. The governing board, council or commission, as  
210 appropriate, shall prescribe the amount of deposit or bond to  
211 be submitted with a bid or contract, if any, and the amount of  
212 deposit or bond to be given for the faithful performance of a  
213 contract.

214 (n) If the governing board, council or commission  
215 purchases or contracts for materials, supplies, equipment,  
216 services and printing contrary to the provisions of sections  
217 four through seven of this article or the rules pursuant  
218 thereto, such purchase or contract is void and of no effect.

219 (o) Any governing board or the council or commission,  
220 as appropriate, may request the Director of purchases to make  
221 available, from time to time, the facilities and services of that  
222 department to the governing boards, council or commission  
223 in the purchase and acquisition of materials, supplies,  
224 equipment, services and printing and the director of  
225 purchases shall cooperate with that governing board, council  
226 or commission, as appropriate, in all such purchases and  
227 acquisitions upon such request.

228 (p) Each governing board or the council or commission,  
229 as appropriate, shall permit private institutions of higher  
230 education to join as purchasers on purchase contracts for  
231 materials, supplies, services and equipment entered into by  
232 that governing board or the council or commission. Any  
233 private school desiring to join as purchasers on such purchase  
234 contracts shall file with that governing board or the council  
235 or commission an affidavit signed by the president of the  
236 institution of higher education or a designee requesting that  
237 it be authorized to join as purchaser on purchase contracts of  
238 that governing board or the council or commission, as

239 appropriate. The private school shall agree that it is bound by  
240 such terms and conditions as that governing board or the  
241 council or commission may prescribe and that it will be  
242 responsible for payment directly to the vendor under each  
243 purchase contract.

244 (q) Notwithstanding any other provision of this code to  
245 the contrary, the governing boards, council and commission,  
246 as appropriate, may make purchases from cooperative buying  
247 groups, consortia, the federal government or from federal  
248 government contracts if the materials, supplies, services,  
249 equipment or printing to be purchased is available from  
250 cooperative buying groups, consortia, the federal government  
251 or from a federal contract and purchasing from the  
252 cooperative buying groups, consortia, federal government or  
253 from a federal government contract would be the most  
254 financially advantageous manner of making the purchase.

255 (r) An independent performance audit of all purchasing  
256 functions and duties which are performed at any state  
257 institution of higher education, except Marshall University  
258 and West Virginia University, shall be performed each fiscal  
259 year. The Joint Committee on Government and Finance shall  
260 conduct the performance audit and the governing boards,  
261 council and commission, as appropriate, are responsible for  
262 paying the cost of the audit from funds appropriated to the  
263 governing boards, council or commission.

264 (1) The governing boards of Marshall University and  
265 West Virginia University, respectively, shall provide for  
266 independent performance audits of all purchasing functions  
267 and duties on their campuses at least once in each three-year  
268 period.

269 (2) Each audit shall be inclusive of the entire time period  
270 that has elapsed since the date of the preceding audit.

271 (3) Copies of all appropriate documents relating to any  
272 audit performed by the governing boards of Marshall

273 University and West Virginia University shall be furnished  
274 to the Joint Committee on Government and Finance and the  
275 Legislative Oversight Commission on Education  
276 Accountability within thirty days of the date the audit report  
277 is completed.

278 (s) The governing boards shall require each institution  
279 under their respective jurisdictions to notify and inform every  
280 vendor doing business with that institution of the provisions  
281 of section fifty-four, article three, chapter five-a of this code,  
282 also known as the Prompt Pay Act of 1990.

283 (t) Consultant services, such as strategic planning  
284 services, do not preclude or inhibit the governing boards,  
285 council or commission from considering any qualified bid or  
286 response for delivery of a product or a commodity because of  
287 the rendering of those consultant services.

288 (u) The commission or council may enter into lease-  
289 purchase agreements for capital improvements, including  
290 equipment, on behalf of or for the benefit of state institutions  
291 of higher education, the commission or council. After the  
292 commission or council, as appropriate, has granted approval  
293 for lease-purchase agreements by the governing boards, a  
294 governing board, may enter into lease-purchase agreements  
295 for capital improvements, including equipment, except the  
296 governing boards of Marshall University and West Virginia  
297 University may enter into lease-purchase agreements for the  
298 state institutions of higher education known as Marshall  
299 University and West Virginia University without seeking the  
300 approval of the commission or the council. Any lease-  
301 purchase agreement so entered shall constitute a special  
302 obligation of the State of West Virginia. The obligation  
303 under a lease-purchase agreement so entered may be from  
304 any funds legally available to the commission, council or the  
305 institution and must be cancelable at the option of the  
306 commission, council or the governing board or institution at  
307 the end of any fiscal year. The obligation, any assignment or

308 securitization thereof, never constitutes an indebtedness of  
309 the State of West Virginia or any department, agency or  
310 political subdivision thereof, within the meaning of any  
311 constitutional provision or statutory limitation, and may not  
312 be a charge against the general credit or taxing powers of the  
313 state or any political subdivision thereof. Such facts shall be  
314 plainly stated in any lease-purchase agreement. Further, the  
315 lease-purchase agreement shall prohibit assignment or  
316 securitization without consent of the lessee and the approval  
317 of the agreement as to form by the Attorney General of West  
318 Virginia. Proposals for any agreement shall be requested in  
319 accordance with the requirements of this section and any  
320 rules or guidelines of the commission and council. In  
321 addition, any lease-purchase agreement which exceeds one  
322 hundred thousand dollars total shall be approved as to form  
323 by the Attorney General of West Virginia. The interest  
324 component of any lease-purchase obligation is exempt from  
325 all taxation of the State of West Virginia, except inheritance,  
326 estate and transfer taxes. It is the intent of the Legislature  
327 that if the requirements set forth in the Internal Revenue  
328 Code of 1986, as amended, and any regulations promulgated  
329 pursuant thereto are met, the interest component of any lease-  
330 purchase obligation also is exempt from the gross income of  
331 the recipient for purposes of federal income taxation and may  
332 be designated by the governing board or the president of the  
333 institution as a bank-qualified obligation.

334 (v) Notwithstanding any other provision of this code to  
335 the contrary, the commission, council and governing boards  
336 have the authority, in the name of the state, to lease, or offer  
337 to lease, as lessee, any grounds, buildings, office or other  
338 space in accordance with this paragraph and as provided  
339 below:

340 (1) The commission, council and governing boards have  
341 sole authority to select and to acquire by contract or lease all  
342 grounds, buildings, office space or other space, the rental of  
343 which is necessarily required by the commission, council or

344 governing boards for the institutions under their jurisdiction.  
345 For state institutions of higher education other than Marshall  
346 University and West Virginia University, the Chief Executive  
347 Officer of the commission, council or an institution shall  
348 certify the following:

349 (A) That the grounds, buildings, office space or other  
350 space requested is necessarily required for the proper  
351 function of the commission, council or institution;

352 (B) That the commission, council or institution will be  
353 responsible for all rent and other necessary payments in  
354 connection with the contract or lease; and

355 (C) That satisfactory grounds, buildings, office space or  
356 other space is not available on grounds and in buildings  
357 currently owned or leased by the commission, council or the  
358 institution. Before executing any rental contract or lease, the  
359 commission, council or a governing board shall determine the  
360 fair rental value for the rental of the requested grounds,  
361 buildings, office space or other space, in the condition in  
362 which they exist, and shall contract for or lease the premises  
363 at a price not to exceed the fair rental value.

364 (2) The commission, council and governing boards are  
365 authorized to enter into long-term agreements for buildings,  
366 land and space for periods longer than one fiscal year but not  
367 to exceed forty years. Any purchase of real estate, any lease-  
368 purchase agreement and any construction of new buildings or  
369 other acquisition of buildings, office space or grounds  
370 resulting therefrom, pursuant to the provisions of this  
371 subsection shall be presented by the commission or council,  
372 as appropriate, to the Joint Committee on Government and  
373 Finance for prior review. Any such lease shall contain, in  
374 substance, all the following provisions:

375 (A) That the commission, council or governing board, as  
376 lessee, has the right to cancel the lease without further

377 obligation on the part of the lessee upon giving thirty days'  
378 written notice to the lessor at least thirty days prior to the last  
379 day of the succeeding month;

380 (B) That the lease is considered canceled without further  
381 obligation on the part of the lessee if the Legislature or the  
382 federal government fails to appropriate sufficient funds  
383 therefor or otherwise acts to impair the lease or cause it to be  
384 canceled; and

385 (C) That the lease is considered renewed for each ensuing  
386 fiscal year during the term of the lease unless it is canceled  
387 by the commission, council or governing board before the  
388 end of the then-current fiscal year.

389 (3) The commission, council or institution which is  
390 granted any grounds, buildings, office space or other space  
391 leased in accordance with this section may not order or make  
392 permanent changes of any type thereto, unless the  
393 commission, council or governing board, as appropriate, has  
394 first determined that the change is necessary for the proper,  
395 efficient and economically sound operation of the institution.  
396 For purposes of this section, a "permanent change" means  
397 any addition, alteration, improvement, remodeling, repair or  
398 other change involving the expenditure of state funds for the  
399 installation of any tangible thing which cannot be  
400 economically removed from the grounds, buildings, office  
401 space or other space when vacated by the institution.

402 (4) Leases and other instruments for grounds, buildings,  
403 office or other space, once approved by the commission,  
404 council or governing board, may be signed by the chief  
405 executive officer of the commission, council or institution.  
406 Any lease or instrument exceeding one hundred thousand  
407 dollars annually shall be approved as to form by the Attorney  
408 General. A lease or other instrument for grounds, buildings,  
409 office or other space that contains a term, including any  
410 options, of more than six months for its fulfillment shall be  
411 filed with the State Auditor.



412 (5) The commission and council jointly may promulgate  
413 rules they consider necessary to carry out the provisions of  
414 this section. The governing boards of Marshall University  
415 and West Virginia University shall promulgate rules pursuant  
416 to section six, article one of this chapter to implement the  
417 provisions of this section.

418 (w) Purchasing card use may be expanded by the council,  
419 commission and state institutions of higher education  
420 pursuant to the provisions of this subsection.

421 (1) The council and commission jointly shall establish  
422 procedures to be implemented by the council, commission  
423 and any institution under their respective jurisdictions using  
424 purchasing cards. The procedures shall ensure that each  
425 maintains:

426 (A) Appropriate use of the purchasing card system;

427 (B) Full compliance with the provisions of article three,  
428 chapter twelve of this code relating to the purchasing card  
429 program; and

430 (C) Sufficient accounting and auditing procedures for all  
431 purchasing card transactions.

432 (2) By the first day of November, two thousand four, the  
433 council and commission jointly shall present the procedures  
434 to the Legislative Oversight Commission on Education  
435 Accountability for its adoption.

436 (3) Notwithstanding any other provision of this code to  
437 the contrary, if the Legislative Oversight Commission on  
438 Education Accountability adopts the procedures, the council,  
439 commission, and any institution authorized pursuant to  
440 subdivision (4) of this subsection, may use purchasing cards  
441 for:

442 (A) Travel expenses directly related to the job duties of  
443 the traveling employee, including fuel and food; and

444 (B) Any routine, regularly scheduled payment, including,  
445 but not limited to, utility payments and real property rental  
446 fees. The council, commission and each institution, annually  
447 by the thirtieth day of June, shall provide to the State  
448 Purchasing Division a list of all goods or services for which  
449 payment was made pursuant to this provision during that  
450 fiscal year.

451 (4) The commission and council each shall evaluate the  
452 capacity of each institution under its jurisdiction for  
453 complying with the procedures established pursuant to  
454 subdivision (3) of this subsection. The commission and  
455 council each shall authorize expanded use of purchasing  
456 cards pursuant to said subdivision for any such institution it  
457 determines has the capacity to comply.

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## CHAPTER 89

**(Com. Sub. for H.B. 4434 - By Delegates M. Poling, Paxton,  
Frederick, Browning, Wysong, Williams, Ennis, Wells,  
Stephens, Tansill and Duke)**

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[Passed March 8, 2008; in effect July 1, 2008.]  
[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new section, designated §18B-5-11,  
relating to creating the energy and water savings revolving loan  
fund; requiring legislative rule; establishing fund  
administration criteria; authorizing fund investment; and  
limiting uses of funds.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18B-5-11 to read as follows:

**ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.**

**§18B-5-11. Energy and Water Savings Revolving Loan Program Fund.**

1 (a) There is created in the State Treasury a special  
2 revolving loan fund known as the “Energy and Water  
3 Savings Revolving Loan Fund”. The fund is administered by  
4 the commission and used to effectuate the purposes of this  
5 section. The fund consists of moneys received from the  
6 following sources:

7 (1) All appropriations provided by the Legislature for  
8 energy and water savings revolving loans;

9 (2) Repayment of loans made to state institutions of  
10 higher education pursuant to this section;

11 (3) Any moneys available from external sources; and

12 (4) All interest and other income earned from investment  
13 of moneys in the fund.

14 (b) The commission shall utilize moneys in the fund to  
15 provide loans to state institutions of higher education under  
16 the jurisdiction of the commission or the council to finance  
17 projects that will achieve significant reductions in campus  
18 energy and water consumption and costs.

19 (c) The commission shall propose a rule for legislative  
20 approval in accordance with section six, article one of this  
21 chapter and article three-a, chapter twenty-nine-a of this code  
22 to implement the provisions of this section. The rule shall  
23 provide at least the following:

24 (1) Project information required in a loan application;

25 (2) Criteria for evaluating loan applications;

26 (3) A method for calculating the terms of loan repayment;  
27 and

28 (4) Other provisions the commission considers necessary  
29 to administer the program in accordance with this section.

30 (d) Projects shall be considered on a competitive basis.  
31 Highest priority is given to projects guaranteeing the greatest  
32 reductions in energy and water consumption and costs and  
33 the earliest loan repayments.

34 (e) Any balance, including accrued interest and any other  
35 returns, in the Energy and Water Savings Revolving Loan  
36 Fund at the end of each fiscal year shall not expire to the  
37 General Revenue Fund, but shall remain in the loan fund and  
38 be expended for the purposes provided by this section. The  
39 Commission may use up to four percent of the total loan  
40 amount in a fiscal year for administrative expenses incurred  
41 in that fiscal year.

42 (f) Fund balances may be invested with the state's  
43 consolidated investment fund. Any earnings on the  
44 investments shall be used solely for the purpose defined in  
45 subsection (b) of this section.

46 (g) The Legislature finds that an emergency exists and,  
47 therefore, the commission shall propose an emergency rule  
48 to implement the provisions of this section in accordance

49 with section six, article one of this chapter and article three-a,  
50 chapter twenty-nine-a of this code by the first day of October,  
51 two thousand eight. The emergency rule may not be  
52 implemented without prior approval of the Legislative  
53 Oversight Commission on Education Accountability.

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## CHAPTER 90

**(Com. Sub. for S.B. 682 - By Senators Plymale, Edgell, Unger,  
Bailey, Green, Hunter, Oliverio, Stollings, Wells,  
White, Guills and Hall)**

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[Passed March 8, 2008; in effect from passage.]  
[Approved by the Governor on March 27, 2008.]

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AN ACT to amend and reenact §18B-10-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-22-18 of said code, all relating to creating a special revenue fund known as the Community and Technical College Capital Improvement Fund; providing for depositing funds pledged to repay principal, interest and/or redemption premium on certain bonds authorized by the commission for community and technical college capital improvements; and allocating five million dollars to the Higher Education Policy Commission Community and Technical College Capital Improvement Fund for community and technical college education capital improvements.

*Be it enacted by the Legislature of West Virginia:*

That §18B-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §29-22-18 of said code be amended and reenacted, all to read as follows:

## Chapter

18B. Higher Education.

29. Miscellaneous Boards and Officers.

**CHAPTER 18B. HIGHER EDUCATION.****ARTICLE 10. FEES AND OTHER MONEY COLLECTED  
AT STATE INSTITUTIONS OF HIGHER  
EDUCATION.****§18B-10-8. Collection; disposition and use of capital and  
auxiliary capital fees; creation of special capital  
and auxiliary capital improvements funds;  
revenue bonds.**

1 (a) This section and any rules adopted by the  
2 commission, council or both, in accordance with this section  
3 and article three-a, chapter twenty-nine-a of this code,  
4 governs the collection, disposition and use of the capital and  
5 auxiliary capital fees authorized by section one of this article.  
6 The statutory provisions governing collection and disposition  
7 of capital funds in place prior to the enactment of this section  
8 remain in effect.

9 (b) *Fees for full-time students.* -- The governing boards  
10 shall fix capital and auxiliary capital fees for full-time  
11 students at each state institution of higher education per  
12 semester. For institutions under its jurisdiction, a governing  
13 board may fix the fees at higher rates for students who are not  
14 residents of this state.

15 (c) *Fees for part-time students.* -- For all part-time  
16 students and for all summer school students, the governing  
17 boards shall impose and collect the fees in proportion to, but  
18 not exceeding, the fees paid by full-time students. Refunds  
19 of the fees may be made in the same manner as any other fee  
20 collected at state institutions of higher education.

21 (d) There is continued in the State Treasury a special  
22 capital improvements fund and special auxiliary capital  
23 improvements fund for each state institution of higher  
24 education and the commission into which shall be paid all  
25 proceeds, respectively, of:

26 (1) The capital and auxiliary capital fees collected from  
27 students at all state institutions of higher education pursuant  
28 to this section; and

29 (2) The fees collected from the students pursuant to  
30 section one of this article. The fees shall be expended by the  
31 commission and governing boards for the payment of the  
32 principal of or interest on any revenue bonds issued by the  
33 board of regents or the succeeding governing boards for  
34 which the fees were pledged prior to the enactment of this  
35 section.

36 (e) The governing boards may make expenditures from  
37 any of the special capital improvements funds or special  
38 auxiliary capital improvement funds established in this  
39 section to finance, in whole or in part, together with any  
40 federal, state or other grants or contributions, for any one or  
41 more of the following projects:

42 (1) The acquisition of land or any rights or interest in  
43 land;

44 (2) The construction or acquisition of new buildings;

45 (3) The renovation or construction of additions to  
46 existing buildings;

47 (4) The acquisition of furnishings and equipment for the  
48 buildings; and

49 (5) The construction or acquisition of any other capital  
50 improvements or capital education facilities at the state

51 institutions of higher education, including any roads, utilities  
52 or other properties, real or personal, or for other purposes  
53 necessary, appurtenant or incidental to the construction,  
54 acquisition, financing and placing in operation of the  
55 buildings, capital improvements or capital education  
56 facilities, including student unions, dormitories, housing  
57 facilities, food service facilities, motor vehicle parking  
58 facilities and athletic facilities.

59 (f) The governing boards, in their discretion, may use the  
60 moneys in the special capital improvements funds and special  
61 auxiliary improvement funds to finance the costs of the  
62 purposes set forth in this section on a cash basis. The  
63 commission, when singly or jointly requested by the  
64 governing boards, periodically may issue revenue bonds of  
65 the state as provided in this section to finance all or part of  
66 the purposes and pledge all or any part of the moneys in such  
67 special funds for the payment of the principal of and interest  
68 on the revenue bonds, and for reserves for the revenue bonds.  
69 Any pledge of the special funds for the revenue bonds shall  
70 be a prior and superior charge on the special funds over the  
71 use of any of the moneys in the funds to pay for the cost of  
72 any of the purposes on a cash basis. Any expenditures from  
73 the special funds, other than for the retirement of revenue  
74 bonds, may be made by the commission or governing boards  
75 only to meet the cost of a predetermined capital  
76 improvements program for one or more of the state  
77 institutions of higher education, in the order of priority  
78 agreed upon by the governing board or boards and the  
79 commission and for which the aggregate revenue collections  
80 projected are presented to the Governor for inclusion in the  
81 annual budget bill, and are approved by the Legislature for  
82 expenditure.

83 (g) The revenue bonds periodically may be authorized  
84 and issued by the commission or governing boards to  
85 finance, in whole or in part, the purposes provided in this  
86 section in an aggregate principal amount not exceeding the



87 amount which the commission determines can be paid as to  
88 both principal and interest and reasonable margins for a  
89 reserve therefor from the moneys in the special funds.

90 (h) The issuance of the revenue bonds shall be authorized  
91 by a resolution adopted by the governing board receiving the  
92 proceeds and the commission and the revenue bonds shall  
93 bear the date or dates; mature at such time or times not  
94 exceeding forty years from their respective dates; be in such  
95 form either coupon or registered, with such exchangeability  
96 and interchangeability privileges; be payable in such medium  
97 of payment and at such place or places, within or without the  
98 state; be subject to such terms of prior redemption at such  
99 prices not exceeding one hundred five per centum of the  
100 principal amount thereof; and shall have the other terms and  
101 provisions determined by the governing board receiving the  
102 proceeds and the commission. The revenue bonds shall be  
103 signed by the Governor and by the chancellor of the  
104 commission or the chair of the governing boards authorizing  
105 the issuance thereof, under the Great Seal of the State,  
106 attested by the Secretary of State, and the coupons attached  
107 to the revenue bonds shall bear the facsimile signature of the  
108 chancellor of the commission or the chair of the appropriate  
109 governing boards. The revenue bonds shall be sold in the  
110 manner the commission or governing board determines is for  
111 the best interests of the state.

112 (i) The commission or governing boards may enter into  
113 trust agreements with banks or trust companies, within or  
114 without the state, and in the trust agreements or the  
115 resolutions authorizing the issuance of the bonds may enter  
116 into valid and legally binding covenants with the holders of  
117 the revenue bonds as to the custody, safeguarding and  
118 disposition of the proceeds of the revenue bonds, the moneys  
119 in the special funds, sinking funds, reserve funds or any other  
120 moneys or funds; as to the rank and priority, if any, of  
121 different issues of revenue bonds by the commission or  
122 governing boards under the provisions of this section; as to

123 the maintenance or revision of the amounts of the fees; as to  
124 the extent to which swap agreements, as defined in  
125 subsection (h), section two, article two-g, chapter thirteen of  
126 this code shall be used in connection with the revenue bonds,  
127 including such provisions as payment, term, security, default  
128 and remedy provisions as the commission shall consider  
129 necessary or desirable, if any, under which the fees may be  
130 reduced; and as to any other matters or provisions which are  
131 considered necessary and advisable by the commission or  
132 governing boards in the best interests of the state and to  
133 enhance the marketability of the revenue bonds.

134 (j) After the issuance of any revenue bonds, the fees at  
135 the state institutions of higher education pledged to the  
136 payment thereof may not be reduced as long as any of the  
137 revenue bonds are outstanding and unpaid except under such  
138 terms, provisions and conditions as shall be contained in the  
139 resolution, trust agreement or other proceedings under which  
140 the revenue bonds were issued. The revenue bonds are and  
141 constitute negotiable instruments under the Uniform  
142 Commercial Code of this state; together with the interest  
143 thereon, be exempt from all taxation by the state of West  
144 Virginia, or by any county, school district, municipality or  
145 political subdivision thereof; and the revenue bonds may not  
146 be considered to be obligations or debts of the state and the  
147 credit or taxing power of the state may not be pledged  
148 therefor, but the revenue bonds shall be payable only from  
149 the revenue pledged therefor as provided in this section.

150 (k) Additional revenue bonds may be issued by the  
151 commission or governing boards pursuant to this section and  
152 financed by additional revenues or funds dedicated from  
153 other sources.. There is hereby created in the State Treasury  
154 a special revenue fund known as the Community and  
155 Technical College Capital Improvement Fund into which  
156 shall be deposited the amounts specified in subsection (j),  
157 section eighteen, article twenty-two, chapter twenty-nine of  
158 this code. All amounts deposited in the fund shall be pledged

159 to the repayment of the principal, interest and redemption  
160 premium, if any, on any revenue bonds or refunding revenue  
161 bonds authorized by the commission for community and  
162 technical college capital improvements.

163 (l) Funding of systemwide and campus-specific revenue  
164 bonds under any other section of this code is continued and  
165 authorized pursuant to the terms of this section. Revenues of  
166 any state institution of higher education pledged to the  
167 repayment of any revenue bonds issued pursuant to this code  
168 shall remain pledged.

169 (m) Any revenue bonds for state institutions of higher  
170 education proposed to be issued under this section or other  
171 sections of this code first must be approved by the  
172 commission.

173 (n) Revenue bonds issued pursuant to this code may be  
174 issued by the commission or governing boards, either singly  
175 or jointly.

176 (o) Fees pledged for repayment of revenue bonds issued  
177 under this section or article twelve-b, chapter eighteen prior  
178 to the effective date of this section shall be transferred to the  
179 commission in a manner prescribed by the commission. The  
180 commission may transfer funds from the accounts of  
181 institutions pledged for the repayment of revenue bonds  
182 issued prior to the effective date of this section or issued  
183 subsequently by the commission upon the request of  
184 institutions, if an institution fails to transfer the pledged  
185 revenues to the commission in a timely manner.

186 (p) Effective the first day of July, two thousand four, the  
187 capital and auxiliary capital fees authorized by this section  
188 and section one of this article are in lieu of any other fees set  
189 out in this code for capital and auxiliary capital projects to  
190 benefit public higher education institutions. Notwithstanding  
191 any other provisions of this code to the contrary, in the event

192 any capital, tuition, registration or auxiliary fees are pledged  
193 to the payment of any revenue bonds issued pursuant to any  
194 general bond resolutions of the commission, any of its  
195 predecessors or any institution, adopted prior to the effective  
196 date of this section, such fees shall remain in effect in  
197 amounts not less than the amounts in effect as of that date,  
198 until the revenue bonds payable from any of the fees have  
199 been paid or the pledge of the fees is otherwise legally  
200 discharged.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 22. STATE LOTTERY ACT.**

#### **§29-22-18. State Lottery Fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; State Lottery Education Fund; State Lottery Senior Citizens Fund; allocation and appropriation of net profits.**

1 (a) There is continued a special revenue fund in the State  
2 Treasury which shall be designated and known as the State  
3 Lottery Fund. The fund consists of all appropriations to the  
4 fund and all interest earned from investment of the fund and  
5 any gifts, grants or contributions received by the fund. All  
6 revenues received from the sale of lottery tickets, materials  
7 and games shall be deposited with the State Treasurer and  
8 placed into the State Lottery Fund. The revenue shall be  
9 disbursed in the manner provided in this section for the  
10 purposes stated in this section and shall not be treated by the  
11 Auditor and Treasurer as part of the general revenue of the  
12 state.

13 (b) No appropriation, loan or other transfer of state funds  
14 may be made to the commission or Lottery Fund after the  
15 initial appropriation.

16 (c) A minimum annual average of forty-five percent of  
17 the gross amount received from each lottery shall be  
18 allocated and disbursed as prizes.

19 (d) Not more than fifteen percent of the gross amount  
20 received from each lottery may be allocated to and may be  
21 disbursed as necessary for fund operation and administration  
22 expenses: *Provided*, That for the period beginning the first  
23 day of the month following the first passage of a referendum  
24 election held pursuant to section seven, article twenty-two-c  
25 of this chapter and for eighteen months thereafter, not more  
26 than seventeen percent of the gross amount received from  
27 each lottery shall be allocated to and may be disbursed as  
28 necessary for fund operation and administration expenses.

29 (e) The excess of the aggregate of the gross amount  
30 received from all lotteries over the sum of the amounts  
31 allocated by subsections (c) and (d) of this section shall be  
32 allocated as net profit. In the event that the percentage  
33 allotted for operations and administration generates a surplus,  
34 the surplus shall be allowed to accumulate to an amount not  
35 to exceed two hundred fifty thousand dollars. On a monthly  
36 basis, the director shall report to the Joint Committee on  
37 Government and Finance of the Legislature any surplus in  
38 excess of two hundred fifty thousand dollars and remit to the  
39 State Treasurer the entire amount of those surplus funds in  
40 excess of two hundred fifty thousand dollars which shall be  
41 allocated as net profit.

42 (f) After first satisfying the requirements for funds  
43 dedicated to the School Building Debt Service Fund in  
44 subsection (h) of this section to retire the bonds authorized to  
45 be issued pursuant to section eight, article nine-d, chapter  
46 eighteen of this code, then satisfying the requirements for  
47 funds dedicated to the Education, Arts, Sciences and Tourism

48 Debt Service Fund in subsection (i) of this section to retire  
49 the bonds authorized to be issued pursuant to section  
50 eleven-a, article six, chapter five of this code, and then  
51 satisfying the requirements for funds dedicated to the  
52 Community and Technical College Capital Improvement  
53 Fund in subsection (j) of this section to retire the bonds for  
54 community and technical college capital improvements  
55 authorized to be issued pursuant to section eight, article ten,  
56 chapter eighteen-b of this code, any and all remaining funds  
57 in the State Lottery Fund shall be made available to pay debt  
58 service in connection with any revenue bonds issued pursuant  
59 to section eighteen-a of this article, if and to the extent  
60 needed for such purpose from time to time. The Legislature  
61 shall annually appropriate all of the remaining amounts  
62 allocated as net profits in subsection (e) of this section, in  
63 such proportions as it considers beneficial to the citizens of  
64 this state, to: (1) The Lottery Education Fund created in  
65 subsection (g) of this section; (2) the School Construction  
66 Fund created in section six, article nine-d, chapter eighteen of  
67 this code; (3) the Lottery Senior Citizens Fund created in  
68 subsection (k) of this section; and (4) the Division of Natural  
69 Resources created in section three, article one, chapter twenty  
70 of this code and the West Virginia Development Office as  
71 created in section one, article two, chapter five-b of this code,  
72 in accordance with subsection (l) of this section. No transfer  
73 to any account other than the School Building Debt Service  
74 Fund, the Education, Arts, Sciences and Tourism Debt  
75 Service Fund, the Community and Technical College Capital  
76 Improvement Fund, the Economic Development Project Fund  
77 created under section eighteen-a, article twenty-two, chapter  
78 twenty-nine of this code, or any fund from which debt service  
79 is paid under subsection (c), section eighteen-a of this article  
80 may be made in any period of time in which a default exists  
81 in respect to debt service on bonds issued by the School  
82 Building Authority, the State Building Commission, the  
83 Higher Education Policy Commission, the Economic  
84 Development Authority or which are otherwise secured by  
85 lottery proceeds. No additional transfer may be made to any  
86 account other than the School Building Debt Service Account

87 and the Education, Arts, Sciences and Tourism Debt Service  
88 Fund and the Community and Technical College Capital  
89 Improvement Fund when net profits for the preceding twelve  
90 months are not at least equal to one hundred fifty percent of  
91 debt service on bonds issued by the School Building  
92 Authority, the State Building Commission and the Higher  
93 Education Policy Commission which are secured by net  
94 profits.

95 (g) There is continued a special revenue fund in the State  
96 Treasury which shall be designated and known as the Lottery  
97 Education Fund. The fund shall consist of the amounts  
98 allocated pursuant to subsection (f) of this section, which  
99 shall be deposited into the Lottery Education Fund by the  
100 State Treasurer. The Lottery Education Fund shall also  
101 consist of all interest earned from investment of the Lottery  
102 Education Fund and any other appropriations, gifts, grants,  
103 contributions or moneys received by the Lottery Education  
104 Fund from any source. The revenues received or earned by  
105 the Lottery Education Fund shall be disbursed in the manner  
106 provided below and may not be treated by the Auditor and  
107 Treasurer as part of the general revenue of the state.  
108 Annually, the Legislature shall appropriate the revenues  
109 received or earned by the Lottery Education Fund to the state  
110 system of public and higher education for these educational  
111 programs it considers beneficial to the citizens of this state.

112 (h) On or before the twenty-eighth day of each month, as  
113 long as revenue bonds or refunding bonds are outstanding,  
114 the lottery director shall allocate to the School Building Debt  
115 Service Fund created pursuant to the provisions of section  
116 six, article nine-d, chapter eighteen of this code, as a first  
117 priority from the net profits of the lottery for the preceding  
118 month, an amount equal to one tenth of the projected annual  
119 principal, interest and coverage ratio requirements on any and  
120 all revenue bonds and refunding bonds issued, or to be  
121 issued, on or after the first day of April, one thousand nine  
122 hundred ninety-four, as certified to the lottery director in

123 accordance with the provisions of section six, article nine-d,  
124 chapter eighteen of this code. In no event shall the monthly  
125 amount allocated exceed one million eight hundred thousand  
126 dollars, nor may the total allocation of the net profits to be  
127 paid into the School Building Debt Service Fund, as provided  
128 in this section, in any fiscal year exceed the lesser of the  
129 principal and interest requirements certified to the lottery  
130 director or eighteen million dollars. In the event there are  
131 insufficient funds available in any month to transfer the  
132 amount required to be transferred pursuant to this subsection  
133 to the School Debt Service Fund, the deficiency shall be  
134 added to the amount transferred in the next succeeding month  
135 in which revenues are available to transfer the deficiency. A  
136 lien on the proceeds of the State Lottery Fund up to a  
137 maximum amount equal to the projected annual principal,  
138 interest and coverage ratio requirements, not to exceed  
139 twenty-seven million dollars annually, may be granted by the  
140 School Building Authority in favor of the bonds it issues  
141 which are secured by the net lottery profits. When the school  
142 improvement bonds, secured by profits from the lottery and  
143 deposited in the School Debt Service Fund, mature, the  
144 profits shall become available for debt service on additional  
145 school improvement bonds as a first priority from the net  
146 profits of the lottery or may at the discretion of the authority  
147 be placed into the School Construction Fund created pursuant  
148 to the provisions of section six, article nine-d, chapter  
149 eighteen of this code.

150 (i) Beginning on or before the twenty-eighth day of July,  
151 one thousand nine hundred ninety-six, and continuing on or  
152 before the twenty-eighth day of each succeeding month  
153 thereafter, as long as revenue bonds or refunding bonds are  
154 outstanding, the lottery director shall allocate to the  
155 Education, Arts, Sciences and Tourism Debt Service Fund  
156 created pursuant to the provisions of section eleven-a, article  
157 six, chapter five of this code, as a second priority from the net  
158 profits of the lottery for the preceding month, an amount  
159 equal to one tenth of the projected annual principal, interest



160 and coverage ratio requirements on any and all revenue  
161 bonds and refunding bonds issued, or to be issued, on or after  
162 the first day of April, one thousand nine hundred ninety-six,  
163 as certified to the lottery director in accordance with the  
164 provisions of that section. In no event may the monthly  
165 amount allocated exceed one million dollars nor may the total  
166 allocation paid into the Education, Arts, Sciences and  
167 Tourism Debt Service Fund, as provided in this section, in  
168 any fiscal year exceed the lesser of the principal and interest  
169 requirements certified to the lottery director or ten million  
170 dollars. In the event there are insufficient funds available in  
171 any month to transfer the amount required pursuant to this  
172 subsection to the Education, Arts, Sciences and Tourism Debt  
173 Service Fund, the deficiency shall be added to the amount  
174 transferred in the next succeeding month in which revenues  
175 are available to transfer the deficiency. A second-in-priority  
176 lien on the proceeds of the State Lottery Fund up to a  
177 maximum amount equal to the projected annual principal,  
178 interest and coverage ratio requirements, not to exceed fifteen  
179 million dollars annually, may be granted by the State  
180 Building Commission in favor of the bonds it issues which  
181 are secured by the net lottery profits.

182 (j) Beginning on or before the twenty-eighth day of July,  
183 two thousand eight, and continuing on or before the twenty-  
184 eighth day of each succeeding month thereafter, as long as  
185 revenue bonds or refunding bonds are outstanding, the lottery  
186 director shall allocate to the Community and Technical  
187 College Capital Improvement Fund, created pursuant to  
188 section eight, article ten, chapter eighteen-b of this code, as  
189 a third priority from net profits of the lottery for the  
190 preceding month, an amount equal to one tenth of the  
191 projected annual principal, interest and coverage ratio  
192 requirements on any and all revenue bonds and refunding  
193 bonds issued or to be issued, on or after the first day of April,  
194 two thousand eight, as certified by the lottery director in  
195 accordance with the provisions of that section. In no event  
196 may the monthly amount allocated exceed five hundred

197 thousand dollars nor may the total allocation paid to the  
198 Community and Technical Capital Improvement Fund, as  
199 provided in this section, in any fiscal year exceed the lesser  
200 of the principal and interest requirements certified to the  
201 lottery director or five million dollars. In the event there are  
202 insufficient funds available in any month to transfer the  
203 amount required pursuant to this subsection to the  
204 Community and Technical College Capital Improvement  
205 Fund, the deficiency shall be added to the amount transferred  
206 in the next succeeding month in which revenues are available  
207 to transfer the deficiency.

208       (1) A third-in-priority lien on the proceeds of the State  
209 Lottery Fund up to a maximum amount equal to the projected  
210 annual principal, interest and coverage ratio requirements,  
211 not exceeding seven and a half million dollars annually, may  
212 be granted by the Higher Education Policy Commission in  
213 favor of the bonds it issues which are secured by the net  
214 lottery profits. When the bonds secured by the profits from  
215 the lottery and deposited in the Education, Arts, Sciences and  
216 Tourism Debt Service Fund as provided in subsection (i) of  
217 this section mature or are paid in full, the bonds issued by the  
218 Higher Education Policy Commission for which lottery  
219 profits are pledged as provided in this subsection shall be  
220 considered to have a second-in-priority lien on the net profits  
221 deposited in the State Lottery Fund.

222       (2) When the community and technical college capital  
223 improvement bonds secured by profits from the lottery and  
224 deposited in the Community and Technical College Capital  
225 Improvement Fund mature, the profits shall become available  
226 for debt service on additional community and technical  
227 college capital improvement bonds as a second priority from  
228 the net profits of the lottery.

229       (3) The Council for Community and Technical College  
230 Education shall approve all community and technical college  
231 capital improvement plans prior to the distribution of bond  
232 proceeds.

233 (k) There is continued a special revenue fund in the State  
234 Treasury which shall be designated and known as the Lottery  
235 Senior Citizens Fund. The fund shall consist of the amounts  
236 allocated pursuant to subsection (f) of this section, which  
237 amounts shall be deposited into the Lottery Senior Citizens  
238 Fund by the State Treasurer. The Lottery Senior Citizens  
239 Fund shall also consist of all interest earned from investment  
240 of the Lottery Senior Citizens Fund and any other  
241 appropriations, gifts, grants, contributions or moneys  
242 received by the Lottery Senior Citizens Fund from any  
243 source. The revenues received or earned by the Lottery  
244 Senior Citizens Fund shall be distributed in the manner  
245 provided below and may not be treated by the Auditor or  
246 Treasurer as part of the general revenue of the state.  
247 Annually, the Legislature shall appropriate the revenues  
248 received or earned by the Lottery Senior Citizens Fund to any  
249 senior citizens medical care and other programs it considers  
250 beneficial to the citizens of this state.

251 (l) The Division of Natural Resources and the West  
252 Virginia Development Office, as appropriated by the  
253 Legislature, may use the amounts allocated to them pursuant  
254 to subsection (f) of this section for one or more of the  
255 following purposes: (1) The payment of any or all of the  
256 costs incurred in the development, construction,  
257 reconstruction, maintenance or repair of any project or  
258 recreational facility, as these terms are defined in section  
259 four, article five, chapter twenty of this code, pursuant to the  
260 authority granted to it under article five, chapter twenty of  
261 this code; (2) the payment, funding or refunding of the  
262 principal of, interest on or redemption premiums on any  
263 bonds, security interests or notes issued by the parks and  
264 recreation section of the Division of Natural Resources under  
265 article five, chapter twenty of this code; or (3) the payment of  
266 any advertising and marketing expenses for the promotion  
267 and development of tourism or any tourist facility or  
268 attraction in this state.

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## CHAPTER 91

**(Com. Sub. for S.B. 287 - By Senators Tomblin,  
Mr. President, and Caruth)  
[By Request of the Executive]**

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[Passed March 8, 2008; in effect from passage.]  
[Approved by the Governor on April 1, 2008.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-4, §18B-18A-5, §18B-18A-6, §18B-18A-7, §18B-18A-8, §18B-18A-9, §18B-18A-10, §18B-18A-11 and §18B-18A-12, all relating to public higher education; research; establishing the West Virginia Research Trust Fund; legislative findings; defining terms; creating special account in the State Treasury; providing for allocation of moneys; authorizing Marshall University and West Virginia University to establish directed research endowments; providing requirements for and administration of directed research endowments; authorizing use of investment earnings; prohibiting expenditure of principal in directed research endowments; providing criteria and restrictions for qualified private donations and qualified private donation pledges; establishing eligible uses of directed research endowment proceeds; requiring directed research endowment plans; establishing criteria and procedures for distribution of matching moneys from the West Virginia Research Trust Fund and providing for reallocation of moneys under certain conditions; requiring participating institutions to return unmatched moneys to the trust fund under certain circumstances; authorizing distribution of certain moneys to state colleges; directing and authorizing Higher Education Policy Commission to promulgate rules; and requiring annual reports.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-4, §18B-18A-5, §18B-18A-6, §18B-18A-7, §18B-18A-8, §18B-18A-9, §18B-18A-10, §18B-18A-11 and §18B-18A-12, all to read as follows:

## **ARTICLE 18A. DIRECTED RESEARCH ENDOWMENTS.**

- §18B-18A-1. Legislative findings; purpose; and intent.
- §18B-18A-2. Definitions.
- §18B-18A-3. West Virginia Research Trust Fund.
- §18B-18A-4. Directed research endowments.
- §18B-18A-5. Qualified private donations.
- §18B-18A-6. Eligible uses of directed research endowment proceeds.
- §18B-18A-7. Directed research endowment plans.
- §18B-18A-8. Distributions from West Virginia Research Trust Fund.
- §18B-18A-9. Reallocation of matching moneys.
- §18B-18A-10. Distributions to state colleges.
- §18B-18A-11. Higher Education Policy Commission rule required; emergency rule authorized.
- §18B-18A-12. Annual report.

### **§18B-18A-1. Legislative findings; purpose; and intent.**

1           (a) The Legislature finds that the continued expansion of  
2 the nation's economy is dependent upon the ability of its  
3 institutions of higher education to increase the quality,  
4 quantity and productivity of its citizens who are engaged in  
5 scientific and technical fields of study. Failure of the United  
6 States to compete in these areas may lead to lower standards  
7 of living, dependence upon foreign intellectual capital and  
8 international insecurity. The economic future of West  
9 Virginia is equally dependent upon the ability of Marshall  
10 University and West Virginia University, the state's two  
11 doctoral-granting, public research universities, to promote,  
12 educate and train researchers and research support staff in  
13 these diverse fields of study.

14           The Legislature further finds that a recent emphasis on  
15 the creation of innovative curricula and the receipt of

16 significant private donations by Marshall University and  
17 West Virginia University has led to major expansions in  
18 certain areas of study, including energy, national security  
19 technology, environmental sciences, health and biomedical  
20 sciences, biometrics, biotechnology and nanotechnology.  
21 Despite these expansions, the additional investment of both  
22 private donations and state moneys is critical to recruiting  
23 world-class scientists, researchers, research staff, technicians  
24 and professional degree graduates, as well as providing  
25 funding for laboratories and scientific equipment.

26 (b) The purpose of the Legislature in enacting this article  
27 is to establish a state fund to be administered by the Higher  
28 Education Policy Commission to address the findings  
29 outlined in subsection (a) of this section. The fund will make  
30 public moneys available to the state's two doctoral-granting  
31 public research universities to match qualified private  
32 donations and qualified private donation pledges; thereby  
33 creating an incentive for donors to support certain priority  
34 areas of study consistent with each participating institution's  
35 long-range strategic plan for research. Creation of this fund  
36 promotes strategic private donations targeted to specific areas  
37 of research and creates a sustainable source of funding for  
38 research initiatives that are critical to achieving long-term  
39 goals including, but not limited to, the following:

40 (1) Research-based economic development and  
41 economic diversification; and

42 (2) Increased potential for patenting, licensing and  
43 related technology transfer and commercialization of  
44 scientific and technological research in the state.

### §18B-18A-2. Definitions.

1 (a) *General* -- For the purposes of this article, terms  
2 have the meaning ascribed to them in section two, article one  
3 of this chapter, unless the context in which the term is used

4 clearly requires a different meaning or a specific definition is  
5 provided in this section.

6 (b) *Definitions* --

7 (1) "Directed research endowment" or "research  
8 endowment" means an account established at or administered  
9 by a participating institution or its affiliated research  
10 corporation or foundation in accordance with the provisions  
11 of section four of this article;

12 (2) "Directed research endowment plan" or "research  
13 plan" means the strategies and procedures formally approved  
14 and adopted by a governing board of a participating  
15 institution pursuant to section seven of this article outlining  
16 how a participating institution proposes to use directed  
17 research endowment proceeds to meet established goals and  
18 objectives;

19 (3) "Directed research endowment proceeds" or  
20 "endowment proceeds" means those investment earnings  
21 accruing to a participating institution's directed research  
22 endowment and available for expenditure by a participating  
23 institution or its affiliated research corporation in accordance  
24 with the provisions of section four of this article;

25 (4) "Trust fund" means the special account designated as  
26 the West Virginia Research Trust Fund established in section  
27 three of this article;

28 (5) "Participating institution" means Marshall University  
29 or West Virginia University;

30 (6) "Qualified private donation" or "qualified donation"  
31 means any private donation, gift or bequest to a directed  
32 research endowment that meets the criteria set forth in  
33 section five of this article;

34 (7) "Qualified private donation pledge" or "qualified  
35 pledge" means any pledge, commitment or other agreement  
36 to give a private donation to a directed research endowment  
37 that is made pursuant to a written agreement between the  
38 donor and the institution or its affiliated research corporation  
39 or foundation and that meets the criteria set forth in section  
40 five of this article;

41 (8) "Foundation" means a corporation created, organized  
42 and located in West Virginia that meets the following  
43 conditions:

44 (A) Is organized and operated for educational purposes  
45 in support of one or more state institutions of higher  
46 education;

47 (B) Is designated by the board of governors of one or  
48 more state institutions of higher education to receive  
49 charitable contributions for educational purposes on behalf of  
50 the institution or institutions;

51 (C) Does not have any part of its earnings inuring to the  
52 benefit of any private shareholder or individual;

53 (D) Is not disqualified from tax exemption under 26 U. S.  
54 C. §501(c)(3) for any reason; and

55 (E) Does not participate or intervene in, on behalf of or  
56 in opposition to any political campaigns for public office;

57 (9) "Research corporation" means an organization  
58 created pursuant to the provisions of article twelve of this  
59 chapter; and

60 (10) "State college" means the West Virginia School of  
61 Osteopathic Medicine, Bluefield State College, Concord  
62 University, Fairmont State University, Glenville State



63 College, Shepherd University, West Liberty State College or  
64 West Virginia State University.

**§18B-18A-3. West Virginia Research Trust Fund.**

1 (a) There is created in the State Treasury a special fund  
2 to be known as the West Virginia Research Trust Fund which  
3 shall consist of any appropriations of moneys to the fund  
4 made by the Legislature, all earnings from investment of the  
5 fund and any unmatched portion of state moneys returned by  
6 a state institution of higher education.

7 (b) Expenditures from the trust fund shall be made for the  
8 purposes set forth in this article and are not subject to  
9 separate appropriation by the Legislature. Any balance,  
10 including accrued investment earnings on any unmatched  
11 portion of state moneys returned by a state institution of  
12 higher education in the trust fund at the end of each fiscal  
13 year shall not expire to the General Revenue Fund, but shall  
14 remain in the trust fund and be expended as provided by this  
15 article.

16 (c) In accordance with the provisions of section eight of  
17 this article, the commission shall make available seventy  
18 percent of moneys in this account to match qualified  
19 donations and qualified pledges to West Virginia University  
20 and thirty percent of the moneys to match qualified donations  
21 and qualified pledges to Marshall University.

22 (d) Investment earnings accruing in the account may be  
23 expended by the commission to provide matching research  
24 funds to state colleges in accordance with the provisions of  
25 section ten of this article.

**§18B-18A-4. Directed research endowments.**

1 (a) The governing board of each participating institution  
2 may create and administer or enter into an agreement with its

3 research corporation and/or foundation to administer one or  
4 more directed research endowments to receive qualified  
5 donations and matching state moneys allocated for  
6 distribution to that institution.

7 (b) A research endowment consists of qualified donations  
8 and matching moneys distributed by the commission from the  
9 trust fund in accordance with the provisions of section eight  
10 of this article.

11 (c) Subject to the following conditions, the governing  
12 board of a participating institution or its research corporation  
13 may invest moneys deposited into the research endowment  
14 either directly or through a foundation subject to the  
15 following conditions:

16 (1) Any interest or other investment earnings on the  
17 moneys invested are retained by the participating institution  
18 to be used for the purposes set forth in this article;

19 (2) Any investments authorized by this subsection are  
20 made in accordance with and subject to the provisions of the  
21 Uniform Prudent Investor Act codified as article six-c,  
22 chapter forty-four of this code; and

23 (3) Any investments authorized by this subsection are  
24 not subject to the provisions of section twelve-d, article one,  
25 chapter twelve of this code.

26 (d) Investment earnings accruing to a participating  
27 institution's research endowment, hereinafter referred to as  
28 endowment proceeds, may be expended by the governing  
29 board of the participating institution or its research  
30 corporation, subject to the provisions of section six of this  
31 article and the following conditions:

32 (1) Endowment proceeds may be expended only for the  
33 eligible uses designated; and

34 (2) The principal of a research endowment may not be  
35 expended for any purpose.

36 (e) The governing board of a participating institution is  
37 exempt from liability for any loss or decrease in value of the  
38 assets or income of a directed research endowment, except as  
39 losses or decreases in value are shown to be the result of bad  
40 faith, gross negligence or intentional misconduct.

41 (f) The governing board of each participating institution  
42 shall promulgate a rule or rules for the administration of  
43 research endowments that fulfills the purposes and  
44 requirements of this article and section six, article one of this  
45 chapter.

#### **§18B-18A-5. Qualified private donations.**

1 (a) Private donations and pledges to a research  
2 endowment meet the criteria for designation as a qualified  
3 donation or qualified pledge under the following conditions:

4 (1) The donation or pledge is expressly and specifically  
5 restricted by the donor for one or more of the eligible uses  
6 designated in section six of this article; however, nothing in  
7 this subdivision prohibits a participating institution from  
8 designating unrestricted gifts or bequests, or any portion  
9 thereof, for use as a qualified donation;

10 (2) The individual donation or pledge is a minimum of  
11 fifty thousand dollars or is bundled with other qualified  
12 donations or qualified pledges to meet the fifty thousand-  
13 dollar threshold; and

14 (3) Donations or pledges may be accepted from  
15 individuals, partnerships, associations, public and private for-

16 profit and nonprofit corporations and nongovernmental  
17 foundations.

18 (b) The following may not be included as a qualified  
19 donation or a qualified pledge:

20 (1) Any donation or pledge received by a participating  
21 institution or its affiliated research corporation or foundation  
22 prior to the effective date of this article;

23 (2) Educational and general fees, auxiliary fees or other  
24 student fees generated by the participating institution;

25 (3) Proceeds from promissory notes, bonds, loans or  
26 other instruments evidencing an indebtedness or any other  
27 obligation of repayment by the governing board to the maker  
28 of the instrument;

29 (4) Any moneys or assets, other than qualified donations  
30 or qualified pledges, received from the participating  
31 institution's affiliated research corporation or foundation; or

32 (5) Any other moneys received from the state or federal  
33 government.

34 (c) The president of each participating institution or his  
35 or her designee shall make the initial determination of  
36 whether a donation or pledge meets the criteria for qualified  
37 donations or qualified pledges as set forth in this section.  
38 The president shall also provide a report to the governing  
39 board at least once each fiscal year regarding the amount of  
40 qualified donations and qualified pledges the participating  
41 institution has received.

**§18B-18A-6. Eligible uses of directed research endowment  
proceeds.**

1 (a) Endowment proceeds may be expended by a  
2 participating institution or its affiliated research corporation  
3 for any of the following designated uses:

4 (1) To pay the base salaries of newly endowed  
5 department chairs, new professorship positions, new research  
6 scientists and new research staff positions, including, but not  
7 limited to, research technicians and support personnel, and to  
8 fund affiliated graduate or undergraduate student research  
9 fellowships.

10 All positions or fellowships shall be engaged primarily in  
11 one of the following areas of research:

12 (A) Energy and environmental sciences;

13 (B) Nanotechnology and materials science;

14 (C) Biological, biotechnological and biomedical sciences;

15 (D) Transportation technology and logistics;

16 (E) Biometrics, security, sensing and related  
17 identification technologies; or

18 (F) Gerontology; or

19 (2) To purchase basic infrastructure directly related to an  
20 area of research identified in subdivision (1) of this  
21 subsection, including, but not limited to, laboratory and  
22 scientific equipment, and other essential equipment and  
23 materials.

24 (b) Eligibility criteria regarding the expenditure of  
25 directed endowment proceeds to pay the base salaries of  
26 personnel, to fund student fellowships and to purchase basic  
27 infrastructure shall be established by rules of the commission  
28 promulgated pursuant to section eleven of this article.

**§18B-18A-7. Directed research endowment plans.**

1 (a) To facilitate the goals of this article and to ensure the  
2 prudent expenditure of state moneys, the governing board of  
3 each participating institution shall submit to the commission  
4 a directed research endowment plan.

5 (b) The research plan shall include, but is not limited to,  
6 the following:

7 (1) An assessment of the participating institution's current  
8 research initiatives, including any initiatives falling within an  
9 area of research identified in section six of this article;

10 (2) An analysis of possible strategies to enhance current  
11 research initiatives;

12 (3) An outline of the participating institution's proposed  
13 uses of endowment proceeds, including identification of any  
14 specific disciplinary hires, collaborations or acquisitions  
15 currently under consideration;

16 (4) A list of proposed uses contained in the research plan  
17 including the anticipated costs associated with each proposed  
18 use;

19 (5) An analysis of the anticipated costs compared to the  
20 expected endowment proceeds available to the institution;

21 (6) An evaluation of how the research plan furthers the  
22 purposes of this article and addresses the research needs of  
23 the institution;

24 (7) Identification of the proposed uses for which  
25 alternative funding sources may be sought to enhance the  
26 comprehensive research initiatives contemplated by the  
27 participating institution. Alternative funding sources exclude

28 qualified donations, matching moneys from the trust fund and  
29 the endowment proceeds generated from the trust fund; and

30 (8) Notation of the amount allocated for distribution to  
31 the participating institution pursuant to section three of this  
32 article.

33 (c) The governing board of each participating institution  
34 shall submit its research plan to the commission prior to  
35 submitting its first request for a distribution of matching  
36 moneys from the trust fund.

**§18B-18A-8. Distributions from West Virginia Research Trust  
Fund.**

1 (a) A participating institution seeking a distribution of  
2 matching moneys from the trust fund first shall obtain  
3 qualified donations and/or qualified pledges in an amount  
4 equal to the amount of matching moneys requested for  
5 distribution and shall submit a request to the commission  
6 setting forth the following:

7 (1) The amount of qualified donations and/or qualified  
8 pledges designated for use in requesting the distribution of  
9 matching moneys from the trust fund and the amount of any  
10 previous distributions of matching moneys from the trust  
11 fund;

12 (2) The amount requested for distribution to the  
13 participating institution pursuant to section three of this  
14 article;

15 (3) An explanation of how the proposed use satisfies the  
16 criteria for the eligible uses of endowment proceeds set forth  
17 in section six of this article;

18 (4) An explanation of how the proposed use of the  
19 endowment proceeds furthers the purposes of this article and

20 addresses the research needs of the institution as identified in  
21 the research plan; and

22 (5) A designation of the applicable research endowment  
23 into which the requested matching moneys are to be  
24 deposited.

25 (b) The commission shall review each request for  
26 distribution of matching money from the trust fund for  
27 compliance with the provisions of this article and the rule  
28 promulgated pursuant to section eleven of this article.

29 (c) Once the commission approves the request of a  
30 participating institution, it shall distribute matching moneys  
31 from those allocated to the institution in the trust fund to the  
32 applicable research endowment in an amount equal to the  
33 amount of qualified donations and/or qualified pledges.

**§18B-18A-9. Reallocation of matching moneys.**

1 (a) No later than five years from the effective date of this  
2 article, each participating institution shall have deposited into  
3 its research endowments an amount of qualified donations  
4 equal to or greater than the total amount of moneys allocated  
5 for distribution to the institution pursuant to the provisions of  
6 subsection (c), section three of this article.

7 (1) If one of the participating institutions fails to have  
8 deposited into its research endowments the requisite amount  
9 of qualified donations by the end of this five-year period,  
10 then any portion of the moneys allocated to the institution  
11 that has not been distributed shall be reallocated for  
12 distribution to the other participating institution pursuant to  
13 the terms of this article.

14 (2) To be eligible to receive a distribution of reallocated  
15 moneys pursuant to this subsection, the other participating



16 institution shall have qualified donations in excess of the  
17 amount required by subsection (a) of this section deposited  
18 into its research endowment(s) in an amount equal to or  
19 greater than the amount of reallocated moneys.

20 (3) If the other participating institution does not have  
21 excess qualified donations on deposit, the reallocated moneys  
22 shall be made available for distribution by the commission to  
23 state colleges in accordance with the provisions of section ten  
24 of this article.

25 (b) If any pledge previously used by a participating  
26 institution to obtain a distribution of matching moneys from  
27 the trust fund has not been paid in full within five years from  
28 the effective date of this article, then the institution shall  
29 return the unmatched portion of state moneys to the trust  
30 fund. These moneys shall be reallocated for distribution to  
31 the other participating institution or to the state colleges  
32 pursuant to the terms of this section and section ten of this  
33 article as applicable.

34 (c) If both participating institutions fail to have deposited  
35 into their respective research endowments the requisite  
36 amount of qualified donations within five years from the  
37 effective date of this article, then any moneys remaining in  
38 the trust fund that have not been distributed shall be made  
39 available for distribution by the commission to state colleges  
40 in accordance with the provisions of this article.

#### **§18B-18A-10. Distributions to state colleges.**

1 (a) The commission may use a portion of those moneys  
2 derived from investment earnings accruing to the trust fund  
3 in accordance with the provisions of section three of this  
4 article, as well as moneys that are not distributed to  
5 participating institutions in accordance with the provisions of  
6 section nine of this article, to distribute state matching

7 moneys to state colleges, as that term is defined in section  
8 two of this article.

9 (b) In the rules required by section eleven of this article,  
10 the commission shall establish procedures for the competitive  
11 application and review of requests from state colleges and  
12 criteria for the eligible use of moneys distributed pursuant to  
13 this section.

14 (c) To qualify for a distribution of state matching moneys  
15 pursuant to this section, a state college shall meet the  
16 following conditions:

17 (1) Obtain qualified donations in an amount equal to or  
18 greater than the amount of matching moneys requested for  
19 distribution from the trust fund; and

20 (2) Deposit the qualified donations and any matching  
21 moneys distributed from the trust fund into the accounts of  
22 the institution or its affiliated research corporation or  
23 foundation.

24 (d) State matching moneys may be expended only for a  
25 research-oriented initiative approved by the commission.

**§18B-18A-11. Higher Education Policy Commission rule  
required; emergency rule authorized.**

1 (a) By the first day of October, two thousand eight, the  
2 commission shall propose a rule for legislative approval in  
3 accordance with the provisions of section six, article one of  
4 this chapter and article three-a, chapter twenty-nine-a of this  
5 code to implement the provisions and purposes of this  
6 article. The rule shall include the following:

7 (1) Documentation standards and review procedures to  
8 determine whether a donation or pledge meets the criteria of

9 a qualified donation or qualified pledge when initially  
10 received or when the terms of a qualified donation or a  
11 qualified pledge are materially altered;

12 (2) Eligibility criteria in accordance with the provisions  
13 of section six of this article for the expenditure of endowment  
14 proceeds to pay the base salaries of personnel, to fund  
15 research fellowships and to purchase basic infrastructure;

16 (3) Procedures to ensure that endowment proceeds are  
17 expended in compliance with the provisions of this article;

18 (4) A requirement for each participating institution to  
19 report on the total amount of qualified donations received, the  
20 investment earnings realized and any anticipated  
21 expenditures of the research endowment proceeds in its  
22 annual operating budget; and

23 (5) Procedures for the competitive application and  
24 review of requests from state colleges and criteria for the  
25 eligible use of moneys distributed pursuant to section ten of  
26 this article.

27 (b) The Legislature finds that an emergency exists and,  
28 therefore, the commission shall file a rule to implement the  
29 provisions of this article as an emergency rule pursuant to the  
30 provisions of article three-a, chapter twenty-nine-a of this  
31 code. The rule is subject to the prior approval of the  
32 Legislative Oversight Commission on Education  
33 Accountability.

#### **§18B-18A-12. Annual report.**

1 By the first day of January, two thousand ten, and  
2 annually thereafter, the commission shall submit a report to  
3 the Governor, the President of the Senate, the Speaker of the  
4 House of Delegates and the Legislative Oversight

5 Commission on Education Accountability detailing  
6 implementation of the research endowments at each  
7 participating institution, the amount of qualified donations  
8 received by each participating institution in the preceding  
9 fiscal year, the amount of any distributions made from the  
10 trust fund and a description of the research and outcomes  
11 supported by those moneys.

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## CHAPTER 92

**(Com. Sub. for H.B. 4433 - By Delegates M. Poling, Paxton,  
Crosier, Gall, Pethtel, Shaver, Williams, Wysong,  
Stephens, Wells and Rowan)**

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[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2008.]

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AN ACT to amend and reenact §18C-3-1 of the Code of West Virginia, 1931, as amended, relating to health education student loan fund; and increasing the portion of a medical student loan that may be cancelled under certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

That §18C-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.**

**§18C-3-1. Health Education Loan Program; establishment; administration; eligibility and loan cancellation; required report.**

1 (a) For the purposes of this section, “Vice Chancellor for  
2 Administration” means the person employed pursuant to  
3 section two, article four, chapter eighteen-b of this code.

4 (b) There is continued a special revolving fund account  
5 administered by the Commission in the state treasury to be  
6 known as the Health Education Student Loan Fund which  
7 shall be used to carry out the purposes of this section. The  
8 fund consists of the following:

9 (1) All funds on deposit in the medical student loan fund  
10 in the state treasury or which are due or become due for  
11 deposit in the fund as obligations made under the previous  
12 enactment of this section;

13 (2) Those funds provided for medical education pursuant  
14 to the provisions of section four, article ten, chapter  
15 eighteen-b of this code;

16 (3) Appropriations provided by the Legislature;

17 (4) Repayment of any loans made under this section;

18 (5) Amounts provided by medical associations, hospitals  
19 or other medical provider organizations in this state, or by  
20 political subdivisions of the state, under an agreement which  
21 requires the recipient to practice his or her health profession  
22 in this state or in the political subdivision providing the funds  
23 for a predetermined period of time and in such capacity as set  
24 forth in the agreement; and

25 (6) Other amounts which may be available from external  
26 sources.

27 (c) Balances remaining in the fund at the end of the fiscal  
28 year do not expire or revert. All costs associated with  
29 administering this section shall be paid from the Health  
30 Education Student Loan Fund.

31 (d) The Vice Chancellor for Administration may utilize  
32 any funds in the Health Education Student Loan Fund for the  
33 purposes of the Medical Student Loan Program. The  
34 commission shall give priority for the loans to residents of  
35 this state, as defined by the commission. An individual is  
36 eligible for loan consideration if the individual meets the  
37 following conditions:

38 (1) Demonstrates financial need;

39 (2) Meets established academic standards;

40 (3) Is enrolled or accepted for enrollment at the West  
41 Virginia University School of Medicine, the Marshall  
42 University School of Medicine, or the West Virginia School  
43 of Osteopathic Medicine in a program leading to the degree  
44 of medical doctor (M.D.) or doctor of osteopathy (D.O.);

45 (4) Has not yet received one of the degrees provided in  
46 subdivision (3) of this subsection; and

47 (5) Is not in default of any previous student loan.

48 (e) At the end of each fiscal year, any individual who has  
49 received a medical student loan and who has rendered  
50 services as a medical doctor or a doctor of osteopathy in this  
51 state in a medically underserved area or in a medical  
52 specialty in which there is a shortage of physicians, as  
53 determined by the Division of Health at the time the loan was  
54 granted, may submit to the commission a notarized, sworn  
55 statement of service on a form provided for that purpose.  
56 Upon receipt of the statement the commission shall cancel  
57 ten thousand dollars of the outstanding loan or loans for  
58 every full twelve consecutive calendar months of such  
59 service.

60 (f) No later than thirty days following the end of each  
61 fiscal year, the Vice Chancellor for Administration shall

62 prepare and submit a report to the commission for inclusion  
63 in the statewide report card required under section eight,  
64 article one-d, chapter eighteen-b of this code to be submitted  
65 to the Legislative Oversight Commission on Education  
66 Accountability established under section eleven, article  
67 three-a, chapter twenty-nine-a of this code. At a minimum,  
68 the report shall include the following information:

69 (1) The number of loans awarded;

70 (2) The total amount of the loans awarded;

71 (3) The amount of any unexpended moneys in the fund;  
72 and

73 (4) The rate of default during the previous fiscal year on  
74 the repayment of previously awarded loans.



## CHAPTER 93

**(Com. Sub. for S.B. 507 - By Senators Kessler, Hunter,  
Plymale, White and Minard)**

[Passed March 5, 2008; in effect from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §3-1-20, §3-1-22, §3-1-29, §3-1-34 and §3-1-41 of the Code of West Virginia, 1931, as amended, all relating to general provisions and definitions for elections; requiring cards of instructions to voters to include notice as to effect of voting provisional ballot and right to request location of correct precinct; requiring posting of cards of instruction at voting places; requiring board of ballot commissioners to

provide election officials with a list of county precincts and voter registration records; eliminating provisions requiring election official trainees to be volunteers receiving credits for high school diploma and to be appointed by county commission or municipality where the election is held; clarifying that prohibition against using counting board in special elections is discretionary with the county commission; requiring poll clerk to notify prospective voter of effect of voting provisional ballot and of correct precinct in which to vote; and updating language relating to signatures to reflect use of electronic poll books and other electronic devices.

*Be it enacted by the Legislature of West Virginia:*

That §3-1-20, §3-1-22, §3-1-29, §3-1-34 and §3-1-41 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

## **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

§3-1-20. Cards of instructions to voters; sample ballots; posting.

§3-1-22. County court clerks to provide election supplies; requirements for poll books and ballot boxes.

§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

§3-1-41. Challenged and provisional voter procedures; counting provisional voters' ballots; ballots of election officials.

### **§3-1-20. Cards of instructions to voters; sample ballots; posting.**

1       (a) The board of ballot commissioners of each county  
2 shall provide cards of general information which will include:

3       (1) The date of the election and the hours during which  
4 polling places will be open;

5       (2) Instruction for mail-in registrants and first-time  
6 voters;



7       (3) Voters' rights; and

8       (4) Prohibitions against fraud and misrepresentation.

9       The board of ballot commissioners shall also provide  
10 cards of instruction for voters in preparing their ballots and  
11 casting a provisional ballot as prescribed by the Secretary of  
12 State. The provisional ballot notice shall include a  
13 notification to voters of their rights as a provisional voter to  
14 inquire as to the correct precinct to cast a ballot and  
15 notification that if a ballot is cast in the incorrect precinct the  
16 ballot may not be counted at the canvass for that election.  
17 The board of ballot commissioners shall furnish a sufficient  
18 number of cards to the commissioners of election at the same  
19 time they deliver the ballots for the precinct. The instructions  
20 regarding a provisional ballot shall be posted in the precinct  
21 in a highly visible location for voters to review.

22       (b) The commissioners of election shall post one  
23 instruction card in each voting booth giving instructions to  
24 the voters on how to prepare the ballots for deposit in the  
25 ballot boxes and how to obtain a new ballot in place of one  
26 accidentally spoiled.

27       (c) The commissioners of election shall post one or more  
28 other cards of general information at places inside and  
29 outside of the voting place where voters pass or wait to vote.  
30 The commissioners shall also post the official write-in  
31 candidates in the same locations inside and outside of the  
32 voting place.

33       (d) The ballot commissioners shall have printed, on a  
34 different color paper than the official ballot, two or more  
35 copies of sample ballots for each voting place for each  
36 election. Sample ballots shall be furnished and posted with  
37 the cards of general information at each voting place.

38 (e) During the period of early in-person voting, the clerk  
 39 of the county commission shall post the cards of general  
 40 information, a list of official write-in candidates and sample  
 41 ballots within the area where absentee voting is conducted.

**§3-1-22. County court clerks to provide election supplies;  
 requirements for poll books and ballot boxes.**

1 The clerk of the county court of each county shall provide  
 2 poll books, a list of all precincts within the county, tally  
 3 sheets, ballot boxes, voting booths, registration records and  
 4 forms, strong and durable envelopes upon which to make  
 5 returns, blank forms for certifying returns and whatever  
 6 further supplies are needed for holding the elections and  
 7 making the returns thereof. The poll books shall bear upon  
 8 each page the following heading: "Names of persons voting  
 9 at precinct No..... in the District of ..... in the  
 10 county of ..... on this (the) ..... day of  
 11 ..... in the year ....." Such poll books shall have  
 12 columns headed respectively: "Number of Voters,"  
 13 "Signature of Voter" and "Challenge of Voter", and shall  
 14 have under the heading "Number of Voters" numbers in  
 15 consecutive order to the bottom of each page. Forms for  
 16 oaths of commissioners of election and poll clerks shall be  
 17 written or printed on the poll books. Each ballot box shall be  
 18 provided with two locks with different keys so that the key  
 19 for one lock will not open the other and shall be so  
 20 constructed as to be safely and securely closed and locked,  
 21 with an opening in the lid of the box sufficient only for the  
 22 passage of a single ballot.

**§3-1-29. Boards of election officials; definitions, composition of  
 boards, determination of number and type.**

1 (a) For the purpose of this article:

2 (1) The term "standard receiving board" means those  
 3 election officials charged with conducting the process of

4 voting within a precinct and consists of five persons,  
5 including one team of poll clerks, one team of election  
6 commissioners for the ballot box and one additional election  
7 commissioner: *Provided*, That if a municipal election is held  
8 at a time when there is no county or state election, the  
9 standard receiving board is to consist of four persons,  
10 including one team of poll clerks and one team of election  
11 commissioners for the ballot box;

12 (2) The term "expanded receiving board" means a  
13 standard receiving board as defined in subdivision (1) of this  
14 subsection and one additional team of poll clerks;

15 (3) The term "counting board" means those election  
16 officials charged with counting the ballots at the precinct in  
17 counties using paper ballots and includes one team of poll  
18 clerks, one team of election commissioners and one  
19 additional commissioner;

20 (4) The term "team of poll clerks" or "team of election  
21 commissioners" means two persons appointed by opposite  
22 political parties to perform the specific functions of the  
23 office: *Provided*, That no team of poll clerks or team of  
24 election commissioners may consist of two persons with the  
25 same registered political party affiliation or two persons  
26 registered with no political party affiliation; and

27 (5) The term "election official trainee" means an  
28 individual who is sixteen or seventeen years of age who  
29 meets the requirements of subdivisions (2), (3), (4), (5) and  
30 (6), subsection (a), section twenty-eight of this article.

31 (b) The composition of boards of election officials shall  
32 be as follows:

33 (1) In any primary, general or special election other than  
34 a presidential primary or presidential general election, each  
35 election precinct is to have one standard receiving board;

36 (2) In presidential primary and presidential general  
37 elections, each election precinct is to have one receiving  
38 board as follows:

39 (A) For precincts of less than five hundred registered  
40 voters, one standard receiving board; and

41 (B) For precincts of more than five hundred registered  
42 voters, one standard receiving board or, at the discretion of  
43 the county commission, one expanded receiving board.

44 (3) In any election conducted using paper ballots,  
45 counting boards may be allowed or required as follows:

46 (A) For any state, county or municipal special election, a  
47 counting board may be allowed at the discretion of the county  
48 commission;

49 (B) In a statewide primary or general election, one  
50 counting board is required for any precinct of more than four  
51 hundred registered voters and one counting board may be  
52 allowed, at the discretion of the county commission, for any  
53 precinct of at least two hundred but no more than four  
54 hundred registered voters; and

55 (C) In a municipal primary or general election, one  
56 counting board may be allowed, at the discretion of the  
57 municipal governing body, for any precinct of more than two  
58 hundred registered voters.

59 (c) For each primary and general election in the county,  
60 the county commission shall designate the number and type  
61 of election boards for the various precincts according to the  
62 provisions of this section. At least eighty-four days before  
63 each primary and general election the county commission  
64 shall notify the county executive committees of the two  
65 major political parties in writing of the number of

66 nominations which may be made for poll clerks and election  
67 commissioners.

68 (d) For each municipal election, the governing body of  
69 the municipality shall perform the duties of the county  
70 commission as provided in this section.

**§3-1-34. Voting procedures generally; assistance to voters;  
voting records; penalties.**

1 (a) Any person desiring to vote in an election shall, upon  
2 entering the election room, clearly state his or her name and  
3 residence to one of the poll clerks who shall thereupon  
4 announce the same in a clear and distinct tone of voice. If  
5 that person is found to be duly registered as a voter at that  
6 precinct, he or she shall sign his or her name in the  
7 designated location provided at the precinct. If that person is  
8 physically or otherwise unable to sign his or her name, his or  
9 her mark shall be affixed by one of the poll clerks in the  
10 presence of the other and the name of the poll clerk affixing  
11 the voter's mark shall be indicated immediately under the  
12 affixation. No ballot may be given to the person until he or  
13 she signs his or her name on the designated location or his or  
14 her signature is affixed thereon.

15 (b) The clerk of the county commission is authorized,  
16 upon verification that the precinct at which a handicapped  
17 person is registered to vote is not handicap accessible, to  
18 transfer that person's registration to the nearest polling place  
19 in the county which is handicap accessible. A request by a  
20 handicapped person for a transfer of registration must be  
21 received by the county clerk no later than thirty days prior to  
22 the date of the election. Any handicapped person who has  
23 not made a request for a transfer of registration at least thirty  
24 days prior to the date of the election may vote a provisional  
25 ballot at a handicap accessible polling place in the county of  
26 his or her registration. If during the canvass the county

27 commission determines that the person had been registered  
28 in a precinct that is not handicap accessible, the voted ballot,  
29 if otherwise valid, shall be counted. The handicapped person  
30 may vote in the precinct to which the registration was  
31 transferred only as long as the disability exists or the precinct  
32 from which the handicapped person was transferred remains  
33 inaccessible to the handicapped. To ensure confidentiality of  
34 the transferred ballot, the county clerk processing the ballot  
35 shall provide the voter with an unmarked envelope and an  
36 outer envelope designated "provisional ballot/handicapped  
37 voter". After validation of the ballot at the canvass, the outer  
38 envelope shall be destroyed and the handicapped voter's  
39 ballot shall be placed with other approved provisional ballots  
40 prior to removal of the ballot from the unmarked envelope.

41 (c) When the voter's signature is properly marked, the  
42 two poll clerks shall sign their names in the places indicated  
43 on the back of the official ballot and deliver the ballot to the  
44 voter to be voted by him or her without leaving the election  
45 room. If he or she returns the ballot spoiled to the clerks,  
46 they shall immediately mark the ballot "spoiled" and it shall  
47 be preserved and placed in a spoiled ballot envelope together  
48 with other spoiled ballots to be delivered to the board of  
49 canvassers and deliver to the voter another official ballot,  
50 signed by the clerks on the reverse side. The voter shall  
51 thereupon retire alone to the booth or compartment prepared  
52 within the election room for voting purposes and there  
53 prepare his or her ballot. In voting for candidates in general  
54 and special elections, the voter shall comply with the rules  
55 and procedures prescribed in section five, article six of this  
56 chapter.

57 (d) It is the duty of a poll clerk, in the presence of the  
58 other poll clerk, to indicate by a check mark, or by other  
59 means, inserted in the appropriate place on the registration  
60 record of each voter the fact that the voter voted in the  
61 election. In primary elections the clerk shall also insert

62 thereon a distinguishing initial or initials of the political party  
63 for whose candidates the voter voted. If a person is  
64 challenged at the polls, the challenge shall be indicated by the  
65 poll clerks on the registration record, together with the name  
66 of the challenger. The subsequent removal of the challenge  
67 shall be recorded on the registration record by the clerk of the  
68 county commission.

69 (e) (1) No voter may receive any assistance in voting  
70 unless, by reason of blindness, disability, advanced age or  
71 inability to read and write, that voter is unable to vote without  
72 assistance. Any voter qualified to receive assistance in  
73 voting under the provisions of this section may:

74 (A) Declare his or her choice of candidates to an election  
75 commissioner of each political party who, in the presence of  
76 the voter and in the presence of each other, shall prepare the  
77 ballot for voting in the manner hereinbefore provided and, on  
78 request, shall read to the voter the names of the candidates  
79 selected on the ballot;

80 (B) Require the election commissioners to indicate to him  
81 or her the relative position of the names of the candidates on  
82 the ballot, whereupon the voter shall retire to one of the  
83 booths or compartments to prepare his or her ballot in the  
84 manner hereinbefore provided;

85 (C) Be assisted by any person of the voter's choice, other  
86 than the voter's present or former employer or agent of that  
87 employer, the officer or agent of a labor union of which the  
88 voter is a past or present member or a candidate on the ballot  
89 or an official write-in candidate; or

90 (D) If he or she is handicapped, vote from an automobile  
91 outside the polling place or precinct by the absentee balloting  
92 method provided in subsection (e), section five, article three  
93 of this chapter in the presence of an election commissioner of  
94 each political party if all of the following conditions are met:

95 (i) The polling place is not handicap accessible; and

96 (ii) No voters are voting or waiting to vote inside the  
97 polling place.

98 (2) The voted ballot shall then be returned to the precinct  
99 officials and secured in a sealed envelope to be returned to  
100 the clerk of the county commission with all other election  
101 materials. The ballot shall then be tabulated using the  
102 appropriate method provided in section eight of this chapter  
103 as it relates to the specific voting system in use.

104 (3) Any voter who requests assistance in voting but who  
105 is believed not to be qualified for assistance under the  
106 provisions of this section shall nevertheless be permitted to  
107 vote a provisional ballot with the assistance of any person  
108 herein authorized to render assistance.

109 (4) Any one or more of the election commissioners or  
110 poll clerks in the precinct may challenge the ballot on the  
111 ground that the voter thereof received assistance in voting it  
112 when in his, her or their opinion the person who received  
113 assistance in voting is not so illiterate, blind, disabled or of  
114 such advanced age as to have been unable to vote without  
115 assistance. The election commissioner or poll clerk or  
116 commissioners or poll clerks making the challenge shall enter  
117 the challenge and reason therefor on the form and in the  
118 manner prescribed or authorized by article three of this  
119 chapter.

120 (5) An election commissioner or other person who assists  
121 a voter in voting:

122 (A) May not in any manner request or seek to persuade  
123 or induce the voter to vote any particular ticket or for any  
124 particular candidate or for or against any public question and  
125 must not keep or make any memorandum or entry of  
126 anything occurring within the voting booth or compartment



127 and must not, directly or indirectly, reveal to any person the  
128 name of any candidate voted for by the voter or which ticket  
129 he or she had voted or how he or she had voted on any public  
130 question or anything occurring within the voting booth or  
131 compartment or voting machine booth except when required  
132 pursuant to law to give testimony as to the matter in a judicial  
133 proceeding; and

134 (B) Shall sign a written oath or affirmation before  
135 assisting the voter on a form prescribed by the Secretary of  
136 State stating that he or she will not override the actual  
137 preference of the voter being assisted, attempt to influence  
138 the voter's choice or mislead the voter into voting for  
139 someone other than the candidate of voter's choice. The  
140 person assisting the voter shall also swear or affirm that he or  
141 she believes that the voter is voting free of intimidation or  
142 manipulation: *Provided*, That no person providing assistance  
143 to a voter is required to sign an oath or affirmation where the  
144 reason for requesting assistance is the voter's inability to vote  
145 without assistance because of blindness as defined in section  
146 three, article fifteen, chapter five of this code and the inability  
147 to vote without assistance because of blindness is certified in  
148 writing by a physician of the voter's choice and is on file in  
149 the office of the clerk of the county commission.

150 (6) In accordance with instructions issued by the  
151 Secretary of State, the clerk of the county commission shall  
152 provide a form entitled "list of assisted voters", the form of  
153 which list shall likewise be prescribed by the Secretary of  
154 State. The commissioners shall enter the name of each voter  
155 receiving assistance in voting the ballot, together with the  
156 poll slip number of that voter and the signature of the person  
157 or the commissioner from each party who assisted the voter.  
158 If no voter has been assisted in voting, the commissioners  
159 shall likewise make and subscribe to an oath of that fact on  
160 the list.

161 (f) After preparing the ballot, the voter shall fold the  
162 ballot so that the face is not exposed and so that the names of  
163 the poll clerks thereon are seen. The voter shall announce his  
164 or her name and present his or her ballot to one of the  
165 commissioners who shall hand the same to another  
166 commissioner, of a different political party, who shall deposit  
167 it in the ballot box if the ballot is the official one and properly  
168 signed. The commissioner of election may inspect every  
169 ballot before it is deposited in the ballot box to ascertain  
170 whether it is single, but without unfolding or unrolling it so  
171 as to disclose its content. When the voter has voted, he or  
172 she shall retire immediately from the election room and  
173 beyond the sixty-foot limit thereof and may not return except  
174 by permission of the commissioners.

175 (g) Following the election, the oaths or affirmations  
176 required by this section from those assisting voters, together  
177 with the "list of assisted voters", shall be returned by the  
178 election commissioners to the clerk of the county commission  
179 along with the election supplies, records and returns. The  
180 clerk of the county commission shall make the oaths,  
181 affirmations and list available for public inspection and shall  
182 preserve them for a period of twenty-two months or until  
183 disposition is authorized or directed by the Secretary of State  
184 or court of record: *Provided*, That the clerk may use these  
185 records to update the voter registration records in accordance  
186 with subsection (d), section eighteen, article two of this  
187 chapter.

188 (h) Any person making an oath or affirmation required  
189 under the provisions of this section who knowingly swears  
190 falsely or any person who counsels, advises, aids or abets  
191 another in the commission of false swearing under this  
192 section is guilty of a misdemeanor and, upon conviction  
193 thereof, shall be fined not more than one thousand dollars or  
194 confined in jail for a period of not more than one year, or  
195 both fined and confined.

196 (i) Any election commissioner or poll clerk who  
197 authorizes or provides unchallenged assistance to a voter  
198 when the voter is known to the election commissioner or poll  
199 clerk not to require assistance in voting is guilty of a felony  
200 and, upon conviction thereof, shall be fined not more than  
201 five thousand dollars or imprisoned in a state correctional  
202 facility for a period of not less than one year nor more than  
203 five years, or both fined and imprisoned.

**§3-1-41. Challenged and provisional voter procedures;  
counting of provisional voters' ballots; ballots of  
election officials.**

1 (a) It is the duty of the members of the receiving board,  
2 jointly or severally, to challenge the right of any person  
3 requesting a ballot to vote in any election:

4 (1) If the person's registration record is not available at  
5 the time of the election;

6 (2) If the signature written by the person in the poll book  
7 does not correspond with the signature purported to be his or  
8 hers on the registration record;

9 (3) If the registration record of the person indicates any  
10 other legal disqualification; or

11 (4) If any other valid challenge exists against the voter  
12 pursuant to section ten, article three of this chapter.

13 (b) Any person challenged shall nevertheless be  
14 permitted to vote in the election. He or she shall be furnished  
15 an official ballot not endorsed by the poll clerks. In lieu of  
16 the endorsements, the poll clerks shall complete and sign an  
17 appropriate form indicating the challenge, the reason thereof  
18 and the name or names of the challengers. The form shall be  
19 securely attached to the voter's ballot and deposited together

20 with the ballot in a separate box or envelope marked  
21 "provisional ballots".

22 (c) At the time that an individual casts a provisional  
23 ballot, the poll clerk shall give the individual written  
24 information stating that an individual who casts a provisional  
25 ballot will be able to ascertain under the free access system  
26 established in this section whether the vote was counted and,  
27 if the vote was not counted, the reason that the vote was not  
28 counted.

29 (d) Before an individual casts a provisional ballot, the  
30 poll clerk shall provide the individual written instructions,  
31 supplied by the board of ballot commissioners, stating that if  
32 the voter is casting a ballot in the incorrect precinct, the ballot  
33 cast may not be counted for that election: *Provided*, That if  
34 the voter is found to be in the incorrect precinct, then the poll  
35 worker shall attempt to ascertain the appropriate precinct for  
36 the voter to cast a ballot and immediately give the voter the  
37 information if ascertainable.

38 (e) Provisional ballots may not be counted by the election  
39 officials. The county commission shall, on its own motion,  
40 at the time of canvassing of the election returns, sit in session  
41 to determine the validity of any challenges according to the  
42 provisions of this chapter. If the county commission  
43 determines that the challenges are unfounded, each  
44 provisional ballot of each challenged voter, if otherwise  
45 valid, shall be counted and tallied together with the regular  
46 ballots cast in the election. The county commission, as the  
47 board of canvassers, shall protect the privacy of each  
48 provisional ballot cast. The county commission shall  
49 disregard technical errors, omissions or oversights if it can  
50 reasonably be ascertained that the challenged voter was  
51 entitled to vote.

52 (f) Any person duly appointed as an election  
53 commissioner or clerk under the provisions of section

54 twenty-eight of this article who serves in that capacity in a  
55 precinct other than the precinct in which the person is legally  
56 entitled to vote may cast a provisional ballot in the precinct  
57 in which the person is serving as a commissioner or clerk.  
58 The ballot is not invalid for the sole reason of having been  
59 cast in a precinct other than the precinct in which the person  
60 is legally entitled to vote. The county commission shall  
61 record the provisional ballot on the voter's permanent  
62 registration record: *Provided*, That the county commission  
63 may count only the votes for the offices that the voter was  
64 legally authorized to vote for in his or her own precinct.

65 (g) The Secretary of State shall establish a free access  
66 system, which may include a toll-free telephone number or an  
67 internet website, that may be accessed by any individual who  
68 casts a provisional ballot to discover whether his or her vote  
69 was counted and, if not, the reason that the vote was not  
70 counted.



## CHAPTER 94

**(Com. Sub. for S.B. 495 - By Senators Kessler, Love,  
Oliverio and Plymale)**

[Passed March 4, 2008; in effect from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §3-1-46 of the Code of West Virginia, 1931, as amended, requiring training programs for election officials to be conducted within thirty days before an election.

*Be it enacted by the Legislature of West Virginia:*

That §3-1-46 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

### **§3-1-46. Training program for election officials.**

1           (a) The Secretary of State in conjunction with the State  
2 Election Commission shall produce one or more audio-visual  
3 programs which explain and illustrate the procedures for  
4 conducting elections, the duties of the various election  
5 officials and the methods of voting on each voting system in  
6 use in the state.

7           (b) One copy of the appropriate training program shall  
8 be distributed to and kept and preserved by the clerk of the  
9 county commission of each county. The program shall be  
10 shown to all election officials before each election as part of  
11 their instructional program. The clerk of the county  
12 commission shall conduct an adequate number of sessions to  
13 train all election officials, shall schedule the regular sessions  
14 not less than seven days before each election and shall notify  
15 all election officials of the exact date, time and place such  
16 instructional program will be conducted.

17           (c) No person may serve as an election commissioner or  
18 poll clerk in any election unless he or she has attended the  
19 instructional program required by subsection (a) of this  
20 section within thirty days prior to an election. If an election  
21 official fails to attend the instructional program, another  
22 person shall be appointed in the election official's place in  
23 the same manner as persons are appointed under the  
24 provisions of section thirty of this article to replace election  
25 officials refusing to serve. The clerk of the county  
26 commission shall conduct an additional instructional program  
27 within seven days prior to the election for any such person so  
28 appointed: *Provided*, That in cases of emergency, when no

29 person who has attended the instructional program for that  
30 election is available to fill a vacancy on the election board,  
31 the clerk of the county commission may appoint the  
32 substituted person as a commissioner or poll clerk  
33 notwithstanding that he or she has not received the  
34 instruction.

35 (d) The requirements of this section apply to all  
36 elections conducted by municipalities, except that the  
37 recorder or municipal clerk responsible for the election shall  
38 perform the duties of the clerk of the county commission  
39 defined in this section. The clerk of the county commission  
40 may assist the recorder or municipal clerk in conducting the  
41 instructional program.

42 (e) When the instructional program is not being used by  
43 the clerk for instructional purposes, it shall be available to  
44 any duly organized civic, religious, educational or charitable  
45 group without charge, except that the clerk shall require a  
46 cash deposit on such use in an amount to be determined by  
47 the Secretary of State.

48 (f) The Secretary of State shall cause the instructional  
49 program to be amended, edited or reproduced whenever he or  
50 she is of the opinion such revision is necessary in light of  
51 changes in the election laws of this state.

52 (g) No elected official may appear in any training  
53 program either in person or by visual image or by name.

54 (h) Every county clerk shall attend a training, to be  
55 conducted by the Secretary of State every two years, for the  
56 purpose of reviewing the election official training and  
57 receiving updates on election law matters.

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**CHAPTER 95**

**(Com. Sub. for S.B. 493 - By Senators Kessler, Oliverio and Plymale)**

[Passed March 5, 2008; in effect from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §3-1A-6 of the Code of West Virginia, 1931, as amended, authorizing the Secretary of State to implement emergency procedures to ensure the integrity of the election process in times of natural disaster, terrorist attack, war or general emergency.

*Be it enacted by the Legislature of West Virginia:*

That §3-1A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.**

**§3-1A-6. Powers and duties of Secretary of State; exercise of powers by appointees.**

1 (a) The Secretary of State shall be the chief election  
2 official of the state. Except for those rules required by the  
3 provisions of section five of this article to be promulgated by  
4 the commission, the Secretary of State shall have the  
5 authority, after consultation with the State Election  
6 Commission, of which he or she is a member, to make,  
7 amend and rescind such orders and to promulgate legislative  
8 rules, in accordance with the provisions of chapter twenty-  
9 nine-a of this code, as may be necessary to standardize and



10 make effective the provisions of this chapter. All election  
11 officials, county commissions, clerks of county commissions,  
12 clerks of circuit courts, boards of ballot commissioners,  
13 election commissioners and poll clerks shall abide by any  
14 orders that may be issued and any legislative rules that may  
15 be promulgated by the Secretary of State and the  
16 commission.

17 (b) The Secretary of State also shall have authority to  
18 require collection and report of statistical information and to  
19 require other reports by county commissions, clerks of  
20 county commissions and clerks of circuit courts.

21 (c) The Secretary of State shall also advise with election  
22 officials; furnish to the election officials a sufficient number  
23 of indexed copies of the current election laws of West  
24 Virginia and the administrative orders and rules issued or  
25 promulgated thereunder; investigate the administration of  
26 election laws, frauds and irregularities in any registration or  
27 election; report violations of election laws to the appropriate  
28 prosecuting officials; and prepare an annual report.

29 (d) The Secretary of State shall also have the power to  
30 administer oaths and affirmations, issue subpoenas for the  
31 attendance of witnesses, issue subpoena duces tecum to  
32 compel the production of books, papers, records, registration  
33 records and other evidence and fix the time and place for  
34 hearing any matters relating to the administration and  
35 enforcement of this chapter, or the rules promulgated by the  
36 State Election Commission or by the Secretary of State as the  
37 chief election official of the state. In case of disobedience to  
38 a subpoena or subpoena duces tecum, he or she may invoke  
39 the aid of any circuit court in requiring the attendance,  
40 evidence and testimony of witnesses and the production of  
41 papers, books, records, registration records and other  
42 evidence.

43 (e) (1) The Secretary of State shall also have the power,  
44 after consultation with the Secretary of the Department of  
45 Military Affairs and Public Safety, to implement emergency  
46 procedures and rules to ensure that all eligible voters have the  
47 opportunity to cast a valid ballot and to uphold the integrity  
48 of an election in the event of natural disaster as declared by  
49 the Governor of this state, terrorist attack, war or general  
50 emergency, if any of which occur during or immediately  
51 preceding an election.

52 (2) For purposes of this subsection, a "general  
53 emergency" means circumstances preventing the casting of  
54 ballots in one or more voting precincts. The chief judge of  
55 the circuit court of the county where the casting of ballots is  
56 being prevented must declare by order that a general  
57 emergency exists."

58 (f) All powers and duties vested in the Secretary of State  
59 pursuant to this article may be exercised by appointees of the  
60 Secretary of State at his or her discretion, but the Secretary of  
61 State shall be responsible for their acts.

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## CHAPTER 96

**(Com. Sub. for S.B. 496 - By Senators Kessler, Oliverio,  
White, McKenzie and Plymale)**

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[Passed March 4, 2008; in effect from passage.]  
[Approved by the Governor on March 20, 2008.]

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AN ACT to amend and reenact §3-2-30 of the Code of West Virginia, 1931, as amended, relating to protecting certain information maintained in voter registration files.

*Be it enacted by the Legislature of West Virginia:*

That §3-2-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 2. REGISTRATION OF VOTERS.**

### **§3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit.**

1       (a) Any person may examine the active, inactive, rejected  
2 and canceled voter registration records during office hours of  
3 the clerk of the county commission in accordance with the  
4 provisions of chapter twenty-nine-b of this code as follows:

5       (1) When the active and inactive files are maintained on  
6 precinct registration books, any person may examine the files  
7 under the supervision of the clerk and obtain copies of  
8 records except when a precinct book is in temporary use for  
9 updating and preparing lists or during the time the books are  
10 sealed for use in an election. Other original voter registration  
11 records, including canceled voter records, pending  
12 applications, rejected applications, records of change  
13 requests, reinstatements and other documents, shall be  
14 available for inspection upon specific request; and

15       (2) When the active, inactive, rejected and canceled voter  
16 files are maintained in data format, any person may examine  
17 voter record information in printed form or in a read-only  
18 data format on a computer terminal set aside for public use,  
19 if available. The data files available for examination and  
20 copying shall include all registration and voting information  
21 maintained in the file, but may not include the registrant's  
22 telephone number, social security number or driver's license  
23 number or nonoperator's identification number issued by the  
24 Division of Motor Vehicles.

25 (b) Printed lists of registered voters may be purchased for  
26 noncommercial use from the clerk of the county commission  
27 at a cost of one cent per name.

28 (c) In counties maintaining active and inactive files in  
29 digitized data format, the clerk of the county commission  
30 shall, upon request, prepare printed copies of the lists of  
31 voters for each precinct. No list prepared under this section  
32 may include the registrant's telephone number, social  
33 security number or driver's license number or nonoperator's  
34 identification number issued by the Division of Motor  
35 Vehicles. The clerk shall establish a written policy, posted  
36 within public view, listing the options for selection and  
37 sorting criteria and available data elements. The data  
38 elements shall include, at least:

39 (1) The name, residence address, political party affiliation  
40 and status of the registrant;

41 (2) The available formats of the lists; and

42 (3) The times at which lists will be prepared. A copy of  
43 the county policy shall be filed with the Secretary of State no  
44 later than the first day of January of each even-numbered  
45 year.

46 (d) In counties which maintain voter files in a digitized  
47 data format, lists of registered voters may be obtained for  
48 noncommercial purposes in data format on disk provided and  
49 prepared by the clerk of the county commission at a cost of  
50 one cent per name plus ten dollars for each disk required. No  
51 data file prepared under this subsection may include the  
52 registrant's telephone number, social security number or  
53 driver's license number or nonoperator's identification  
54 number issued by the Division of Motor Vehicles.

55 (e) The fees received by the clerk of the county  
56 commission shall be kept in a separate fund under the  
57 supervision of the clerk for the purpose of defraying the cost  
58 of the preparation of the voter lists. Any unexpended balance  
59 in the fund shall be transferred to the general fund of the  
60 county commission.

61 (f) The Secretary of State may make voter lists available  
62 for sale subject to the limitations as provided in this section  
63 for counties. The cost for a partial list shall be one and  
64 one-half cents per name plus ten dollars for each disk  
65 required; the cost for a complete statewide list shall be  
66 one-half cent per name and a flat fee of one thousand dollars.  
67 One cent per name for each voter from a particular county on  
68 each partial list and one-half cent per name for each voter  
69 from a particular county on each statewide list sold shall be  
70 reimbursed to the appropriate county. The disk fee and  
71 one-half cent per name associated with a partial list and the  
72 flat fee of one thousand dollars associated with a complete  
73 statewide list shall be deposited to a special revenue account  
74 for purpose of defraying the cost of preparing the lists.

75 (g) An update to a previously purchased list may be  
76 provided by the Secretary of State or the clerk of the county  
77 commission at a prorated cost based on the amount of  
78 additional information provided. The additional rates  
79 charged by the clerk of the county commission shall be  
80 specified in the policy established pursuant to subsection (c)  
81 of this section.

82 (h) No voter registration lists or data files containing  
83 voter names, addresses or other information derived from  
84 voter data files obtained pursuant to the provisions of this  
85 article may be used for commercial or charitable solicitations  
86 or advertising, sold or reproduced for resale.

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## CHAPTER 97

**(Com. Sub. for S.B. 514 - By Senators Kessler, Hunter,  
Minard and Deem)**

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[Passed March 4, 2008; in effect from passage.]  
[Approved by the Governor on March 20, 2008.]

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AN ACT to amend and reenact §3-3-5 of the Code of West Virginia, 1931, as amended, relating generally to voting an absentee ballot by electronic mail; allowing ballot to be transmitted to absentee voter by electronic mail; requiring absentee voter to return completed ballot in the same manner ballot was transmitted or by electronic mail; and specifying that ballots received via electronic mail are to be processed in the same manner as ballots submitted by facsimile.

*Be it enacted by the Legislature of West Virginia:*

That §3-3-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 3. VOTING BY ABSENTEES.**

#### **§3-3-5. Voting an absentee ballot by mail, facsimile or electronic mail; penalties.**

- 1 (a) Upon oral or written request, the official designated
- 2 to supervise and conduct absentee voting shall provide to any
- 3 voter of the county, in person, by mail, by electronic mail or
- 4 by facsimile the appropriate application for voting absentee
- 5 by mail as provided in this article. The voter shall complete
- 6 and sign the application in his or her own handwriting or, if

7 the voter is unable to complete the application because of  
8 illiteracy or physical disability, the person assisting the voter  
9 and witnessing the mark of the voter shall sign his or her  
10 name in the space provided.

11 (b) Completed applications for voting an absentee ballot  
12 by mail are to be accepted when received by the official  
13 designated to supervise and conduct absentee voting in  
14 person, by mail, by electronic mail or by facsimile within the  
15 following times:

16 (1) For persons eligible to vote an absentee ballot under  
17 the provisions of subdivision (3), subsection (b), section one  
18 of this article, relating to absent uniformed services and  
19 overseas voters, not earlier than the first day of January of an  
20 election year or eighty-four days preceding the election,  
21 whichever is earlier, and not later than the sixth day  
22 preceding the election, which application is to, upon the  
23 voter's request, be accepted as an application for the ballots  
24 for all elections in the calendar year; and

25 (2) For all other persons eligible to vote an absentee  
26 ballot by mail, not earlier than eighty-four days preceding the  
27 election and not later than the sixth day preceding the  
28 election.

29 (c) Upon acceptance of a completed application, the  
30 official designated to supervise and conduct absentee voting  
31 shall determine whether the following requirements have  
32 been met:

33 (1) The application has been completed as required by  
34 law;

35 (2) The applicant is duly registered to vote in the precinct  
36 of his or her residence and, in a primary election, is qualified  
37 to vote the ballot of the political party requested;

38 (3) The applicant is authorized for the reasons given in  
39 the application to vote an absentee ballot by mail;

40 (4) The address to which the ballot is to be mailed is an  
41 address outside the county if the voter is applying to vote by  
42 mail under the provisions of paragraph (A) or (B),  
43 subdivision (2), subsection (b), section one of this article; or  
44 subdivision (3) or (4) of said subsection;

45 (5) The applicant is not making his or her first vote after  
46 having registered by postcard registration or, if the applicant  
47 is making his or her first vote after having registered by  
48 postcard registration, the applicant is exempt from these  
49 requirements; and

50 (6) No regular and repeated pattern of applications for an  
51 absentee ballot by mail for the reason of being out of the  
52 county during the entire period of voting in person exists to  
53 suggest that the applicant is no longer a resident of the  
54 county.

55 (d) If the official designated to supervise and conduct  
56 absentee voting determines that the required conditions have  
57 been met, two representatives that are registered to vote with  
58 different political party affiliations shall sign their names in  
59 the places indicated on the back of the official ballot. If the  
60 official designated to supervise and conduct absentee voting  
61 determines the required conditions have not been met, or has  
62 evidence that any of the information contained in the  
63 application is not true, the official shall give notice to the  
64 voter that the voter's absentee ballot will be challenged as  
65 provided in this article and shall enter that challenge.

66 (e) (1) Within one day after the official designated to  
67 supervise and conduct absentee voting has both the  
68 completed application and the ballot, the official shall mail to  
69 the voter at the address given on the application the following  
70 items as required and as prescribed by the Secretary of State:



71 (A) One of each type of official absentee ballot the voter  
72 is eligible to vote, prepared according to law;

73 (B) One envelope, unsealed, which may have no marks  
74 except the designation "Absent Voter's Ballot Envelope No.  
75 1" and printed instructions to the voter;

76 (C) One postage paid envelope, unsealed, designated  
77 "Absent Voter's Ballot Envelope No. 2";

78 (D) Instructions for voting absentee by mail;

79 (E) For electronic systems, a device for marking by  
80 electronically sensible pen or ink, as may be appropriate;

81 (F) Notice that a list of write-in candidates is available  
82 upon request; and

83 (G) Any other supplies required for voting in the  
84 particular voting system.

85 (2) If the voter is an absent uniformed services voter or  
86 overseas voter, as defined by 42 U. S. C. §1973, *et seq.*, the  
87 official designated to supervise and conduct absentee voting  
88 may voluntarily upon request of the voter transmit the ballot  
89 to the voter via facsimile or by electronic mail. If the ballot  
90 is transmitted by facsimile or by electronic mail pursuant to  
91 this subdivision, the official designated to supervise and  
92 conduct absentee voting shall also transmit via facsimile or  
93 by electronic mail:

94 (A) A waiver of privacy form, to be promulgated by the  
95 Secretary of State;

96 (B) Instructions for voting absentee utilizing the Federal  
97 Voting Assistance Program Electronic Transmission System.  
98 For the purposes of this subsection, the "Federal Voting  
99 Assistance Program Electronic Transmission System" is the

100 system established by the Department of Defense for the  
101 explicit purpose of sending and receiving absentee ballots by  
102 military and overseas United States citizens;

103 (C) Notice that a list of write-in candidates is available  
104 upon request.

105 The official designated to supervise and conduct absentee  
106 voting is not required to mail to the voter the materials listed  
107 in paragraphs (B), (C) and (E), subdivision (1) of this  
108 subsection.

109 (f) The voter shall mark the ballot alone: *Provided*, That  
110 the voter may have assistance in voting according to the  
111 provisions of section six of this article.

112 (1) After the voter has voted the ballot or ballots to be  
113 returned by mail, the voter shall:

114 (A) Place the ballot or ballots in envelope no. 1 and seal  
115 that envelope;

116 (B) Place the sealed envelope no. 1 in envelope no. 2  
117 and seal that envelope;

118 (C) Complete and sign the forms on envelope no. 2; and

119 (D) Return that envelope to the official designated to  
120 supervise and conduct absentee voting.

121 (2) If the ballot was transmitted via facsimile or by  
122 electronic mail as provided in subdivision (2), subsection (e)  
123 of this section, the voter shall return the ballot in the same  
124 manner the ballot was received, except that the voter may  
125 return the ballot by United States mail, along with a signed  
126 privacy waiver form.

127 (g) Except as provided in subsection (h) of this section,  
128 absentee ballots returned by United States mail or other  
129 express shipping service are to be accepted if:

130 (1) The ballot is received by the official designated to  
131 supervise and conduct absentee voting no later than the day  
132 after the election; or

133 (2) The ballot bears a postmark of the United States  
134 Postal Service dated no later than election day and the ballot  
135 is received by the official designated to supervise and  
136 conduct absentee voting no later than the hour at which the  
137 board of canvassers convenes to begin the canvass.

138 (h) Absentee ballots received through the United States  
139 mail from persons eligible to vote an absentee ballot under  
140 the provisions of subdivision (3), subsection (b), section one  
141 of this article, relating to uniform services and overseas  
142 voters, are to be accepted if the ballot is received by the  
143 official designated to supervise and conduct absentee voting  
144 no later than the hour at which the board of canvassers  
145 convenes to begin the canvass.

146 (i) Ballots transmitted via facsimile or by electronic mail  
147 pursuant to subdivision (2), subsection (f) of this section are  
148 to be accepted if the ballot is received by the official  
149 designated to supervise and conduct absentee voting no later  
150 than the close of polls on election day: *Provided*, That the  
151 Secretary of State's office shall enter into an agreement with  
152 the Federal Voting Assistance Program of the United States  
153 Department of Defense to transmit the ballots to the county  
154 clerks at a time when two individuals of opposite political  
155 parties are available to process the received ballots.

156 (j) Ballots received after the proper time which cannot be  
157 accepted are to be placed unopened in an envelope marked  
158 for the purpose and kept secure for twenty-two months

159 following the election, after which time they are to be  
160 destroyed without being opened.

161 (k) Absentee ballots which are hand delivered are to be  
162 accepted if they are received by the official designated to  
163 supervise and conduct absentee voting no later than the day  
164 preceding the election: *Provided*, That no person may hand  
165 deliver more than two absentee ballots in any election and  
166 any person hand delivering an absentee ballot is required to  
167 certify that he or she has not examined or altered the ballot.  
168 Any person who makes a false certification violates the  
169 provisions of article nine of this chapter and is subject to  
170 those provisions.

171 (l) Upon receipt of the sealed envelope, the official  
172 designated to supervise and conduct absentee voting shall:

173 (1) Enter onto the envelope any other required  
174 information;

175 (2) Enter the challenge, if any, to the ballot;

176 (3) Enter the required information into the permanent  
177 record of persons applying for and voting an absentee ballot  
178 in person; and

179 (4) Place the sealed envelope into a ballot box that is  
180 secured by two locks with a key to one lock kept by the  
181 president of the county commission and a key to the other  
182 lock kept by the county clerk.

183 (m) Upon receipt of a ballot submitted via facsimile or by  
184 electronic mail pursuant to subdivision (2), subsection (f) of  
185 this section, the official designated to supervise and conduct  
186 absentee voting shall place the ballot in an envelope marked  
187 "Absentee by Facsimile or by Electronic Mail" with the  
188 completed waiver: *Provided*, That no ballots are to be  
189 processed without the presence of two individuals of opposite  
190 political parties.

191 (n) All ballots received by facsimile or by electronic mail  
192 prior to the close of the polls on election day are to be  
193 tabulated in the manner prescribed for tabulating absentee  
194 ballots submitted by mail to the extent that those procedures  
195 are appropriate for the applicable voting system. The clerk  
196 of the county commission shall keep a record of absentee  
197 ballots sent and received by facsimile or by electronic mail.



## CHAPTER 98

**(Com. Sub. for S.B. 494 - By Senators Kessler, Oliverio,  
White, Plymale and Jenkins)**

\_\_\_\_\_  
[Passed March 5, 2008; in effect from passage.]  
[Approved by the Governor on April 1, 2008.]  
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AN ACT to amend and reenact §3-4A-2, §3-4A-10, §3-4A-13, §3-4A-16, §3-4A-17, §3-4A-19, §3-4A-28 and §3-4A-33 of the Code of West Virginia, 1931, as amended, all relating to allowing election officials to use an electronic poll book containing voter registration information to verify that registered voters are eligible to vote in an election; defining terms; providing for storage, protection and maintenance of electronic poll books by county clerk; providing for use of electronic poll book to verify eligibility of voter; requiring election official to notify person not shown in electronic poll book to eligible to vote of the correct precinct; requiring preelection examination of electronic poll books; and requiring use of printed poll book if electronic poll book is not in working order.

*Be it enacted by the Legislature of West Virginia:*

That §3-4A-2, §3-4A-10, §3-4A-13, §3-4A-16, §3-4A-17, §3-4A-19, §3-4A-28 and §3-4A-33 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### **ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

- §3-4A-2. Definitions.
- §3-4A-10. County clerk to be custodian of vote-recording devices, tabulating equipment and electronic poll books; duties.
- §3-4A-13. Inspection of ballots, electronic poll books and vote-recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote-recording devices; receipt of election materials by ballot commissioners.
- §3-4A-16. Delivery of vote-recording devices and electronic poll books; time, arrangement for voting.
- §3-4A-17. Check of vote-recording devices and electronic poll books before use; corrections; reserve vote-recording devices.
- §3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.
- §3-4A-28. Post-election custody and inspection of vote-recording devices and electronic poll books; canvass and recounts.
- §3-4A-33. Tampering with vote-recording devices, electronic poll books, ballot labels, ballot or ballot cards, program decks, standard validation test decks or other automatic tabulating equipment; other dishonest practices; attempts; penalty.

#### **§3-4A-2. Definitions.**

1 As used in this article, unless otherwise specified:

2 (1) "Automatic tabulating equipment" means all  
3 apparatus necessary to electronically count votes recorded on  
4 ballots and tabulate the results;

5 (2) "Ballot" means a tabulating card or paper on which  
6 votes may be recorded by means of perforating or marking  
7 with electronically sensible ink or pencil or a screen upon  
8 which votes may be recorded by means of a stylus or by  
9 means of touch;

10 (3) "Central counting center" means a facility equipped  
11 with suitable and necessary automatic tabulating equipment,  
12 selected by the county commission, for the electronic  
13 counting of votes recorded on ballots;

14       (4) "Electronic poll book" means an electronic device  
15 containing the same voter registration information maintained  
16 by the county clerk in a printed poll book.

17       (5) "Electronic voting system" is a means of conducting  
18 an election whereby votes are recorded on ballots by means  
19 of an electronically sensible marking ink, by perforating or  
20 are recorded on equipment that registers votes on a computer  
21 disk, or by touching a screen with a stylus or by means of  
22 touch, and votes are subsequently counted by automatic  
23 tabulating equipment at the central counting center;

24       (6) "Program deck" means the actual punch card deck or  
25 decks, or a computer program disk, diskette, tape or other  
26 programming media, containing the program for counting  
27 and tabulating the votes, including the "application program  
28 deck";

29       (7) "Application program deck" means the punch card  
30 deck or equivalent capacity in other program medias as  
31 provided, containing specific options used and necessary to  
32 modify the program of general application, to conduct and  
33 tabulate a specific election according to applicable law;

34       (8) "Standard validation test deck" means a group of  
35 ballots wherein all voting possibilities which can occur in an  
36 election are represented; and

37       (9) "Vote-recording device" means equipment in which  
38 ballot labels and ballots are placed to allow a voter to record  
39 his or her vote by perforating or equipment with a screen  
40 upon which votes may be recorded by means of a stylus or by  
41 means of touch.

**§3-4A-10. County clerk to be custodian of vote-recording devices, tabulating equipment and electronic poll books; duties.**

1 (a) When an electronic voting system is acquired by any  
2 county commission, the vote-recording devices, where  
3 applicable, and the tabulating equipment shall be  
4 immediately placed in the custody of the county clerk and  
5 shall remain in his or her custody at all times except when in  
6 use at an election or when in custody of a court or court  
7 officers during contest proceedings. The clerk shall see that  
8 the vote-recording devices and the tabulating equipment are  
9 properly protected and preserved from damage or  
10 unnecessary deterioration and shall not permit any  
11 unauthorized person to tamper with them. The clerk shall  
12 also keep the vote-recording devices and tabulating  
13 equipment in repair and of preparing the same for voting.

14 (b) When a county commission elects to acquire and use  
15 electronic poll books in lieu of printed poll books, the clerk  
16 of the county commission shall immediately take custody of  
17 the electronic poll books, which shall remain in his or her  
18 custody at all times except when in use at an election or when  
19 in the custody of a court or court officers during contest  
20 proceedings. The clerk shall ensure that the electronic poll  
21 books are properly protected and preserved from damage or  
22 unnecessary deteriorations and the clerk shall not permit any  
23 unauthorized person to tamper with the electronic poll books.  
24 The clerk shall also keep the electronic poll books in good  
25 repair and the clerk shall prepare the electronic poll books for  
26 election day.

**§3-4A-13. Inspection of ballots, electronic poll books and vote-recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote-recording devices; receipt of election materials by ballot commissioners.**

1 When the clerk of the county commission has completed  
2 the preparation of the ballots and of any electronic poll books  
3 and vote-recording devices as provided in sections eleven-a



4 and twelve-a of this article and as provided in section twenty-  
5 one, article one of this chapter, and not later than seven days  
6 before the day of the election, he or she shall notify the  
7 members of the county commission and the ballot  
8 commissioners that the ballots and any electronic poll books  
9 and devices are ready for use.

10 (b) The members of the county commission and the ballot  
11 commissioners shall convene at the office of the clerk or at  
12 such other place at which any vote-recording devices or  
13 electronic poll books and the ballots are stored, not later than  
14 five days before the day of the election, and shall inspect the  
15 devices, electronic poll books and the ballots to determine  
16 whether the requirements of this article have been met.  
17 Notice of the place and time of the inspection shall be  
18 published, no less than three days in advance, as a Class I-0  
19 legal advertisement in compliance with the provisions of  
20 article three, chapter fifty-nine of this code. The publication  
21 area is the county involved.

22 (c) Any candidate and one representative of each political  
23 party on the ballot may be present during the examination.  
24 If the devices and electronic poll books and ballots are found  
25 to be in proper order, the members of the county commission  
26 and the ballot commissioners shall endorse their approval in  
27 the book in which the clerk entered the numbers of the  
28 devices opposite the numbers of the precincts.

29 (d) The vote-recording devices, the electronic poll books  
30 and the ballots shall then be secured in double lock rooms.  
31 The clerk and the president or president pro tempore of the  
32 county commission shall each have a key. The rooms shall  
33 be unlocked only in their presence and only for the removal  
34 of the devices, electronic poll books and the ballots for  
35 transportation to the polls. Upon removal of the devices, the  
36 electronic poll books and the ballots, the clerk and president  
37 or president pro tempore of the county commission shall  
38 certify in writing signed by them that the devices, the

39 electronic poll books and packages of ballots were found to  
40 be sealed when removed for transportation to the polls.

41 (e) Vote-recording devices used during the early voting  
42 period may be used on election day if retested in accordance  
43 with all the provisions of this section, including public notice  
44 between the close of early voting and prior to precinct  
45 placement for election day. Vote-recording devices  
46 containing a personal electronic ballot (PEB), a programable  
47 memory chip and a printed paper trail must comply with the  
48 applicable requirements of section twenty-six of this article.

49 (f) Not later than one day before the election, the election  
50 commissioner of each precinct previously designated by the  
51 ballot commissioners shall attend at the office of the clerk of  
52 the county commission to receive the necessary election  
53 records, books and supplies required by law. The election  
54 commissioners shall receive the per diem mileage rate  
55 prescribed by law for this service. The election  
56 commissioners shall give the ballot commissioners a  
57 sequentially numbered written receipt, on a printed form,  
58 provided by the clerk of the county commission, for such  
59 records, books and supplies. The receipt shall be prepared in  
60 duplicate. One copy of the receipt shall remain with the clerk  
61 of the county commission and one copy shall be delivered to  
62 the president or president pro tempore of the county  
63 commission.

**§3-4A-16. Delivery of vote-recording devices and electronic poll  
books; time, arrangement for voting.**

1 The clerk of the county commission shall deliver or cause  
2 to be delivered each vote-recording device, electronic poll  
3 book and the package of ballots to the polling place where  
4 they are to be employed. The delivery shall be made not less  
5 than one hour prior to the opening of the polls and in the  
6 presence of the precinct election commissioners. At the time  
7 of the delivery the device and electronic poll books are to be

8 sealed to prevent any use prior to the opening of the polls and  
9 the ballots are to be packaged and sealed to prevent any  
10 tampering with the ballots. Immediately prior to the opening  
11 of the polls on election day, the sealed packages of ballots are  
12 to be opened, where applicable, and the seal of the vote-  
13 recording device and the seal of the electronic poll book is to  
14 be broken in the presence of the precinct election  
15 commissioners, who shall certify in writing signed by them  
16 to the clerk of the county commission that the devices, where  
17 applicable, and the ballots have been delivered in their  
18 presence, that the devices and packages of ballots were found  
19 to be sealed upon delivery and that the seals have been  
20 broken and the devices opened in their presence, as may be  
21 appropriate. The election commissioners shall then cause the  
22 vote-recording device and booth to be arranged so that the  
23 front of the vote-recording device will not be visible, when  
24 the vote-recording device is being operated, to any person  
25 other than the voter. The poll clerks shall ensure that the  
26 vote-recording device is placed in a location that maintains  
27 voter privacy through the entire period of voting.

**§3-4A-17. Check of vote-recording devices and electronic poll  
books before use; corrections; reserve vote-  
recording devices.**

1 (a) In counties utilizing an electronic voting system  
2 where votes are to be recorded by means of perforating or by  
3 touching a screen with a stylus or by means of touch before  
4 permitting the first voter to vote, the election commissioners  
5 shall examine the vote-recording devices to ascertain whether  
6 the ballot labels are arranged as specified on the facsimile  
7 diagram furnished to the precinct. If the ballot labels are  
8 arranged incorrectly, the commissioners shall immediately  
9 notify the clerk of the county commission of the foregoing  
10 facts in writing, indicating the number of the device, and  
11 obtain from the clerk a reserve vote-recording device and  
12 thereafter proceed to conduct the election.

13 (b) Any reserve vote-recording device so used is to be  
14 prepared for use by the clerk or his or her duly appointed  
15 deputy and the reserve vote-recording device is to be  
16 prepared, inspected and sealed and delivered to the polling  
17 place wherein the seal is to be broken and the device opened  
18 in the presence of the precinct election commissioners who  
19 shall certify in writing signed by them to the clerk of the  
20 county commission, that the reserve vote-recording device  
21 was found to be sealed upon delivery to the polling place,  
22 that the seal was broken and the device opened in their  
23 presence at the polling place. The vote-recording device  
24 found to have been with incorrect ballot labels is to be  
25 returned immediately to the custody of the clerk who shall  
26 then promptly cause the vote-recording device to be repaired,  
27 prepared and resealed in order that it may be used as a  
28 reserve vote-recording device if needed.

29 (c) In counties using electronic poll books, the election  
30 commissioners shall examine the electronic poll books to  
31 ascertain whether the poll books are in working order before  
32 allowing any voters to enter the polling location. If the  
33 electronic poll books are not in working order, the election  
34 commissioners shall contact the county clerk who shall  
35 immediately authorize a printed poll book to serve in place of  
36 the electronic poll book for that election. A printed poll book  
37 shall accompany the electronic poll book to each precinct.

**§3-4A-19. Conducting electronic voting system elections  
generally; duties of election officers; penalties.**

1 (a) The election officers shall constantly and diligently  
2 maintain a watch in order to see that no person votes more  
3 than once and to prevent any voter from occupying the voting  
4 booth for more than five minutes.

5 (b) In primary elections, before a voter is permitted to  
6 occupy the voting booth, the election commissioner

7 representing the party to which the voter belongs shall direct  
8 the voter to the vote-recording device or supply the voter  
9 with a ballot, as may be appropriate, which will allow the  
10 voter to vote only for the candidates who are seeking  
11 nomination on the ticket of the party with which the voter is  
12 affiliated or for unaffiliated voters in accordance with section  
13 thirty-one, article two of this chapter.

14 (c) The poll clerk shall issue to each voter when he or she  
15 signs the poll book a printed card or ticket numbered to  
16 correspond to the number on the poll book of the voter and in  
17 the case of a primary election, indicating the party affiliation  
18 of the voter, which numbered card or ticket is to be presented  
19 to the election commissioner in charge of the voting booth.

20 (d) One hour before the opening of the polls the precinct  
21 election commissioners shall arrive at the polling place and  
22 set up the voting booths in clear view of the election  
23 commissioners. Where applicable, they shall open the vote-  
24 recording devices, place them in the voting booths, examine  
25 them to see that they have the correct ballots or ballot labels,  
26 where applicable by comparing them with the sample ballots,  
27 and determine whether they are in proper working order.  
28 They shall open and check the ballots, the electronic poll  
29 books, if applicable, supplies, records and forms and post the  
30 sample ballots or ballot labels and instructions to voters.  
31 Upon ascertaining that all ballots, supplies, electronic poll  
32 books, if applicable, records and forms arrived intact, the  
33 election commissioners shall certify their findings in writing  
34 upon forms provided and collected by the clerk of the county  
35 commission over their signatures to the clerk of the county  
36 commission. Any discrepancies are to be noted and reported  
37 immediately to the clerk of the county commission. The  
38 election commissioners shall then number in sequential order  
39 the ballot stub of each ballot in their possession and report in  
40 writing to the clerk of the county commission the number of  
41 ballots received. They shall issue the ballots in sequential  
42 order to each voter.

43 (e) Upon entering a precinct which is using an electronic  
44 poll book, each voter shall be verified by use of the electronic  
45 poll book to be a registered voter. If the voter is not  
46 registered according to the electronic poll book within that  
47 precinct, the poll clerk is to inform the voter of the proper  
48 precinct in which the voter is registered.

49 (f) Where applicable, each voter shall be instructed how  
50 to operate the vote-recording device before he or she enters  
51 the voting booth.

52 (g) Where applicable, any voter who spoils, defaces or  
53 mutilates the ballot delivered to him or her, on returning the  
54 ballot to the poll clerks, shall receive another in its place.  
55 Every person who does not vote any ballot delivered to him  
56 or her shall, before leaving the election room, return the  
57 ballot to the poll clerks. When a spoiled or defaced ballot is  
58 returned, the poll clerks shall make a minute of the fact on  
59 the poll books, at the time, write the word "spoiled" across  
60 the face of the ballot and place it in an envelope for spoiled  
61 ballots.

62 Immediately on closing the polls, the election  
63 commissioners shall ascertain the number of spoiled ballots  
64 during the election and the number of ballots remaining not  
65 voted. The election commissioners shall also ascertain from  
66 the poll books the number of persons who voted and shall  
67 report, in writing signed by them to the clerk of the county  
68 commission, any irregularities in the ballot boxes, the number  
69 of ballots cast, the number of ballots spoiled during the  
70 election and the number of ballots unused. All unused ballots  
71 are to be returned at the same time to the clerk of the county  
72 commission who shall count them and record the number.  
73 All unused ballots shall be stored with the other election  
74 materials and destroyed at the expiration of twenty-two  
75 months.

76 (h) Each commissioner who is a member of an election  
77 board which fails to account for every ballot delivered to it is  
78 guilty of a misdemeanor and, upon conviction thereof, shall  
79 be fined not more than one thousand dollars or confined in  
80 jail for not more than one year, or both.

81 (i) The board of ballot commissioners of each county, or  
82 the chair of the board, shall preserve the ballots that are left  
83 over in their hands, after supplying the precincts as provided,  
84 until the close of the polls on the day of election and shall  
85 deliver them to the clerk of the county commission who shall  
86 store them with the other election materials and destroy them  
87 at the expiration of twenty-two months.

88 (j) Where ballots are used, the voter, after he or she has  
89 marked his or her ballot, shall, before leaving the voting  
90 booth, place the ballot inside the envelope or sleeve provided  
91 for this purpose, with the stub extending outside the  
92 envelope, and return it to an election commissioner who shall  
93 remove the stub and deposit the envelope, if applicable, with  
94 the ballot inside in the ballot box. No ballot from which the  
95 stub has been detached may be accepted by the officer in  
96 charge of the ballot box, but the ballot shall be marked  
97 "spoiled" and placed with the spoiled ballots. If an electronic  
98 voting system is used that utilizes a screen on which votes  
99 may be recorded by means of a stylus or by means of touch  
100 and the signal warning that a voter has attempted to cast his  
101 or her ballot has failed to do so properly has been activated  
102 and the voter has departed the polling place and cannot be  
103 recalled by a poll clerk to complete his or her ballot while the  
104 voter remains physically present in the polling place, then  
105 two election commissioners of different registered party  
106 affiliations, two poll clerks of different registered party  
107 affiliations or an election commissioner and a poll clerk of  
108 different registered party affiliations shall spoil the ballot.

109 (k) The precinct election commissioners shall prepare a  
110 report in quadruplicate of the number of voters who have

111 voted and, where electronic voting systems are used that  
112 utilize a screen on which votes may be recorded by means of  
113 a stylus or by means of touch, the number of ballots that were  
114 spoiled, as indicated by the poll books, and shall place two  
115 copies of this report in the ballot box or where electronic  
116 voting systems are used that utilize a screen upon which  
117 votes may be recorded by means of a stylus or by means of  
118 touch, shall place two copies of this report and the electronic  
119 ballot devices in a container provided by the clerk of the  
120 county commission, which thereupon is to be sealed with a  
121 paper seal signed by the election commissioners to ensure  
122 that no additional ballots may be deposited or removed from  
123 the ballot box. Two election commissioners of different  
124 registered party affiliations or two special messengers of  
125 different registered party affiliations appointed by the clerk  
126 of the county commission, shall forthwith deliver the ballot  
127 box or container to the clerk of the county commission at the  
128 central counting center and receive a signed numbered receipt  
129 therefor. The receipt must carefully set forth in detail any  
130 and all irregularities pertaining to the ballot boxes or  
131 containers and noted by the precinct election officers.

132       The receipt is to be prepared in duplicate, a copy of  
133 which remains with the clerk of the county commission who  
134 shall have any and all irregularities noted. The time of their  
135 departure from the polling place is to be noted on the two  
136 remaining copies of the report, which are to be immediately  
137 mailed to the clerk of the county commission.

138       (1) The poll books, register of voters, unused ballots,  
139 spoiled ballots and other records and supplies are to be  
140 delivered to the clerk of the county commission, all in  
141 conformity with the provisions of this section.

**§3-4A-28. Post-election custody and inspection of vote-  
recording devices and electronic poll books;  
canvass and recounts.**



1 (a) The vote-recording devices, electronic poll books,  
2 tabulating programs and standard validation test ballots are  
3 to remain sealed during the canvass of the returns of the  
4 election, except that the equipment may be opened for the  
5 canvass and must be resealed immediately thereafter. During  
6 the seven-day period after the completion of the canvass, any  
7 candidate or the local chair of a political party may be  
8 permitted to examine any of the sealed materials: *Provided*,  
9 That a notice of the time and place of the examination shall  
10 be posted at the central counting center before and on the  
11 hour of nine o'clock in the morning on the day the  
12 examination is to occur and all persons entitled to be present  
13 at the central counting center may, at their option, be present.  
14 Upon completion of the canvass and after the seven-day  
15 period has expired, the vote-recording devices, test results  
16 and standard validation test ballots are to be sealed for one  
17 year: *Provided, however*, That the vote-recording devices,  
18 electronic poll books, and all tabulating equipment may be  
19 released for use in any other lawful election to be held more  
20 than ten days after the canvass is completed and any of the  
21 electronic voting equipment or electronic poll books  
22 discussed in this section may be released for inspection or  
23 review by a request of a circuit court or the Supreme Court of  
24 Appeals.

25 (b) In canvassing the returns of the election, the board of  
26 canvassers shall examine, as required by subsection (d) of  
27 this section, all of the vote-recording devices, electronic poll  
28 books, the automatic tabulating equipment used in the  
29 election and those voter-verified paper ballots generated by  
30 direct recording electronic vote machines, shall determine the  
31 number of votes cast for each candidate and for and against  
32 each question and, by this examination, shall procure the  
33 correct returns and ascertain the true results of the election.  
34 Any candidate or his or her party representative may be  
35 present at the examination.

36 (c) If any qualified individual demands a recount of the  
37 votes cast at an election, the voter-verified paper ballot shall  
38 be used according to the same rules that are used in the  
39 original vote count pursuant to section twenty-seven of this  
40 article. For purposes of this subsection, "qualified  
41 individual" means a person who is a candidate for office on  
42 the ballot or a voter affected by an issue, other than an  
43 individual's candidacy, on the ballot.

44 (d) During the canvass and any requested recount, at least  
45 five percent of the precincts are to be chosen at random and  
46 the voter-verified paper ballots are to be counted manually.  
47 Whenever the vote total obtained from the manual count of  
48 the voter-verified paper ballots for all votes cast in a  
49 randomly selected precinct:

50 (1) Differs by more than one percent from the automated  
51 vote tabulation equipment; or

52 (2) Results in a different prevailing candidate or outcome,  
53 either passage or defeat, of one or more ballot issues in the  
54 randomly selected precincts for any contest or ballot issue,  
55 then the discrepancies shall immediately be disclosed to the  
56 public and all of the voter-verified paper ballots shall be  
57 manually counted. In every case where there is a difference  
58 between the vote totals obtained from the automated vote  
59 tabulation equipment and the corresponding vote totals  
60 obtained from the manual count of the voter-verified paper  
61 ballots, the manual count of the voter-verified paper ballots  
62 is the vote of record.

**§3-4A-33. Tampering with vote-recording devices, electronic  
poll books, ballot labels, ballot or ballot cards,  
program decks, standard validation test decks or  
other automatic tabulating equipment; other  
dishonest practices; attempts; penalty.**

1 (a) Any person not an election officer or other public  
2 official who shall tamper or attempt to tamper with any vote-  
3 recording device, electronic poll book, ballot label, ballot or  
4 ballot card, program deck, standard validation test deck or  
5 automatic tabulating equipment or in any way intentionally  
6 impair or attempt to impair their use and any person who  
7 shall be guilty of or shall attempt any dishonest practice upon  
8 any such devices or equipment, or with or by their use, shall  
9 be deemed guilty of a felony and, upon conviction thereof,  
10 shall be confined in a correctional facility for not less than  
11 one year nor more than ten years or fined not less than five  
12 thousand dollars, or both.

13 (b) Any clerk of a county commission, county  
14 commissioner, ballot commissioner, election commissioner,  
15 or poll clerk, or any custodian, technician or other public  
16 official authorized to take part in the holding of an election or  
17 in preparing for an election, who, with intent to cause or  
18 permit any vote-recording device, electronic poll book,  
19 program deck, standard validation test deck or other  
20 automatic tabulating equipment to fail to record, test or  
21 tabulate correctly all votes cast thereon or tabulated  
22 therewith, tampers with or disarranges such device in any  
23 way, or any part or appliance thereof, or who causes or  
24 consents to the use of such device or equipment for vote  
25 recording, testing or tabulating at any election with  
26 knowledge of the fact that the same is not in order, or not  
27 perfectly set and adjusted so that it will correctly record, test  
28 or tabulate all votes cast or who, with the purpose of  
29 defrauding or deceiving any voter or of causing it to be  
30 doubtful for what ticket or candidate or candidates or  
31 proposition any vote is cast, or of causing it to appear on said  
32 device or devices that the votes cast for one ticket, candidate  
33 or proposition, were cast for another ticket, candidate or  
34 proposition, removes, changes or mutilates any ballot, ballot  
35 card or ballot label on said device or any part thereof, or does  
36 any other thing intended to interfere with the validity or

37 accuracy of the election, shall be deemed guilty of a felony  
38 and, upon conviction thereof, shall be confined in a  
39 correctional facility for not less than one year nor more than  
40 ten years, or fined not less than five thousand dollars or both.

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## CHAPTER 99

**(S.B. 236 - By Senators Kessler, Hunter, Oliverio,  
Plymale, White and Love)**

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[Passed March 5, 2008; in effect from passage.]  
[Approved by the Governor on March 20, 2008.]

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AN ACT to amend and reenact §3-5-15 and §3-5-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-6-8 and §3-6-9 of said code, all relating to removing obsolete language relating to the role of circuit clerks in elections.

*Be it enacted by the Legislature of West Virginia:*

That §3-5-15 and §3-5-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-6-8 and §3-6-9 of said code be amended and reenacted, all to read as follows:

### **Article**

- 5. Primary Elections and Nominating Procedures.**
- 6. Conduct and Administration of Elections.**

## **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

- §3-5-15. Ascertaining and certifying primary election results.  
§3-5-16. Return of supplies and certificates.

**§3-5-15. Ascertaining and certifying primary election results.**

1       When the polls are closed in an election precinct where  
2 only a single election board has served, the receiving board  
3 shall perform all of the duties prescribed in this section.  
4 When the polls are closed in an election precinct where two  
5 election boards have served, both the receiving and counting  
6 boards shall together conclude the counting of the votes cast,  
7 the tabulating and summarizing of the number of the votes  
8 cast, unite in certifying and attesting to the returns of the  
9 election and join in making out the certificates of the result of  
10 the election provided in this article. They shall not adjourn  
11 until the work is completed.

12       In all election precincts, as soon as the polls are closed  
13 and the last voter has voted, the receiving board shall first  
14 process the absentee ballots according to the provisions of  
15 section eight, article three of this chapter. After the absentee  
16 ballots to be counted have been deposited in the ballot box,  
17 the election officers shall proceed to ascertain the result of  
18 the election in the following manner:

19       (a) The receiving board shall ascertain from the poll  
20 books and record separately on the proper form the total  
21 number of voters of each party and nonpartisan voters who  
22 have voted.

23       (1) The number of provisional ballots of each party shall  
24 be counted and subtracted from the number of voters of the  
25 same party, which result should equal the number of ballots  
26 of that party deposited in the ballot box.

27       (2) The total of all voters, including both partisan and  
28 nonpartisan voters, minus the total of all provisional ballots,  
29 should equal the number of nonpartisan ballots deposited in  
30 the ballot box.

31 (3) The commissioners and clerks shall also report, over  
32 their signatures, the number of each type of ballots spoiled  
33 and the number of each type of ballots not voted.

34 (b) The procedure for counting ballots, whether  
35 performed throughout the day by the counting board, as  
36 provided in section thirty-three, article one of this chapter, or  
37 after the close of the polls by the receiving board or by the  
38 two boards together, shall be as follows:

39 (1) The ballot box shall be opened and all votes shall be  
40 tallied in the presence of the entire election board;

41 (2) One of the commissioners shall take one ballot from  
42 the box at a time and shall determine if the ballot is properly  
43 signed by the two poll clerks of the receiving board. If not  
44 properly signed, the ballot shall be placed in an envelope for  
45 the purpose without unfolding it. If properly signed, the  
46 commissioner shall announce which type of ballot it is and  
47 hand the ballot to a team of commissioners of opposite  
48 politics, who shall together read the votes marked on the  
49 ballot for each office. Write-in votes for nomination for any  
50 office and write-in votes for election for any person other  
51 than an official write-in candidate shall be disregarded;

52 (3) The commissioner responsible for removing the  
53 ballots from the box shall keep a tally of the number of  
54 ballots of each party and any nonpartisan ballot as they are  
55 removed and whenever the number of ballots of a particular  
56 party shall equal the number of voters entered on the poll  
57 book for that party minus the number of provisional ballots  
58 of that party, as determined according to subsection (a) of  
59 this section, any other ballot found in the ballot box shall be  
60 placed in the same envelope with unsigned ballots not  
61 counted, without unfolding the same, or allowing anyone to  
62 examine or know the contents thereof, and the number of  
63 excess ballots of each party shall be recorded on the  
64 envelope;

65 (4) Each poll clerk shall keep an accurate tally of the  
66 votes cast by marking in ink on tally sheets, which shall be  
67 provided for the purpose so as to show the number of votes  
68 received by each candidate for each office;

69 (5) When the votes have been read from a ballot, the  
70 ballot shall be immediately strung on a thread, with separate  
71 threads for each party's ballots and for nonpartisan ballots.

72 (c) As soon as the results at the precinct are ascertained,  
73 the commissioners and clerks shall make out and sign three  
74 certificates of result, for each party represented, of the vote  
75 for all candidates of each party represented, on a form  
76 prescribed by the Secretary of State, giving the complete  
77 returns of the election at the polling place, which form shall  
78 include the following oath:

79 We, the undersigned commissioners and poll clerks of the  
80 primary election held at precinct No. .... of .....  
81 district of ..... County, W.Va., on the ..... day of  
82 ....., 20..., do hereby certify that having been first duly  
83 sworn, we have carefully and impartially ascertained the  
84 result of said election at said precinct for the candidates on  
85 the official ballot of the ..... party, and the same is as  
86 follows:

87 The election officers shall enter the name of each office  
88 and the full name of each candidate on the ballot and the  
89 number of votes, in words and numbers, received by each.  
90 The election officers shall also enter the full name of every  
91 official write-in candidate for election to offices to be filled  
92 in the primary, except delegate to national convention, and  
93 the number of votes for each. Two of the certificates of  
94 result of election, for each party, shall be sealed in separately  
95 addressed envelopes, furnished for that purpose, and shall be  
96 disposed of by the precinct commissioners as follows: Two  
97 of the sealed envelopes containing the returns of each party  
98 shall be delivered to the clerk of the county commission who

99 shall, within forty-eight hours, mail one of the sealed returns  
100 for each precinct by certified mail to the Secretary of State.  
101 The one unsealed certificate shall be posted on the outside of  
102 the front door of the polling place.

103 (d) All ballots voted for candidates of each party shall be  
104 sealed in separate envelopes and the commissioners and  
105 clerks shall each sign across the seal.

### **§ 3-5-16. Return of supplies and certificates.**

1 Immediately after completion of the count, tabulation and  
2 the posting of the certificate of result of the primary election  
3 in each precinct, one of the commissioners or poll clerks of  
4 each party at the precinct, designated for that purpose, shall  
5 return to the clerk of the county commission the ballot boxes,  
6 registration books and the several packages of ballots, poll  
7 books, tally sheets, certificates and all other election supplies  
and returns.

## **ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.**

§3-6-8. Precinct returns; certificates; procedures.

§3-6-9. Canvas of returns; declaration of results; recounts; recordkeeping.

### **§3-6-8. Precinct returns; certificates; procedures.**

1 As soon as the results are ascertained, the election  
2 officials shall make out and sign, under oath as provided in  
3 section fifteen, article five of this chapter, four certificates of  
4 result on a form prescribed by the Secretary of State, giving  
5 the complete returns of the election at the polling place,  
6 including the name of each office and the full name of every  
7 candidate on the ballot and the full name of every official  
8 write-in candidate for each office and the number of votes, in  
9 words and numbers, received by each, and the designation of



10 each issue on the ballot and the number of votes, in words  
11 and numbers, for and against the issue.

12 The certificates shall be sealed and disposed of as  
13 provided in section fifteen, article five of this chapter for  
14 certificates of result of a primary election.

15 Immediately after the completion of the tabulation and  
16 the posting of the certificate of result of the general election  
17 in each precinct, the ballots, registration books, poll books,  
18 tally sheets and other election supplies shall be sealed and  
19 delivered to the clerk of the county commission as provided  
20 in section sixteen, article five of this chapter.

**§3-6-9. Canvass of returns; declaration of results; recounts;  
recordkeeping.**

1 (a) The commissioners of the county commission shall be  
2 ex officio a board of canvassers and, as such, shall keep in a  
3 well-bound book, marked "election record", a complete  
4 record of all their proceedings in ascertaining and declaring  
5 the results of every election in their respective counties.  
6 They shall convene as the canvassing board at the courthouse  
7 on the fifth day (Sundays excepted) after every election held  
8 in their county, or in any district of the county, and the  
9 officers in whose custody the ballots, pollbooks, registration  
10 records, tally sheets and certificates have been placed shall  
11 lay them before the board for examination. They may, if  
12 considered necessary, require the attendance of any of the  
13 commissioners, poll clerks or other persons present at the  
14 election to appear and testify respecting the election and  
15 make other orders as shall seem proper to procure correct  
16 returns and ascertain the true results of the election in their  
17 county; but in this case all the questions to the witnesses and  
18 all the answers to the questions and evidence shall be taken  
19 down in writing and filed and preserved. All orders made  
20 shall be entered upon the record. They may adjourn, from  
21 time to time, but no longer than absolutely necessary. When

22 a majority of the commissioners are not present, the meeting  
23 shall stand adjourned until the next day and so from day to  
24 day, until a quorum is present. All meetings of the  
25 commissioners sitting as a board of canvassers shall be open  
26 to the public. The board shall proceed to open each sealed  
27 package of ballots laid before them and, without unfolding  
28 them, count the number in each package and enter the  
29 number upon their record. The ballots shall then be again  
30 sealed carefully in a new envelope and each member of the  
31 board shall write his or her name across the place where the  
32 envelope is sealed. After canvassing the returns of the  
33 election, the board shall publicly declare the results of the  
34 election; however, they shall not enter an order certifying the  
35 election results for a period of forty-eight hours after the  
36 declaration.

37 (b) Within the 48-hour period, a candidate voted for at  
38 the election may demand the board to open and examine any  
39 of the sealed packages of ballots and recount them; but they  
40 shall seal the ballots again, along with the envelope above  
41 named, and the clerk of the county commission and each  
42 member of the board shall write his or her name across the  
43 places where it is sealed and endorse in ink, on the outside:  
44 "Ballots of the election held at precinct No. \_\_\_\_\_, in the  
45 district of \_\_\_\_\_, and county of  
46 \_\_\_\_\_, on the \_\_\_\_\_ day of  
47 \_\_\_\_\_." In computing the 48-hour period as used  
48 in this section, Saturdays, Sundays and legal holidays shall be  
49 excluded: *Provided*, That at the end of the 48-hour period, an  
50 order shall be entered certifying all election results except for  
51 those offices in which a recount has been demanded.

52 (c) If a recount has been demanded, the board shall have  
53 an additional twenty-four hours after the end of the 48-hour  
54 period in which to send notice to all candidates who filed for  
55 the office in which a recount has been demanded of the date,  
56 time and place where the board will convene to commence  
57 the recount. The notice shall be served under the provisions

58 of subsection (d) of this section. The recount shall be set for  
59 no sooner than three days after the serving of the notice:  
60 *Provided*, That after the notice is served, candidates so served  
61 shall have an additional twenty-four hours in which to notify  
62 the board, in writing, of their intention to preserve their right  
63 to demand a recount of precincts not requested to be  
64 recounted by the candidate originally requesting a recount of  
65 ballots cast: *Provided, however*, That there shall be only one  
66 recount of each precinct, regardless of the number of requests  
67 for a recount of any precinct. A demand for the recount of  
68 ballots cast at any precinct may be made during the recount  
69 proceedings only by the candidate originally requesting the  
70 recount and those candidates who notify the board, pursuant  
71 to this subdivision, of their intention to preserve their right to  
72 demand a recount of additional precincts.

73 (d) Any sheriff of the county in which the recount is to  
74 occur shall deliver a copy thereof in writing to the candidate  
75 in person; or if the candidate is not found, by delivering the  
76 copy at the usual place of abode of the candidate and giving  
77 information of its purport, to the spouse of the candidate or  
78 any other person found there who is a member of his or her  
79 family and above the age of sixteen years; or if neither the  
80 spouse of the candidate nor any other person be found there  
81 and the candidate is not found, by leaving the copy posted at  
82 the front door of the place of abode. Any sheriff, thereto  
83 required, shall serve a notice within his or her county and  
84 make return of the manner and time of service; for a failure  
85 so to do, he or she shall forfeit twenty dollars. The return  
86 shall be evidence of the manner and time of service.

87 (e) Every candidate who demands a recount shall be  
88 required to furnish bond in a reasonable amount with good  
89 sufficient surety to guarantee payment of the costs and the  
90 expenses of the recount in the event the result of the election  
91 is not changed by the recount; but the amount of the bond  
92 shall in no case exceed three hundred dollars.

93 (f) After the board of canvassers has made their  
94 certificates and declared the results as hereinafter provided,  
95 they shall deposit the sealed packages of ballots, absent voter  
96 ballots, registration records, pollbooks, tally sheets and  
97 precinct certificates with the clerk of the county commission  
98 from whom they were received, who shall carefully preserve  
99 them for twenty-two months: *Provided*, That the clerk may  
100 use these records to update the voter registration records in  
101 accordance with subsection (d), section eighteen, article two  
102 of this chapter. If there is no contest pending as to any  
103 election and their further preservation is not required by any  
104 order of a court, the ballots, pollbooks, tally sheets and  
105 certificates shall be destroyed by fire or otherwise, without  
106 opening the sealed packages of ballots. If there is a contest  
107 pending, they shall be destroyed as soon as the contest is  
108 ended.

109 (g) If the result of the election is not changed by the  
110 recount, the costs and expenses of the recount shall be paid  
111 by the party at whose instance the recount was made.



## CHAPTER 100

**(Com. Sub. for S.B. 746 - By Senator Facemyer)**

[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §22-15A-2 and §22-15A-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto six new sections, designated §22-15A-24, §22-15A-25, §22-15A-26, §22-15A-27, §22-15A-

28 and §22-15A-29, all relating to implementing a takeback program for certain electronic devices with manufacturers; providing incentives for recycling certain electronics; providing an opportunity for counties and municipalities to increase recycling efforts; establishing a registration program for manufacturers of certain electronic goods; assessing registration fees; authorizing civil and administrative penalties; and requiring rulemaking.

*Be it enacted by the Legislature of West Virginia:*

That §22-15A-2 and §22-15A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto six new sections, designated §22-15A-24, §22-15A-25, §22-15A-26, §22-15A-27, §22-15A-28 and §22-15A-29, all to read as follows:

## **ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.**

§22-15A-2. Definitions.

§22-15A-5. Litter pickup and removal; education; government recycling responsibilities; monitoring and evaluation; study commission; repeal; report to Legislature.

§22-15A-24. Covered manufacturers; prohibited sales; effective date.

§22-15A-25. Manufacturer registration; registration fees; creating the Covered Electronic Devices Takeback Fund.

§22-15A-26. Manufacturers' takeback programs.

§22-15A-27. Civil actions and administrative fines; powers and duties of secretary.

§22-15A-28. Retailer penalties.

§22-15A-29. Rulemaking.

### **§22-15A-2. Definitions.**

1 Unless the context clearly indicates a different meaning  
2 or defined elsewhere in this chapter, as used in this article:

3 (1) "Beneficial use" means the use or reuse of whole  
4 waste tires or tire derived material which are reused in  
5 constructing retaining walls, rebuilding highway shoulders

6 and subbase, building highway crash attenuation barriers and  
7 other civil engineering applications, feed hopper or watering  
8 troughs for livestock, other agricultural uses approved by the  
9 Department of Environmental Protection, playground  
10 equipment, boat or truck dock construction, house or building  
11 construction, go-cart, motorbike or race track barriers,  
12 recapping, alternative daily cover or similar types of  
13 beneficial applications: *Provided*, That waste tires may not be  
14 reused as fencing, as erosion control structures, along stream  
15 banks or river banks or reused in any manner where human  
16 health or the environment, as determined by the Secretary of  
17 the Department of Environmental Protection, is put at risk.

18 (2) "Brand" means the name, symbol, logo, trademark, or  
19 other information that identifies a product rather than the  
20 components of the product.

21 (3) "Collected for commercial purposes" means taking  
22 solid waste for disposal from any person for remuneration  
23 regardless of whether or not the person taking the solid waste  
24 is a common carrier by motor vehicle governed by article  
25 two, chapter twenty-four-a of this code.

26 (4) "Computer" means a desktop, personal computer or  
27 laptop computer, including the computer monitor. Computer  
28 does not include a personal digital assistant device, computer  
29 peripheral devices such as a mouse or other similar pointing  
30 device, a printer or a detachable keyboard.

31 (5) "Court" means any circuit, magistrate or municipal  
32 court.

33 (6) "Covered electronic device" means a television,  
34 computer or video display device with a screen that is greater  
35 than four inches measured diagonally. "Covered electronic  
36 device" does not include a video display device that is part of

37 a motor vehicle or that is contained within a household  
38 appliance or commercial, industrial or medical equipment.

39 (7) "Department" means the Department of  
40 Environmental Protection.

41 (8) "Litter" means all waste material, including, but not  
42 limited to, any garbage, refuse, trash, disposable package,  
43 container, can, bottle, paper, covered electronic devices,  
44 ashes, cigarette or cigar butt, carcass of any dead animal or  
45 any part thereof or any other offensive or unsightly matter,  
46 but not including the wastes of primary processes of mining,  
47 logging, sawmilling, farming or manufacturing.

48 (9) "Litter receptacle" means those containers suitable for  
49 the depositing of litter at each respective public area  
50 designated by the secretary's rules promulgated pursuant to  
51 subsection (e), section three of this article.

52 (10) "Manufacturer" means a person that is the brand  
53 owner of a covered electronic device or television sold or  
54 offered for sale in this state by any means, including  
55 transactions conducted through retail sales outlets, catalogs  
56 or the internet.

57 (11) "Person" means a natural person, corporation, firm,  
58 partnership, association or society and the plural as well as  
59 the singular.

60 (12) "Public area" means an area outside of a  
61 municipality, including public road and highway  
62 rights-of-way, parks and recreation areas owned or controlled  
63 by this state or any county of this state or an area held open  
64 for unrestricted access by the general public.

65 (13) "Recyclable materials" means those materials that  
66 would otherwise become solid waste for disposal in a refuse

67 disposal system and which may be collected, separated or  
68 processed and returned to the marketplace in the form of raw  
69 materials or products.

70 (14) "Remediate or remediation" means to remove all  
71 litter, solid waste and tires located above grade at a site:  
72 *Provided*, That remediation does not include clean up of  
73 hazardous waste.

74 (15) "Television" means any telecommunication system  
75 device that can receive moving pictures and sound broadcast  
76 over a distance and includes a television tuner or a video  
77 display device peripheral to a computer in which the display  
78 contains a television tuner.

79 (16) "Secretary" means the Secretary of the Department  
80 of Environmental Protection.

81 (17) "Video display device" means an electronic device  
82 with an output surface that displays or is capable of  
83 displaying moving graphical images or visual representations  
84 of image sequences or pictures that show a number of quickly  
85 changing images on a screen to create the illusion of motion.  
86 Video display device includes a device that is an integral part  
87 of the display and cannot easily be removed from the display  
88 by the consumer and that produces the moving image on the  
89 screen. A "video display device" may use a cathode-ray tube  
90 (CRT), liquid crystal display (LCD), gas plasma, digital light  
91 processing, other image-projection technology or imaging  
92 display technologies.

93 (18) "Waste tire" means any continuous solid or  
94 pneumatic rubber covering designed to encircle the wheel of  
95 a vehicle but which has been discarded, abandoned or is no  
96 longer suitable for its original, intended purpose nor suitable  
97 for recapping, or other beneficial use because of wear,  
98 damage or defect. A tire is no longer considered to be



99 suitable for its original intended purpose when it fails to meet  
100 the minimum requirements to pass a West Virginia motor  
101 vehicle safety inspection. Used tires located at a commercial  
102 recapping facility or tire dealer for the purpose of being  
103 reused or recapped are not waste tires.

104 (19) "Waste tire monofill or monofill" means an  
105 approved solid waste facility where no solid waste except  
106 waste tires are placed for the purpose of long term storage for  
107 eventual retrieval for marketing purposes.

108 (20) "Waste tire processing facility" means a solid waste  
109 facility or manufacturer that accepts waste tires generated by  
110 sources other than the owner or operator of the facility for  
111 processing by such means as cryogenics, pyrolysis,  
112 pyroprocessing cutting, splitting, shredding, quartering,  
113 grinding or otherwise breaking down waste tires for the  
114 purposes of disposal, reuse, recycling and/or marketing.

115 (21) "Waters of the state" means generally, without  
116 limitation, natural or artificial lakes, rivers, streams, creeks,  
117 branches, brooks, ponds, impounding reservoirs, springs,  
118 wells, watercourses and wetlands.

**§22-15A-5. Litter pickup and removal; education; government  
recycling responsibilities; monitoring and  
evaluation; study commission; repeal; report to  
Legislature.**

1 (a) *Litter pickup and removal.* --

2 (1) Each county commission and the Regional Jail  
3 Authority may establish a jail or prison inmate program  
4 including a regular litter pickup work regimen under proper  
5 supervision pursuant to section four, article fifteen, chapter  
6 seventeen of this code. Funding for these programs shall be  
7 from the Litter Control Fund. Funding requirements may

8 include salaries for additional personnel needed for the  
9 program. The program may include the cooperative help of  
10 the Division of Highways or any other voluntary state, local,  
11 private, civic or public agency for personnel, equipment or  
12 materials in establishing a county or regionwide, continual  
13 program of inmate litter pickup. Upon final approval of the  
14 projected cost of the program for a given fiscal year, the  
15 secretary shall disburse the approved amount to the county or  
16 Regional Jail Authority. The funds will be used by the  
17 Authority to reimburse the county commission or Regional  
18 Jail Authority for its expenses related to the program and to  
19 pay other costs related to the use of inmates for litter pickup.  
20 Nothing contained herein shall preclude a county or counties  
21 from expending whatever additional funds its commission or  
22 commissions may deem appropriate from any other revenue  
23 source in furtherance of said program.

24 (2) All persons involved with litter pickup may separate  
25 identifiable recyclable materials from other litter collected.  
26 The funds resulting from the sale of those recyclable  
27 materials shall be returned to the Litter Control Fund.

28 (3) The county or regional solid waste authority may also  
29 contract with local governments, civic organizations or chief  
30 correctional officers in any county to implement litter pickup  
31 and removal pursuant to this act when the state offender  
32 workforce is not available. In such cases, the contract  
33 provisions shall require that identifiable recyclable materials  
34 shall be separated from other litter collected, with resulting  
35 funds returned to the Litter Control Fund. Priority shall be  
36 given to those contracts that maximize the use of community  
37 service hours by inmates and youth employment programs.

38 (b) *Education.* --

39 (1) The Department of Education in cooperation with the  
40 Department of Environmental Protection shall distribute

41 educational materials to the schools based on the goals of  
42 litter clean up and proper solid waste disposal, the rationale  
43 for the goals and how primary and secondary school students  
44 can contribute to the achievement of the goals. The  
45 Department of Education shall further incorporate this  
46 information into the curriculum of the public school system  
47 as appropriate.

48 (2) The Division of Highways and local governments  
49 shall conduct public awareness programs to notify the public  
50 of the provisions of this law and how they can participate, to  
51 inform them as to the rationale behind the provisions of this  
52 law, to advise them of other avenues for achievement of the  
53 noted goals and to encourage their participation.

54 (3) The Department of Environmental Protection and the  
55 Solid Waste Management Board shall provide technical  
56 assistance to local governments in the implementation of this  
57 law.

58 (c) *Government recycling responsibilities.* --

59 (1) All state agencies and regional planning councils may  
60 establish and implement aluminum container, glass and paper  
61 recycling programs at their public facilities. To the extent  
62 practicable, programs for other metals, plastics, covered  
63 electronic devices, rubber and other recyclable materials may  
64 be established and implemented. The moneys collected from  
65 the sale of such materials shall be deposited and accounted  
66 for in the Litter Control Fund pursuant to the authority of  
67 section four of this article.

68 (2) To further promote recycling and reduction of the  
69 waste stream, county and municipal governments shall  
70 consider the establishment of recycling programs as provided  
71 in this section in the operation of their facilities and shall  
72 evaluate the cost effectiveness of:

73 (A) Procedures that separate identifiable recyclable  
74 materials from solid waste collected; and

75 (B) Programs that provide for:

76 (i) The establishment of a collection place for recyclables  
77 at all landfills and other interim solid waste collection sites  
78 and arrangements for the material collected to be recycled;

79 (ii) Public notification of such places and encouragement  
80 to participate;

81 (iii) The use of rate differentials at landfills to facilitate  
82 public participation in on-site recycling programs.

83 (3) In preparing the recycling plan as required under this  
84 subsection, the county may address methods for the separate  
85 collection and recycling of covered electronic devices,  
86 including efforts by the county with manufacturers, recyclers,  
87 retailers or other local governments for the collection and  
88 recycling of covered electronic devices.

89 (d) Each affected agency and local government shall  
90 monitor and evaluate the programs implemented pursuant to  
91 this law.

92 (e) The secretary shall submit a report to the Speaker of  
93 the House and the President of the Senate not later than the  
94 first day of March, two thousand six, and every five years  
95 thereafter regarding the effectiveness of the programs  
96 authorized by this law.

**§22-15A-24. Covered manufacturers; prohibited sales; effective date.**

1 (a) This section, along with sections twenty-five,  
2 twenty-six, twenty-seven, twenty-eight and twenty-nine of

3 this article apply to a manufacturer that manufactured an  
4 average of more than one thousand covered electronic  
5 devices per year in the three-year period immediately  
6 preceding the initial registration required in section twenty-  
7 five of this article.

8 (b) On or after the first day of July, two thousand nine, a  
9 manufacturer may not sell or lease or offer for sale or lease  
10 to any person in the state a new covered electronic device or  
11 television unless:

12 (1) The covered electronic device is labeled with the  
13 name of the manufacturer or the manufacturer's brand label;  
14 and

15 (2) The manufacturer has registered with and submitted  
16 a registration fee to the secretary as provided in section  
17 twenty-five of this article.

18 (c) If a manufacturer is subject to the requirements of  
19 sections twenty-four, twenty-five and twenty-six of this  
20 article, a retailer may not sell or lease or offer for sale or  
21 lease to any person in the state a new covered electronic  
22 device unless the manufacturer has complied with the  
23 requirements of this section and sections twenty-five and  
24 twenty-six of this article.

**§22-15A-25. Manufacturer registration; registration fees;  
creating the Covered Electronic Devices  
Takeback Fund.**

1 (a) Each manufacturer wishing to sell or lease covered  
2 electronic devices shall register with the secretary no later  
3 than the first day of January, two thousand nine, and each  
4 year thereafter. The secretary shall provide a registration  
5 form which at a minimum shall include:

6 (1) The name, address and telephone number of the  
7 manufacturer;

8 (2) The brand names under which the manufacturer sells  
9 or offers for sale covered electronic devices or televisions in  
10 the state;

11 (3) Whether the manufacturer has implemented a  
12 takeback or recycling program for its covered electronic  
13 devices or televisions or both;

14 (4) If the manufacturer has implemented a takeback or  
15 recycling program for its covered electronic devices, the  
16 manufacturer must provide a toll-free number and website  
17 address that provides information about the takeback or  
18 recycling program, including a detailed description of how a  
19 person may return a covered electronic device for recycling,  
20 refurbishing or reuse.

21 (5) The secretary may request additional information  
22 necessary to further the goals of this program.

23 (b) One year after the implementation of the program and  
24 each year thereafter, the manufacturer must submit a report  
25 to the secretary on the implementation of the program during  
26 the prior year, including:

27 (1) The total weight of covered electronic devices  
28 received by the program from West Virginia during the prior  
29 year;

30 (2) The total number of covered electronic devices from  
31 West Virginia recycled, refurbished and reused during the  
32 prior year either by actual count or by using average product  
33 weights;

34 (3) The processes and methods used to recycle, refurbish  
35 or reuse the covered electronic devices received from West  
36 Virginia; and

37 (4) If the manufacturer has implemented a covered  
38 electronic device or television takeback program, be updated  
39 prior to any significant change in the program.

40 (c) The covered electronic device manufacturer  
41 registration fee is:

42 (1) Ten thousand dollars for the initial registration by the  
43 manufacturer that has not implemented a takeback program  
44 and is due no later than the first day of January, two thousand  
45 nine;

46 (2) Three thousand dollars for the initial registration by  
47 the manufacturer that has implemented a takeback program  
48 and is due no later than the first day of January, two thousand  
49 nine;

50 (3) Five thousand dollars for each subsequent annual  
51 registration by a manufacturer that did not have an  
52 implemented covered electronic device takeback program in  
53 the prior year; and

54 (4) Five hundred for each subsequent annual registration  
55 by a manufacturer that had implemented and maintained a  
56 covered electronic device takeback program in the prior year.

57 (d) All registration fees collected shall be deposited in a  
58 special account in the State Treasury to be known as the  
59 Covered Electronic Devices Takeback Fund which is to be  
60 administered by the secretary. Expenditures from the fund  
61 shall be for recycling grants to counties and municipalities  
62 for recycling or other programs that divert covered electronic  
63 devices from the waste stream and for the secretary's

64 administrative expense in administering the requirements of  
65 sections twenty-four, twenty-five, twenty-six, twenty-seven  
66 and twenty-eight of this article. Expenditures are not  
67 authorized from collections but are to be made only in  
68 accordance with the appropriation by the Legislature and in  
69 accordance with the provisions of article three, chapter  
70 twelve of this code and upon fulfillment of the provisions of  
71 article two, chapter eleven-b of this code: *Provided*, That for  
72 the fiscal year ending the thirtieth day of June, two thousand  
73 nine, expenditures are authorized from collections rather than  
74 pursuant to appropriation by the Legislature.

75 (e) The secretary shall review the registration submitted  
76 under this section. If the registration does not meet the  
77 requirements of this section and the rules adopted by the  
78 secretary, the secretary shall notify the manufacturer of the  
79 insufficiency.

80 (f) Within sixty days after receipt of a notice of  
81 insufficiency, the manufacturer shall submit a revised  
82 registration that addresses the insufficiencies noted by the  
83 secretary.

84 (g) The secretary shall maintain a list of registered  
85 covered electronic device manufacturers.

86 (h) The secretary shall publish the list of registered  
87 covered electronic device manufacturers online to provide  
88 retailers easy access to the manufacturers authorized to sell  
89 their products in this state.

### **§22-15A-26. Manufacturers' takeback programs.**

1 (a) Before a manufacturer may offer a covered electronic  
2 device for sale or lease in this state, the manufacturer may:

3 (1) Adopt and implement a takeback program; and



4       (2) Affix a permanent, readily visible label to the covered  
5 electronic device or television with the manufacturer's brand.

6       (b) The takeback program shall enable a consumer to  
7 recycle covered electronic devices or televisions without  
8 paying a separate recycling fee at the time of recycling and  
9 shall include provisions for:

10       (1) The manufacturer's collection from a consumer of  
11 any covered electronic device that has reached the end of its  
12 useful life and is labeled with the manufacturer's brand; and

13       (2) Recycling or reuse of covered electronic devices  
14 collected under subdivision (1) of this section.

15       (c) The collection of covered electronic devices provided  
16 under the takeback program must be reasonable, convenient  
17 and available to consumers in the state and designed to meet  
18 the collection needs of consumers in the state. Examples of  
19 collection methods that alone or combined meet the  
20 convenience requirements of this section include:

21       (1) A system by which the manufacturer or the  
22 manufacturer's designee offers the consumer a system for  
23 returning covered electronic devices by mail at no charge to  
24 the consumer.

25       (2) A system using a physical collection site that the  
26 manufacturer or the manufacturer's designee operates and to  
27 which the consumer may return covered electronic devices.

28       (3) A system using collection events held by the  
29 manufacturer or the manufacturer's designee at which the  
30 consumer may return covered electronic devices.

31       (d) Collection services under this section may use  
32 existing collection infrastructure for handling covered

33 electronic devices and should encourage the inclusion of  
34 systems jointly managed by a group of manufacturers,  
35 electronic recyclers and repair shops, recyclers of other  
36 commodities, reuse organizations, not-for-profit corporations,  
37 retailers, recyclers and other suitable operations. If a  
38 manufacturer or its designee offers a mail-back system as  
39 described in this section, either individually, by working  
40 together with a group of manufacturers or by working with  
41 others, it shall be deemed to meet the convenience  
42 requirements of this section.

43 (e) The takeback program shall include information for  
44 the consumer on how and where to return the manufacturer's  
45 covered electronic device. The manufacturer shall include  
46 collection, recycling and reuse information on the  
47 manufacturer's publicly available website. The manufacturer  
48 shall provide collection, recycling and reuse information to  
49 the secretary. The manufacturer may include collection,  
50 recycling and reuse information in the packaging or in the  
51 other materials that accompany the manufacturer's covered  
52 electronic devices when the equipment is sold.

53 (f) If more than one person is a manufacturer of a certain  
54 brand of covered electronic devices as defined in section two  
55 of this article, any of those persons may assume  
56 responsibility for and satisfy the obligations of a  
57 manufacturer under this article for that brand. If none of  
58 those persons assumes responsibility or satisfies the  
59 obligations of a manufacturer for the covered electronic  
60 devices of that brand, the secretary may consider any of those  
61 persons to be the responsible manufacturer for purposes of  
62 sections twenty-four, twenty-five, twenty-six, and twenty-  
63 seven of this article.

**§22-15A-27. Civil actions and administrative fines; powers and duties of secretary.**

1 (a) *Civil action.* — In addition to being subject to  
2 injunctive relief under this article, a manufacturer who  
3 violates any provision of section twenty-four or twenty-five  
4 of this article or of any rule adopted pursuant to section  
5 twenty-four or twenty-five of this article is liable for a civil  
6 penalty not to exceed ten thousand dollars to be collected in  
7 a civil action brought by the secretary. Venue for such  
8 actions shall be in the circuit court of Kanawha County.  
9 Each day a violation occurs is a separate violation.

10 (b) *Administrative action.* — (1) In addition to any other  
11 remedies available at law and after an opportunity for a  
12 hearing which may be waived in writing by the person  
13 accused of a violation, the secretary may impose a penalty for  
14 violation of any provision of section twenty-four or  
15 twenty-five of this article or any rule adopted thereunder.  
16 The secretary's decision may be appealed to the  
17 Environmental Quality Board.

18 (2) The penalty imposed on a person under this  
19 subsection shall be up to one thousand dollars for each  
20 violation, but not to exceed a total of fifty thousand dollars a  
21 year. Each day a violation occurs is a separate violation  
22 under this subsection.

23 (3) Any penalty imposed under this subsection is payable  
24 to the State of West Virginia and collectible in any manner  
25 provided by law for the collection of debts.

26 (4) Any penalty collected under this section shall be  
27 placed in the Covered Electronic Devices Takeback Fund.

28 (c) *Powers and duties of secretary.* — The secretary may  
29 conduct audits and inspections to determine compliance with  
30 the provisions of sections twenty-four and twenty-five of this  
31 article and may take enforcement action as provided herein.  
32 The secretary may remove a manufacturer from the

33 registration list for failure to pay any penalty imposed under  
34 this section and upheld on appeal.

**§22-15A-28. Retailer penalties.**

1 (a) The secretary may assess against any retailer that sells  
2 covered electronic devices not authorized for sale in this state  
3 a penalty up to five hundred dollars for each violation, but  
4 not to exceed five thousand dollars total for the year. The  
5 secretary's decision may be appealed to the Environmental  
6 Quality Board.

7 (b) A fine under subsection (a) of this section may be  
8 assessed only after the retailer that committed the violation  
9 has been issued three warnings from the secretary regarding  
10 the violation.

11 (c) Each day on which a violation occurs or continues is  
12 a separate violation under this section.

13 (d) All penalties assessed under this section shall be  
14 deposited into the Covered Electronic Devices Takeback  
15 Fund.

**§22-15A-29. Rulemaking.**

1 The secretary shall propose for promulgation emergency  
2 and legislative rules in accordance with the provisions of  
3 article three, chapter twenty-nine-a of this code necessary to  
4 implement the provisions of sections twenty-four through  
5 twenty-eight, inclusive, of this article by the first day of  
6 January, two thousand nine.

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## CHAPTER 101

**(H.B. 4038 - By Delegates Morgan, Martin, Argento, Beach, Caputo, Hartman, D. Poling, Staggers, Swartzmiller, Canterbury and Rowan)**

[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §21-3C-1, §21-3C-2, §21-3C-7, §21-3C-8, §21-3C-11 and §21-3C-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21-3C-10a, all relating to the Elevator Safety Act; requiring annual inspections of elevators; requiring elevator mechanics to be licensed by the Division of Labor; authorizing legislative rules; providing for fees; and providing civil and criminal penalties for noncompliance.

*Be it enacted by the Legislature of West Virginia:*

That §21-3C-1, §21-3C-2, §21-3C-7, §21-3C-8, §21-3C-11 and §21-3C-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §21-3C-10a, all to read as follows:

### **ARTICLE 3C. ELEVATOR SAFETY.**

- §21-3C-1. Definitions.
- §21-3C-2. Inspectors; application; certificates of competency.
- §21-3C-7. Safety equipment.
- §21-3C-8. Certificate of operation; renewal.
- §21-3C-10a. License requirements for elevator mechanics; contractors license required; supervision of elevator apprentices required.
- §21-3C-11. Disposition of fees; legislative rules.
- §21-3C-12. Penalties.

**§21-3C-2. Inspectors; application; certificates of competency.**

1 (a) No person may serve as an inspector unless he or she  
2 successfully completes the examination for Qualified  
3 Elevator Inspector (QEI) from an examination organization  
4 approved by the commissioner and holds a certificate of  
5 competency for elevator inspections issued by the division.

6 (b) The application for elevator inspector shall be in  
7 writing, accompanied by a fee of ten dollars, upon a form  
8 furnished by the division. The applicant shall state his or her  
9 level of education, previous employers, the period of  
10 employment, the position held with each employer, and  
11 other information required by the division. The applicant  
12 shall also submit a copy of his or her QEI card, and a letter  
13 from one of his or her previous employers concerning his or  
14 her character and experience.

15 (c) Applications which contain any willfully submitted  
16 false or untrue information shall be rejected.

17 (d) The division shall issue a certificate of competency  
18 for elevator inspections to an applicant who successfully  
19 completes the examination and who complies with the  
20 requirements of this article and legislative rules promulgated  
21 by the division.

22 (e) Any person hired as a private inspector by a county or  
23 municipality shall possess a certificate of competency issued  
24 by the division.

25 (f) The division may hire division inspectors or enter into  
26 a contract for the services of a division inspector so long as  
27 the inspector has been certified competent by the division.  
28 The division may hire an inspector supervisor who shall  
29 supervise the inspection activities under this article.

**§21-3C-7. Safety equipment.**

1 Every passenger elevator shall be equipped, maintained  
2 and operated in a safe manner in accordance with legislative  
3 rules promulgated by the division as authorized by this  
4 article.

**§21-3C-8. Certificate of operation; renewal.**

1 A certificate of operation for any elevator may not be  
2 issued until the elevator has been inspected for safety and the  
3 inspection report filed with the division. The certificate of  
4 operation shall list the date of inspection and shall expire one  
5 year after the date of inspection. The certificate of operation  
6 shall be conspicuously posted in the elevator at all times. An  
7 expired certificate of operation shall be renewed in the  
8 manner that the prior certificate was obtained.

**§21-3C-10a. License requirements for elevator mechanics;  
contractors license required; supervision of  
elevator apprentices required.**

1 (a) On and after the first day of January, two thousand  
2 ten, no person may engage or offer to engage in the business  
3 of erecting, constructing, installing, altering, servicing,  
4 repairing or maintaining elevators or related conveyances  
5 covered by this article in this state, unless he or she has a  
6 license issued by the Commissioner of Labor in accordance  
7 with the provisions of this article.

8 (b) A person licensed under this article must:

9 (1) Have in his or her possession a copy of the license  
10 issued pursuant to this article on any job on which he or she  
11 is performing elevator mechanic work; and

12 (2) Be, or be employed by, a contractor licensed pursuant  
13 to the provisions of article eleven, chapter twenty-one of this  
14 code.

15 (c) An elevator apprentice may work only under the  
16 direct supervision of a licensed elevator mechanic, as set  
17 forth in legislative rules promulgated pursuant to this article.

**§21-3C-11. Disposition of fees; legislative rules.**

1 (a) The division shall propose rules for legislative  
2 approval in accordance with the provisions of article three,  
3 chapter twenty-nine-a of this code, for the implementation  
4 and enforcement of the provisions of this article, which shall  
5 provide:

6 (1) Standards, qualifications and procedures for  
7 submitting applications, taking examinations, and issuing and  
8 renewing licenses, certificates of competency and certificates  
9 of operation;

10 (2) Qualifications and supervision requirements for  
11 elevator apprentices;

12 (3) Provisions for the granting of licenses without  
13 examination, to applicants who present satisfactory evidence  
14 of having the expertise required to perform work as defined  
15 in this article and who apply for licensure on or before the  
16 first day of July, two thousand ten: *Provided*, That if a  
17 license issued under the authority of this subsection  
18 subsequently lapses, the applicant may, at the discretion of  
19 the commissioner, be subject to all licensure requirements,  
20 including the examination;

21 (4) Provisions for the granting of emergency licenses in  
22 the event of an emergency due to disaster, act of God or work  
23 stoppage when the number of persons in the state holding



24 licenses issued pursuant to this article is insufficient to cope  
25 with the emergency;

26 (5) Provisions for the granting of temporary licenses in  
27 the event that there are no elevator mechanics available to  
28 engage in the work of an elevator mechanic as defined by this  
29 article;

30 (6) Continuing education requirements;

31 (7) Reciprocity provisions;

32 (8) Procedures for investigating complaints and revoking  
33 or suspending licenses, certificates of competency and  
34 certificates of operation, including appeal procedures;

35 (9) Fees for testing, issuance and renewal of licenses,  
36 certificates of competency and certificates of operation, and  
37 other costs necessary to administer the provisions of this  
38 article;

39 (10) Enforcement procedures; and

40 (11) Any other rules necessary to effectuate the purposes  
41 of this article.

42 (b) The rules proposed for promulgation pursuant to  
43 subsection (a) of this section shall establish the amount of  
44 any fee authorized pursuant to the provisions of this article:  
45 *Provided*, That in no event may the fees established for the  
46 issuance of certificates of operation exceed fifty dollars.

47 (c) All fees collected pursuant to the provisions of this  
48 article shall be deposited in an appropriated special revenue  
49 account hereby created in the State Treasury known as the  
50 "Elevator Safety Fund" and expended for the implementation  
51 and enforcement of this article: *Provided*, That amounts

52 collected which are found from time to time to exceed funds  
53 needed for the purposes set forth in this article may be  
54 transferred to other accounts or funds and redesignated for  
55 other purposes by appropriation of the Legislature.

56 (d) The division may enter into agreements with counties  
57 and municipalities whereby such counties and municipalities  
58 be permitted to retain the inspection fees collected to support  
59 the enforcement activities at the local level.

60 (e) The commissioner and his or her deputy  
61 commissioner or any compliance officer of the division as  
62 authorized by the commissioner may consult with  
63 engineering authorities and organizations concerned with  
64 standard safety codes, rules and regulations governing the  
65 operation, maintenance, servicing, construction, alteration,  
66 installation and the qualifications which are adequate,  
67 reasonable and necessary for the elevator mechanic and  
68 inspector.

### **§21-3C-12. Penalties.**

1 (a) On and after the first day of January, two thousand  
2 ten, the commissioner may issue a cease and desist order to  
3 any person engaging in the business of erecting, constructing,  
4 installing, altering, servicing, repairing or maintaining  
5 elevators or related conveyances covered by this article in  
6 this state without a license, or inspecting elevators or related  
7 conveyances covered by this article without a certificate of  
8 competency, or operating an elevator or related conveyance  
9 covered by this article without a certificate of operation.

10 (b) Any person who violates a cease and desist order is  
11 guilty of a misdemeanor and, upon conviction thereof, is  
12 subject to the following penalties:

13 (1) For the first offense, a fine of not less than two  
14 hundred dollars nor more than one thousand dollars;

15 (2) For the second offense, a fine of not less than five  
16 hundred dollars nor more than two thousand dollars, or  
17 confinement in jail for not more than six months, or both;

18 (3) For the third and subsequent offenses, a fine of not  
19 less than one thousand dollars nor more than five thousand  
20 dollars, and confinement in jail for not less than thirty days  
21 nor more than one year.

22 (c) Each day that a person violates a cease and desist  
23 order or is otherwise not in compliance with the provisions of  
24 this article constitutes a separate offense.

25 (d) The Commissioner of Labor may institute  
26 proceedings in the circuit court of the county where the  
27 alleged violation of the provisions of this article occurred or  
28 are occurring to enjoin any violation of any provision of this  
29 article. A circuit court by injunction may compel compliance  
30 with the provisions of this article, with the lawful orders of  
31 the Commissioner of Labor and with any final decision of the  
32 Commissioner of Labor. The Commissioner of Labor shall be  
33 represented in all such proceedings by the Attorney General  
34 or his or her assistants.

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## CHAPTER 102

**(S.B. 503 - By Senators Fanning, Kessler, Foster, Bailey,  
Wells, White, Plymale and McKenzie)**

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[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

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AN ACT to amend and reenact §22-1-6 of the Code of West Virginia, 1931, as amended, relating to authorizing the Secretary of the Department of Environmental Protection to

require solid waste facility permit applicants and specified others connected with applicants and permittees to furnish fingerprints for the purpose of conducting state and federal criminal history checks.

*Be it enacted by the Legislature of West Virginia:*

That §22-1-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.**

**§22-1-6. Secretary of the Department of Environmental Protection.**

1 (a) The secretary is the chief executive officer of the  
2 department. Subject to section seven of this article and other  
3 provisions of law, the secretary shall organize the department  
4 into such offices, sections, agencies and other units of  
5 activity as may be found by the secretary to be desirable for  
6 the orderly, efficient and economical administration of the  
7 department and for the accomplishment of its objects and  
8 purposes. The secretary may appoint a deputy secretary,  
9 chief of staff, assistants, hearing officers, clerks,  
10 stenographers and other officers, technical personnel and  
11 employees needed for the operation of the department and  
12 may prescribe their powers and duties and fix their  
13 compensation within amounts appropriated.

14 (b) The secretary has the power to and may designate  
15 supervisory officers or other officers or employees of the  
16 department to substitute for him or her on any board or  
17 commission established under this code or to sit in his or her  
18 place in any hearings, appeals, meetings or other activities  
19 with such substitute having the same powers, duties,  
20 authority and responsibility as the secretary. The secretary

21 has the power to delegate, as he or she considers appropriate,  
22 to supervisory officers or other officers or employees of the  
23 department his or her powers, duties, authority and  
24 responsibility relating to issuing permits, hiring and training  
25 inspectors and other employees of the department,  
26 conducting hearings and appeals and such other duties and  
27 functions set forth in this chapter or elsewhere in this code.

28 (c) The secretary has responsibility for the conduct of the  
29 intergovernmental relations of the department, including  
30 assuring:

31 (1) That the department carries out its functions in a  
32 manner which supplements and complements the  
33 environmental policies, programs and procedures of the  
34 federal government, other state governments and other  
35 instrumentalities of this state; and

36 (2) That appropriate officers and employees of the  
37 department consult with individuals responsible for making  
38 policy relating to environmental issues in the federal  
39 government, other state governments and other  
40 instrumentalities of this state concerning differences over  
41 environmental policies, programs and procedures and  
42 concerning the impact of statutory law and rules upon the  
43 environment of this state.

44 (d) In addition to other powers, duties and responsibilities  
45 granted and assigned to the secretary by this chapter, the  
46 secretary is authorized and empowered to:

47 (1) Sign and execute in the name of the state by the  
48 Department of Environmental Protection any contract or  
49 agreement with the federal government or its departments or  
50 agencies, subdivisions of the state, corporations, associations,  
51 partnerships or individuals: *Provided*, That the powers  
52 granted to the secretary to enter into agreements or contracts

53 and to make expenditures and obligations of public funds  
54 under this subdivision may not exceed or be interpreted as  
55 authority to exceed the powers granted by the Legislature to  
56 the various commissioners, directors or board members of the  
57 various departments, agencies or boards that comprise and  
58 are incorporated into each secretary's department pursuant to  
59 the provisions of chapter five-f of this code;

60 (2) Conduct research in improved environmental  
61 protection methods and disseminate information to the  
62 citizens of this state;

63 (3) Enter private lands to make surveys and inspections  
64 for environmental protection purposes; to investigate for  
65 violations of statutes or rules which the department is  
66 charged with enforcing; to serve and execute warrants and  
67 processes; to make arrests; issue orders, which for the  
68 purposes of this chapter include consent agreements; and to  
69 otherwise enforce the statutes or rules which the department  
70 is charged with enforcing;

71 (4) Require any applicant or holder of a permit to install,  
72 establish, modify, operate or close a solid waste facility to  
73 furnish the fingerprints of the applicant or permittee; any  
74 officer, director or manager of the applicant or permittee; any  
75 person owning a five percent or more interest, beneficial or  
76 otherwise, in the applicant's or permittee's business; or any  
77 other person conducting or managing the affairs of the  
78 applicant or permittee or of the proposed licensed premises,  
79 in whole or in part. These fingerprints may be used to obtain  
80 and review any police record for the purposes set may be  
81 relevant pursuant to section five, article fifteen of this  
82 chapter, and to use the fingerprints furnished to conduct a  
83 criminal records check through the Criminal Identification  
84 Bureau of the West Virginia State Police and a national  
85 criminal history check through the Federal Bureau of  
86 Investigation. The results of the checks shall be provided to  
87 the secretary.

88 (5) Acquire for the state in the name of the Department of  
89 Environmental Protection by purchase, condemnation, lease  
90 or agreement, or accept or reject for the state, in the name of  
91 the Department of Environmental Protection, gifts, donations,  
92 contributions, bequests or devises of money, security or  
93 property, both real and personal, and any interest in property;

94 (6) Provide for workshops, training programs and other  
95 educational programs, apart from or in cooperation with other  
96 governmental agencies, necessary to ensure adequate  
97 standards of public service in the department. The secretary  
98 may provide for technical training and specialized instruction  
99 of any employee. Approved educational programs, training  
100 and instruction time may be compensated for as a part of  
101 regular employment. The secretary is authorized to pay out  
102 of federal or state funds, or both, as such funds are available,  
103 fees and expenses incidental to the educational programs,  
104 training and instruction. Eligibility for participation by  
105 employees shall be in accordance with guidelines established  
106 by the secretary;

107 (7) Issue certifications required under 33 U. S. C. §1341  
108 of the federal Clean Water Act and enter into agreements in  
109 accordance with the provisions of section seven-a, article  
110 eleven of this chapter. Prior to issuing any certification the  
111 secretary shall solicit from the Division of Natural Resources  
112 reports and comments concerning the possible certification.  
113 The Division of Natural Resources shall direct the reports  
114 and comments to the secretary for consideration; and

115 (8) Notwithstanding any provisions of this code to the  
116 contrary, employ in-house counsel to perform all legal  
117 services for the secretary and the department, including, but  
118 not limited to, representing the secretary, any chief, the  
119 department or any office thereof in any administrative  
120 proceeding or in any proceeding in any state or federal court.  
121 Additionally, the secretary may call upon the Attorney

122 General for legal assistance and representation as provided by  
123 law.

124 (e) The secretary shall be appointed by the Governor, by  
125 and with the advice and consent of the Senate, and serves at  
126 the will and pleasure of the Governor.

127 (f) At the time of his or her initial appointment, the  
128 secretary must be at least thirty years old and shall be  
129 selected with special reference and consideration given to his  
130 or her administrative experience and ability, to his or her  
131 demonstrated interest in the effective and responsible  
132 regulation of the energy industry and the conservation and  
133 wise use of natural resources. The secretary must have at  
134 least a bachelor's degree in a related field and at least three  
135 years of experience in a position of responsible charge in at  
136 least one discipline relating to the duties and responsibilities  
137 for which the secretary will be responsible upon assumption  
138 of the office. The secretary may not be a candidate for or  
139 hold any other public office, may not be a member of any  
140 political party committee and shall immediately forfeit and  
141 vacate his or her office as secretary in the event he or she  
142 becomes a candidate for or accepts appointment to any other  
143 public office or political party committee.

144 (g) The secretary shall receive an annual salary as  
145 provided in section two-a, article seven, chapter six of this  
146 code and is allowed and shall be paid necessary expenses  
147 incident to the performance of his or her official duties. Prior  
148 to the assumption of the duties of his or her office, the  
149 secretary shall take and subscribe to the oath required of  
150 public officers prescribed by section five, article IV of the  
151 Constitution of West Virginia and shall execute a bond, with  
152 surety approved by the Governor, in the penal sum of ten  
153 thousand dollars, which executed oath and bond will be filed  
154 in the Office of the Secretary of State. Premiums on the bond  
155 shall be paid from the department funds.





## CHAPTER 103

(Com. Sub. for S.B. 751 - By Senator McCabe)

[Passed March 6, 2008; in effect July 1, 2008.]  
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to the special reclamation tax; continuing the Special Reclamation Fund; establishing the Special Reclamation Water Trust Fund; continuing and reimposing a tax on clean coal mined for deposit into both funds; providing for the investment of moneys thereby deposited; requiring the secretary to look at alternative programs; and authorizing secretary to promulgate legislative rules implementing the alternative programs.

*Be it enacted by the Legislature of West Virginia:*

That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

#### **§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.**

- 1 (a) After a surface mining permit application has been
- 2 approved pursuant to this article, but before a permit has been
- 3 issued, each operator shall furnish a penal bond, on a form to
- 4 be prescribed and furnished by the secretary, payable to the

5 State of West Virginia and conditioned upon the operator  
6 faithfully performing all of the requirements of this article  
7 and of the permit. The penal amount of the bond shall be not  
8 less than one thousand dollars nor more than five thousand  
9 dollars for each acre or fraction of an acre: *Provided*, That  
10 the minimum amount of bond furnished for any type of  
11 reclamation bonding shall be ten thousand dollars. The bond  
12 shall cover: (1) The entire permit area; or (2) that increment  
13 of land within the permit area upon which the operator will  
14 initiate and conduct surface mining and reclamation  
15 operations within the initial term of the permit. If the  
16 operator chooses to use incremental bonding, as succeeding  
17 increments of surface mining and reclamation operations are  
18 to be initiated and conducted within the permit area, the  
19 operator shall file with the secretary an additional bond or  
20 bonds to cover the increments in accordance with this  
21 section: *Provided, however*, That once the operator has  
22 chosen to proceed with bonding either the entire permit area  
23 or with incremental bonding, the operator shall continue  
24 bonding in that manner for the term of the permit.

25 (b) The period of liability for bond coverage begins with  
26 issuance of a permit and continues for the full term of the  
27 permit plus any additional period necessary to achieve  
28 compliance with the requirements in the reclamation plan of  
29 the permit.

30 (c)(1) The form of the bond shall be approved by the  
31 secretary and may include, at the option of the operator,  
32 surety bonding, collateral bonding (including cash and  
33 securities), establishment of an escrow account, self-bonding  
34 or a combination of these methods. If collateral bonding is  
35 used, the operator may elect to deposit cash or collateral  
36 securities or certificates as follows: Bonds of the United  
37 States or its possessions of the Federal Land Bank or of the  
38 Homeowners' Loan Corporation; full faith and credit general  
39 obligation bonds of the State of West Virginia or other states

40 and of any county, district or municipality of the State of  
41 West Virginia or other states; or certificates of deposit in a  
42 bank in this state, which certificates shall be in favor of the  
43 department. The cash deposit or market value of the  
44 securities or certificates shall be equal to or greater than the  
45 penal sum of the bond. The secretary shall, upon receipt of  
46 any deposit of cash, securities or certificates, promptly place  
47 the same with the Treasurer of the State of West Virginia  
48 whose duty it is to receive and hold the deposit in the name  
49 of the state in trust for the purpose for which the deposit is  
50 made when the permit is issued. The operator making the  
51 deposit is entitled, from time to time, to receive from the  
52 State Treasurer, upon the written approval of the secretary,  
53 the whole or any portion of any cash, securities or certificates  
54 so deposited, upon depositing with him or her in lieu thereof  
55 cash or other securities or certificates of the classes specified  
56 in this subsection having value equal to or greater than the  
57 sum of the bond.

58 (2) The secretary may approve an alternative bonding  
59 system if it will: (A) Reasonably assure that sufficient funds  
60 will be available to complete the reclamation, restoration and  
61 abatement provisions for all permit areas which may be in  
62 default at any time; and (B) provide a substantial economic  
63 incentive for the permittee to comply with all reclamation  
64 provisions.

65 (d) The secretary may accept the bond of the applicant  
66 itself without separate surety when the applicant  
67 demonstrates to the satisfaction of the secretary the existence  
68 of a suitable agent to receive service of process and a history  
69 of financial solvency and continuous operation sufficient for  
70 authorization to self-insure.

71 (e) It is unlawful for the owner of surface or mineral  
72 rights to interfere with the present operator in the discharge

73 of the operator's obligations to the state for the reclamation of  
74 lands disturbed by the operator.

75 (f) All bond releases shall be accomplished in accordance  
76 with the provisions of section twenty-three of this article.

77 (g) The Special Reclamation Fund previously created is  
78 continued. The Special Reclamation Water Trust Fund is  
79 created within the State Treasury into and from which  
80 moneys shall be paid for the purpose of assuring a reliable  
81 source of capital to reclaim and restore water treatment  
82 systems on forfeited sites. The moneys accrued in both  
83 funds, any interest earned thereon and yield from investments  
84 by the State Treasurer or West Virginia Investment  
85 Management Board are reserved solely and exclusively for  
86 the purposes set forth in this section and section seventeen,  
87 article one of this chapter. The funds shall be administered  
88 by the secretary who is authorized to expend the moneys in  
89 both funds for the reclamation and rehabilitation of lands  
90 which were subjected to permitted surface mining operations  
91 and abandoned after the third day of August, one thousand  
92 nine hundred seventy-seven, where the amount of the bond  
93 posted and forfeited on the land is less than the actual cost of  
94 reclamation, and where the land is not eligible for abandoned  
95 mine land reclamation funds under article two of this chapter.  
96 The secretary shall develop a long-range planning process for  
97 selection and prioritization of sites to be reclaimed so as to  
98 avoid inordinate short-term obligations of the assets in both  
99 funds of such magnitude that the solvency of either is  
100 jeopardized. The secretary may use both funds for the  
101 purpose of designing, constructing and maintaining water  
102 treatment systems when they are required for a complete  
103 reclamation of the affected lands described in this subsection.  
104 The secretary may also expend an amount not to exceed ten  
105 percent of the total annual assets in both funds to implement  
106 and administer the provisions of this article and, as they

107 apply to the Surface Mine Board, articles one and four,  
108 chapter twenty-two-b of this code.

109 (h)(1) For tax periods commencing on and after the first  
110 day of July, two thousand eight, every person conducting  
111 coal surface mining shall remit a special reclamation tax as  
112 follows: (A) For the initial period of twelve months, ending  
113 the thirtieth day of June, two thousand nine, seven and  
114 four-tenths cents per ton of clean coal mined, the proceeds of  
115 which shall be allocated by the secretary for deposit in the  
116 Special Reclamation Fund and the Special Reclamation  
117 Water Trust Fund; (B) an additional seven cents per ton of  
118 clean coal mined, the proceeds of which shall be deposited in  
119 the Special Reclamation Fund. The tax shall be levied upon  
120 each ton of clean coal severed or clean coal obtained from  
121 refuse pile and slurry pond recovery or clean coal from other  
122 mining methods extracting a combination of coal and waste  
123 material as part of a fuel supply. The additional seven-cent  
124 tax shall be reviewed and, if necessary, adjusted annually by  
125 the Legislature upon recommendation of the council pursuant  
126 to the provisions of section seventeen, article one of this  
127 chapter: *Provided*, That the tax may not be reduced until the  
128 Special Reclamation Fund and Special Reclamation Water  
129 Trust Fund have sufficient moneys to meet the reclamation  
130 responsibilities of the state established in this section.

131 (2) In managing the Special Reclamation Program, the  
132 secretary shall: (A) Pursue cost-effective alternative water  
133 treatment strategies; and (B) conduct formal actuarial studies  
134 every two years and conduct informal reviews annually on  
135 the Special Reclamation Fund and Special Reclamation  
136 Water Trust Fund.

137 (3) Prior to the thirty-first day of December, two  
138 thousand eight, the secretary shall:

139 (A) Determine the feasibility of creating an alternate  
140 program, on a voluntary basis, for financially sound operators  
141 by which those operators pay an increased tax into the  
142 Special Reclamation Fund in exchange for a maximum per-  
143 acre bond that is less than the maximum established in  
144 subsection (a) of this section;

145 (B) Determine the feasibility of creating an incremental  
146 bonding program by which operators can post a reclamation  
147 bond for those areas actually disturbed within a permit area,  
148 but for less than all of the proposed disturbance and obtain  
149 incremental release of portions of that bond as reclamation  
150 advances so that the released bond can be applied to  
151 approved future disturbance; and

152 (C) Determine the feasibility for sites requiring water  
153 reclamation by creating a separate water reclamation security  
154 account or bond for the costs so that the existing reclamation  
155 bond in place may be released to the extent it exceeds the  
156 costs of water reclamation.

157 (4) If the secretary determines that the alternative  
158 program, the incremental bonding program or the water  
159 reclamation account or bonding programs reasonably assure  
160 that sufficient funds will be available to complete the  
161 reclamation of a forfeited site and that the Special  
162 Reclamation Fund will remain fiscally stable, the secretary is  
163 authorized to propose legislative rules in accordance with  
164 article three, chapter twenty-nine-a of this code to implement  
165 an alternate program, a water reclamation account or bonding  
166 program or other funding mechanisms or a combination  
167 thereof.

168 (i) This special reclamation tax shall be collected by the  
169 State Tax Commissioner in the same manner, at the same  
170 time and upon the same tonnage as the minimum severance  
171 tax imposed by article twelve-b, chapter eleven of this code

172 is collected: *Provided*, That under no circumstance shall the  
173 special reclamation tax be construed to be an increase in  
174 either the minimum severance tax imposed by said article or  
175 the severance tax imposed by article thirteen of said chapter.

176 (j) Every person liable for payment of the special  
177 reclamation tax shall pay the amount due without notice or  
178 demand for payment.

179 (k) The Tax Commissioner shall provide to the secretary  
180 a quarterly listing of all persons known to be delinquent in  
181 payment of the special reclamation tax. The secretary may  
182 take the delinquencies into account in making determinations  
183 on the issuance, renewal or revision of any permit.

184 (l) The Tax Commissioner shall deposit the moneys  
185 collected with the Treasurer of the State of West Virginia to  
186 the credit of the Special Reclamation Fund and Special  
187 Reclamation Water Trust Fund.

188 (m) At the beginning of each quarter, the secretary shall  
189 advise the State Tax Commissioner and the Governor of the  
190 assets, excluding payments, expenditures and liabilities, in  
191 both funds.

192 (n) To the extent that this section modifies any powers,  
193 duties, functions and responsibilities of the department that  
194 may require approval of one or more federal agencies or  
195 officials in order to avoid disruption of the federal-state  
196 relationship involved in the implementation of the Federal  
197 Surface Mining Control and Reclamation Act, 30 U. S.  
198 C. §1270 by the state, the modifications will become effective  
199 upon the approval of the modifications by the appropriate  
200 federal agency or official.

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## CHAPTER 104

**(S.B. 706 - By Senators Bowman, Fanning, Foster and McKenzie)**

[Passed March 7, 2008; in effect ninety days from passage.]  
 [Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §22-6-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-21-14 of said code, all relating to clarifying the procedures for the placement of a liner through mined-out coal horizons.

*Be it enacted by the Legislature of West Virginia:*

That §22-6-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-21-14 of said code be amended and reenacted, all to read as follows:

**Article**

- 6. Office of Oil and Gas; Oil and Gas wells; Administration; Enforcement.**
- 21. Coalbed Methane Wells and Units.**

**ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS  
WELLS; ADMINISTRATION;  
ENFORCEMENT.**

**§22-6-20. Same -- When well is drilled through horizon of  
coalbed from which coal has been removed.**

- 1       When a well is drilled through the horizon of a coalbed
- 2       from which the coal has been removed, the hole shall be
- 3       drilled at least thirty feet below the coalbed, of a size
- 4       sufficient to permit the placing of a liner which shall start not
- 5       less than twenty feet beneath the horizon of the coalbed and
- 6       extend not less than twenty feet above it. Within this liner,



7 which may be welded to the casing to be used, shall be  
8 centrally placed the largest-sized casing to be used in the well  
9 and the space between the liner and casing shall be filled with  
10 cement as they are lowered into the hole. Cement shall be  
11 placed in the bottom of the hole to a depth of twenty feet to  
12 form a sealed seat for both liner and casing: *Provided*, That  
13 the liner may extend back to the surface and serve as the  
14 freshwater or coal protection casing, if done in accordance  
15 with sections eighteen and twenty-one of this article, as  
16 applicable. If the liner is constructed in this manner, the next  
17 string of casing to be run into the well shall extend at least  
18 twenty feet below the coalbed. Cement shall be placed  
19 between that string of casing and the liner from the bottom of  
20 the casing to a point at least twenty feet above the coalbed.  
21 Following the setting of the liner, drilling shall proceed in the  
22 manner provided above. Should it be found necessary to drill  
23 through the horizon of two or more workable coalbeds from  
24 which the coal has been removed, the liner shall be started  
25 not less than twenty feet below the lowest horizon penetrated  
26 and shall extend to a point not less than twenty feet above the  
27 highest horizon.

## ARTICLE 21. COALBED METHANE WELLS AND UNITS.

### **§22-21-14. Protective devices required when a coalbed methane well penetrates workable coalbed; when a coalbed methane well is drilled through horizon of coalbed from which coal has been removed; notice of stimulation; results of stimulation.**

1 (a) Except for those coalbeds which the coalbed methane  
2 operator proposes to complete for production of coalbed  
3 methane or where a ventilation hole is being converted to a  
4 well, when a well penetrates one or more workable coalbeds,  
5 the well operator shall run and cement a string of casing in  
6 the hole through the workable coalbed or beds in such a  
7 manner as will exclude all oil, gas or gas pressure as may be  
8 found in such coalbed or beds. Such string of casing shall be

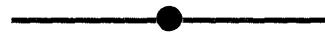
9 circulated and cemented in such a manner as provided for in  
10 reasonable rules promulgated by the chief in accordance with  
11 the provisions of chapter twenty-nine-a of this code. After  
12 any such string of casing has been so run and cemented to the  
13 surface, drilling may proceed to the permitted depth.

14 (b) When a coalbed methane well is drilled through the  
15 horizon of a coalbed from which the coal has been removed,  
16 the hole shall be drilled at least thirty feet below the coalbed,  
17 of a size sufficient to permit the placing of a liner which shall  
18 start not less than twenty feet above it. Within this liner,  
19 which may be welded to the casing to be used, shall be  
20 centrally placed the largest-sized casing to be used in the well  
21 and the space between the liner and casing shall be filled with  
22 cement as they are lowered into the hole. Cement shall be  
23 placed in the bottom of the hole to a depth of twenty feet to  
24 form a sealed seat for both liner and casing: *Provided*, That  
25 the liner may extend back to the surface and serve as the  
26 freshwater or coal protection casing, if done in accordance  
27 with subsection (a) of this section and section twenty-one,  
28 article six of this chapter, as applicable. If the liner is  
29 constructed in this manner, the next string of casing to be run  
30 into the well shall extend at least twenty feet below the  
31 coalbed. Cement shall be placed between that string of  
32 casing and the liner from the bottom of the casing to a point  
33 at least twenty feet above the coalbed. Following the setting  
34 of the liner, drilling shall proceed in the manner provided  
35 above. Should it be found necessary to drill through the  
36 horizon of two or more workable coalbeds from which the  
37 coal has been removed, such liner shall be started not less  
38 than twenty feet below the lowest horizon penetrated and  
39 shall extend to a point not less than twenty feet above the  
40 highest horizon penetrated.

41 (c) At least five days prior to the stimulation of any coal  
42 seam the well operator shall give the coal owner and operator  
43 notice of the date and time of stimulation and shall allow the

44 coal owner or operator to have an observer present at the site  
45 at the coal owner or operator's risk and cost. Within thirty  
46 days after stimulation is completed, the well operator shall  
47 certify the actual stimulation procedure used, including, but  
48 not limited to, the fluid injection rate, the injection pressure,  
49 the volume and components of fluid injected and the amount  
50 and components of the propping agent, if any.

51 (d) The chief may grant variances to the requirements of  
52 this section where the variance would promote the extraction  
53 of coalbed methane without affecting mine safety.



## CHAPTER 105

**(H.B. 4080 - By Delegates Pino, Blair, Guthrie, Reynolds,  
Walters and Frederick)**

[Passed March 5, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 15, 2008.]

AN ACT to amend and reenact §44-6A-1, §44-6A-2, §44-6A-3, §44-6A-4, §44-6A-5, §44-6A-6, §44-6A-7 and §44-6A-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §44-6A-9 and §44-6A-10, all relating to funds held for charitable purposes by nonprofit, charitable institutions; repealing the Uniform Management of Institutional Funds Act (UMIFA); creating the Uniform Prudent Management of Institutional Funds Act (UPMIFA); standards of conduct in managing and investing institutional funds; appropriation of institutional funds for expenditures or accumulation; criteria for expenditure or accumulation of institutional funds; delegation to an external

agent for the purpose of managing and investing of institutional funds; modifying or releasing donor restrictions on management, investment, or purpose of funds; reviewing compliance; application to existing institutional funds; relation to the federal Electronic Signatures in Global and National Commerce Act; and uniformity in the application and construction of the act.

*Be it enacted by the Legislature of West Virginia:*

That §44-6A-1, §44-6A-2, §44-6A-3, §44-6A-4, §44-6A-5, §44-6A-6, §44-6A-7 and §44-6A-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §44-6A-9 and §44-6A-10, all to read as follows:

**ARTICLE 6A. UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT.**

- §44-6A-1. Short title.
- §44-6A-2. Definitions.
- §44-6A-3. Standard of conduct in managing and investing institutional fund.
- §44-6A-4. Appropriations for expenditure or accumulation of endowment fund; rules of construction.
- §44-6A-5. Delegation of management and investment functions.
- §44-6A-6. Release or modification of restrictions on management, investment, or purpose.
- §44-6A-7. Reviewing compliance.
- §44-6A-8. Application to existing institutional funds.
- §44-6A-9. Relation to electronic signatures in Global and National Commerce Act.
- §44-6A-10. Uniformity of application and construction.

**§44-6A-1. Short title.**

- 1 This article may be cited as the “Uniform Prudent
- 2 Management of Institutional Funds Act.”

**§44-6A-2. Definitions.**

- 1 In this article:

2 (1) “Charitable purpose” means the relief of poverty, the  
3 advancement of education or religion, the promotion of  
4 health, the promotion of a governmental purpose, or any  
5 other purpose the achievement of which is beneficial to the  
6 community.

7 (2) “Endowment fund” means an institutional fund or part  
8 thereof that, under the terms of a gift instrument, is not  
9 wholly expendable by the institution on a current basis. The  
10 term does not include assets that an institution designates as  
11 an endowment fund for its own use.

12 (3) “Gift instrument” means a record or records,  
13 including an institutional solicitation, under which property  
14 is granted to, transferred to, or held by or on behalf of an  
15 institution as an institutional fund.

16 (4) “Institution” means:

17 (A) A person, other than an individual, organized and  
18 operated exclusively for charitable purposes;

19 (B) A government or governmental subdivision, agency,  
20 or instrumentality, to the extent that it holds funds  
21 exclusively for a charitable purpose;

22 (C) A trust that had both charitable and noncharitable  
23 interests, after all noncharitable interests have terminated;  
24 and

25 (D) A community foundation or community trust.

26 (5) “Institutional fund” means a fund held by an  
27 institution exclusively for charitable purposes. The term does  
28 not include:

29 (A) Program-related assets;

30 (B) A fund held for an institution by a trustee that is not  
31 an institution, unless the fund is held exclusively for the  
32 benefit of either a community foundation or community trust  
33 by a bank, a trust company or other similar fiduciary; or

34 (C) A fund in which a beneficiary that is not an  
35 institution has an interest, other than an interest that could  
36 arise upon violation or failure of the purposes of the fund.

37 (6) "Person" means an individual, corporation, business  
38 trust, estate, trust, partnership, limited liability company,  
39 association, joint venture, public corporation, government or  
40 governmental subdivision, agency, or instrumentality, or any  
41 other legal or commercial entity.

42 (7) "Program-related asset" means an asset held by an  
43 institution primarily to accomplish a charitable purpose of the  
44 institution and not primarily for investment.

45 (8) "Record" means information that is inscribed on a  
46 tangible medium or that is stored in an electronic or other  
47 medium and is retrievable in perceivable form.

48 (9) "Community foundation" or "community trust"  
49 means an institution that has been established to attract  
50 contributions for the benefit of a particular community or  
51 area whose contributions are often received and maintained  
52 in the form of separate trusts or funds which are subject to  
53 varying degrees of control by the governing body of the  
54 community foundation or community trust and which the  
55 governing body in good faith believes meets the requirements  
56 of the regulations issued by the Internal Revenue Service,  
57 United States Department of Treasury, presently codified as  
58 26 CFR 1.170A-9(e)(10) and (11), to qualify as a "publicly  
59 supported" organization and to be treated as a "single entity"  
60 rather than as an aggregation of separate funds.

**§44-6A-3. Standard of conduct in managing and investing institutional fund.**

1 (a) Subject to the intent of a donor expressed in a gift  
2 instrument, an institution, in managing and investing an  
3 institutional fund, shall consider the charitable purposes of  
4 the institution and the purposes of the institutional fund.

5 (b) In addition to complying with the duty of loyalty  
6 imposed by law other than this article, each person  
7 responsible for managing and investing an institutional fund  
8 shall manage and invest the fund in good faith and with the  
9 care an ordinarily prudent person in a like position would  
10 exercise under similar circumstances.

11 (c) In managing and investing an institutional fund, an  
12 institution:

13 (1) May incur only costs that are appropriate and  
14 reasonable in relation to the assets, the purposes of the  
15 institution, and the skills available to the institution; and

16 (2) Shall make a reasonable effort to verify facts relevant  
17 to the management and investment of the fund.

18 (d) An institution may pool two or more institutional  
19 funds for purposes of management and investment.

20 (e) Except as otherwise provided by a gift instrument, the  
21 following rules apply:

22 (1) In managing and investing an institutional fund, the  
23 following factors, if relevant, must be considered:

24 (A) General economic conditions;

25 (B) The possible effect of inflation or deflation;

26 (C) The expected tax consequences, if any, of investment  
27 decisions or strategies;

28 (D) The role that each investment or course of action  
29 plays within the overall investment portfolio of the fund;

30 (E) The expected total return from income and the  
31 appreciation of investments;

32 (F) Other resources of the institution;

33 (G) The needs of the institution and the fund to make  
34 distributions and to preserve capital; and

35 (H) An asset's special relationship or special value, if  
36 any, to the charitable purposes of the institution.

37 (2) Management and investment decisions about an  
38 individual asset must be made not in isolation but rather in  
39 the context of the institutional fund's portfolio of investments  
40 as a whole and as a part of an overall investment strategy  
41 having risk and return objectives reasonably suited to the  
42 fund and to the institution.

43 (3) Except as otherwise provided by law other than this  
44 article, an institution may invest in any kind of property or  
45 type of investment consistent with this section.

46 (4) An institution shall diversify the investments of an  
47 institutional fund unless the institution reasonably determines  
48 that, because of special circumstances, the purposes of the  
49 fund are better served without diversification.

50 (5) Within a reasonable time after receiving property, an  
51 institution shall make and carry out decisions concerning the  
52 retention or disposition of the property or to rebalance a  
53 portfolio, in order to bring the institutional fund into



54 compliance with the purposes, terms, and distribution  
55 requirements of the institution as necessary to meet other  
56 circumstances of the institution and the requirements of this  
57 article.

58 (6) A person that has special skills or expertise, or is  
59 selected in reliance upon the person's representation that the  
60 person has special skills or expertise, has a duty to use those  
61 skills or that expertise in managing and investing institutional  
62 funds.

**§44-6A-4. Appropriation for expenditure or accumulation of  
endowment fund; rules of construction.**

1 (a) Subject to the intent of a donor expressed in the gift  
2 instrument, an institution may appropriate for expenditure or  
3 accumulate so much of an endowment fund as the institution  
4 determines is prudent for the uses, benefits, purposes, and  
5 duration for which the endowment fund is established. This  
6 section does not limit the authority of the institution to  
7 expend funds as permitted under other law, the terms of the  
8 gift instrument, or the charter of the institution. Unless stated  
9 otherwise in the gift instrument, the assets in an endowment  
10 fund are donor-restricted assets (regardless of their treatment  
11 for accounting purposes) until appropriated for expenditure  
12 by the institution. In making a determination to appropriate  
13 or accumulate, the institution shall act in good faith, with the  
14 care that an ordinarily prudent person in a like position would  
15 exercise under similar circumstances, and shall consider, if  
16 relevant, the following factors:

17 (1) The duration and preservation of the endowment  
18 fund;

19 (2) The purposes of the institution and the endowment  
20 fund;

- 21 (3) General economic conditions;
- 22 (4) The possible effect of inflation or deflation;
- 23 (5) The expected total return from income and the  
24 appreciation of investments;
- 25 (6) Other resources of the institution; and
- 26 (7) The investment policy of the institution.
- 27 (b) To limit the authority to appropriate for expenditure  
28 or accumulate under subsection (a), a gift instrument must  
29 specifically state the limitation.
- 30 (c) Terms in a gift instrument designating a gift as an  
31 endowment, or a direction or authorization in the gift  
32 instrument to use only “income”, “interest”, “dividends”, or  
33 “rents, issues, or profits”, or “to preserve the principal  
34 intact”, or words of similar import:
- 35 (1) Create an endowment fund of permanent duration  
36 unless other language in the gift instrument limits the  
37 duration or purpose of the fund; and
- 38 (2) Do not otherwise limit the authority to appropriate for  
39 expenditure or accumulate under subsection (a).

**§44-6A-5. Delegation of management and investment functions.**

- 1 (a) Subject to any specific limitation set forth in a gift  
2 instrument or in law other than this article, an institution may  
3 delegate to an external agent the management and investment  
4 of an institutional fund to the extent that an institution could  
5 prudently delegate under the circumstances. An institution  
6 shall act in good faith, with the care that an ordinarily prudent

7 person in a like position would exercise under similar  
8 circumstances, in:

9 (1) Selecting an agent;

10 (2) Establishing the scope and terms of the delegation,  
11 consistent with the purposes of the institution and the  
12 institutional fund; and

13 (3) Periodically reviewing the agent's actions in order to  
14 monitor the agent's performance and compliance with the  
15 scope and terms of the delegation.

16 (b) In performing a delegated function, an agent owes a  
17 duty to the institution to exercise reasonable care to comply  
18 with the scope and terms of the delegation.

19 (c) An institution that complies with subsection (a) is not  
20 liable for the decisions or actions of an agent to which the  
21 function was delegated.

22 (d) By accepting delegation of a management or  
23 investment function from an institution that is subject to the  
24 laws of this state, an agent submits to the jurisdiction of the  
25 courts of this state in all proceedings arising from or related  
26 to the delegation or the performance of the delegated  
27 function.

28 (e) An institution may delegate management and  
29 investment functions to its committees, officers, or  
30 employees as authorized by law of this state other than this  
31 article.

**§44-6A-6. Release or modification of restrictions on  
management, investment, or purpose.**

1 Without limiting the options otherwise available to an  
2 institution under applicable law, a restriction on the

3 management, investment, purpose or other provision of a gift  
4 to an institutional fund may be released or modified in any  
5 one or more of the following ways:

6 (1) If the donor consents in a record, an institution may  
7 release or modify, in whole or in part, a restriction contained  
8 in a gift instrument on the management, investment, or  
9 purpose of an institutional fund. A release or modification  
10 may not allow a fund to be used for a purpose other than a  
11 charitable purpose of the institution.

12 (2) The court, upon application of an institution, may  
13 modify a restriction contained in a gift instrument regarding  
14 the management or investment of an institutional fund if the  
15 restriction has become impracticable or wasteful, if it impairs  
16 the management or investment of the fund, or if, because of  
17 circumstances not anticipated by the donor, a modification of  
18 a restriction will further the purposes of the fund. The  
19 institution shall notify the Attorney General of the  
20 application, and the Attorney General must be given an  
21 opportunity to be heard. To the extent practicable, any  
22 modification must be made in accordance with the donor's  
23 probable intention.

24 (3) If a particular charitable purpose or a restriction  
25 contained in a gift instrument on the use of an institutional  
26 fund becomes unlawful, impracticable, impossible to achieve,  
27 or wasteful, the court, upon application of an institution, may  
28 modify the purpose of the fund or the restriction on the use of  
29 the fund in a manner consistent with the charitable purposes  
30 expressed in the gift instrument. The institution shall notify  
31 the Attorney General of the application, and the Attorney  
32 General must be given an opportunity to be heard.

33 (4) If an institution determines that a restriction contained  
34 in a gift instrument on the management, investment, or  
35 purpose of an institutional fund is unlawful, impracticable,

36 impossible to achieve, or wasteful, the institution, sixty days  
37 after notification to the Attorney General, may release or  
38 modify the restriction, in whole or in part, if:

39 (A) The institutional fund subject to the restriction has a  
40 total value of less than twenty-five thousand dollars;

41 (B) More than twenty years have elapsed since the fund  
42 was established; and

43 (C) The institution uses the property in a manner  
44 consistent with the charitable purposes expressed in the gift  
45 instrument.

46 (5) If the terms of a gift instrument, either specifically or  
47 by being subject to the charter of the institution, confer a  
48 power on the institution to release or modify a restriction on  
49 the management or investment of an institutional fund or the  
50 particular charitable purpose or restriction on the use of the  
51 institutional fund, the institution shall have the power to so  
52 modify or terminate that restriction and the other provisions  
53 of this section shall not apply to that release or modification.  
54 A release or modification under this subsection may not  
55 allow a fund to be used for a purpose other than a charitable  
56 purpose of the institution.

#### **§44-6A-7. Reviewing compliance.**

1 Compliance with this article is determined in light of the  
2 facts and circumstances existing at the time a decision is  
3 made or action is taken, and not by hindsight.

#### **§44-6A-8. Application to existing institutional funds.**

1 This article applies to institutional funds existing on or  
2 established after the effective date of this article. As applied  
3 to institutional funds existing on the effective date of this



relating generally to the ethical standards of public officers, employees and lobbyists; defining additional terms; providing compensation for telephonic participation in meetings; creating a procedure for replacing recused members of the Probable Cause Review Board; altering requirements for pending complaint against a candidate for public office is stayed; establishing a time-frame for candidates to waive stay provisions; clarifying the procedure for replacing recused members of the commission hearing a complaint; providing for exclusive appeal of decisions by the commission imposing sanctions to the circuit court of Kanawha County; permitting personal use of frequent traveler bonus points acquired on official government business; redefining and clarifying what constitutes a limited interest in a public contract; prohibiting public employees or officials from influencing contracts in which they have a financial interest; providing that full-time public officials and full-time public employees may not seek employment with or be employed by a vendor over whose public contract the public official or public employee exercises authority or control; providing a procedure for granting exceptions to the restriction on purchases of personal property from regulated persons and vendors; providing that public officials and employees may not decide matters regarding a vendor with whom the official or employee is seeking employment or has an agreement concerning future employment; providing standards for determining when public officials may or may not vote on matters involving a for-profit or not-for-profit business, including financial institutions, with whom either they or an immediate family member are associated; providing that lobbyists must complete an ethics training course during each two-year registration cycle; clarifying that notice of suspension of a lobbyist's lobbying privileges be sent to the affected lobbyist by certified mail; requiring lobbyist complete training prior to lobbying; and making technical corrections.

*Be it enacted by the Legislature of West Virginia:*

That §6B-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §6B-2-1, §6B-2-2a, §6B-2-3a, §6B-2-4 and §6B-2-5 of said code be amended and reenacted; and that §6B-3-3c and §6B-3-4 be amended and reenacted, all to read as follows:

**Article**

1. **Short Title; Legislative Findings; Purposes and Intent; Construction and Application of Chapter; Severability.**
2. **West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearances Before Public Agencies; Code of Conduct for Administrative Law Judges.**
3. **Lobbyists.**

**ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.**

**§6B-1-3. Definitions.**

1 As used in this chapter, unless the context in which used  
2 clearly requires otherwise:

3 (a) "Review Board" means the Probable Cause Review  
4 Board created by section two-a, article two of this chapter.

5 (b) "Business" means any entity through which business  
6 for-profit is conducted including a corporation, partnership,  
7 proprietorship, franchise, association, organization or self-  
8 employed individual.

9 (c) "Compensation" means money, thing of value or  
10 financial benefit. The term "compensation" does not include  
11 reimbursement for actual reasonable and necessary expenses  
12 incurred in the performance of one's official duties.

13 (d) "Employee" means any person in the service of  
14 another under any contract of hire, whether express or



15 implied, oral or written, where the employer or an agent of  
16 the employer or a public official has the right or power to  
17 control and direct such person in the material details of how  
18 work is to be performed and who is not responsible for the  
19 making of policy nor for recommending official action.

20 (e) "Ethics Commission" or "commission" means the  
21 West Virginia Ethics Commission.

22 (f) "Immediate family", with respect to an individual,  
23 means a spouse with whom the individual is living as  
24 husband and wife and any dependent child or children,  
25 dependent grandchild or grandchildren and dependent parent  
26 or parents.

27 (g) "Ministerial functions" means actions or functions  
28 performed by an individual under a given state of facts in a  
29 prescribed manner in accordance with a mandate of legal  
30 authority, without regard to, or without the exercise of, the  
31 individual's own judgment as to the propriety of the action  
32 being taken.

33 (h) "Person" means an individual, corporation, business  
34 entity, labor union, association, firm, partnership, limited  
35 partnership, committee, club or other organization or group  
36 of persons, irrespective of the denomination given such  
37 organization or group.

38 (i) "Political contribution" means and has the same  
39 definition as is given that term under the provisions of article  
40 eight, chapter three of this code.

41 (j) "Public employee" means any full-time or part-time  
42 employee of any state, county or municipal governmental  
43 body or any political subdivision thereof, including county  
44 school boards.

45 (k) "Public official" means any person who is elected or  
46 appointed to any state, county or municipal office or position  
47 and who is responsible for the making of policy or takes  
48 official action which is either ministerial or nonministerial, or  
49 both, with respect to: (1) Contracting for, or procurement of,  
50 goods or services; (2) administering or monitoring grants or  
51 subsidies; (3) planning or zoning; (4) inspecting, licensing,  
52 regulating or auditing any person; or (5) any other activity  
53 where the official action has an economic impact of greater  
54 than a de minimis nature on the interest or interests of any  
55 person.

56 (l) "Relative" means spouse, mother, father, sister,  
57 brother, son, daughter, grandmother, grandfather, grandchild,  
58 mother-in-law, father-in-law, sister-in-law, brother-in-law,  
59 son-in-law or daughter-in-law.

60 (m) "Respondent" means a person who is the subject of  
61 an investigation by the commission or against whom a  
62 complaint has been filed with the commission.

63 (n) "Thing of value", "other thing of value" or "anything  
64 of value" means and includes: (1) Money, bank bills or notes,  
65 United States treasury notes and other bills, bonds or notes  
66 issued by lawful authority and intended to pass and circulate  
67 as money; (2) goods and chattels; (3) promissory notes, bills  
68 of exchange, orders, drafts, warrants, checks, bonds given for  
69 the payment of money or the forbearance of money due or  
70 owing; (4) receipts given for the payment of money or other  
71 property; (5) any right or chose in action; (6) chattels real or  
72 personal or things which savor of realty and are, at the time  
73 taken, a part of a freehold, whether they are of the substance  
74 or produce thereof or affixed thereto, although there may be  
75 no interval between the severing and the taking away thereof;  
76 (7) any interest in realty, including, but not limited to, fee  
77 simple estates, life estates, estates for a term or period of  
78 time, joint tenancies, cotenancies, tenancies in common,

79 partial interests, present or future interests, contingent or  
80 vested interests, beneficial interests, leasehold interests or  
81 any other interest or interests in realty of whatsoever nature;  
82 (8) any promise of employment, present or future; (9)  
83 donation or gift; (10) rendering of services or the payment  
84 thereof; (11) any advance or pledge; (12) a promise of  
85 present or future interest in any business or contract or other  
86 agreement; or (13) every other thing or item, whether  
87 tangible or intangible, having economic worth. "Thing of  
88 value", "other thing of value" or "anything of value" shall not  
89 include anything which is de minimis in nature nor a lawful  
90 political contribution reported as required by law.

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION;  
POWERS AND DUTIES; DISCLOSURE  
OF FINANCIAL INTEREST BY PUBLIC  
OFFICIALS AND EMPLOYEES;  
APPEARANCES BEFORE PUBLIC  
AGENCIES; CODE OF CONDUCT FOR  
ADMINISTRATIVE LAW JUDGES.**

- §6B-2-1. West Virginia Ethics Commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.
- §6B-2-2a. Probable Cause Review Board.
- §6B-2-3a. Complaints.
- §6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.
- §6B-2-5. Ethical standards for elected and appointed officials and public employees.

**§6B-2-1. West Virginia Ethics Commission created; members;  
appointment, term of office and oath;  
compensation and reimbursement for expenses;  
meetings and quorum.**

- 1 (a) There is hereby created the West Virginia Ethics  
2 Commission, consisting of twelve members, no more than  
3 seven of whom shall be members of the same political party.

4 The members of the commission shall be appointed by the  
5 Governor with the advice and consent of the Senate. Within  
6 thirty days of the effective date of this section, the Governor  
7 shall make the initial appointments to the commission. No  
8 person may be appointed to the commission or continue to  
9 serve as a member of the commission who holds elected or  
10 appointed office under the government of the United States,  
11 the State of West Virginia or any of its political subdivisions,  
12 or who is a candidate for any of those offices, who is  
13 employed as a registered lobbyist, or who is otherwise  
14 subject to the provisions of this chapter other than by reason  
15 of his or her appointment to or service on the commission. A  
16 member may contribute to a political campaign, but no  
17 member shall hold any political party office or participate in  
18 a campaign relating to a referendum or other ballot issue.

19 (b) At least two members of the commission shall have  
20 served as a member of the West Virginia Legislature; at least  
21 two members of the commission shall have been employed  
22 in a full-time elected or appointed office in state government;  
23 at least one member shall have served as an elected official  
24 in a county or municipal government or on a county school  
25 board; at least one member shall have been employed full-  
26 time as a county or municipal officer or employee; and at  
27 least two members shall have served part time as a member  
28 or director of a state, county or municipal board, commission  
29 or public service district and at least four members shall be  
30 selected from the public at large. No more than four members  
31 of the commission shall reside in the same congressional  
32 district.

33 (c) Of the initial appointments made to the commission,  
34 two shall be for a term ending one year after the effective  
35 date of this section, two for a term ending two years after the  
36 effective date of this section, two for a term ending three  
37 years after the effective date of this section, three for a term  
38 ending four years after the effective date of this section and

39 three shall be for terms ending five years after the effective  
40 date of this section. Thereafter, terms of office shall be for  
41 five years, each term ending on the same day of the same  
42 month of the year as did the term which it succeeds. Each  
43 member shall hold office from the date of his or her  
44 appointment until the end of the term for which he or she was  
45 appointed or until his or her successor qualifies for office.  
46 When a vacancy occurs as a result of death, resignation or  
47 removal in the membership of this commission, it shall be  
48 filled by appointment within thirty days of the vacancy for  
49 the unexpired portion of the term in the same manner as  
50 original appointments. No member shall serve more than two  
51 consecutive full or partial terms and no person may be  
52 reappointed to the commission until at least two years have  
53 elapsed after the completion of a second successive term.

54 (d) Each member of the commission shall take and  
55 subscribe to the oath or affirmation required pursuant to  
56 section five, article IV of the Constitution of West Virginia.  
57 A member may be removed by the Governor for substantial  
58 neglect of duty, gross misconduct in office or violation of this  
59 chapter, after written notice and opportunity for reply.

60 (e) The commission shall meet within thirty days of the  
61 initial appointments to the commission at a time and place to  
62 be determined by the Governor, who shall designate a  
63 member to preside at that meeting until a chairman is elected.  
64 At its first meeting, the commission shall elect a chairman  
65 and other officers as are necessary. The commission shall  
66 within ninety days after its first meeting adopt rules for its  
67 procedures.

68 (f) Seven members of the commission shall constitute a  
69 quorum, except that when the commission is sitting as a  
70 hearing board pursuant to section four of this article, then  
71 five members shall constitute a quorum. Except as may be  
72 otherwise provided in this article, a majority of the total  
73 membership shall be necessary to act at all times.

74 (g) Members of the commission shall receive the same  
75 compensation and expense reimbursement as is paid to  
76 members of the Legislature for their interim duties as  
77 recommended by the Citizens Legislative Compensation  
78 Commission and authorized by law for each day or portion  
79 thereof engaged in the discharge of official duties: *Provided*,  
80 That to be eligible for compensation and expense  
81 reimbursement, the member must participate in a meeting or  
82 adjudicatory session: *Provided, however*, That the member is  
83 not eligible for expense reimbursement if he or she does not  
84 attend a meeting or adjudicatory session in person.

85 (h) The commission shall appoint an executive director  
86 to assist the commission in carrying out its functions in  
87 accordance with commission rules and with applicable law.  
88 The executive director shall be paid a salary fixed by the  
89 commission or as otherwise provided by law. The  
90 commission shall appoint and discharge counsel and  
91 employees and shall fix the compensation of employees and  
92 prescribe their duties. Counsel to the commission shall advise  
93 the commission on all legal matters and on the instruction of  
94 the commission may commence appropriate civil actions:  
95 *Provided*, That no counsel shall both advise the commission  
96 and act in a representative capacity in any proceeding.

97 (i) The commission may delegate authority to the  
98 chairman or executive director to act in the name of the  
99 commission between meetings of the commission, except that  
100 the commission shall not delegate the power to hold hearings  
101 and determine violations to the chairman or executive  
102 director.

103 (j) The principal office of the commission shall be in the  
104 seat of government but it or its designated subcommittees  
105 may meet and exercise its power at any other place in the  
106 state. Meetings of the commission shall be public unless: (1)  
107 They are required to be private by the provisions of this

108 chapter relating to confidentiality; or (2) they involve  
109 discussions of commission personnel, planned or ongoing  
110 litigation and planned or ongoing investigations.

111 (k) Meetings of the commission shall be upon the call of  
112 the chair and may be conducted by telephonic or other  
113 electronic conferencing: *Provided*, That telephone or other  
114 electronic conferencing and voting are not permitted when  
115 the commission is acting as a hearing board under section  
116 four of this article or when the Probable Cause Review Board  
117 meets to receive an oral response as authorized under  
118 subsection (d), section four of this article. Members shall be  
119 given notice of meetings held by telephone or other  
120 electronic conferencing in the same manner as meetings at  
121 which the members are required to attend in person.  
122 Telephone or other electronic conferences shall be  
123 electronically recorded and the recordings shall be retained  
124 by the commission in accordance with its record retention  
125 policy.

#### **§6B-2-2a. Probable Cause Review Board.**

1 (a) There is hereby established a Probable Cause Review  
2 Board that shall conduct hearings to determine whether there  
3 is probable cause to believe that a violation of the West  
4 Virginia Governmental Ethics Act has occurred and, if so, to  
5 refer that investigation to the Ethics Commission. The  
6 Review Board is an autonomous board, not under the  
7 direction or control of the Ethics Commission. The Review  
8 Board will review complaints received or initiated by the  
9 Ethics Commission to make a threshold determination of  
10 whether probable cause exists to believe that a violation of  
11 the West Virginia Governmental Ethics Act has occurred.

12 (b) The Governor, by and with the advice and consent of  
13 the Senate, shall appoint three persons as members of the  
14 Review Board, each of whom shall be a resident and citizen

15 of the state. Each member of the Review Board shall hold  
16 office until his or her successor has been appointed and  
17 qualified. At least one member of the board must be an  
18 attorney licensed by the State of West Virginia and no more  
19 than two members can belong to the same political party. The  
20 members of the Review Board shall be appointed for  
21 overlapping terms of two years, except that the original  
22 appointments shall be for terms of one, two and three years,  
23 respectively. Any member whose term expires may be  
24 reappointed by the Governor. In the event a Review Board  
25 member is unable to complete his or her term, the Governor  
26 shall appoint a person with similar qualification to complete  
27 that term. Each Review Board member shall receive the  
28 same compensation and expense reimbursement as provided  
29 to Ethics Commission members pursuant to section one of  
30 this article. These and all other costs incurred by the Review  
31 Board shall be paid from the budget of the Ethics  
32 Commission.

33 (c) No person may be appointed to the Review Board or  
34 continue to serve as a member of the Review Board who  
35 holds elected or appointed office under the government of the  
36 United States, the State of West Virginia or any of its  
37 political subdivisions, or who is a candidate for any of such  
38 offices, or who is a registered lobbyist, or who is otherwise  
39 subject to the provisions of this chapter other than by reason  
40 of his or her appointment to or service on the Review Board.  
41 A Review Board member may contribute to a political  
42 campaign, but no member shall hold any political party office  
43 or participate in a campaign relating to a referendum or other  
44 ballot issue.

45 (d) Members of the Review Board may recuse themselves  
46 from a particular case upon their own motion, with the  
47 approval of the Review Board, and shall recuse themselves,  
48 for good cause shown, upon motion of a party. The  
49 remaining members of the Review Board may, by majority



50 vote, select a temporary member to replace a recused  
51 member: *Provided*, That the temporary member selected to  
52 replace a recused member shall be a person who meets all  
53 requirements for appointment provided by subsection (c),  
54 section two-a of this article, and whose political affiliation is  
55 the same as the recused member.

56 (e) The Ethics Commission shall propose, for approval by  
57 the Review Board, any procedural and interpretative rules  
58 governing the operation of the Review Board. The  
59 commission shall propose these rules pursuant to article  
60 three, chapter twenty-nine-a of the code.

61 (f) The Ethics Commission shall provide staffing and a  
62 location for the Review Board to conduct hearings. The  
63 Ethics Commission is authorized to employ and assign the  
64 necessary professional and clerical staff to assist the Review  
65 Board in the performance of its duties and commission staff  
66 shall, as the commission deems appropriate, also serve as  
67 staff to the Review Board. All investigations and proceedings  
68 of the Review Board are deemed confidential as provided in  
69 section four of this article and members of the Review Board  
70 are bound to the same confidentiality requirements applicable  
71 to the Ethics Commission pursuant to this article.

72 (g) The Review Board may subpoena witnesses, compel  
73 their attendance and testimony, administer oaths and  
74 affirmations, take evidence and require by subpoena the  
75 production of books, papers, records or other evidence  
76 needed for the performance of the Review Board's duties.

77 (h) Upon decision by the Review Board that probable  
78 cause exists to believe that a violation of this chapter has  
79 occurred, commission staff shall send notice to the  
80 commission members of the Review Board's finding. After  
81 an ethics complaint has been submitted to the Review Board  
82 in accordance with section four of this article, the

83 commission may take no further action until it receives the  
84 Review Board's probable cause finding.

**§6B-2-3a. Complaints.**

1 (a) The commission may commence an investigation,  
2 pursuant to section four of this article, on the filing of a  
3 complaint duly verified by oath or affirmation, by any  
4 person.

5 (b) The commission may order the executive director to  
6 prepare a complaint, upon a majority affirmative vote of its  
7 members, if it receives or discovers credible information  
8 which, if true, would merit an inquiry into whether a  
9 violation of this article has occurred.

10 (c) (1) No complaint may be accepted or initiated by the  
11 commission against a public official or public employee  
12 during the sixty days before a primary or general election at  
13 which the public official or public employees is a candidate  
14 for elective office.

15 (2) If a complaint is pending against a public official or  
16 public employee who is also a candidate for public office,  
17 then the commission shall stay the processing of the  
18 complaint for the sixty day time period preceding the primary  
19 election or general election, or both, unless the candidate  
20 waives the stay in writing. If the commission receives a  
21 written waiver of the stay at least sixty days prior to the  
22 election, and if the Review Board has not yet ruled whether  
23 probable cause exists to believe there has been a violation of  
24 the Ethics Act, then the Review Board will process the  
25 complaint and make a probable cause determination at least  
26 thirty days prior to the election: *Provided*, That the stay  
27 provisions of this subdivision do not apply to complaints  
28 which have already been adjudicated by the commission and  
29 are pending on appeal.

30 (3) For purposes of this subsection, any provisions of this  
31 chapter setting time periods for initiating a complaint or for  
32 performing any other action are considered tolled until after  
33 the election at which the public official or public employee  
34 candidate stands for elective office.

**§6B-2-4. Processing complaints; dismissals; hearings;  
disposition; judicial review.**

1 (a) Upon the filing of a complaint, the Executive Director  
2 of the commission or his or her designee shall, within three  
3 working days, acknowledge the receipt of the complaint by  
4 first-class mail unless the complaint was initiated by the  
5 commission or the complainant or his or her representative  
6 personally filed the complaint with the commission and was  
7 given a receipt or other acknowledgment evidencing the  
8 filing of the complaint. No political party or officer,  
9 employee or agent of a political party acting in his or her  
10 official capacity may file a complaint for a violation of this  
11 chapter with the commission. Nothing in this section  
12 prohibits a private citizen, acting in that capacity, from filing  
13 a verified complaint with the commission under this section.  
14 Within fourteen days after the receipt of a complaint, the  
15 Executive Director shall refer the complaint to the Review  
16 Board created pursuant to section two-a of this article.

17 (b) Upon the referral of a complaint by the Executive  
18 Director pursuant to subsection (a) of this section, the Review  
19 Board shall determine whether the allegations of the  
20 complaint, if taken as true, would constitute a violation of  
21 law upon which the commission could properly act under the  
22 provisions of this chapter. If the complaint is determined by  
23 a majority vote of the Review Board to be insufficient in this  
24 regard, the Review Board shall dismiss the complaint.

25 (c) Upon a finding by the Review Board that the  
26 complaint is sufficient, the Executive Director shall give

27 notice of a pending investigation to the complainant, if any,  
28 and to the respondent. The notice of investigation shall be  
29 mailed to the parties and, in the case of the respondent, shall  
30 be mailed as certified mail, return receipt requested, marked  
31 "Addressee only, personal and confidential". The notice shall  
32 describe the conduct of the respondent which is alleged to  
33 violate the law and a copy of the complaint shall be appended  
34 to the notice mailed to the respondent. Each notice of  
35 investigation shall inform the respondent that the purpose of  
36 the investigation is to determine whether probable cause  
37 exists to believe that a violation of law has occurred which  
38 may subject the respondent to administrative sanctions by the  
39 commission, criminal prosecution by the state, or civil  
40 liability. The notice shall further inform the respondent that  
41 he or she has a right to appear before the Review Board and  
42 that he or she may respond in writing to the commission  
43 within thirty days after the receipt of the notice, but that no  
44 fact or allegation shall be taken as admitted by a failure or  
45 refusal to timely respond.

46 (d) Within the 45-day period following the mailing of a  
47 notice of investigation, the Review Board shall proceed to  
48 consider (1) The allegations raised in the complaint; (2) Any  
49 timely received written response of the respondent; and (3)  
50 Any other competent evidence gathered by or submitted to  
51 the commission which has a proper bearing on the issue of  
52 probable cause. A respondent may appear before the  
53 Review Board and make an oral response to the complaint.  
54 The commission shall promulgate rules prescribing the  
55 manner in which a respondent may present his or her oral  
56 response. The commission may ask a respondent to disclose  
57 specific amounts received from a source and request other  
58 detailed information not otherwise required to be set forth in  
59 a statement or report filed under the provisions of this chapter  
60 if the information sought is considered to be probative as to  
61 the issues raised by a complaint or an investigation initiated  
62 by the commission. Any information thus received shall be

63 confidential except as provided by subsection (e) of this  
64 section. If a person asked to provide information fails or  
65 refuses to furnish the information to the commission, the  
66 commission may exercise its subpoena power as provided in  
67 this chapter and any subpoena issued by the commission shall  
68 have the same force and effect as a subpoena issued by a  
69 circuit court of this state. Enforcement of any subpoena may  
70 be had upon application to a circuit court of the county in  
71 which the Review Board is conducting an investigation  
72 through the issuance of a rule or an attachment against the  
73 respondent as in cases of contempt.

74 (e) All investigations, complaints, reports, records,  
75 proceedings and other information received by the  
76 commission and related to complaints made to the  
77 commission or investigations conducted by the commission  
78 pursuant to this section, including the identity of the  
79 complainant or respondent, are confidential and may not be  
80 knowingly and improperly disclosed by any current or former  
81 member or employee of the commission or the Review Board  
82 except as follows:

83 (A) Once there has been a finding that probable cause  
84 exists to believe that a respondent has violated the provisions  
85 of this chapter and the respondent has been served by the  
86 commission with a copy of the Review Board's order and the  
87 statement of charges prepared pursuant to the provisions of  
88 subsection (g) of this section, the complaint and all reports,  
89 records, nonprivileged and nondeliberative material  
90 introduced at any probable cause hearing held pursuant to the  
91 complaint cease to be confidential.

92 (B) After a finding of probable cause, any subsequent  
93 hearing held in the matter for the purpose of receiving  
94 evidence or the arguments of the parties or their  
95 representatives shall be open to the public and all reports,  
96 records and nondeliberative materials introduced into

97 evidence at the hearing, as well as the commission's orders,  
98 are not confidential.

99 (C) The commission may release any information relating  
100 to an investigation at any time if the release has been agreed  
101 to in writing by the respondent.

102 (D) The complaint and the identity of the complainant  
103 shall be disclosed to a person named as respondent  
104 immediately upon the respondent's request.

105 (E) Where the commission is otherwise required by the  
106 provisions of this chapter to disclose information or to  
107 proceed in such a manner that disclosure is necessary and  
108 required to fulfill those requirements.

109 (2) If, in a specific case, the commission finds that there  
110 is a reasonable likelihood that the dissemination of  
111 information or opinion in connection with a pending or  
112 imminent proceeding will interfere with a fair hearing or  
113 otherwise prejudice the due administration of justice, the  
114 commission shall order that all or a portion of the information  
115 communicated to the commission to cause an investigation  
116 and all allegations of ethical misconduct or criminal acts  
117 contained in a complaint shall be confidential and the person  
118 providing the information or filing a complaint shall be  
119 bound to confidentiality until further order of the  
120 commission.

121 (f) If the members of the Review Board fail to find  
122 probable cause, the proceedings shall be dismissed by the  
123 commission in an order signed by the members of the Review  
124 Board. Copies of the order of dismissal shall be sent to the  
125 complainant and served upon the respondent forthwith. If the  
126 Review Board decides by a unanimous vote that there is  
127 probable cause to believe that a violation under this chapter  
128 has occurred, the members of the Review Board shall sign an

129 order directing the commission staff to prepare a statement of  
130 charges and assign the matter for hearing to the commission  
131 or a hearing examiner as the commission may subsequently  
132 direct. The commission shall then schedule a hearing, to be  
133 held within ninety days after the date of the order, to  
134 determine the truth or falsity of the charges. The  
135 commission's review of the evidence presented shall be de  
136 novo. For the purpose of this section, service of process upon  
137 the respondent is obtained at the time the respondent or the  
138 respondent's agent physically receives the process, regardless  
139 of whether the service of process is in person or by certified  
140 mail.

141 (g) At least eighty days prior to the date of the hearing,  
142 the commission shall serve the respondent by certified mail,  
143 return receipt requested, with the statement of charges and a  
144 notice of hearing setting forth the date, time and place for the  
145 hearing. The scheduled hearing may be continued only upon  
146 a showing of good cause by the respondent or under other  
147 circumstances as the commission, by legislative rule, directs.

148 (h) The commission may sit as a hearing board to  
149 adjudicate the case or may permit an assigned hearing  
150 examiner employed by the commission to preside at the  
151 taking of evidence. The commission shall, by legislative rule,  
152 establish the general qualifications for hearing examiners.  
153 The legislative rule shall also contain provisions which  
154 ensure that the functions of a hearing examiner will be  
155 conducted in an impartial manner and describe the  
156 circumstances and procedures for disqualification of hearing  
157 examiners.

158 (i) A member of the commission or a hearing examiner  
159 presiding at a hearing may:

160 (1) Administer oaths and affirmations, compel the  
161 attendance of witnesses and the production of documents,

162 examine witnesses and parties and otherwise take testimony  
163 and establish a record;

164 (2) Rule on offers of proof and receive relevant evidence;

165 (3) Take depositions or have depositions taken when the  
166 ends of justice will be served;

167 (4) Regulate the course of the hearing;

168 (5) Hold conferences for the settlement or simplification  
169 of issues by consent of the parties;

170 (6) Dispose of procedural requests or similar matters;

171 (7) Accept stipulated agreements;

172 (8) Take other action authorized by the Ethics  
173 Commission consistent with the provisions of this chapter.

174 (j) With respect to allegations of a violation under this  
175 chapter, the complainant has the burden of proof. The West  
176 Virginia Rules of Evidence governing proceedings in the  
177 courts of this state shall be given like effect in hearings held  
178 before the commission or a hearing examiner. The  
179 commission shall, by rule, regulate the conduct of hearings  
180 so as to provide full procedural due process to a respondent.  
181 Hearings before a hearing examiner shall be recorded  
182 electronically. When requested by either of the parties, the  
183 presiding officer shall order a transcript, verified by oath or  
184 affirmation, of each hearing held and so recorded. In the  
185 discretion of the commission, a record of the proceedings  
186 may be made by a certified court reporter. Unless otherwise  
187 ordered by the commission, the cost of preparing a transcript  
188 shall be paid by the party requesting the transcript. Upon a  
189 showing of indigency, the commission may provide a  
190 transcript without charge. Within fifteen days following the



191 hearing, either party may submit to the hearing examiner that  
192 party's proposed findings of fact. The hearing examiner shall  
193 thereafter prepare his or her own proposed findings of fact  
194 and make copies of the findings available to the parties. The  
195 hearing examiner shall then submit the entire record to the  
196 commission for final decision.

197 (k) The recording of the hearing or the transcript of  
198 testimony, as the case may be, and the exhibits, together with  
199 all papers and requests filed in the proceeding, and the  
200 proposed findings of fact of the hearing examiner and the  
201 parties, constitute the exclusive record for decision by the  
202 commission, unless by leave of the commission a party is  
203 permitted to submit additional documentary evidence or take  
204 and file depositions or otherwise exercise discovery.

205 (l) The commission shall set a time and place for the  
206 hearing of arguments by the complainant and respondent, or  
207 their respective representatives, and shall notify the parties  
208 thereof. Briefs may be filed by the parties in accordance with  
209 procedural rules promulgated by the commission. The  
210 commission shall issue a final decision in writing within  
211 forty-five days of the receipt of the entire record of a hearing  
212 held before a hearing examiner or, in the case of an  
213 evidentiary hearing held by the commission acting as a  
214 hearing board in lieu of a hearing examiner, within twenty-  
215 one days following the close of the evidence.

216 (m) A decision on the truth or falsity of the charges  
217 against the respondent and a decision to impose sanctions  
218 must be approved by at least seven members of the  
219 commission.

220 (n) Members of the commission shall recuse themselves  
221 from a particular case upon their own motion with the  
222 approval of the commission or for good cause shown upon  
223 motion of a party. The remaining members of the

224 commission may, by majority vote, select a temporary  
225 member to replace a recused member: *Provided*, That the  
226 temporary member selected to replace a recused member  
227 shall be a person of the same status or category, provided by  
228 subsection (b), section one of this article, as the recused  
229 member.

230 (o) Except for statements made in the course of official  
231 duties to explain commission procedures, no member or  
232 employee or former member or employee of the commission  
233 may make any public or nonpublic comment about any  
234 proceeding previously or currently before the commission.  
235 Any member or employee or former member or employee of  
236 the commission who violates this subsection is subject to the  
237 penalties contained in subsection (e), section ten of this  
238 article. In addition, violation of this subsection by a current  
239 member or employee of the commission is grounds for  
240 immediate removal from office or termination of  
241 employment.

242 (p) A complainant may be assisted by a member of the  
243 commission staff assigned by the commission after a  
244 determination of probable cause.

245 (q) No employee of the commission assigned to  
246 prosecute a complaint may participate in the commission  
247 deliberations or communicate with commission members or  
248 the public concerning the merits of a complaint.

249 (r) (1) If the commission finds by evidence beyond a  
250 reasonable doubt that the facts alleged in the complaint are  
251 true and constitute a material violation of this article, it may  
252 impose one or more of the following sanctions:

253 (A) Public reprimand;

254 (B) Cease and desist orders;

255 (C) Orders of restitution for money, things of value, or  
256 services taken or received in violation of this chapter;

257 (D) Fines not to exceed five thousand dollars per  
258 violation; or

259 (E) Reimbursement to the commission for the actual costs  
260 of investigating and prosecuting a violation. Any  
261 reimbursement ordered by the commission for its costs under  
262 this paragraph shall be collected by the commission and  
263 deposited into the special revenue account created pursuant  
264 to section six, article one of this chapter.

265 (2) In addition to imposing the above-specified sanctions,  
266 the commission may recommend to the appropriate  
267 governmental body that a respondent be terminated from  
268 employment or removed from office.

269 (3) The commission may institute civil proceedings in the  
270 circuit court of the county in which a violation occurred for  
271 the enforcement of sanctions.

272 (s) At any stage of the proceedings under this section, the  
273 commission may enter into a conciliation agreement with a  
274 respondent if the agreement is deemed by a majority of the  
275 members of the commission to be in the best interest of the  
276 state and the respondent. Any conciliation agreement must be  
277 disclosed to the public: *Provided*, That negotiations leading  
278 to a conciliation agreement, as well as information obtained  
279 by the commission during the negotiations, shall remain  
280 confidential except as may be otherwise set forth in the  
281 agreement.

282 (t) Decisions of the commission involving the issuance of  
283 sanctions may be appealed to the circuit court of Kanawha  
284 County, only by the respondent and only upon the grounds

285 set forth in section four, article five, chapter twenty- nine-a  
286 of this code.

287 (u) (1) Any person who in good faith files a verified  
288 complaint or any person, official or agency who gives  
289 credible information resulting in a formal complaint filed by  
290 commission staff is immune from any civil liability that  
291 otherwise might result by reason of such actions.

292 (2) If the commission determines, by clear and  
293 convincing evidence, that a person filed a complaint or  
294 provided information which resulted in an investigation  
295 knowing that the material statements in the complaint or the  
296 investigation request or the information provided were not  
297 true; filed an unsubstantiated complaint or request for an  
298 investigation in reckless disregard of the truth or falsity of the  
299 statements contained therein; or filed one or more  
300 unsubstantiated complaints which constituted abuse of  
301 process, the commission shall:

302 (A) Order the complainant or informant to reimburse the  
303 respondent for his or her reasonable costs;

304 (B) Order the complainant or informant to reimburse the  
305 respondent for his or her reasonable attorney fees; and

306 (C) Order the complainant or informant to reimburse the  
307 commission for the actual costs of its investigation. In  
308 addition, the commission may decline to process any further  
309 complaints brought by the complainant, the initiator of the  
310 investigation or the informant.

311 (3) The sanctions authorized in this subsection are not  
312 exclusive and do not preclude any other remedies or rights of  
313 action the respondent may have against the complainant or  
314 informant under the law.

315 (v) (1) If at any stage in the proceedings under this  
316 section it appears to a Review Board, a hearing examiner or  
317 the commission that there is credible information or evidence  
318 that the respondent may have committed a criminal violation,  
319 the matter shall be referred to the full commission for its  
320 consideration. If, by a vote of two thirds of the members of  
321 the full commission, it is determined that probable cause  
322 exists to believe a criminal violation has occurred, the  
323 commission shall refer the matter to the appropriate county  
324 prosecuting attorney having jurisdiction for a criminal  
325 investigation and possible prosecution. Deliberations of the  
326 commission with regard to referring a matter for criminal  
327 investigation by a prosecuting attorney shall be private and  
328 confidential. Notwithstanding any other provision of this  
329 article, once a referral for criminal investigation is made  
330 under the provisions of this subsection, the ethics  
331 proceedings shall be held in abeyance until action on the  
332 referred matter is concluded. If the referral of the matter to  
333 the prosecuting attorney results in a criminal conviction of  
334 the respondent, the commission may resume its investigation  
335 or prosecution of the ethics violation, but may not impose a  
336 fine as a sanction if a violation is found to have occurred.

337 (2) If fewer than two thirds of the full commission  
338 determine that a criminal violation has occurred, the  
339 commission shall remand the matter to the Review Board, the  
340 hearing examiner or the commission itself as a hearing board,  
341 as the case may be, for further proceedings under this article.

342 (w) The provisions of this section shall apply to  
343 violations of this chapter occurring after the thirtieth day of  
344 September, one thousand nine hundred eighty-nine, and  
345 within one year before the filing of a complaint: *Provided*,  
346 That the applicable statute of limitations for violations which  
347 occur on or after the first day of July, two thousand five, is  
348 two years after the date on which the alleged violation  
349 occurred.

**§6B-2-5. Ethical standards for elected and appointed officials and public employees.**

1       (a) *Persons subject to section.* -- The provisions of this  
2 section apply to all elected and appointed public officials and  
3 public employees, whether full or part time, in state, county,  
4 municipal governments and their respective boards, agencies,  
5 departments and commissions and in any other regional or  
6 local governmental agency, including county school boards.

7       (b) *Use of public office for private gain.* -- (1) A public  
8 official or public employee may not knowingly and  
9 intentionally use his or her office or the prestige of his or her  
10 office for his or her own private gain or that of another  
11 person. Incidental use of equipment or resources available to  
12 a public official or public employee by virtue of his or her  
13 position for personal or business purposes resulting in de  
14 minimis private gain does not constitute use of public office  
15 for private gain under this subsection. The performance of  
16 usual and customary duties associated with the office or  
17 position or the advancement of public policy goals or  
18 constituent services, without compensation, does not  
19 constitute the use of prestige of office for private gain.

20       (2) Notwithstanding the general prohibition against use  
21 of office for private gain, public officials and public  
22 employees may use bonus points acquired through  
23 participation in frequent traveler programs while traveling on  
24 official government business: *Provided*, That the official's  
25 or employee's participation in such program, or acquisition  
26 of such points, does not result in additional costs to the  
27 government.

28       (3) The Legislature, in enacting this subsection,  
29 recognizes that there may be certain public officials or public  
30 employees who bring to their respective offices or  
31 employment their own unique personal prestige which is

32 based upon their intelligence, education, experience, skills  
33 and abilities, or other personal gifts or traits. In many cases,  
34 these persons bring a personal prestige to their office or  
35 employment which inures to the benefit of the state and its  
36 citizens. Those persons may, in fact, be sought by the state to  
37 serve in their office or employment because, through their  
38 unusual gifts or traits, they bring stature and recognition to  
39 their office or employment and to the state itself. While the  
40 office or employment held or to be held by those persons  
41 may have its own inherent prestige, it would be unfair to  
42 those individuals and against the best interests of the citizens  
43 of this state to deny those persons the right to hold public  
44 office or to be publicly employed on the grounds that they  
45 would, in addition to the emoluments of their office or  
46 employment, be in a position to benefit financially from the  
47 personal prestige which otherwise inheres to them.  
48 Accordingly, the commission is directed, by legislative rule,  
49 to establish categories of public officials and public  
50 employees, identifying them generally by the office or  
51 employment held, and offering persons who fit within those  
52 categories the opportunity to apply for an exemption from the  
53 application of the provisions of this subsection. Exemptions  
54 may be granted by the commission, on a case-by-case basis,  
55 when it is shown that: (A) The public office held or the  
56 public employment engaged in is not such that it would  
57 ordinarily be available or offered to a substantial number of  
58 the citizens of this state; (B) the office held or the  
59 employment engaged in is such that it normally or  
60 specifically requires a person who possesses personal  
61 prestige; and (C) the person's employment contract or letter  
62 of appointment provides or anticipates that the person will  
63 gain financially from activities which are not a part of his or  
64 her office or employment.

65 (c) *Gifts.* -- (1) A public official or public employee may  
66 not solicit any gift unless the solicitation is for a charitable  
67 purpose with no resulting direct pecuniary benefit conferred

68 upon the official or employee or his or her immediate family:  
69 *Provided*, That no public official or public employee may  
70 solicit for a charitable purpose any gift from any person who  
71 is also an official or employee of the state and whose position  
72 is subordinate to the soliciting official or employee:  
73 *Provided, however*, That nothing herein shall prohibit a  
74 candidate for public office from soliciting a lawful political  
75 contribution. No official or employee may knowingly accept  
76 any gift, directly or indirectly, from a lobbyist or from any  
77 person whom the official or employee knows or has reason  
78 to know:

79 (A) Is doing or seeking to do business of any kind with  
80 his or her agency;

81 (B) Is engaged in activities which are regulated or  
82 controlled by his or her agency; or

83 (C) Has financial interests which may be substantially  
84 and materially affected, in a manner distinguishable from the  
85 public generally, by the performance or nonperformance of  
86 his or her official duties.

87 (2) Notwithstanding the provisions of subdivision (1) of  
88 this subsection, a person who is a public official or public  
89 employee may accept a gift described in this subdivision, and  
90 there shall be a presumption that the receipt of such gift does  
91 not impair the impartiality and independent judgment of the  
92 person. This presumption may be rebutted only by direct  
93 objective evidence that the gift did impair the impartiality and  
94 independent judgment of the person or that the person knew  
95 or had reason to know that the gift was offered with the intent  
96 to impair his or her impartiality and independent judgment.  
97 The provisions of subdivision (1) of this subsection do not  
98 apply to:

99 (A) Meals and beverages;



100 (B) Ceremonial gifts or awards which have insignificant  
101 monetary value;

102 (C) Unsolicited gifts of nominal value or trivial items of  
103 informational value;

104 (D) Reasonable expenses for food, travel and lodging of  
105 the official or employee for a meeting at which the official or  
106 employee participates in a panel or has a speaking  
107 engagement;

108 (E) Gifts of tickets or free admission extended to a public  
109 official or public employee to attend charitable, cultural or  
110 political events, if the purpose of such gift or admission is a  
111 courtesy or ceremony customarily extended to the office;

112 (F) Gifts that are purely private and personal in nature; or

113 (G) Gifts from relatives by blood or marriage, or a  
114 member of the same household.

115 (3) The commission shall, through legislative rule  
116 promulgated pursuant to chapter twenty-nine-a of this code,  
117 establish guidelines for the acceptance of a reasonable  
118 honorarium by public officials and elected officials. The rule  
119 promulgated shall be consistent with this section. Any elected  
120 public official may accept an honorarium only when:

121 (A) That official is a part-time elected public official;

122 (B) The fee is not related to the official's public position  
123 or duties;

124 (C) The fee is for services provided by the public official  
125 that are related to the public official's regular, nonpublic  
126 trade, profession, occupation, hobby or avocation; and

127 (D) The honorarium is not provided in exchange for any  
128 promise or action on the part of the public official.

129 (4) Nothing in this section shall be construed so as to  
130 prohibit the giving of a lawful political contribution as  
131 defined by law.

132 (5) The Governor or his designee may, in the name of the  
133 State of West Virginia, accept and receive gifts from any  
134 public or private source. Any gift so obtained shall become  
135 the property of the state and shall, within thirty days of the  
136 receipt thereof, be registered with the commission and the  
137 Division of Culture and History.

138 (6) Upon prior approval of the Joint Committee on  
139 Government and Finance, any member of the Legislature  
140 may solicit donations for a regional or national legislative  
141 organization conference or other legislative organization  
142 function to be held in the state for the purpose of deferring  
143 costs to the state for hosting of the conference or function.  
144 Legislative organizations are bipartisan regional or national  
145 organizations in which the Joint Committee on Government  
146 and Finance authorizes payment of dues or other membership  
147 fees for the Legislature's participation and which assist this  
148 and other state legislatures and their staff through any of the  
149 following:

150 (A) Advancing the effectiveness, independence and  
151 integrity of legislatures in the states of the United States;

152 (B) Fostering interstate cooperation and facilitating  
153 information exchange among state legislatures;

154 (C) Representing the states and their legislatures in the  
155 American federal system of government;

156 (D) Improving the operations and management of state  
157 legislatures and the effectiveness of legislators and legislative

158 staff, and to encourage the practice of high standards of  
159 conduct by legislators and legislative staff;

160 (E) Promoting cooperation between state legislatures in  
161 the United States and legislatures in other countries.

162 The solicitations may only be made in writing. The  
163 legislative organization may act as fiscal agent for the  
164 conference and receive all donations. In the alternative, a  
165 bona fide banking institution may act as the fiscal agent. The  
166 official letterhead of the Legislature may not be used by the  
167 legislative member in conjunction with the fund raising or  
168 solicitation effort. The legislative organization for which  
169 solicitations are being made shall file with the Joint  
170 Committee on Government and Finance and with the  
171 Secretary of State for publication in the State Register as  
172 provided in article two of chapter twenty-nine-a of the code,  
173 copies of letters, brochures and other solicitation documents,  
174 along with a complete list of the names and last known  
175 addresses of all donors and the amount of donations received.  
176 Any solicitation by a legislative member shall contain the  
177 following disclaimer:

178 "This solicitation is endorsed by [name of member]. This  
179 endorsement does not imply support of the soliciting  
180 organization, nor of the sponsors who may respond to the  
181 solicitation. A copy of all solicitations are on file with the  
182 West Virginia Legislature's Joint Committee on Government  
183 and Finance, and with the Secretary of State and are available  
184 for public review."

185 (7) Upon written notice to the commission, any member  
186 of the Board of Public Works may solicit donations for a  
187 regional or national organization conference or other function  
188 related to the office of the member to be held in the state for  
189 the purpose of deferring costs to the state for hosting of the  
190 conference or function. The solicitations may only be made

191 in writing. The organization may act as fiscal agent for the  
192 conference and receive all donations. In the alternative, a  
193 bona fide banking institution may act as the fiscal agent. The  
194 official letterhead of the office of the Board of Public Works  
195 member may not be used in conjunction with the fund raising  
196 or solicitation effort. The organization for which solicitations  
197 are being made shall file with the Joint Committee on  
198 Government and Finance, with the Secretary of State for  
199 publication in the State Register as provided in article two of  
200 chapter twenty-nine-a of the code and with the commission,  
201 copies of letters, brochures and other solicitation documents,  
202 along with a complete list of the names and last known  
203 addresses of all donors and the amount of donations received.  
204 Any solicitation by a member of the Board of Public Works  
205 shall contain the following disclaimer: "This solicitation is  
206 endorsed by (name of member of Board of Public Works.)  
207 This endorsement does not imply support of the soliciting  
208 organization, nor of the sponsors who may respond to the  
209 solicitation. Copies of all solicitations are on file with the  
210 West Virginia Legislature's Joint Committee on Government  
211 and Finance, with the West Virginia Secretary of State and  
212 with the West Virginia Ethics Commission and are available  
213 for public review." Any moneys in excess of those donations  
214 needed for the conference or function shall be deposited in  
215 the Capitol Dome and Capitol Improvement Fund established  
216 in section two, article four of chapter five-a of this code.

217 (d) *Interests in public contracts.* –

218 (1) In addition to the provisions of section fifteen, article  
219 ten, chapter sixty-one of this code, no elected or appointed  
220 public official or public employee or member of his or her  
221 immediate family or business with which he or she is  
222 associated may be a party to or have an interest in the profits  
223 or benefits of a contract which the official or employee may  
224 have direct authority to enter into, or over which he or she  
225 may have control: *Provided*, That nothing herein shall be

226 construed to prevent or make unlawful the employment of  
227 any person with any governmental body: *Provided, however,*  
228 That nothing herein shall be construed to prohibit a member  
229 of the Legislature from entering into a contract with any  
230 governmental body, or prohibit a part-time appointed public  
231 official from entering into a contract which the part-time  
232 appointed public official may have direct authority to enter  
233 into or over which he or she may have control when the  
234 official has not participated in the review or evaluation  
235 thereof, has been recused from deciding or evaluating and has  
236 been excused from voting on the contract and has fully  
237 disclosed the extent of his or her interest in the contract.

238 (2) In the absence of bribery or a purpose to defraud, an  
239 elected or appointed public official or public employee or a  
240 member of his or her immediate family or a business with  
241 which he or she is associated shall not be considered as  
242 having a prohibited financial interest in a public contract  
243 when such a person has a limited interest as an owner,  
244 shareholder or creditor of the business which is awarded a  
245 public contract. A limited interest for the purposes of this  
246 subsection is:

247 (A) An interest which does not exceed one thousand  
248 dollars in the profits or benefits of the public contract or  
249 contracts in a calendar year;

250 (B) An interest as a creditor of a public employee or  
251 official who exercises control over the contract, or a member  
252 of his or her immediate family, if the amount is less than five  
253 thousand dollars.

254 (3) If a public official or employee has an interest in the  
255 profits or benefits of a contract, then he or she may not make,  
256 participate in making, or in any way attempt to use his office  
257 or employment to influence a government decision affecting  
258 his or her financial or limited financial interest. Public

259 officials shall also comply with the voting rules prescribed in  
260 subsection (j) of this section.

261 (4) Where the provisions of subdivisions (1) and (2) of  
262 this subsection would result in the loss of a quorum in a  
263 public body or agency, in excessive cost, undue hardship, or  
264 other substantial interference with the operation of a state,  
265 county, municipality, county school board or other  
266 governmental agency, the affected governmental body or  
267 agency may make written application to the Ethics  
268 Commission for an exemption from subdivisions (1) and (2)  
269 of this subsection.

270 (e) *Confidential information.* -- No present or former  
271 public official or employee may knowingly and improperly  
272 disclose any confidential information acquired by him or her  
273 in the course of his or her official duties nor use such  
274 information to further his or her personal interests or the  
275 interests of another person.

276 (f) *Prohibited representation.* -- No present or former  
277 elected or appointed public official or public employee shall,  
278 during or after his or her public employment or service,  
279 represent a client or act in a representative capacity with or  
280 without compensation on behalf of any person in a contested  
281 case, rate-making proceeding, license or permit application,  
282 regulation filing or other particular matter involving a  
283 specific party or parties which arose during his or her period  
284 of public service or employment and in which he or she  
285 personally and substantially participated in a decision-  
286 making, advisory or staff support capacity, unless the  
287 appropriate government agency, after consultation, consents  
288 to such representation. A staff attorney, accountant or other  
289 professional employee who has represented a government  
290 agency in a particular matter shall not thereafter represent  
291 another client in the same or substantially related matter in  
292 which that client's interests are materially adverse to the

293 interests of the government agency, without the consent of  
294 the government agency: *Provided*, That this prohibition on  
295 representation shall not apply when the client was not  
296 directly involved in the particular matter in which the  
297 professional employee represented the government agency,  
298 but was involved only as a member of a class. The provisions  
299 of this subsection shall not apply to legislators who were in  
300 office and legislative staff who were employed at the time it  
301 originally became effective on the first day of July, one  
302 thousand nine hundred eighty-nine, and those who have since  
303 become legislators or legislative staff and those who shall  
304 serve hereafter as legislators or legislative staff.

305 (g) *Limitation on practice before a board, agency,*  
306 *commission or department.* -- Except as otherwise provided  
307 in section three, four or five, article two, chapter eight-a of  
308 this code: (1) No elected or appointed public official and no  
309 full-time staff attorney or accountant shall, during his or her  
310 public service or public employment or for a period of one  
311 year after the termination of his or her public service or  
312 public employment with a governmental entity authorized to  
313 hear contested cases or promulgate or propose rules, appear  
314 in a representative capacity before the governmental entity in  
315 which he or she serves or served or is or was employed in the  
316 following matters:

317 (A) A contested case involving an administrative  
318 sanction, action or refusal to act;

319 (B) To support or oppose a proposed rule;

320 (C) To support or contest the issuance or denial of a  
321 license or permit;

322 (D) A rate-making proceeding; and

323 (E) To influence the expenditure of public funds.

324 (2) As used in this subsection, "represent" includes any  
325 formal or informal appearance before, or any written or oral  
326 communication with, any public agency on behalf of any  
327 person: *Provided*, That nothing contained in this subsection  
328 shall prohibit, during any period, a former public official or  
329 employee from being retained by or employed to represent,  
330 assist or act in a representative capacity on behalf of the  
331 public agency by which he or she was employed or in which  
332 he or she served. Nothing in this subsection shall be  
333 construed to prevent a former public official or employee  
334 from representing another state, county, municipal or other  
335 governmental entity before the governmental entity in which  
336 he or she served or was employed within one year after the  
337 termination of his or her employment or service in the entity.

338 (3) A present or former public official or employee may  
339 appear at any time in a representative capacity before the  
340 Legislature, a county commission, city or town council or  
341 county school board in relation to the consideration of a  
342 statute, budget, ordinance, rule, resolution or enactment.

343 (4) Members and former members of the Legislature and  
344 professional employees and former professional employees  
345 of the Legislature shall be permitted to appear in a  
346 representative capacity on behalf of clients before any  
347 governmental agency of the state or of county or municipal  
348 governments, including county school boards.

349 (5) An elected or appointed public official, full-time staff  
350 attorney or accountant who would be adversely affected by  
351 the provisions of this subsection may apply to the Ethics  
352 Commission for an exemption from the one year prohibition  
353 against appearing in a representative capacity, when the  
354 person's education and experience is such that the prohibition  
355 would, for all practical purposes, deprive the person of the  
356 ability to earn a livelihood in this state outside of the  
357 governmental agency. The Ethics Commission shall by



358 legislative rule establish general guidelines or standards for  
359 granting an exemption or reducing the time period, but shall  
360 decide each application on a case-by-case basis.

361 (h) *Employment by regulated persons and vendors.* -- (1)  
362 No full-time official or full-time public employee may seek  
363 employment with, be employed by, or seek to purchase, sell  
364 or lease real or personal property to or from any person who:

365 (A) Had a matter on which he or she took, or a  
366 subordinate is known to have taken, regulatory action within  
367 the preceding twelve months; or

368 (B) Has a matter before the agency on which he or she is  
369 working or a subordinate is known by him or her to be  
370 working.

371 (C) Is a vendor to the agency where the official serves or  
372 public employee is employed and the official or public  
373 employee, or a subordinate of the official or public employee,  
374 exercises authority or control over a public contract with such  
375 vendor, including, but not limited to:

376 (i) Drafting bid specifications or requests for proposals;

377 (ii) Recommending selection of the vendor;

378 (iii) Conducting inspections or investigations;

379 (iv) Approving the method or manner of payment to the  
380 vendor;

381 (v) Providing legal or technical guidance on the  
382 formation, implementation or execution of the contract; or

383 (vi) Taking other nonministerial action which may affect  
384 the financial interests of the vendor.

385 (2) Within the meaning of this section, the term  
386 "employment" includes professional services and other  
387 services rendered by the public official or public employee,  
388 whether rendered as employee or as an independent  
389 contractor; "seek employment" includes responding to  
390 unsolicited offers of employment as well as any direct or  
391 indirect contact with a potential employer relating to the  
392 availability or conditions of employment in furtherance of  
393 obtaining employment; and "subordinate" includes only those  
394 agency personnel over whom the public official or public  
395 employee has supervisory responsibility.

396 (3) A full-time public official or full-time public  
397 employee who would be adversely affected by the provisions  
398 of this subsection may apply to the Ethics Commission for an  
399 exemption from the prohibition contained in subdivision (1)  
400 of this subsection.

401 (A) The Ethics Commission shall by legislative rule  
402 establish general guidelines or standards for granting an  
403 exemption, but shall decide each application on a case-by-  
404 case basis;

405 (B) A person adversely affected by the restriction on the  
406 purchase of personal property may make such purchase after  
407 seeking and obtaining approval from the commission or in  
408 good faith reliance upon an official guideline promulgated by  
409 the commission, written advisory opinions issued by the  
410 commission, or a legislative rule.

411 (C) The commission may establish exceptions to the  
412 personal property purchase restrictions through the adoption  
413 of guidelines, advisory opinions or legislative rule.

414 (4) A full-time public official or full-time public  
415 employee may not take personal regulatory action on a matter  
416 affecting a person by whom he or she is employed or with

417 whom he or she is seeking employment or has an agreement  
418 concerning future employment.

419 (5) A full-time public official or full-time public  
420 employee may not personally participate in a decision,  
421 approval, disapproval, recommendation, rendering advice,  
422 investigation, inspection or other substantial exercise of  
423 nonministerial administrative discretion involving a vendor  
424 with whom he or she is seeking employment or has an  
425 agreement concerning future employment.

426 (6) A full-time public official or full-time public  
427 employee may not receive private compensation for  
428 providing information or services that he or she is required to  
429 provide in carrying out his or her public job responsibilities.

430 (i) *Members of the Legislature required to vote.* --  
431 Members of the Legislature who have asked to be excused  
432 from voting or who have made inquiry as to whether they  
433 should be excused from voting on a particular matter and  
434 who are required by the presiding officer of the House of  
435 Delegates or Senate of West Virginia to vote under the rules  
436 of the particular house shall not be guilty of any violation of  
437 ethics under the provisions of this section for a vote so cast.

438 (j) *Limitations on Voting.*

439 (1) Public officials, excluding members of the Legislature  
440 who are governed by subsection (i) of this section, may not  
441 vote on a matter:

442 (A) In which they, an immediate family member, or a  
443 business with which they or an immediate family member is  
444 associated have a financial interest. Business with which  
445 they are associated means a business of which the person or  
446 an immediate family member is a director, officer, owner,  
447 employee, compensated agent, or holder of stock which

448 constitutes five percent or more of the total outstanding  
449 stocks of any class.

450 (B) If a public official is employed by a financial  
451 institution and his or her primary responsibilities include  
452 consumer and commercial lending, the public official may  
453 not vote on a matter which directly affects the financial  
454 interests of a customer of the financial institution if the public  
455 official is directly involved in approving a loan request from  
456 the person or business appearing before the governmental  
457 body or if the public official has been directly involved in  
458 approving a loan for that person or business within the past  
459 12 months: *Provided*, That this limitation only applies if the  
460 total amount of the loan or loans exceeds fifteen thousand  
461 dollars.

462 (C) A personnel matter involving the public official's  
463 spouse or relative;

464 (D) The appropriations of public moneys or the awarding  
465 of a contract to a nonprofit corporation if the public official  
466 or an immediate family member is employed by the  
467 nonprofit.

468 (II) A public official may vote:

469 (A) If the public official, his or her spouse, immediate  
470 family members or relatives or business with which they are  
471 associated are affected as a member of, and to no greater  
472 extent than any other member of a profession, occupation,  
473 class of persons or class of businesses. A class shall consist  
474 of not fewer than five similarly situated persons or  
475 businesses; or

476 (B) If the matter affects a publicly traded company when:

477 (i) The public official, or dependent family members  
478 individually or jointly own less than five percent of the issued

479 stock in the publicly traded company and the value of the  
480 stocks individually or jointly owned is less than ten thousand  
481 dollars; and

482 (ii) Prior to casting a vote the public official discloses his  
483 or her interest in the publicly traded company.

484 (3) For a public official's recusal to be effective, it is  
485 necessary to excuse him or herself from participating in the  
486 discussion and decision-making process by physically  
487 removing him or herself from the room during the period,  
488 fully disclosing his or her interests, and recusing him or  
489 herself from voting on the issue.

490 (k) *Limitations on participation in licensing and rate-*  
491 *making proceedings.* -- No public official or employee may  
492 participate within the scope of his or her duties as a public  
493 official or employee, except through ministerial functions as  
494 defined in section three, article one of this chapter, in any  
495 license or rate-making proceeding that directly affects the  
496 license or rates of any person, partnership, trust, business  
497 trust, corporation or association in which the public official  
498 or employee or his or her immediate family owns or controls  
499 more than ten percent. No public official or public employee  
500 may participate within the scope of his or her duties as a  
501 public official or public employee, except through ministerial  
502 functions as defined in section three, article one of this  
503 chapter, in any license or rate-making proceeding that  
504 directly affects the license or rates of any person to whom the  
505 public official or public employee or his or her immediate  
506 family, or a partnership, trust, business trust, corporation or  
507 association of which the public official or employee, or his or  
508 her immediate family, owns or controls more than ten  
509 percent, has sold goods or services totaling more than one  
510 thousand dollars during the preceding year, unless the public  
511 official or public employee has filed a written statement  
512 acknowledging such sale with the public agency and the

513 statement is entered in any public record of the agency's  
514 proceedings. This subsection shall not be construed to require  
515 the disclosure of clients of attorneys or of patients or clients  
516 of persons licensed pursuant to article three, eight, fourteen,  
517 fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one,  
518 chapter thirty of this code.

519 (l) *Certain compensation prohibited.* -- (1) A public  
520 employee may not receive additional compensation from  
521 another publicly- funded state, county or municipal office or  
522 employment for working the same hours, unless:

523 (A) The public employee's compensation from one public  
524 employer is reduced by the amount of compensation received  
525 from the other public employer;

526 (B) The public employee's compensation from one public  
527 employer is reduced on a pro rata basis for any work time  
528 missed to perform duties for the other public employer;

529 (C) The public employee uses earned paid vacation,  
530 personal or compensatory time or takes unpaid leave from his  
531 or her public employment to perform the duties of another  
532 public office or employment; or

533 (D) A part-time public employee who does not have  
534 regularly scheduled work hours or a public employee who is  
535 authorized by one public employer to make up, outside of  
536 regularly scheduled work hours, time missed to perform the  
537 duties of another public office or employment maintains time  
538 records, verified by the public employee and his or her  
539 immediate supervisor at least once every pay period, showing  
540 the hours that the public employee did, in fact, work for each  
541 public employer. The public employer shall submit these  
542 time records to the Ethics Commission on a quarterly basis.

543 (2) This section does not prohibit a retired public official  
544 or public employee from receiving compensation from a

545 publicly- funded office or employment in addition to any  
546 retirement benefits to which the retired public official or  
547 public employee is entitled.

548 (m) *Certain expenses prohibited.* -- No public official or  
549 public employee shall knowingly request or accept from any  
550 governmental entity compensation or reimbursement for any  
551 expenses actually paid by a lobbyist and required by the  
552 provisions of this chapter to be reported, or actually paid by  
553 any other person.

554 (n) Any person who is employed as a member of the  
555 faculty or staff of a public institution of higher education and  
556 who is engaged in teaching, research, consulting or  
557 publication activities in his or her field of expertise with  
558 public or private entities and thereby derives private benefits  
559 from such activities shall be exempt from the prohibitions  
560 contained in subsections (b), (c) and (d) of this section when  
561 the activity is approved as a part of an employment contract  
562 with the governing board of the institution or has been  
563 approved by the employee's department supervisor or the  
564 president of the institution by which the faculty or staff  
565 member is employed.

566 (o) Except as provided in this section, a person who is a  
567 public official or public employee may not solicit private  
568 business from a subordinate public official or public  
569 employee whom he or she has the authority to direct,  
570 supervise or control. A person who is a public official or  
571 public employee may solicit private business from a  
572 subordinate public official or public employee whom he or  
573 she has the authority to direct, supervise or control when:

574 (A) The solicitation is a general solicitation directed to  
575 the public at large through the mailing or other means of  
576 distribution of a letter, pamphlet, handbill, circular or other  
577 written or printed media; or

578 (B) The solicitation is limited to the posting of a notice in  
579 a communal work area; or

580 (C) The solicitation is for the sale of property of a kind  
581 that the person is not regularly engaged in selling; or

582 (D) The solicitation is made at the location of a private  
583 business owned or operated by the person to which the  
584 subordinate public official or public employee has come on  
585 his or her own initiative.

586 (p) The commission may, by legislative rule promulgated  
587 in accordance with chapter twenty-nine-a of this code, define  
588 further exemptions from this section as necessary or  
589 appropriate.

### **ARTICLE 3. LOBBYISTS.**

§6B-3-3c. Lobbyist training course.

§6B-3-4. Reporting by lobbyists.

#### **§6B-3-3c. Lobbyist training course.**

1 The commission shall provide a training course for  
2 registered lobbyists and prospective lobbyists at least twice  
3 each year regarding the provisions of the ethics code relevant  
4 to lobbyists. One such course shall be conducted during the  
5 month of January. In addition to the registration fees  
6 authorized in section three-a of this article, the commission  
7 may collect a reasonable fee established by legislative rule  
8 authorized pursuant to article three, chapter twenty-nine-a of  
9 this code from those attending lobbyist training, which is to  
10 be collected by the Ethics Commission and deposited  
11 pursuant to section six, article one of this chapter. To  
12 maintain registration and engage in lobbying activities, a  
13 lobbyist must complete one such training course during each  
14 two-year registration cycle as described in section three-a of



15 this article: *Provided*, That a lobbyist must attend such  
16 training course prior to engaging in lobbying activities.

**§6B-3-4. Reporting by lobbyists.**

1 (a) A registered lobbyist shall file with the commission  
2 reports of his or her lobbying activities, signed by the  
3 lobbyist. The reports shall be filed three times a year as  
4 follows:

5 (1) On or before the fifteenth day of May, a lobbyist shall  
6 report all lobbying activities in which he or she engaged from  
7 the first day of January through the thirtieth day of April.

8 (2) On or before the fifteenth day of September, a  
9 lobbyist shall report all lobbying activities in which he or she  
10 engaged from the first day of May through the thirty-first day  
11 of August;

12 (3) On or before the fifteenth day of January, a lobbyist  
13 shall report all lobbying activities in which he or she engaged  
14 from the first day of September through the thirty-first day of  
15 December.

16 (b) If the date on which a lobbyist expenditure report is  
17 due falls on a Saturday, Sunday or legal holiday, the report  
18 will be considered timely filed if it is postmarked not later  
19 than the next business day. If a registered lobbyist files a late  
20 report, the lobbyist shall pay the commission a fee of ten  
21 dollars for each late day, not to exceed a total of two hundred  
22 fifty dollars. If a registered lobbyist fails to file a report or to  
23 pay the required fee for filing an untimely report, the  
24 commission may, after written notice sent by certified mail,  
25 return receipt requested, suspend the lobbyist's privileges as  
26 a registered lobbyist until the lobbyist has satisfactorily  
27 complied with all reporting requirements and paid the  
28 required fee.

29 (c)(1) Except as otherwise provided in this section, each  
30 report filed by a lobbyist shall show the total amount of all  
31 expenditures for lobbying activities made or incurred by on  
32 behalf of the lobbyist during the period covered by the report.  
33 The report shall also show subtotals segregated according to  
34 financial category, including meals and beverages; living  
35 accommodations; advertising; travel; contributions; gifts to  
36 public officials or employees or to members of the immediate  
37 family of a public official or employee; and other expenses  
38 or services.

39 (2) Lobbyists are not required to report the following:

40 (A) Unreimbursed personal living and travel expenses not  
41 incurred directly for lobbying;

42 (B) Any expenses incurred for the lobbyist's own living  
43 accommodations;

44 (C) Any expenses incurred for the lobbyist's own travel  
45 to and from public meetings or hearings of the legislative and  
46 executive branches; or

47 (D) Any expenses incurred for telephone and any office  
48 expenses, including rent and salaries and wages paid for staff  
49 and secretarial assistance.

50 (d) If a lobbyist is employed by more than one employer,  
51 the report shall show the proportionate amount of the  
52 expenditures in each category incurred on behalf of each of  
53 his or her employers.

54 (e) The report shall describe the subject matter of the  
55 lobbying activities in which the lobbyist has been engaged  
56 during the reporting period.

57 (f) If, during the period covered by the report, the  
58 lobbyist made expenditures or expenditures were made or

59 incurred on behalf of the lobbyist in the reporting categories  
60 of meals and beverages, living accommodations, travel, gifts  
61 or other expenditures, other than for those expenditures  
62 governed by subsection (g) of this section, the lobbyist shall  
63 report the name of the public official or employee to whom  
64 or on whose behalf the expenditures were made, the total  
65 amount of the expenditures, and the subject matter of the  
66 lobbying activity, if any: *Provided*, That a registered lobbyist  
67 who entertains more than one public official or public  
68 employee at a time with meals and beverages complies with  
69 the provisions of this section if he or she reports the names of  
70 the public officials or public employees entertained and the  
71 total amount expended for meals and beverages for all of the  
72 public officials or public employees entertained: *Provided*,  
73 *however*, That where several lobbyists join in entertaining  
74 one or more public officials or public employees at a time  
75 with meals and beverages, each lobbyist complies with the  
76 provisions of this section by reporting the names of the  
77 public officials or public employees entertained and his or  
78 her proportionate share of the total amount expended for  
79 meals and beverages for all of the public officials or public  
80 employees entertained. Under this subsection, no portion of  
81 the amount of an expenditure for a dinner, party or other  
82 function sponsored by a lobbyist's employer need be  
83 attributed to a particular public official or employee who  
84 attends the function if the sponsor has invited to the function  
85 all the members of: (1) The Legislature; (2) either house of  
86 the Legislature; (3) a standing or select committee of either  
87 house; or (4) a joint committee of the two houses of the  
88 Legislature. However, the amount spent for the function shall  
89 be added to other expenditures for the purpose of determining  
90 the total amount of expenditures reported under subdivision  
91 (1), subsection (c) of this section: *Provided further*, That if  
92 the expenditure is for a function to which the entire  
93 membership of the Legislature has been invited, the lobbyist  
94 need only report that fact, the total amount of the expenditure  
95 and the subject matter of the lobbying activity.

96 (g) If, during the period covered by the report, the  
97 lobbyist made expenditures in the reporting categories of  
98 meals and beverages, lodging, travel, gifts and scheduled  
99 entertainment for or on behalf of a particular public official  
100 or public employee in return for the participation of the  
101 public official or employee in a panel or speaking  
102 engagement at a meeting, the lobbyist shall report the name  
103 of the public official or employee to whom or on whose  
104 behalf the expenditures were made and the total amount of  
105 the expenditures.



## CHAPTER 107

**(H.B. 4684 - By Delegate Palumbo)**

[Passed March 8, 2008; in effect from passage.]  
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6, §11-13X-7, §11-13X-8, §11-13X-10, §11-13X-11, §11-13X-12 and §11-13X-13 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Film Industry Investment Act; specifying definitions; restricting qualification of expenditures to prevent qualification for more than one credit program; stating the amount of credit allowed in specified percentages; specifying review and certification of projects by the film office; specifying credit limitation and allocation of credit by the film office; specifying terms to be agreed by an eligible company; specifying duties of an eligible company upon completion of a qualified project; specifying forms and information to be filed by an eligible company with the film office; authorizing the transfer or sale of excess

credits; specifying criteria for recapture, elimination or reduction of credit; specifying liability of credit transferor and transferee; specifying tax credit review information to be provided to the Legislature; specifying disclosure of certain information by the Tax Commissioner; and making amendments retroactively applicable to taxable years beginning after the thirty-first day of December, two thousand seven.

*Be it enacted by the Legislature of West Virginia:*

That §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6, §11-13X-7, §11-13X-8, §11-13X-10, §11-13X-11, §11-13X-12 and §11-13X-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.**

- §11-13X-3. Definitions.
- §11-13X-4. Creation of the tax credit.
- §11-13X-5. Amount of credit allowed; limitation of the credits.
- §11-13X-6. Requirements for credit.
- §11-13X-7. Application of credit to state taxes.
- §11-13X-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration and forfeiture of credit.
- §11-13X-10. Burden of proof.
- §11-13X-11. Tax credit review and accountability.
- §11-13X-12. Economic development.
- §11-13X-13. Effective date.

#### **§11-13X-3. Definitions.**

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

6       (b) *Terms defined.* --

7 (1) "Commercial exploitation" means reasonable intent  
8 for public viewing for the delivery medium used.

9 (2) "Direct production expenditure" means a transaction  
10 that occurs in the State of West Virginia or with a West  
11 Virginia vendor, and includes:

12 (A) Payment of wages, fringe benefits or fees for talent,  
13 management, or labor to a person who is a resident of West  
14 Virginia;

15 (B) Payment to a personal services corporation for the  
16 services of a performing artist if:

17 (i) The personal services corporation is subject to West  
18 Virginia income tax on those payments; and

19 (ii) The performing artist receiving payments from the  
20 personal services corporation is subject to West Virginia  
21 income tax; and

22 (C) Any of the following provided by a vendor:

23 (i) The story and scenario to be used by a qualified  
24 project;

25 (ii) Set construction and operations, wardrobe,  
26 accessories and related services;

27 (iii) Photography, sound synchronization, lighting and  
28 related services;

29 (iv) Editing and related services;

30 (v) Rental of facilities and equipment;

31 (vi) Leasing of vehicles;

- 32 (vii) Food or lodging;
- 33 (viii) Airfare if purchased through a West Virginia-based  
34 travel agency or travel company;
- 35 (ix) Insurance coverage and bonding if purchased through  
36 a West Virginia-based insurance agent; and
- 37 (x) Other direct costs of producing a qualified project in  
38 accordance with generally accepted entertainment industry  
39 practices.
- 40 (3) "Eligible company" means a person or business entity  
41 engaged in the business of producing film industry  
42 productions.
- 43 (4) "Feature length" means in excess of forty minutes.
- 44 (5) "Federal new markets tax credit program" means the  
45 tax credit program codified as Section 45D of the United  
46 States Internal Revenue Code of 1986, as amended;
- 47 (6) "Film industry production" means a qualified project  
48 intended for reasonable national or international commercial  
49 exploitation.
- 50 (7) "Film office" means the West Virginia Film Office,  
51 which is a division of the West Virginia Department of  
52 Commerce.
- 53 (8) "Postproduction expenditure" means a transaction that  
54 occurs in West Virginia or with a West Virginia vendor after  
55 the completion of principal photography, including editing  
56 and negative cutting, Foley recording and sound effects,  
57 automatic dialogue replacement (also known as ADR or  
58 dubbing), special effects or visual effects, including  
59 computer-generated imagery or other effects, scoring and

60 music editing, sound editing, beginning and end credits,  
61 soundtrack production, subtitling or addition of sound or  
62 visual effects; but not including an expenditure for  
63 advertising, marketing, distribution or expense payments.

64 (9) "Qualified project" means a feature length theatrical  
65 or direct-to-video motion picture, a made-for-television  
66 motion picture, a commercial, a music video, commercial  
67 still photography, a television pilot program, a television  
68 series and a television mini-series that incurs a minimum of  
69 twenty-five thousand dollars in direct production  
70 expenditures and post-production expenditures, as defined by  
71 this subsection, in West Virginia. The term excludes news or  
72 current affairs programming, a weather or market program,  
73 an interview or talk show, a sporting event or show, an  
74 awards show, a gala, a production that solicits funds, a home  
75 shopping program, a program that primarily markets a  
76 product or service, political advertising or a concert  
77 production.

78 A qualified project may be produced on any single media  
79 or multimedia program that:

80 (A) Is fixed on film, digital medium, videotape, computer  
81 disk, laser disc or other similar delivery medium;

82 (B) Can be viewed or reproduced;

83 (C) Is not intended to and does not violate a provision of  
84 article eight-c, chapter sixty-one of this code;

85 (D) Does not contain obscene matter or sexually explicit  
86 conduct, as defined by article eight-a, chapter sixty-one, of  
87 this code;

88 (E) Is intended for reasonable commercial exploitation  
89 for the delivery medium used; and



90 (F) Does not contain content that portrays the State of  
91 West Virginia in a significantly derogatory manner.

92 (10)"Tax Commissioner" means the West Virginia State  
93 Tax Commissioner or his or her designee.

#### **§11-13X-4. Creation of the tax credit.**

1 (a) An eligible company may apply for, and the Tax  
2 Commissioner shall allow, a nonrefundable tax credit in an  
3 amount equal to the percentage specified in section five of  
4 this article of:

5 (1) Direct production expenditures incurred in West  
6 Virginia that are directly attributable to the production in  
7 West Virginia of a qualified project and that occur in West  
8 Virginia or with a West Virginia vendor; and

9 (2) Postproduction expenditures incurred in West  
10 Virginia that are:

11 (A) Directly attributable to the production of a qualified  
12 project;

13 (B) For services performed in West Virginia.

14 (b) Expenditures utilized by an eligible company for  
15 purposes of calculating the tax credit authorized by this  
16 article shall in no event be utilized by the eligible company  
17 for the purpose calculating or qualifying investment for  
18 claiming the economic opportunity tax credit authorized by  
19 article thirteen-q of this chapter or the manufacturing  
20 investment tax credit authorized by article thirteen-s of this  
21 chapter.

#### **§11-13X-5. Amount of credit allowed; limitation of the credits.**

1 (a) *Base allowance.* –

2 (1) The amount of credit allowed to every eligible  
3 company, except as provided in subsection (b) of this section,  
4 shall be twenty-two percent; and

5 (2) For taxable years beginning prior to the first day of  
6 January, two thousand ten, there shall be an additional credit  
7 of five percent.

8 (b) *Extra allowance for hiring of local workers.* -- Any  
9 amount allowed in subsection (a) of this section shall be  
10 increased by an additional four percent if the eligible  
11 company, or its authorized payroll service company, employs  
12 ten or more West Virginia residents as part of its full-time  
13 employees working in the state or as apprentices working in  
14 the state.

15 (c) *Application of the credits.* -- The tax credit allowed  
16 under this section shall be applied to the eligible company's  
17 state tax liability as provided in section seven of this article.

18 (d) *Limitation of the credits.* -- No more than ten million  
19 dollars of the tax credits shall be allocated by the film office  
20 in any given West Virginia state fiscal year. The film office  
21 shall allocate the tax credits in the order the applications  
22 therefor are received.

23 (e) The additional five percent tax credit amount  
24 authorized pursuant to subdivision (2), subsection (a) of this  
25 section shall not be available with respect to expenditures  
26 attributable to a production for which the eligible company  
27 receives a tax credit pursuant to the federal new markets tax  
28 credit program.

#### **§11-13X-6. Requirements for credit.**

1 (a) In order for any eligible company to claim a tax credit  
2 under this article, it shall comply with the following  
3 requirements:

4 (1) If the qualified project contains production credits, the  
5 eligible company shall agree, upon request by the film office,  
6 to recognize the State of West Virginia with the following  
7 acknowledgment in the end credit roll: "Filmed in West  
8 Virginia with assistance of the West Virginia Film Industry  
9 Investment Act";

10 (2) Apply to the film office on forms and in the manner  
11 the film office may prescribe; and

12 (3) Submit to the film office information required by the  
13 film office to demonstrate conformity with the requirements  
14 of this section and shall agree in writing:

15 (A) To pay all obligations the eligible company has  
16 incurred in West Virginia;

17 (B) To publish, at completion of principal photography,  
18 a notice at least once a week for three consecutive weeks in  
19 local newspapers in regions where filming or production has  
20 taken place to notify the public of the need to file creditor  
21 claims against the eligible company by a specified date;

22 (C) That outstanding obligations are not waived should  
23 a creditor fail to file by the specified date; and

24 (D) To delay filing of a claim for the tax credit authorized  
25 by this article until the film office delivers written  
26 notification to the Tax Commissioner that the eligible  
27 company has fulfilled all requirements for the credit.

28 The film office shall determine the eligibility of the  
29 company and the qualification of each project, and shall  
30 report this information to the Tax Commissioner in a manner  
31 and at times the film office and the Tax Commissioner shall  
32 agree upon.

33 (b) Upon completion of a qualified project, the eligible  
34 company shall:

35 (1) File all required West Virginia tax reports and returns  
36 for all applicable tax years and pay any balance of West  
37 Virginia tax due;

38 (2) All claims for the tax credit shall be filed with an  
39 expense verification report prepared by an independent  
40 certified public accountant, utilizing "Agreed Upon  
41 Procedures" which are prescribed by the film office in  
42 accordance with generally accepted auditing standards in the  
43 United States. The certified public accountant will render a  
44 report as to the qualification of the credits, consistent with  
45 guidelines to be determined by the film office and approved  
46 by the Tax Commissioner; and

47 (3) An eligible company claiming an extra allowance for  
48 employing local workers shall submit to the film office  
49 documentation verifying West Virginia residency for all  
50 individuals claimed to qualify for the extra allowance. The  
51 documentation shall include the name, home address and  
52 telephone number for all individuals used to qualify for the  
53 extra allowance.

54 (c) If the requirements of this section have been complied  
55 with, the film office shall approve the film tax credit and  
56 issue to the Tax Commissioner a document granting the  
57 appropriate tax credit to the eligible company.

### **§11-13X-7. Application of credit to state taxes.**

1 (a) *Credit allowed.* —

2 Beginning in the taxable year that the expenditures  
3 permitted under section four of this article are incurred,  
4 eligible companies and owners of eligible companies, as

5 described in subsection (d) of this section, are permitted a  
6 credit, as described in section five of this article, against the  
7 taxes imposed by articles twenty-three, twenty-four and  
8 twenty-one of this chapter, in that order, as specified in this  
9 section.

10 (b) *Business franchise tax.* —

11 The credit is first applied to reduce the taxes imposed by  
12 article twenty-three of this chapter for the taxable year,  
13 determined after application of the credits against tax  
14 provided in section seventeen of said article, but before  
15 application of any other allowable credits against tax.

16 (c) *Corporation net income taxes.* —

17 After application of subsection (b) of this section, any  
18 unused credit is next applied to reduce the taxes imposed by  
19 article twenty-four of this chapter for the taxable year,  
20 determined before application of allowable credits against  
21 tax.

22 (d) *Personal income tax.* —

23 (1) If the eligible taxpayer is an electing small business  
24 corporation (as defined in Section 1361 of the United States  
25 Internal Revenue Code of 1986, as amended), a partnership,  
26 a limited liability company that is treated as a partnership for  
27 federal income tax purposes or a sole proprietorship, then any  
28 unused credit, after application of subsections (b) and (c) of  
29 this subsection, is allowed as a credit against the taxes  
30 imposed by article twenty-one of this chapter on the income  
31 from business or other activity subject to tax under article  
32 twenty-three of this chapter or on income of a sole proprietor  
33 attributable to the business.

34 (2) Electing small business corporations, limited liability  
35 companies, partnerships and other unincorporated  
36 organizations shall allocate the credit allowed by this article  
37 among its members in the same manner as profits and losses  
38 are allocated for the taxable year.

**§11-13X-8. Uses of credit; unused credit; carry forward; carry  
back prohibited; expiration and forfeiture of  
credit.**

1 (a) No credit is allowed under this section against any  
2 employer withholding taxes imposed by article twenty-one of  
3 this chapter.

4 (b) If the tax credit allowed under this article in any  
5 taxable year exceeds the sum of the taxes enumerated in  
6 subsections (b), (c) or (d), section seven of this article for that  
7 taxable year, the excess may be applied against those taxes,  
8 in the order and manner stated in section seven of this article,  
9 for succeeding taxable years until the earlier of the following:

10 (1) The full amount of the excess tax credit is used;

11 (2) The expiration of the second taxable year after the  
12 taxable year in which the expenditures occurred. The tax  
13 credit remaining thereafter is forfeited; or

14 (3) The excess tax credit is transferred or sold.

15 (c) No carryback to a prior taxable year is allowed for the  
16 amount of any unused portion of any annual credit allowance.

17 (d) The transfer or sale of this credit does not extend the  
18 time in which the credit can be used. The carry forward  
19 period for credit that is transferred or sold begins on the date  
20 on which the credit was originally granted by the film office.

21 (e) Any tax credit certificate issued in accordance with  
22 this article, which has been issued to an eligible company,  
23 and to the extent not previously claimed against the tax of the  
24 eligible company or the owner of the certificate, may be  
25 transferred or sold by such eligible company to another West  
26 Virginia taxpayer, subject to the following conditions:

27 (1) A single transfer or sale may involve one or more  
28 transferees, assignees or purchasers. A transfer or sale of the  
29 credits may involve multiple transfers to one or more  
30 transferees, assignees or purchasers;

31 (2) Transferors and sellers shall apply to the film office  
32 for approval of any transfer, sale or assignment of the tax  
33 credit. Any amount of the tax credit that has been transferred  
34 or assigned shall be subject to the same limitations and  
35 conditions that apply to the eligible company's or seller's  
36 entitlement, use and application of the credit. The  
37 application for sale, transfer or assignment of the credit shall  
38 include the transferor's tax credit balance prior to transfer, the  
39 credit certificate number, the name of the seller, the  
40 transferor's remaining tax credit balance after transfer, if any,  
41 all tax identification numbers for both transferor and  
42 transferee, the date of transfer, the amount transferred, a copy  
43 of the credit certificate and any other information required by  
44 the film office.

45 (3) The Tax Commissioner shall not approve the transfer  
46 or assignment of a tax credit to a taxpayer if the seller or  
47 transferor has an outstanding tax obligation with the State of  
48 West Virginia in connection with any qualified project for  
49 any prior taxable year.

50 (f) The transferee, assignee or purchaser shall apply such  
51 credits in the same manner and against the same taxes as the  
52 taxpayer eligible company originally awarded the credit.

53 (g) For purposes of this chapter, any proceeds received  
54 by the eligible company or transferor for its assignment or  
55 sale of the tax credits allowed pursuant to this section are  
56 exempt from the West Virginia consumers sales and service  
57 tax and use tax and from the corporate net income tax and  
58 personal income tax.

59 (h) Tax credits will be subject to recapture, elimination or  
60 reduction if it is determined by the Tax Commissioner that a  
61 taxpayer was not entitled to the credit, in whole or in part, in  
62 the tax year in which it was claimed by the taxpayer.  
63 Transferors, and transferees of sold, transferred or assigned  
64 tax credits bear joint and several liability for any tax, interest  
65 or penalty resulting from recapture, elimination or reduction  
66 of a credit claimed pursuant to this article.

67 (i) Failure to comply with this section will result in the  
68 disallowance of the tax credit until the taxpayers are in full  
69 compliance.

#### **§11-13X-10. Burden of proof.**

1 The burden of proof is on the eligible company claiming  
2 the credit allowed by this article to establish by clear and  
3 convincing evidence that the eligible company or credit  
4 transferee is entitled to the amount of credit asserted for the  
5 taxable year.

#### **§11-13X-11. Tax credit review and accountability.**

1 (a) Beginning on the first day of the third taxable year  
2 after the passage of this article and every two years  
3 thereafter, the film office shall submit to the Governor, the  
4 President of the Senate and the Speaker of the House of  
5 Delegates a tax credit review and accountability report  
6 evaluating the cost effectiveness of the film industry  
7 investment act during the most recent two-year period for



8 which information is available. The criteria to be evaluated  
9 shall include, but not limited to, for each year of the two-year  
10 period:

11 (1) The number of eligible companies claiming the credit;

12 (2) The dollar amount of tax credit certificates issued to  
13 taxpayers;

14 (3) The number of new businesses created by the tax  
15 credit;

16 (4) The number of new jobs, if any, created by the tax  
17 credit;

18 (5) The amount of direct expenditures made on qualified  
19 projects; and

20 (6) The cost of the credit.

21 (b) Eligible companies claiming the credit shall provide  
22 any information the Tax Commissioner and the film office  
23 may require to prepare the report: *Provided*, That the  
24 information provided is subject to the confidentiality and  
25 disclosure provisions of section five-d and five-s, article ten  
26 of this chapter. However, notwithstanding the provisions of  
27 section five-d and five-s, article ten of this chapter, the Tax  
28 Department is hereby authorized to disclose to the film office  
29 and to the development office such tax information as may be  
30 necessary to compile the report required by this section and  
31 the report required by section twelve of this article.

### **§11-13X-12. Economic development.**

1 The West Virginia Development Office, in consultation  
2 and coordination with the appropriate public and private  
3 entities, shall promote, foster, encourage and monitor the

4 development of the film industry in this state as part of its  
5 comprehensive economic development strategy for West  
6 Virginia and report recommendations for expanding the  
7 industry in the state to the Governor and the Joint Committee  
8 on Government and Finance annually on or before the first  
9 day of December.

**§11-13X-13. Effective date.**

1 (a) The credit allowed by this article shall be allowed  
2 upon eligible expenditures occurring after the thirty-first day  
3 of December, two thousand seven.

4 (b) The amendments to this article enacted in the year  
5 two thousand eight shall apply to all taxable years beginning  
6 after the thirty-first day of December, two thousand seven,  
7 and shall apply with retroactive effect with relation to taxable  
8 years beginning prior to the date of passage of such  
9 amendments.



## CHAPTER 108

**(Com. Sub. for H.B. 4150 - By Delegates Yost, Caputo, Klempa,  
Burdiss, Eldridge, Hutchins, Tucker, Reynolds,  
Rodighiero and D. Poling)**

[Passed March 7, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new article, designated §1-6-1; to amend  
and reenact §7-3-2a of said code; and to amend and reenact  
§18-5-24 of said code, all relating to requiring that the purchase  
of United States flag or flags of the State of West Virginia only

be made from manufacturers in the United States when public funds are used.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §1-6-1; that §7-3-2a of said code be amended and reenacted; and that §18-5-24 of said code be amended and reenacted, all to read as follows:

**Chapter**

1. **The State and Its Subdivisions.**
7. **County Commissions and Officers.**
18. **Education.**

**CHAPTER 1. THE STATE AND ITS SUBDIVISIONS.**

**ARTICLE 6. STATE PURCHASE OF AMERICAN-MADE  
FLAGS.**

**§1-6-1. Purchasing requirements.**

- 1 Any United States flag or flag of the State of West
- 2 Virginia purchased with state funds must be manufactured in
- 3 the United States.

**CHAPTER 7. COUNTY COMMISSIONS  
AND OFFICERS.**

**ARTICLE 3. COUNTY PROPERTY.**

**§7-3-2a. County commissions to purchase and display flags.**

- 1 The county commission of every county of the state shall
- 2 purchase, out of its General Revenue Fund, a United States
- 3 flag and a flag of the State of West Virginia, four feet by six
- 4 feet in dimensions and of regulation bunting, or of other
- 5 appropriate size and quality, for its courthouse, and shall

6 require the flags to be displayed from the courthouse, or from  
7 an appropriate nearby staff or pole, every day between the  
8 hours of sunrise and sunset, except in inclement weather.  
9 Each county commission shall also purchase a United States  
10 flag and a flag of the State of West Virginia, and require the  
11 flags to be displayed at all times in the circuit courtroom of  
12 the county. Each county and any municipality therein may  
13 purchase a POW-MIA flag to be displayed from its  
14 courthouse or other governmental building alongside the state  
15 flag and United States flag on Memorial Day, Armed Forces  
16 Day, Flag Day, Independence Day, National POW/MIA  
17 Recognition Day and Veteran's Day each year. The  
18 custodian or other person in charge of the courthouse shall  
19 display the flags as required by this section.

20 Any United States flag or flag of the State of West  
21 Virginia purchased out of the general revenue of the county  
22 must be manufactured in the United States.

## CHAPTER 18. EDUCATION.

### ARTICLE 5. COUNTY BOARD OF EDUCATION.

#### **§18-5-24. Purchase and display of United States flag; penalty for failure to display.**

1 Boards of education shall purchase United States flags,  
2 four by six feet, of regulation bunting, for schools in its  
3 district, and require the flags to be displayed from the schools  
4 during the time the school is in session, except in inclement  
5 weather. The teacher, custodian or other person in charge of  
6 the building during the session is responsible for this flag  
7 being displayed at the school.

8 Any United States flag or flag of the State of West  
9 Virginia purchased out of the county board building fund  
10 must be manufactured in the United States.

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**CHAPTER 109**

**(Com. Sub. for H.B. 4402 - By Delegates Morgan,  
Hutchins and Palumbo)**

[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §29-22A-19 of the Code of West Virginia, 1931, as amended, relating to compulsive gambling; authorizing the Department of Health and Human Resources to bid and award contracts for treatment programs; requiring development of procedures; establishing contract requirements; requiring post award conferences; providing for performance monitoring; prohibiting interference with operation of program; prohibiting use of Lottery Commission logo on advertising media; and requiring annual report.

*Be it enacted by the Legislature of West Virginia:*

That §29-22A-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 22A. RACETRACK VIDEO LOTTERY.**

**§29-22A-19. Compulsive Gambling Treatment Fund; contract requirements for compulsive gamblers treatment program.**

- 1 (a) There is hereby created and established a separate
- 2 special account to be known as the "Compulsive Gambling
- 3 Treatment Fund". The fund shall be appropriated from the
- 4 Commission's administrative expense account and shall be

5 not less than one hundred fifty thousand dollars nor more  
6 than five hundred thousand dollars per fiscal year, as  
7 determined by the commission, as well as other amounts  
8 designated for in this chapter to provide funds for compulsive  
9 gambling treatment programs in the state.

10 (b) The Department of Health and Human Resources  
11 shall administer the grants and funds issued from the  
12 “Compulsive Gambling Treatment Fund”.

13 (c) The Department of Health and Human Resources  
14 shall develop criteria consistent with this section which a  
15 treatment program for compulsive gamblers must meet in  
16 order to become eligible for a grant from the funds made  
17 available for treatment programs pursuant to this provision.

18 (d) The Department of Health and Human Resources is  
19 not subject to the purchasing requirements as set forth in the  
20 legislative rule of the Purchasing Division of the Department  
21 of Administration: *Provided*, That the Department of Health  
22 and Human Resources shall comply with all contract  
23 requirements set forth in this section.

24 (e) The Department of Health and Human Resources  
25 shall develop procedures for bidding and awarding the  
26 contract, which must include:

27 (1) The procedures to be followed for submitting bids and  
28 the procedures for making awards;

29 (2) The proposed general terms and conditions for the  
30 contract;

31 (3) The description of the commodities and services  
32 required for the contract, with sufficient clarity to assure that  
33 there is a comprehensive understanding of the project’s scope

34 and requirements, including, but not limited to, the following  
35 elements:

36 (A) Services to be provided, including education,  
37 prevention, crisis intervention, outreach, assessment, referral  
38 and treatment for problem gamblers, and protocols for  
39 emergency treatment;

40 (B) Requirements for the business and professional  
41 licensing of providers, parameters for media-related  
42 advertising and public service announcements;

43 (C) Training, licensing, monitoring, evaluation and  
44 reporting requirements;

45 (D) Requirements for maintaining the confidentiality of  
46 the client population; and

47 (E) Rights to conduct financial and performance audits;

48 (4) A proposed time schedule commencement and  
49 completion of the contract;

50 (5) A budget for the contract;

51 (6) Requirements or restrictions for the subletting of  
52 specific portions of the contract, if any; and

53 (7) Requirements for professional liability and other  
54 insurance coverage.

55 (f) The Department of Health and Human Resources may  
56 award the contract based on low bid, best value, sole source  
57 or other basis, or may choose to reject all bids and reissue an  
58 invitation for bids: *Provided*, That the Department of Health  
59 and Human Resources shall document the basis of its

60 decisions under this subsection and shall report its decisions  
61 in the annual report required in subsection (j) of this section.

62 (g) The Department of Health and Human Resources  
63 shall hold a post award conference with the contractor to  
64 ensure a clear and mutual understanding of all contract terms  
65 and conditions, and the respective responsibilities of all  
66 parties. The agenda for the conference shall include, at a  
67 minimum, the introduction of all participants and  
68 identification of department and contractor key personnel,  
69 and discussion of the following items:

70 (1) The scope of the contract, including specifications of  
71 requirements set forth in the bid request;

72 (2) The contract terms and conditions, particularly any  
73 special contract provisions;

74 (3) The technical and reporting requirements of the  
75 contract;

76 (4) The contract administration procedures, including  
77 contract monitoring and progress measurement;

78 (5) The rights and obligations of both parties and the  
79 contractor performance evaluation procedures;

80 (6) An explanation that the contractor will be evaluated  
81 on its performance both during and at the conclusion of the  
82 contract and that such information may be considered in the  
83 selection of future contracts;

84 (7) Potential contract problem areas and possible  
85 solutions;

86 (8) Invoicing requirements and payment procedures, with  
87 particular attention to whether payment will be made  
88 according to outcomes achieved by the contractor; and



89 (9) An explanation of the limits of authority of the  
90 personnel of both the department and the contractor.

91 (h) The Department of Health and Human Resources  
92 shall develop a comprehensive and objective monitoring  
93 checklist which:

94 (1) Measures treatment outcomes;

95 (2) Monitors compliance with contract requirements; and

96 (3) Assesses contractor performance on a quarterly and  
97 annual basis.

98 (i) The commission may not influence or interfere with  
99 the operation of the program or the advertising and marketing  
100 decisions of the contractor.

101 (j) The Department of Health and Human Resources may  
102 monitor contract performance, review compliance with the  
103 contract's terms and conditions, request and review pertinent  
104 information in support of tendered invoices and conduct other  
105 investigation so as to enable it to properly assess whether the  
106 project's objectives and the contract's terms and conditions  
107 are being met. However, the Department of Health and  
108 Human Resources may not unduly influence or interfere with  
109 the operation of the program or the advertising and marketing  
110 decisions of the contractor.

111 (k) Once any contract to render services under a  
112 compulsive gambling treatment program is awarded pursuant  
113 to this section, the contract shall be administrated by the  
114 Department of Health and Human Resources, and the  
115 department shall maintain all records pertaining to each  
116 request for reimbursement and disbursement for under said  
117 contract for a minimum of five (5) years.

118 (l) The contractor may prominently promote, display or  
119 advertise the Compulsive Gambler's Treatment Program, its  
120 purpose, its hotline or its program events in any location in  
121 which the Lottery Commission promotes, displays, advertises  
122 or conducts operations or in any other location: *Provided,*  
123 That the Lottery Commission's name, logo or other indicia  
124 may not appear on any advertising, marketing or promotional  
125 material of the contractor.

126 (m) The Department of Health and Human Resources  
127 shall report annually to the Joint Committee on Government  
128 and Finance on the amount of program funds distributed, the  
129 amount of administrative fee retained by the department and  
130 its use of the fee, the number of persons served by the  
131 program, and on each requirement set forth in this section.

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## CHAPTER 110

**(Com. Sub. for S.B. 736 - By Senator Caruth)**

[Passed March 16, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §37-1-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §44A-1-8 of said code; and to amend and reenact §44A-3-5 of said code, all relating generally to appointment of guardians and conservators for persons under legal disability, including protected persons; clarifying the sale of real estate for persons under legal disability, including protected persons; authorizing background checks for persons seeking appointment as guardian or conservator; clarifying who may not be appointed guardian or

conservator; clarifying when a conservator appointment is exempted; and making technical corrections.

*Be it enacted by the Legislature of West Virginia:*

That §37-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §44A-1-8 of said code be amended and reenacted; and that §44A-3-5 of said code be amended and reenacted, all to read as follows:

**Chapter**

37. Real Property.

44A. West Virginia Guardianship and Conservatorship Act.

**CHAPTER 37. REAL PROPERTY.**

**ARTICLE 1. LANDS OF PERSONS WITH LEGAL  
DISABILITY, AND LANDS HELD IN  
TRUST.**

**§37-1-3. Guardian ad litem.**

1 A guardian ad litem shall be appointed for minors under  
2 the age of eighteen, inmates and protected persons subject to  
3 the requirements of section five, article three, chapter forty-  
4 four-a of this code. The guardian ad litem shall answer the  
5 petition under oath, be present at any summary proceeding or  
6 hearing and inform the court whether the sale of property is  
7 in the best interests of the minor, inmate or protected person.  
8 Minors over the age of fourteen may answer in person as  
9 well.

**CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP  
AND CONSERVATORSHIP ACT.**

**Article**

1. Definitions and General Provisions.

3. Guardianship and Conservatorship Administration.

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.****§44A-1-8. Persons and entities qualified to serve as guardian and conservator; default guardian and conservator; exemptions from conservator appointment.**

1 (a) Any adult individual may be appointed to serve as a  
2 guardian, a conservator or both upon a showing by the  
3 individual of the necessary education, ability and background  
4 to perform the duties of guardian or conservator and upon a  
5 determination by the court that the individual is capable of  
6 providing an active and suitable program of guardianship or  
7 conservatorship for the protected person. The individual may  
8 not be employed by or affiliated with any public agency,  
9 entity or facility that is providing substantial services or  
10 financial assistance to the protected person.

11 (b) The court may, after first determining it to be in the  
12 best interest of the protected person, appoint coguardians,  
13 coconservators or both.

14 (c) Any person being considered by a court for  
15 appointment as a guardian or conservator shall provide  
16 information regarding any crime, other than traffic offenses,  
17 of which he or she was convicted and the court or mental  
18 hygiene commissioner may order a background check to be  
19 conducted by the state police or county sheriff. The court  
20 shall consider this information in determining the person's  
21 fitness to be appointed a guardian or conservator.

22 (d) Any nonprofit corporation chartered in this state and  
23 licensed as set forth in subsection (e) of this section or a  
24 public agency that is not a provider of health care services to  
25 the protected person may be appointed to serve as a guardian,  
26 a conservator or both: *Provided*, That the entity is capable of  
27 providing an active and suitable program of guardianship or  
28 conservatorship for the protected person and is not otherwise

29 providing substantial services or financial assistance to the  
30 protected person.

31 (e) A nonprofit corporation chartered in this state may be  
32 appointed to serve as a guardian or conservator or as a  
33 limited or temporary guardian or conservator for a protected  
34 person if it is licensed to do so by the Secretary of Health and  
35 Human Resources. The secretary shall propose legislative  
36 rules, for promulgation in accordance with the provisions of  
37 chapter twenty-nine-a of this code, for the licensure of  
38 nonprofit corporations and shall provide for the review of the  
39 licenses. The rules shall, at a minimum, establish standards  
40 to assure that any corporation licensed for guardianship or  
41 conservatorship:

42 (1) Has sufficient fiscal and administrative resources to  
43 perform the fiduciary duties and make the reports and  
44 accountings required by this chapter;

45 (2) Will respect and maintain the dignity and privacy of  
46 the protected person;

47 (3) Will protect and advocate the legal human rights of  
48 the protected person;

49 (4) Will assure that the protected person is receiving  
50 appropriate educational, vocational, residential and medical  
51 services in the setting least restrictive of the individual's  
52 personal liberty;

53 (5) Will encourage the protected person to participate to  
54 the maximum extent of his or her abilities in all decisions  
55 affecting him or her and to act in his or her own behalf on all  
56 matters in which he or she is able to do so;

57 (6) Does not provide educational, vocational, residential  
58 or medical services to the protected person; and

59 (7) Has written provisions in effect for the distribution of  
60 assets and for the appointment of temporary guardians and  
61 conservators for any protected persons it serves in the event  
62 the corporation ceases to be licensed by the Department of  
63 Health and Human Resources or otherwise becomes unable  
64 to serve as guardian.

65 (f) A duly licensed nonprofit corporation that has been  
66 appointed to serve as a guardian or as a conservator pursuant  
67 to the provisions of this article is entitled to compensation in  
68 accordance with the provisions of section thirteen of this  
69 article.

70 (g) Except as provided in section thirteen of this article,  
71 no guardian or conservator nor any officer, agent, director,  
72 servant or employee of any guardian or conservator may do  
73 business with or in any way profit, either directly or  
74 indirectly, from the estate or income of any protected person  
75 for whom services are being performed by the guardian or  
76 conservator.

77 (h) A person who has an interest as a creditor of a  
78 protected person is not eligible for appointment as either a  
79 guardian or conservator of the protected person, except that  
80 a bank or trust company authorized to exercise trust powers  
81 or to engage in trust business in this state may be appointed  
82 as a conservator if the court determines it is capable of  
83 providing suitable conservatorship for the protected person.

84 (i) The Secretary of the Department of Health and Human  
85 Resources shall designate the adult protective services  
86 division of the county of appointment, or another agency  
87 under his or her jurisdiction, to be appointed as guardian  
88 when there is no other individual, nonprofit corporation or  
89 other public agency that is equally or better qualified and  
90 willing to serve. The department may not refuse to accept the  
91 guardianship appointment when ordered by the court, but  
92 may not be appointed as conservator.

93 (j) The sheriff of the county in which a court has  
94 jurisdiction shall be appointed as conservator when there is  
95 no other individual, nonprofit corporation or other public  
96 agency that is equally or better qualified and willing to serve.  
97 The sheriff may not refuse to accept the conservatorship  
98 appointment when ordered by the court, but may not be  
99 appointed as guardian.

100 (k) A conservator shall not be appointed when the alleged  
101 protected person's total assets are worth less than two  
102 thousand dollars or the alleged protected person's income is:  
103 (1) From the Social Security Administration and a  
104 representative payee has been appointed to act in the best  
105 interest of the individual; (2) from Medicaid and the only  
106 income distributed to the individual is the personal account  
107 allotment; or (3) less than fifty dollars per month or six  
108 hundred dollars per year. In these instances, the guardian,  
109 representative payee or health care facility, if there is no  
110 other person or entity, shall manage the personal care account  
111 or assets.

### **ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.**

#### **§44A-3-5. Sale or mortgage of real estate.**

1 (a) A conservator shall not sell real estate and shall not be  
2 authorized to mortgage any real estate without approval of  
3 the court.

4 (b) Following a petition by the conservator for the sale or  
5 mortgage of real property, the court or mental hygiene  
6 commissioner shall appoint a guardian ad litem and set a  
7 hearing on the petition. The conservator shall personally  
8 serve the protected person and serve by certified mail all  
9 persons entitled to notice pursuant to the original petition at  
10 least thirty days prior to the hearing.



## CHAPTER 111

**(Com. Sub. for S.B. 519 - By Senators Fanning, Foster, Kessler,  
Prezioso, Plymale, Wells, White and Unger)**

[Passed March 5, 2008; in effect from passage.]  
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §22-18-22 of the Code of West Virginia, 1931, as amended, relating to extending the termination date of the Hazardous Waste Management Fee Fund to the thirtieth day of June, two thousand ten.

*Be it enacted by the Legislature of West Virginia:*

That §22-18-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.**

#### **§22-18-22. Appropriation of funds; Hazardous Waste Management Fund.**

1 (a) The net proceeds of all fines, penalties and forfeitures  
2 collected under this article shall be appropriated as directed  
3 by section five, article XII of the Constitution of West  
4 Virginia. For the purposes of this section, the net proceeds  
5 of the fines, penalties and forfeitures shall be considered the  
6 proceeds remaining after deducting therefrom those sums  
7 appropriated by the Legislature for defraying the cost of  
8 administering this article. All permit application fees  
9 collected under this article shall be paid into the State  
10 Treasury into a special fund designated the Hazardous Waste  
11 Management Fund. In making the appropriation for



12 defraying the cost of administering this article, the  
13 Legislature shall first take into account the sums included in  
14 that special fund prior to deducting additional sums as may  
15 be needed from the fines, penalties and forfeitures collected  
16 pursuant to this article.

17 (b) Effective on the first day of July, two thousand three,  
18 there is imposed an annual certification fee for facilities that  
19 manage hazardous waste, as defined by the federal Resource  
20 Conservation and Recovery Act, as amended. The fee will be  
21 set by rule promulgated by the secretary in accordance with  
22 the provisions of article three, chapter twenty-nine-a of this  
23 code. The rule shall be a product of a negotiated rule-making  
24 process with the facilities subject to the rule. The rule shall,  
25 at a minimum, establish different fee rates for facilities based  
26 on criteria established in the rule. The total amount of fees  
27 generated shall raise no more funds than are necessary and  
28 adequate to meet the matching requirements for all federal  
29 grants which support the hazardous waste management  
30 program, but shall not exceed seven hundred thousand dollars  
31 per year.

32 (c) The revenues collected from the annual certification  
33 fee shall be deposited in the State Treasury to the credit of the  
34 Hazardous Waste Management Fee Fund, which is  
35 continued. Moneys of the fund, together with any interest or  
36 other return earned thereon, shall be expended to meet the  
37 matching requirements of federal grant programs which  
38 support the hazardous waste management program.  
39 Expenditures from the fund are for the purposes set forth in  
40 this article and are not authorized from collections, but are to  
41 be made only in accordance with appropriation by the  
42 Legislature and in accordance with the provisions of article  
43 three, chapter twelve of this code and upon the fulfillment of  
44 the provisions set forth in article two, chapter five-a of this  
45 code. Amounts collected which are found, from time to time,  
46 to exceed the funds needed for purposes set forth in this

47 article may be transferred to other accounts by appropriation  
48 of the Legislature.

49 (d) The fee provided for in subsection (b) of this section  
50 and the fund established in subsection (c) of this section shall  
51 terminate on the thirtieth day of June, two thousand ten. The  
52 department shall, by the thirty-first day of December of each  
53 year, report to the Joint Committee on Government and  
54 Finance regarding moneys collected into the Hazardous  
55 Waste Management Fee Fund and expenditures by the  
56 agency, including any federal matching moneys received and  
57 providing an accounting on the collection of the fee by type  
58 of permit activity, funds being expended and current and  
59 future projected balances of the fund.



## CHAPTER 112

**(Com. Sub. for S.B. 619 - By Senators Prezioso, Jenkins, Wells,  
Hunter, Hall, Stollings, Plymale, Unger, Kessler, Foster and Love)**

[Passed March 4, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §16-4D-2, §16-4D-3 and §16-4D-4 of the Code of West Virginia, 1931, as amended, all relating to adding definitions for anticipated and unanticipated users of external defibrillators; and limiting liability toward unanticipated users who render aid.

*Be it enacted by the Legislature of West Virginia:*

That §16-4D-2, §16-4D-3 and §16-4D-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### **ARTICLE 4D. AUTOMATED EXTERNAL DEFIBRILLATORS.**

§16-4D-2. Definitions.

§16-4D-3. Early defibrillation programs.

§16-4D-4. Limitation on liability.

##### **§16-4D-2. Definitions.**

1 (a) "Anticipated operator" means any person trained in  
2 accordance with section three of this article who utilizes an  
3 automated external defibrillator which was placed through an  
4 early defibrillation program.

5 (b) "Automated external defibrillator", hereinafter  
6 referred to as AED, means a medical device heart monitor  
7 and defibrillator that: (1) Has undergone the premarket  
8 approval process pursuant to the Federal Food, Drug and  
9 Cosmetic Act, 21 U. S. C. §360, as amended; (2) is capable  
10 of recognizing the presence or absence of ventricular  
11 fibrillation; (3) is capable of determining, without  
12 intervention by the operator, whether defibrillation should be  
13 performed; and (4) upon determining that defibrillation  
14 should be performed, automatically charges and requests  
15 delivery of an electrical impulse to an individual's heart.

16 (c) "Early defibrillation program" means a coordinated  
17 program that meets the requirements of section three of this  
18 article and one that provides early public access to  
19 defibrillation for individuals experiencing sudden cardiac  
20 arrest through the use of an automated external defibrillator.

21 (d) "Emergency medical services (EMS)" means all  
22 services established by the Emergency Medical Services Act  
23 of 1973 in article four-c of this chapter, including, but not

24 limited to, the emergency medical services plan of the  
25 Department of Health and Human Resources providing a  
26 response to the medical needs of an individual to prevent the  
27 loss of life or aggravation of illness or injury.

28 (e) "Entity" means a public or private group,  
29 organization, business, association or agency that meets the  
30 requirements of section three of this article. "Entity" does not  
31 include emergency medical services operational programs or  
32 licensed commercial ambulance services.

33 (f) "Medical director" means a duly licensed physician  
34 who serves as the designated medical coordinator for an  
35 entity's early defibrillation program.

36 (g) "Unanticipated operator" means any person rendering  
37 emergency medical care involving the use of an AED.

### **§16-4D-3. Early defibrillation programs.**

1 An entity providing an early defibrillation program shall:

2 (1) Register the program with the Office of Emergency  
3 Medical Services, pursuant to article four-c of this chapter,  
4 identifying the placement of AEDs, training of anticipated  
5 operators, preplanned EMS system coordination, designation  
6 of a medical director, maintenance of AED equipment and  
7 reports of AED utilization;

8 (2) Require the anticipated operator of an AED to receive  
9 appropriate training in cardiopulmonary resuscitation,  
10 referred to as "CPR", in the operation of an AED and in the  
11 determination of advance directives from the American Heart  
12 Association, American Red Cross, any other nationally  
13 recognized course in CPR and AED or an AED and CPR  
14 training program approved by the Office of Emergency  
15 Medical Services;

16 (3) Maintain and test the AED in accordance with the  
17 manufacturer's guidelines and keep written records of this  
18 maintenance and testing;

19 (4) Designate a medical director for the coordination of  
20 the program, which shall include, but not be limited to,  
21 training, coordinating with EMS, creating AED deployment  
22 strategies and reviewing each operation of an AED;

23 (5) Notify the local EMS system and public safety  
24 answering point or other appropriate emergency dispatch  
25 center of the existence of an entity's early defibrillation  
26 program, the location of the program and the program's plan  
27 for coordination with the EMS system;

28 (6) Provide that an operator of an AED who renders  
29 emergency care or treatment on a person experiencing  
30 cardiac arrest shall activate the EMS system as soon as  
31 possible and shall report the use of an AED to the program  
32 medical director; and

33 (7) Comply with the guidelines of the West Virginia  
34 Office of Emergency Medical Services regarding data  
35 collection and reporting.

**§16-4D-4. Limitation on liability.**

1 A person is not liable for civil damages as a result of any  
2 act or omission in rendering emergency medical care or  
3 treatment involving the use of an AED if the care or  
4 treatment does not amount to gross negligence and the  
5 following conditions are met:

6 (1) The person, entity, certified trainer or medical director  
7 of the early defibrillation program is in compliance with the  
8 provisions of section three of this article; and

9 (2) The person is an anticipated operator of an AED who  
10 gratuitously and in good faith rendered emergency medical  
11 care, pursuant to the requirements of section three of this  
12 article, other than in the ordinary course of the person's  
13 employment or profession; or

14 (3) The person is an unanticipated operator who  
15 gratuitously and in good faith rendered emergency medical  
16 care.



## CHAPTER 113

**(Com. Sub. for S.B. 645 - By Senators Kessler, Edgell and Helmick)**

[Passed March 8, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5F-7, relating to exempting city and county hospitals subject to health care financial disclosure from the additional audit requirements for local government offices.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-5F-7, to read as follows:

### **ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.**

#### **§16-5F-7. Exempt from additional audits.**

1 (a) Every covered facility and related organization  
2 required to file or publish reports as provided in this article

3 shall be exempt from the audits imposed upon local  
4 government offices by article nine, chapter six of this code.

5 (b) Any covered facility and related organization exempt  
6 under this section from the audit requirements and  
7 obligations imposed upon local government offices by article  
8 nine, chapter six of this code shall file a copy of its audited  
9 financial statements with the State Auditor annually, within  
10 a reasonable period of time following receipt of the audited  
11 financial statements by the covered facility and related  
12 organization.



## CHAPTER 114

**(Com. Sub. for H.B. 4418 - By Delegates Perdue, Hatfield,  
Long, Boggs, Staggers, Varner and Hamilton)**

[Passed March 4, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 12, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5B-17, relating to healthcare-associated infection reporting; establishing an advisory panel; establishing panel responsibilities; establishing limitations on use of information; establishing that all hospitals shall report; establishing that the Health Care Authority will make the data available to the public and to Bureau of Public Health; providing an implementation date for hospital reporting; and penalties.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-5B-17, to read as follows:

**ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.**

**§16-5B-17. Healthcare-associated infection reporting.**

1 (a) As used in this section, the following words mean:

2 (1) “Centers for Disease Control and Prevention” or  
3 “CDC” means the United States Department of Health and  
4 Human Services Centers for Disease Control and Prevention;

5 (2) “National Healthcare Safety Network” or “NHSN”  
6 means the secure Internet-based data collection surveillance  
7 system managed by the Division of Healthcare Quality  
8 Promotion at the CDC, created by the CDC for accumulating,  
9 exchanging and integrating relevant information on infectious  
10 adverse events associated with healthcare delivery.

11 (3) “Hospital” means hospital as that term is defined in  
12 subsection-e, section three, article twenty-nine-b, chapter  
13 sixteen.

14 (4) “Health care-associated infection” means a localized  
15 or systemic condition that results from an adverse reaction to  
16 the presence of an infectious agent or a toxin of an infectious  
17 agent that was not present or incubating at the time of  
18 admission to a hospital.

19 (5) “Physician” means a person licensed to practice  
20 medicine by either the board of medicine or the board of  
21 osteopathy.

22 (6) “Nurse” means a person licensed in West Virginia as  
23 a registered professional nurse in accordance with article  
24 seven, chapter thirty.



25 (b) The West Virginia Health Care Authority is hereby  
26 directed to create an Infection Control Advisory Panel whose  
27 duty is to provide guidance and oversight in implementing  
28 this section. The advisory panel shall consist of the  
29 following members:

30 (1) Two board-certified or board-eligible physicians,  
31 affiliated with a West Virginia hospital or medical school,  
32 who are active members of the Society for Health Care  
33 Epidemiology of America and who have demonstrated an  
34 interest in infection control;

35 (2) One physician who maintains active privileges to  
36 practice in at least one West Virginia hospital;

37 (3) Three infection control practitioners, two of whom are  
38 nurses, each certified by the Certification Board of Infection  
39 Control and Epidemiology, and each working in the area of  
40 infection control. Rural and urban practice must be  
41 represented;

42 (4) A statistician with an advanced degree in medical  
43 statistics;

44 (5) A microbiologist with an advanced degree in clinical  
45 microbiology;

46 (6) The Director of the Division of Disease Surveillance  
47 and Disease Control in the Bureau for Public Health or a  
48 designee; and

49 (7) The director of the hospital program in the office of  
50 health facilities, licensure and certification in the Bureau for  
51 Public Health.

52 (c) The advisory panel shall:

53 (1) Provide guidance to hospitals in their collection of  
54 healthcare-associated infections;

55 (2) Provide evidence-based practices in the control and  
56 prevention of healthcare-associated infections;

57 (3) Establish reasonable goals to reduce the number of  
58 healthcare-associated infections;

59 (4) Develop plans for analyzing infection-related data  
60 from hospitals;

61 (5) Develop healthcare-associated advisories for hospital  
62 distribution;

63 (6) Review and recommend to the West Virginia Health  
64 Care Authority the manner in which the reporting is made  
65 available to the public to assure that the public understands  
66 the meaning of the report; and

67 (7) Other duties as identified by the West Virginia Health  
68 Care Authority.

69 (d) Hospitals shall report information on  
70 healthcare-associated infections in the manner prescribed by  
71 the CDC National Healthcare Safety Network(NHSN). The  
72 reporting standard prescribed by the CDC National  
73 Healthcare Safety Network(NHSN), as adopted by the West  
74 Virginia Health Care Authority, shall be the reporting system  
75 of the hospitals in West Virginia.

76 (e) Hospitals who fail to report information on  
77 healthcare-associated infections in the manner and time  
78 frame required by the West Virginia Health Care Authority  
79 shall be fined the sum of five thousand dollars for each such  
80 failure.

81 (f) The Infection Control Advisory Panel shall provide  
82 the results of the collection and analysis of all hospital data

83 to the West Virginia Health Care Authority for public  
84 availability and the Bureau for Public Health for  
85 consideration in their hospital oversight and epidemiology  
86 and disease surveillance responsibilities in West Virginia.

87 (g) Data collected and reported pursuant to this act may  
88 not be considered to establish standards of care for any  
89 purposes of civil litigation in West Virginia.

90 (h) The West Virginia Health Care Authority shall report  
91 no later than January 15 of each year to the legislative  
92 oversight committee on health and human resources  
93 accountability, beginning in the year two thousand eleven.  
94 This yearly report shall include a summary of the results of  
95 the required reporting and the work of the advisory panel.

96 (i) The West Virginia Health Care Authority shall  
97 require that all hospitals implement and initiate this reporting  
98 requirement no later than the first day of July, two thousand  
99 nine.



## CHAPTER 115

**(H.B. 4513 - By Delegates Hatfield, Marshall, Long, Eldridge,  
Spencer, Fleischauer, Longstreth, Rodighiero, Rowan,  
Ashley and Border)**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §16-22-3 of the Code of West Virginia, 1931, as amended, relating to the reimbursement of costs for newborn screenings by designated health insurers in the state.

*Be it enacted by the Legislature of West Virginia:*

That § 16-22-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 22. DETECTION AND CONTROL OF DISEASES  
IN NEWBORN CHILDREN.**

**§16-22-3. Tests for diseases specified by the State Public Health Commissioner; reports; assistance to afflicted children; Public Health Commissioner to propose rules.**

1 (a) The hospital or birthing center in which an infant is  
2 born, the parents or legal guardians, the physician attending  
3 a newborn child, or any person attending a newborn child not  
4 under the care of a physician shall require and ensure that  
5 each such child be tested for phenylketonuria, galactosemia,  
6 hypothyroidism, sickle cell anemia and certain other diseases  
7 specified by the Bureau for Public Health. The Bureau for  
8 Public Health shall also require testing for congenital adrenal  
9 hyperplasia, cystic fibrosis and biotinidase deficiency. No  
10 later than the first day of July, two thousand eight, the Bureau  
11 for Public Health shall also require testing for isovaleric  
12 acidemia, glutaric acidemia type I, 3-Hydroxy-3-  
13 methylglutaric aciduria, multiple carboxylase deficiency,  
14 methylmalonic acidemia-mutase deficiency form, 3-  
15 methylcrotonyl-CoA carboxylase deficiency, methylmalonic  
16 acidemia, Cbl A and Cbl B forms, propionic acidemia, beta-  
17 ketothiolase deficiency, medium-chain acyl-CoA  
18 dehydrogenase deficiency, very long-chain acyl-CoA  
19 dehydrogenase deficiency, long-chain hydroxyacyl-CoA  
20 dehydrogenase deficiency, trifunctional protein deficiency,  
21 carnitine uptake defeat, maple syrup urine disease,  
22 homocystinuria, citrullinemia type I, argininosuccinate  
23 acidemia, tyrosinemia type I, hemoglobin S/Beta-  
24 thalassemia, sickle C disease and hearing deficiency.

25 (b) A positive result on any test specified in subsection  
26 (a) of this section, or a positive result for any other diseases  
27 specified by the Bureau for Public Health, shall be promptly  
28 reported to the Bureau for Public Health by the director of the  
29 laboratory performing such test.

30 (c) Newborn screenings shall be considered a covered  
31 benefit reimbursed to the birthing facilities by Public  
32 Employees Insurance Agency, the State Children's Health  
33 Insurance Program, the Medicaid program and all health  
34 insurers whose benefit package includes pregnancy coverage  
35 and who are licensed under chapter thirty-three of this code.

36 (d) The Bureau for Public Health shall propose rules for  
37 legislative approval in accordance with article three, chapter  
38 twenty-nine of this code. These legislative rules shall  
39 include:

40 (1) A means for the Bureau for Public Health, in  
41 cooperation with other state agencies, and with attending  
42 physicians, to provide medical, dietary and related assistance  
43 to children determined to be afflicted with any disease  
44 specified in subsection (a) of this section and certain other  
45 diseases specified by the Bureau for Public Health; and

46 (2) A means for payment for the screening provided for  
47 in this section; and

48 (3) Anything further considered necessary by the Bureau  
49 for Public Health to implement the provisions of this section.

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**CHAPTER 116****(H.B. 2503 - By Delegates Boggs, Stemple and Tansill)**

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[Passed March 4, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 10, 2008.]

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AN ACT to amend and reenact §17B-2-1 of the Code of West Virginia, 1931, as amended, relating to the requirements for obtaining a state-issued identification card; and allowing persons who possess a valid driver's license to also possess an identification card.

*Be it enacted by the Legislature of West Virginia:*

That §17B-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

**\*§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.**

- 1 (a) A person, except those hereinafter expressly
- 2 exempted, may not drive any motor vehicle upon a street or
- 3 highway in this state or upon any subdivision street, as used
- 4 in article twenty-four, chapter eight of this code, when the
- 5 use of the subdivision street is generally used by the public

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**\*CLERK'S NOTE:** This section was also amended by H.B. 4139 (Chapter 66), which passed subsequent to this act.

6 unless the person has a valid driver's license under the  
7 provisions of this code for the type or class of vehicle being  
8 driven.

9 Any person licensed to operate a motor vehicle as  
10 provided in this code may exercise the privilege thereby  
11 granted as provided in this code and, except as otherwise  
12 provided by law, is not required to obtain any other license to  
13 exercise the privilege by any county, municipality or local  
14 board or body having authority to adopt local police  
15 regulations.

16 (b) The division, upon issuing a driver's license, shall  
17 indicate on the license the type or general class or classes of  
18 vehicle or vehicles the licensee may operate in accordance  
19 with the provisions of this code, federal law or rule. Licenses  
20 shall be issued in different colors for those drivers under age  
21 eighteen, those drivers age eighteen to twenty-one and adult  
22 drivers. The commissioner is authorized to select and assign  
23 colors to the licenses of the various age groups.

24 (c) Driver's licenses issued by the division shall be  
25 classified in the following manner:

26 (1) Class A, B or C license shall be issued to those  
27 persons eighteen years of age or older with two years' driving  
28 experience and who have qualified for the commercial  
29 driver's license established by chapter seventeen-e of this  
30 code and the federal Motor Carrier Safety and Improvement  
31 Act of 1999 and subsequent rules, and have paid the required  
32 fee.

33 (2) Class D license shall be issued to those persons  
34 eighteen years and older with one year of driving experience  
35 who operate motor vehicles other than those types of vehicles  
36 which require the operator to be licensed under the provisions  
37 of chapter seventeen-e of this code and federal law and rule

38 and whose primary function or employment is the  
39 transportation of persons or property for compensation or  
40 wages and have paid the required fee. For the purposes of  
41 the regulation of the operation of a motor vehicle, wherever  
42 the term chauffeur's license is used in this code, it shall be  
43 construed to mean the Class A, B, C or D license described  
44 in this section or chapter seventeen-e of this code or federal  
45 law or rule: *Provided*, That anyone who is not required to be  
46 licensed under the provisions of chapter seventeen-e of this  
47 code and federal law or rule and who operates a motor  
48 vehicle which is registered or which is required to be  
49 registered as a Class A motor vehicle as that term is defined  
50 in section one, article ten, chapter seventeen-a of this code  
51 with a gross vehicle weight rating of less than eight thousand  
52 one pounds, is not required to obtain a Class D license.

53 (3) Class E license shall be issued to those persons who  
54 have qualified under the provisions of this chapter and who  
55 are not required to obtain a Class A, B, C or D license and  
56 who have paid the required fee. The Class E license may be  
57 endorsed under the provisions of section seven-b of this  
58 article for motorcycle operation. The Class E license for any  
59 person under the age of eighteen may also be endorsed with  
60 the appropriate graduated driver license level in accordance  
61 with the provisions of section three-a of this article.

62 (4) Class F license shall be issued to those persons who  
63 successfully complete the motorcycle examination procedure  
64 provided by this chapter and have paid the required fee, but  
65 who do not possess a Class A, B, C, D or E driver's license.

66 (5) All licenses issued under this section may contain  
67 information designating the licensee as a diabetic, organ  
68 donor or as deaf or hard of hearing and for other handicapped  
69 or disabled persons in accordance with criteria established by  
70 the division, if the licensee requests this information on the  
71 license.



72 (d) A person, except those hereinafter expressly  
73 exempted, may not drive any motorcycle upon a street or  
74 highway in this state or upon any subdivision street, as used  
75 in article twenty-four, chapter eight of this code, when the  
76 use of the subdivision street is generally used by the public  
77 unless the person has a valid motorcycle license or a valid  
78 license which has been endorsed under section seven-b of  
79 this article for motorcycle operation or has a valid motorcycle  
80 instruction permit.

81 (e)(1) An identification card may be issued to any person  
82 who:

83 (A) Is a resident of this state in accordance with the  
84 provisions of section one-a, article three, chapter seventeen-a  
85 of this code;

86 (B) Has reached the age of two years. The division may  
87 also issue an identification card to a person under the age of  
88 two years for good cause shown;

89 (C) Has paid the required fee of two dollars and fifty  
90 cents per year for each year the identification card is issued  
91 to be valid: *Provided*, That the fee is not required if the  
92 applicant is sixty-five years or older or is legally blind; and

93 (D) Presents a birth certificate or other proof of age and  
94 identity acceptable to the division with a completed  
95 application on a form furnished by the division.

96 (2) The identification card shall contain the same  
97 information as a driver's license except that the identification  
98 card shall be clearly marked as identification card. However,  
99 the division may issue an identification card with less  
100 information to persons under the age of sixteen. It may be  
101 renewed on application and payment of the fee required by  
102 this section.

103 (A) Every identification card issued to persons who have  
104 attained their twenty-first birthday shall expire on the day of  
105 the month designated by the commissioner in which the  
106 applicant's birthday occurs in those years in which the  
107 applicant's age is evenly divisible by five. Except as  
108 provided in paragraph (B) of this subdivision, no  
109 identification card may be issued for less than three years nor  
110 more than seven years and shall be valid for a period of five  
111 years expiring in the month in which the applicant's birthday  
112 occurs and in a year in which the applicant's age is evenly  
113 divisible by five.

114 (B) Every identification card issued to persons who have  
115 not attained their twenty-first birthday shall expire on the day  
116 of the month designated by the commissioner in the year in  
117 which the applicant attains the age of twenty-one years.

118 (C) Every identification card issued to persons under the  
119 age of sixteen shall expire on the day of the month designated  
120 by the commissioner in which the applicant's birthday occurs  
121 and shall be issued for a period of two years.

122 (3) The division may issue an identification card to an  
123 applicant whose privilege to operate a motor vehicle has been  
124 refused, canceled, suspended or revoked under the provisions  
125 of this code.

126 (f) Any person violating the provisions of this section is  
127 guilty of a misdemeanor and, upon conviction thereof, shall  
128 be fined not more than five hundred dollars; and upon a  
129 second or subsequent conviction, shall be fined not more than  
130 five hundred dollars or confined in jail not more than six  
131 months, or both.

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## CHAPTER 117

**(Com. Sub. for H.B. 4022 - By Mr. Speaker, Mr. Thompson,  
and Delegate Armstead)  
[By Request of the Executive]**

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[Passed March 8, 2008; in effect July 1, 2008.]  
[Approved by the Governor on March 31, 2008.]

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AN ACT to repeal §29-21-10, §29-21-11 and §29-21-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29-21-3b; and to amend and reenact §29-21-6, §29-21-8, §29-21-9, §29-21-13 and §29-21-13a of said code, all relating to Public Defender Services generally; creating the Indigent Defense Commission; specifying members and their terms; specifying certain powers and duties of the Indigent Defense Commission; requiring submission of report to Legislature; requiring public defender corporations to submit monthly financial statements and reports; providing requirements for the creation, activation, merger or dissolution of public defender corporations; authorizing employment of certain attorneys; requiring consultation with judge; providing for the order of appointment of panel attorneys; establishing requirements for funding applications; requiring corporations to submit proposed budgets; authorizing amended funding contracts; authorizing executive director to establish guidelines for submission of claims and vouchers; establishing certain deadlines for submitting claims; providing for periodic payment of fees to panel attorneys; clarifying in-court work and meaning of separate cases; establishing limitations on reimbursement of certain expenses; requiring vouchers be reimbursed within a certain period; providing for interest accruing on late reimbursements; and giving preference to processing vouchers involving child abuse and neglect cases.

*Be it enacted by the Legislature of West Virginia:*

That §29-21-10, §29-21-11 and §29-21-12 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §29-21-3b; and that §29-21-6, §29-21-8, §29-21-9, §29-21-13 and §29-21-13a of said code be amended and reenacted, all to read as follows:

**ARTICLE 21. PUBLIC DEFENDER SERVICES.**

- §29-21-3b. Indigent Defense Commission.
- §29-21-6. Powers, duties and limitations.
- §29-21-8. Public defender corporations; establishment thereof.
- §29-21-9. Panel attorneys.
- §29-21-13. Approval of public defender corporation funding applications; funding; recordkeeping by public defender corporations.
- §29-21-13a. Compensation and expenses for panel attorneys.

**§29-21-3b. Indigent Defense Commission.**

1 (a) There is hereby established the Indigent Defense  
 2 Commission to provide assistance to Public Defender  
 3 Services with regard to the general policies and procedures of  
 4 the agency, including, but not limited to, the opening, closing  
 5 or merging of public defender offices throughout the state  
 6 and the establishment of performance measures for the  
 7 qualitative review of indigent defense.

8 (b) In order to demonstrate a collaborative approach to  
 9 solving criminal justice problems, the commission shall  
 10 consist of the Executive Director of Public Defender  
 11 Services, who shall serve as chair, and the following  
 12 members appointed by the Governor:

13 (1) One former or retired circuit judge;

14 (2) Three lawyers, one from each congressional district,  
 15 who have significant experience in the defense of criminal  
 16 cases or have demonstrated a strong commitment to quality  
 17 representation of indigent defendants;

18 (3) One current chief public defender; and

19 (4) One nonlawyer with a demonstrated commitment to  
20 providing legal services to the indigent;

21 (5) One person who is a member of an organization that  
22 advocates on behalf of people with mental illness and  
23 developmental disabilities; and

24 (6) One attorney with significant experience in the  
25 defense of juvenile delinquency and abuse and neglect cases.

26 (c) The commission shall meet at the times and places  
27 specified by the call of the chair: *Provided*, That the  
28 commission shall meet no less than four times each year.  
29 Members shall serve without compensation but may receive  
30 reimbursement of actual and necessary expenses for each day  
31 or portion thereof engaged in this discharge of official duties  
32 in a manner consistent with the guidelines of the Travel  
33 Management Office of the Department of Administration.

34 (d) Of the initial appointments made to the commission,  
35 two shall be for a term ending one year after the effective  
36 date of this section, two for a term ending two years after the  
37 effective date of this section, two for a term ending three  
38 years after the effective date of this section. Thereafter,  
39 terms of office shall be for four years, each term ending on  
40 the same day of the same month of the year as did the term  
41 which it succeeds. Each member shall hold office from the  
42 date of his or her appointment until the end of the term for  
43 which he or she was appointed or until his or her successor  
44 qualifies for office. When a vacancy occurs as a result of  
45 death, resignation or removal in the membership of this  
46 commission, it shall be filled by appointment within thirty  
47 days of the vacancy for the unexpired portion of the term in  
48 the same manner as original appointments. No member shall  
49 serve more than two consecutive full or partial terms and no  
50 person may be reappointed to the commission until at least

51 two years have elapsed after the completion of a second  
52 successive term.

53 (e) The appointed members of the commission serve  
54 four-year terms that shall coincide with the term of the  
55 Governor.

56 (f) The commission has the following powers and duties:

57 (1) To develop standards regarding the qualifications and  
58 training for public defenders, assistant public defenders and  
59 staff;

60 (2) To explore opportunities related to the training of  
61 appointed panel attorneys;

62 (3) To evaluate, on an annual basis, the compensation and  
63 caseloads of public defenders and appointed panel attorneys;

64 (4) To develop standards for providing and compensating  
65 expert witnesses, investigators and other persons who  
66 provide services related to legal representation under this  
67 article;

68 (5) To study, monitor and evaluate existing standards for  
69 determining eligibility for legal representation under section  
70 sixteen of this article;

71 (6) To study the feasibility and need of creating  
72 additional public defender corporations, the activation of  
73 public defender corporations and the formation of  
74 multicircuit or regional public defender corporations in  
75 accordance with the provisions of section eight of this article;

76 (7) To study the potential for the dissolution of public  
77 defender corporations;

78 (8) To study, monitor, evaluate and make  
79 recommendations regarding the training, experience and  
80 background necessary for a public defender or panel attorney  
81 to competently represent indigent defendants in capital cases;  
82 and

83 (9) To monitor and make recommendations regarding the  
84 following activities of the board of directors of each public  
85 defender corporation receiving funding pursuant to this  
86 article:

87 (A) The appointment of the public defender and any  
88 assistant public defenders pursuant to subdivision (1),  
89 subsection (c), section fifteen of this article;

90 (B) The fixing of professional and clerical salaries  
91 pursuant to subdivision (2), subsection (c), section fifteen of  
92 this article; and

93 (C) The removal of any public defender, assistant public  
94 defender or other employee for misfeasance, malfeasance or  
95 nonfeasance pursuant to subdivision (3), subsection (c),  
96 section fifteen of this article.

97 (g) On or before the fifteenth day of January, two  
98 thousand nine the commission shall report to the Legislature  
99 its findings and recommendations on the feasibility and need  
100 for the creation of additional public defender corporations;  
101 the activation of public defender corporations; the formation  
102 of multicircuit or regional public defender corporations; or  
103 the dissolution of public defender corporations in accordance  
104 with the provisions of section eight of this article.

#### **§29-21-6. Powers, duties and limitations.**

1 (a) Consistent with the provisions of this article, the  
2 agency is authorized to make grants to and contracts with  
3 public defender corporations and with individuals,

4 partnerships, firms, corporations and nonprofit organizations  
5 for the purpose of providing legal representation under this  
6 article and may make any other grants and contracts that are  
7 necessary to carry out the purposes and provisions of this  
8 article.

9 (b) The agency is authorized to accept, and employ or  
10 dispose of in furtherance of the purposes of this article, any  
11 money or property, real, personal or mixed, tangible or  
12 intangible, received by gift, devise, bequest or otherwise.

13 (c) The agency shall establish and the executive director  
14 or his or her designee shall operate a criminal law research  
15 center as provided in section seven of this article. This center  
16 shall undertake directly, or by grant or contract, to serve as a  
17 clearinghouse for information; to provide training and  
18 technical assistance related to the delivery of legal  
19 representation; and to engage in research, except that broad  
20 general, legal or policy research unrelated to direct  
21 representation of eligible clients may not be undertaken.

22 (d) The agency shall establish and the executive director  
23 or his or her designee shall operate an accounting and  
24 auditing division to require and monitor the compliance with  
25 this article by public defender corporations and other persons  
26 or entities receiving funding or compensation from the  
27 agency. The accounting and auditing division shall review  
28 all plans and proposals for grants and contracts and shall  
29 make a recommendation of approval or disapproval to the  
30 executive director. The accounting and auditing division  
31 shall prepare, or cause to be prepared, reports concerning the  
32 evaluation, inspection or monitoring of public defender  
33 corporations and other grantees, contractors, persons or  
34 entities receiving financial assistance under this article and  
35 shall further carry out the agency's responsibilities for  
36 records and reports as set forth in section eighteen of this  
37 article. The accounting and auditing division shall require



38 each public defender corporation to submit financial  
39 statements monthly and to report monthly on the billable and  
40 nonbillable time of its professional employees, including  
41 time used in administration of the respective offices, so as to  
42 compare the time to similar time expended in nonpublic law  
43 offices for similar activities. The accounting and auditing  
44 division shall provide to the executive director assistance in  
45 the fiscal administration of all of the agency's divisions.  
46 This assistance shall include, but not be limited to, budget  
47 preparation and statistical analysis.

48 (e) The agency shall establish and the executive director  
49 or his or her designee shall operate an appellate advocacy  
50 division for the purpose of prosecuting litigation on behalf  
51 of eligible clients in the Supreme Court of Appeals. The  
52 executive director or his or her designee shall be the director  
53 of the appellate advocacy division. The appellate advocacy  
54 division shall represent eligible clients upon appointment by  
55 the circuit courts or by the Supreme Court of Appeals. The  
56 division may, however, refuse the appointments due to a  
57 conflict of interest or if the executive director has determined  
58 the existing caseload cannot be increased without  
59 jeopardizing the appellate division's ability to provide  
60 effective representation. In order to effectively and  
61 efficiently use the resources of the appellate division, the  
62 executive director may restrict the provision of appellate  
63 representation to certain types of cases. The executive  
64 director may select and employ staff attorneys to perform the  
65 duties prescribed by this subsection. The appellate division  
66 shall maintain records of representation of eligible clients for  
67 record purposes only.

**§29-21-8. Public defender corporations; establishment thereof.**

1 (a) (1) In each judicial circuit of the state, there is hereby  
2 created a public defender corporation of the circuit:  
3 *Provided*, That the executive director, with the approval of

4 the Indigent Defense Commission, may authorize the  
5 creation, merger or dissolution of a public defender  
6 corporation in a judicial circuit where the creation, merger or  
7 dissolution of such a public defender corporation would  
8 improve the quality of legal representation, assure the  
9 prudent and resourceful expenditure of state funds and  
10 further the purposes of this article: *Provided, however,* That  
11 prior to the creation, merger or dissolution of a public  
12 defender corporation in accordance with this subsection, the  
13 commission shall provide a report to the Legislature pursuant  
14 to subsection (g), section three-b of this article for approval  
15 of the creation, merger, or dissolution of any public defender  
16 corporation.

17 (2) The purpose of these public defender corporations is  
18 to provide legal representation in the respective circuits in  
19 accordance with the provisions of this article. A public  
20 defender corporation may employ full-time attorneys and  
21 employ part-time attorneys in whatever combination that the  
22 public defender corporation deems most cost effective.

23 (b) If the executive director, with the approval of the  
24 Indigent Defense Commission, determines there is a need to  
25 activate, merge or dissolve a corporation in a judicial circuit  
26 of the state, pursuant to subsection (a) of this section, the  
27 Indigent Defense Commission shall first consult with and  
28 give substantial consideration to the recommendation of the  
29 judge of a single-judge circuit or the chief judge of a multi-  
30 judge circuit.

#### **§29-21-9. Panel attorneys.**

1 (a) In each circuit of the state, the circuit court shall  
2 establish and maintain regional and local panels of private  
3 attorneys-at-law who are available to serve as counsel for  
4 eligible clients. An attorney-at-law may become a panel  
5 attorney and be enrolled on the regional or local panel, or

6 both, to serve as counsel for eligible clients by informing the  
7 court. An agreement to accept cases generally or certain  
8 types of cases particularly may not prevent a panel attorney  
9 from declining an appointment in a specific case.

10 (b) In all cases where an attorney-at-law is required to be  
11 appointed for an eligible client, the appointment shall be  
12 made by the circuit judge in the following order of  
13 preference:

14 (1) In circuits where a public defender office is in  
15 operation, the judge shall appoint the public defender office  
16 unless an appointment is not appropriate due to a conflict of  
17 interest or unless the public defender corporation board of  
18 directors or the public defender, with the approval of the  
19 board, has notified the court that the existing caseload cannot  
20 be increased without jeopardizing the ability of defenders to  
21 provide effective representation;

22 (2) If the public defender office is not available for  
23 appointment, the court shall appoint one or more panel  
24 attorneys from the local panel;

25 (3) If there is no local panel attorney available, the judge  
26 shall appoint one or more panel attorneys from the regional  
27 panel;

28 (4) If there is no regional panel attorney available, the  
29 judge may appoint a public defender office from an adjoining  
30 circuit if such public defender office agrees to the  
31 appointment;

32 (5) If the adjoining public defender office does not accept  
33 the appointment, the judge may appoint a panel attorney from  
34 an adjoining circuit; or

35 (6) If a panel attorney from an adjoining circuit is  
36 unavailable, the judge may appoint a panel attorney from any  
37 circuit.

38 (c) In any given case, the appointing judge may alter the  
39 order in which attorneys are appointed if the case requires  
40 particular knowledge or experience on the part of the  
41 attorney to be appointed: *Provided*, That any time a court, in  
42 appointing counsel pursuant to the provisions of this section,  
43 alters the order of appointment as set forth herein, the order  
44 of appointment shall contain the court's reasons for doing so.

**§29-21-13. Approval of public defender corporation funding applications; funding; recordkeeping by public defender corporations.**

1 (a) On or before the first day of May of each year, each  
2 active public defender corporation shall submit to the  
3 executive director and the commission a funding application  
4 and a proposed budget for the ensuing fiscal year. The  
5 accounting and auditing division shall review all funding  
6 applications and prepare recommendations for an operating  
7 plan and annual budget for each public defender corporation.  
8 The executive director shall review the funding applications  
9 and the accounting and auditing recommendations and shall,  
10 in consultation with the board of directors of each public  
11 defender corporation, prepare a plan for providing legal  
12 services, execute a funding contract for the fiscal year and  
13 commit funds for that purpose.

14 (b) Upon final approval of a funding application by the  
15 executive director, the approved budget shall be set forth in  
16 an approval notice. The total cost to the agency shall not  
17 exceed the amount set forth in the approval notice and the  
18 agency shall not be obligated to reimburse the recipient for  
19 costs incurred in excess of the amount unless and until a  
20 program modification has been approved in accordance with  
21 the provisions of this article. At the discretion of the  
22 executive director, when caseloads increase or unusual  
23 expenses occur, funding contracts may be amended during a  
24 fiscal year if necessary to provide cost effective  
25 representation.

26 (c) Funding of public defender corporations or other  
27 programs or entities providing legal representation under the  
28 provisions of this article shall be by annual grants disbursed  
29 in such periodic allotments as the executive director shall  
30 deem appropriate.

31 (d) All recipients of funding under this article shall  
32 maintain such records as required by the executive director.

**§29-21-13a. Compensation and expenses for panel attorneys.**

1 (a) All panel attorneys shall maintain detailed and  
2 accurate records of the time expended and expenses incurred  
3 on behalf of eligible clients, and upon completion of each  
4 case, exclusive of appeal, shall submit to the appointing court  
5 a voucher for services. Claims for fees and expense  
6 reimbursements shall be submitted to the appointing court on  
7 forms approved by the executive director. The executive  
8 director shall establish guidelines for the submission of  
9 vouchers and claims for fees and expense reimbursements  
10 under this section. Claims submitted more than ninety  
11 calendar days after the last date of service shall be rejected,  
12 unless for good cause, the appointing court authorizes in  
13 writing an extension: *Provided*, That claims where the last  
14 date of service occurred prior to the first day of July, two  
15 thousand eight, shall be rejected unless submitted prior to the  
16 first day of January, two thousand nine.

17 The appointing court shall review the voucher to  
18 determine if the time and expense claims are reasonable,  
19 necessary and valid, and shall forward the voucher to the  
20 agency with an order approving payment of the claimed  
21 amount or of a lesser sum the court considers appropriate.

22 (b) Notwithstanding any other provision of this section to  
23 the contrary, Public Defender Services may pay by direct bill,  
24 prior to the completion of the case, litigation expenses  
25 incurred by attorneys appointed under this article.

26 (c) Notwithstanding any other provision of this section to  
27 the contrary, a panel attorney may be compensated for  
28 services rendered and reimbursed for expenses incurred prior  
29 to the completion of the case where: (1) More than six  
30 months have expired since the commencement of the panel  
31 attorney's representation in the case; and (2) no prior payment  
32 of attorney fees has been made to the panel attorney by  
33 Public Defender Services during the case. The executive  
34 director, in his or her discretion, may authorize periodic  
35 payments where ongoing representation extends beyond six  
36 months in duration. The amounts of any fees or expenses  
37 paid to the panel attorney on an interim basis, when  
38 combined with any amounts paid to the panel attorney at the  
39 conclusion of the case, shall not exceed the limitations on  
40 fees and expenses imposed by this section.

41 (d) In each case in which a panel attorney provides legal  
42 representation under this article, and in each appeal after  
43 conviction in circuit court, the panel attorney shall be  
44 compensated at the following rates for actual and necessary  
45 time expended for services performed and expenses incurred  
46 subsequent to the effective date of this article:

47 (1) For attorney's work performed out of court,  
48 compensation shall be at the rate of forty-five dollars per  
49 hour. For paralegal's work performed out of court for the  
50 attorney, compensation shall be at the rate of the paralegal's  
51 regular compensation on an hourly basis or, if salaried, at the  
52 hourly rate of compensation which would produce the  
53 paralegal's current salary, but in no event shall the  
54 compensation exceed twenty dollars per hour. Out-of-court  
55 work includes, but is not limited to, travel, interviews of  
56 clients or witnesses, preparation of pleadings and prehearing  
57 or pretrial research.

58 (2) For attorney's work performed in court, compensation  
59 shall be at the rate of sixty-five dollars per hour. No  
60 compensation for paralegal's work performed in court shall

61 be allowed. In-court work includes, but is not limited to, all  
62 time spent awaiting hearing or trial before a judge,  
63 magistrate, special master or other judicial officer.

64 (3) The maximum amount of compensation for out-of-  
65 court and in-court work under this subsection is as follows:  
66 For proceedings of any kind involving felonies for which a  
67 penalty of life imprisonment may be imposed, the amount as  
68 the court may approve; for all other eligible proceedings,  
69 three thousand dollars unless the court, for good cause  
70 shown, approves payment of a larger sum.

71 (e) Actual and necessary expenses incurred in providing  
72 legal representation for proceedings of any kind involving  
73 felonies for which a penalty of life imprisonment may be  
74 imposed, including, but not limited to, expenses for travel,  
75 transcripts, salaried or contracted investigative services and  
76 expert witnesses, shall be reimbursed in an amount as the  
77 court may approve. For all other eligible proceedings, actual  
78 and necessary expenses incurred in providing legal  
79 representation, including, but not limited to, expenses for  
80 travel, transcripts, salaried or contracted investigative  
81 services and expert witnesses, shall be reimbursed to a  
82 maximum of one thousand five hundred dollars unless the  
83 court, for good cause shown, approves reimbursement of a  
84 larger sum.

85 Expense vouchers shall specifically set forth the nature,  
86 amount and purpose of expenses incurred and shall provide  
87 receipts, invoices or other documentation required by the  
88 executive director and the State Auditor:

89 (1) (A) Reimbursement of expenses for production of  
90 transcripts of proceedings reported by a court reporter is  
91 limited to the cost per original page and per copy page as set  
92 forth in section four, article seven, chapter fifty-one of this  
93 code.

94 (B) (i) There shall be no reimbursement of expenses for  
95 or production of a transcript of a preliminary hearing before  
96 a magistrate or juvenile referee, or of a magistrate court trial,  
97 where such hearing or trial has also been recorded  
98 electronically in accordance with the provisions of section  
99 eight, article five, chapter fifty of this code or court rule.

100 (ii) Reimbursement of the expense of an appearance fee  
101 for a court reporter who reports a proceeding other than one  
102 described in subparagraph (i) of this paragraph is limited to  
103 twenty-five dollars. Where a transcript of a proceeding is  
104 produced, there shall be no reimbursement for the expense of  
105 any appearance fee.

106 (iii) Except for the appearance fees provided in this  
107 paragraph, there shall be no reimbursement for hourly court  
108 reporters' fees or fees for other time expended by the court  
109 reporter, either at the proceeding or traveling to or from the  
110 proceeding.

111 (C) Reimbursement of the cost of transcription of tapes  
112 electronically recorded during preliminary hearings or  
113 magistrate court trials is limited to one dollar per page.

114 (2) Reimbursement for any travel expense incurred in an  
115 eligible proceeding is limited to the rates for the  
116 reimbursement of travel expenses established by rules  
117 promulgated by the Governor pursuant to the provisions of  
118 section eleven, article eight, chapter twelve of this code and  
119 administered by the Secretary of the Department of  
120 Administration pursuant to the provisions of section forty-  
121 eight, article three, chapter five-a of this code.

122 (3) Reimbursement for investigative services is limited to  
123 a rate of thirty dollars per hour for work performed by an  
124 investigator.



125 (f) For purposes of compensation under this section, an  
126 appeal from magistrate court to circuit court, an appeal from  
127 a final order of the circuit court or a proceeding seeking an  
128 extraordinary remedy made to the Supreme Court of Appeals  
129 shall be considered a separate case.

130 (g) Vouchers submitted under this section shall  
131 specifically set forth the nature of the service rendered, the  
132 stage of proceeding or type of hearing involved, the date and  
133 place the service was rendered and the amount of time  
134 expended in each instance. All time claimed on the vouchers  
135 shall be itemized to the nearest tenth of an hour. If the charge  
136 against the eligible client for which services were rendered is  
137 one of several charges involving multiple warrants or  
138 indictments, the voucher shall indicate the fact and  
139 sufficiently identify the several charges so as to enable the  
140 court to avoid a duplication of compensation for services  
141 rendered. The executive director shall refuse to requisition  
142 payment for any voucher which is not in conformity with the  
143 recordkeeping, compensation or other provisions of this  
144 article or the voucher guidelines established issued pursuant  
145 to subsection (a) of this section and in such circumstance  
146 shall return the voucher to the court or to the service provider  
147 for further review or correction.

148 (h) Vouchers submitted under this section after the first  
149 day of July, two thousand eight, shall be reimbursed within  
150 ninety days of receipt. Reimbursements after ninety days  
151 shall bear interest from the ninety-first day at the legal rate in  
152 effect for the calendar year in which payment is due.

153 (i) Vouchers submitted for fees and expenses involving  
154 child abuse and neglect cases shall be processed for payment  
155 before processing vouchers submitted for all other cases.



## CHAPTER 118

**(S.B. 270 - By Senators Kessler, Hunter and Unger)**

[Passed March 4, 2008; in effect ninety days from passage.]  
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §62-11A-1 of the Code of West Virginia, 1931, as amended, relating to eliminating obsolete language requiring circuit clerks to handle and disburse certain inmate moneys.

*Be it enacted by the Legislature of West Virginia:*

That §62-11A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.**

#### **§62-11A-1. Release for work and other purposes by courts of record with criminal jurisdiction.**

- 1 (a) When a defendant is sentenced or committed for a
- 2 term of one year or less by a court of record having criminal
- 3 jurisdiction, the court may in its order grant to the defendant
- 4 the privilege of leaving the jail during necessary and
- 5 reasonable hours for any of the following purposes:
  - 6 (1) To work at his or her employment;
  - 7 (2) To seek employment;

8       (3) To conduct his or her own business or to engage in  
9 other self-employment, including housekeeping and attending  
10 to the needs of his or her family;

11       (4) To attend an educational institution;

12       (5) To obtain medical treatment;

13       (6) To devote time to any other purpose approved of or  
14 ordered by the court, including participation in the litter  
15 control program of the county unless the court specifically  
16 finds that this alternative service would be inappropriate.

17       (b) Whenever an inmate who has been granted the  
18 privilege of leaving the jail under this section is not engaged  
19 in the activity for which the leave is granted, he or she shall  
20 be confined in jail.

21       (c) An inmate sentenced to ordinary confinement may  
22 petition the court at any time after sentence for the privilege  
23 of leaving jail under this section and may renew his or her  
24 petition in the discretion of the court. The court may  
25 withdraw the privilege at any time by order entered with or  
26 without notice.

27       (d) If the inmate has been granted permission to leave the  
28 jail to seek or take employment, the court's probation officers  
29 or, if none, the jail shall assist him or her in obtaining suitable  
30 employment and in making certain that employment already  
31 obtained is suitable. Employment shall not be deemed  
32 suitable if the wages or working conditions or other  
33 circumstances present a danger of exploitation or of  
34 interference in a labor dispute in the establishment in which  
35 the inmate would be employed.

36       (e) An inmate who is serving his or her sentence pursuant  
37 to this section shall be eligible for a reduction of his or her  
38 term for good behavior and faithful performance of duties in

39 the same manner as if he or she had served his or her term in  
40 ordinary confinement.

41 (f) The court shall not make an order granting the  
42 privilege of leaving the institution under this section unless  
43 it is satisfied that there are adequate facilities for the  
44 administration of such privilege in the jail or other institution  
45 in which the defendant will be confined.

46 (g) In every case wherein the defendant has been  
47 convicted of an offense, defined in section twelve, article  
48 eight, chapter sixty-one of this code or in article eight-b or  
49 eight-d of said chapter against a child, the defendant shall not  
50 live in the same residence as any minor child, nor exercise  
51 visitation with any minor child and shall have no contact with  
52 the victim of the offense: *Provided*, That the defendant may  
53 petition the court of the circuit wherein he or she was so  
54 convicted for a modification of this term and condition of this  
55 probation and the burden shall rest upon the defendant to  
56 demonstrate that a modification is in the best interest of the  
57 child.



## CHAPTER 119

**(Com. Sub. for S.B. 715 - By Senators Plymale and Minard)**

[Passed March 8, 2008; in effect July 1, 2008.]  
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §5-16-2 and §5-16-15 of the Code of West Virginia, 1931, as amended, all relating to the participation in the Public Employees Insurance Agency of certain retired employees; mandatory participation in Retiree

Health Benefit Trust Fund; requiring written certification from nonstate employers who opt out of the other post-employment benefits plan of the fund; providing that agency is not liable to provide benefit where employer opted out; and directing the finance board to study an oral health benefit to children of covered employees.

*Be it enacted by the Legislature of West Virginia:*

That §5-16-2 and §5-16-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES  
INSURANCE ACT.**

§5-16-2. Definitions.

§5-16-15. Optional dental, optical, disability and prepaid retirement plan and audiology and hearing-aid service plan.

**§5-16-2. Definitions.**

1 The following words and phrases as used in this article,  
2 unless a different meaning is clearly indicated by the context,  
3 have the following meanings:

4 (1) “Agency” means the Public Employees Insurance  
5 Agency created by this article.

6 (2) “Director” means the Director of the Public  
7 Employees Insurance Agency created by this article.

8 (3) “Employee” means any person, including an elected  
9 officer, who works regularly full time in the service of the  
10 State of West Virginia and, for the purpose of this article  
11 only, the term “employee” also means any person, including  
12 an elected officer, who works regularly full time in the  
13 service of a county board of education; a county, city or town  
14 in the state; any separate corporation or instrumentality  
15 established by one or more counties, cities or towns, as

16 permitted by law; any corporation or instrumentality  
17 supported in most part by counties, cities or towns; any  
18 public corporation charged by law with the performance of a  
19 governmental function and whose jurisdiction is coextensive  
20 with one or more counties, cities or towns; any  
21 comprehensive community mental health center or  
22 comprehensive mental retardation facility established,  
23 operated or licensed by the Secretary of Health and Human  
24 Resources pursuant to section one, article two-a, chapter  
25 twenty-seven of this code and which is supported in part by  
26 state, county or municipal funds; any person who works  
27 regularly full time in the service of the Higher Education  
28 Policy Commission, the West Virginia Council for  
29 Community and Technical College Education or a governing  
30 board, as defined in section two, article one, chapter  
31 eighteen-b of this code; any person who works regularly full  
32 time in the service of a combined city-county health  
33 department created pursuant to article two, chapter sixteen of  
34 this code; any person designated as a 21st Century Learner  
35 Fellow pursuant to section eleven, article three, chapter  
36 eighteen-a of this code; and any person who works as a long-  
37 term substitute as defined in section one, article one, chapter  
38 eighteen-a of this code in the service of a county board of  
39 education: *Provided*, That a long-term substitute who is  
40 continuously employed for at least one hundred thirty-three  
41 instructional days during an instructional term, and until the  
42 end of that instructional term, is eligible for the benefits  
43 provided in this article until the first day of September  
44 following that instructional term: *Provided, however*, That a  
45 long-term substitute employed fewer than one hundred  
46 thirty-three instructional days during an instructional term is  
47 eligible for the benefits provided in this article only during  
48 such time as he or she is actually employed as a long-term  
49 substitute. On and after the first day of January, one  
50 thousand nine hundred ninety-four, and upon election by a  
51 county board of education to allow elected board members to  
52 participate in the Public Employees Insurance Program  
53 pursuant to this article, any person elected to a county board

54 of education shall be considered to be an “employee” during  
55 the term of office of the elected member. Upon election by  
56 the State Board of Education to allow appointed board  
57 members to participate in the Public Employees Insurance  
58 Program pursuant to this article, any person appointed to the  
59 State Board of Education is considered an “employee” during  
60 the term of office of the appointed member: *Provided further,*  
61 That the elected member of a county board of education and  
62 the appointed member of the State Board of Education shall  
63 pay the entire cost of the premium if he or she elects to be  
64 covered under this article. Any matters of doubt as to who is  
65 an employee within the meaning of this article shall be  
66 decided by the director.

67 On or after the first day of July, one thousand nine  
68 hundred ninety-seven, a person shall be considered an  
69 “employee” if that person meets the following criteria:

70 (i) Participates in a job-sharing arrangement as defined in  
71 section one, article one, chapter eighteen-a of this code;

72 (ii) Has been designated, in writing, by all other  
73 participants in that job-sharing arrangement as the  
74 “employee” for purposes of this section; and

75 (iii) Works at least one third of the time required for a  
76 full-time employee.

77 (4) “Employer” means the State of West Virginia, its  
78 boards, agencies, commissions, departments, institutions or  
79 spending units; a county board of education; a county, city or  
80 town in the state; any separate corporation or instrumentality  
81 established by one or more counties, cities or towns, as  
82 permitted by law; any corporation or instrumentality  
83 supported in most part by counties, cities or towns; any  
84 public corporation charged by law with the performance of a  
85 governmental function and whose jurisdiction is coextensive  
86 with one or more counties, cities or towns; any

87 comprehensive community mental health center or  
88 comprehensive mental retardation facility established,  
89 operated or licensed by the Secretary of Health and Human  
90 Resources pursuant to section one, article two-a, chapter  
91 twenty-seven of this code and which is supported in part by  
92 state, county or municipal funds; a combined city-county  
93 health department created pursuant to article two, chapter  
94 sixteen of this code; and a corporation meeting the  
95 description set forth in section three, article twelve, chapter  
96 eighteen-b of this code that is employing a 21st Century  
97 Learner Fellow pursuant to section eleven, article three,  
98 chapter eighteen of this code but the corporation is not  
99 considered an employer with respect to any employee other  
100 than a 21st Century Learner Fellow. Any matters of doubt as  
101 to who is an “employer” within the meaning of this article  
102 shall be decided by the director. The term “employer” does  
103 not include within its meaning the National Guard.

104 (5) “Finance board” means the Public Employees  
105 Insurance Agency finance board created by this article.

106 (6) “Person” means any individual, company, association,  
107 organization, corporation or other legal entity, including, but  
108 not limited to, hospital, medical or dental service  
109 corporations; health maintenance organizations or similar  
110 organization providing prepaid health benefits; or individuals  
111 entitled to benefits under the provisions of this article.

112 (7) “Plan”, unless the context indicates otherwise, means  
113 the medical indemnity plan, the managed care plan option or  
114 the group life insurance plan offered by the agency.

115 (8) “Retired employee” means an employee of the state  
116 who retired after the twenty-ninth day of April, one thousand  
117 nine hundred seventy-one, and an employee of the Higher  
118 Education Policy Commission, the Council for Community  
119 and Technical College Education, a state institution of higher  
120 education or a county board of education who retires on or



121 after the twenty-first day of April, one thousand nine hundred  
122 seventy-two, and all additional eligible employees who retire  
123 on or after the effective date of this article, meet the  
124 minimum eligibility requirements for their respective state  
125 retirement system and whose last employer immediately prior  
126 to retirement under the state retirement system is a  
127 participating employer in the state retirement system and in  
128 the Public Employees Insurance Agency: *Provided*, That for  
129 the purposes of this article, the employees who are not  
130 covered by a state retirement system, but who are covered by  
131 a state-approved or state-contracted retirement program or a  
132 system approved by the director, shall, in the case of  
133 education employees, meet the minimum eligibility  
134 requirements of the State Teachers Retirement System and in  
135 all other cases, meet the minimum eligibility requirements of  
136 the Public Employees Retirement System and may participate  
137 in the Public Employees Insurance Agency as retired  
138 employees upon terms as the director sets by rule as  
139 authorized in this article. Employers with employees who  
140 are, or who are eligible to become, retired employees under  
141 this article shall be mandatory participants in the Retiree  
142 Health Benefit Trust Fund created pursuant to article  
143 sixteen-d of this chapter. Nonstate employers may opt out of  
144 the West Virginia other post-employment benefits plan of the  
145 Retiree Health Benefit Trust Fund and elect to not provide  
146 benefits under the Public Employees Insurance Agency to  
147 retirees of the nonstate employer, but may do so only upon  
148 the written certification, under oath, of an authorized officer  
149 of the employer that the employer has no employees who are,  
150 or who are eligible to become, retired employees and that the  
151 employer will defend and hold harmless the Public  
152 Employees Insurance Agency from any claim by one of the  
153 employer's past, present or future employees for eligibility to  
154 participate in the Public Employees Insurance Agency as a  
155 retired employee. As a matter of law, the Public Employees  
156 Insurance Agency shall not be liable in any respect to provide  
157 plan benefits to a retired employee of a nonstate employer  
158 which has opted out of the West Virginia other post-

159 employment benefits plan of the Retiree Health Benefit Trust  
160 Fund pursuant to this section.

**§5-16-15. Optional dental, optical, disability and prepaid retirement plan and audiology and hearing-aid service plan.**

1 (a) On and after the first day of July, one thousand nine  
2 hundred eighty-nine, the director shall make available to  
3 participants in the public employees insurance system: (1) A  
4 dental insurance plan; (2) an optical insurance plan; (3) a  
5 disability insurance plan; (4) a prepaid retirement insurance  
6 plan; and (5) an audiology and hearing-aid services insurance  
7 plan. Public employees insurance participants may elect to  
8 participate in any one of these plans separately or in  
9 combination. All actuarial and administrative costs of each  
10 plan shall be totally borne by the premium payments of the  
11 participants or local governing bodies electing to participate  
12 in that plan. The director is authorized to employ such  
13 administrative practices and procedures with respect to these  
14 optional plans as are authorized for the administration of  
15 other plans under this article. The director shall establish  
16 separate funds: (1) For deposit of dental insurance premiums  
17 and payment of dental insurance claims; (2) for deposit of  
18 optical insurance premium payments and payment of optical  
19 insurance claims; (3) for deposit of disability insurance  
20 premium payments and payment of disability insurance  
21 claims; and (4) for deposit of audiology and hearing-aid  
22 service insurance premiums and payment of audiology and  
23 hearing-aid insurance claims. Such funds shall not be  
24 supplemented by nor be used to supplement any other funds.

25 (b) The Finance Board shall study the feasibility of an  
26 oral health benefit for children of participants.

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## CHAPTER 120

**(Com. Sub. for H.B. 4381 - By Delegates Kominar, Moore,  
Barker, Perry, Schoen, Ashley and Walters)**

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[Passed March 7, 2008; in effect from passage.]  
[Approved by the Governor on March 27, 2008.]

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AN ACT to repeal §23-2C-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §23-2C-2 and §23-2C-10 of said code; and to amend and reenact §33-26-3, §33-26-5, §33-26-6, §33-26-8 and §33-26-12 of said code, all relating to an assigned risk plan and guaranty association account for workers' compensation insurance; defining terms; eliminating certain funds in the treasurer's office and transferring moneys in such funds to the Old Fund; eliminating the requirement that private carriers maintain an office in this state; providing for the establishment and operation of an assigned risk plan; making workers' compensation insurance applicable to the Insurance Guaranty Association Act; establishing a new account to be administered by the West Virginia Insurance Guaranty Association; modifying standards for paying duplicate claims; and providing that limits on benefits payable by the guaranty association are not applicable to obligations arising out of workers' compensation insurance.

*Be it enacted by the Legislature of West Virginia:*

That §23-2C-9 of the Code of West Virginia, 1931, as amended, be repealed; that §23-2C-2 and §23-2C-10 of said code be amended and reenacted; and that §33-26-3, §33-26-5, §33-26-6, §33-26-8 and §33-26-12 of said code be amended and reenacted, all to read as follows:

**Chapter****23. Workers' Compensation.****33. Insurance.****CHAPTER 23. WORKERS' COMPENSATION.****ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE  
COMPANY.**

§23-2C-2. Definitions.

§23-2C-10. West Virginia adverse risk assignment.

**§23-2C-2. Definitions.**

1 (a) "Executive director" means the Executive Director of  
2 the West Virginia Workers' Compensation Commission as  
3 provided in section one-b, article one of this chapter.

4 (b) "Commission" means the West Virginia Workers'  
5 Compensation Commission as provided by section one,  
6 article one of this chapter.

7 (c) "Insurance Commissioner" means the Insurance  
8 Commissioner of West Virginia as provided in section one,  
9 article two, chapter thirty-three of this code.

10 (d) "Company" or "successor to the commission" means  
11 the employers' mutual insurance company created pursuant  
12 to the terms of this article.

13 (e) "Policy default" means a policyholder that has failed  
14 to comply with the terms of its workers' compensation  
15 insurance policy and is consequently without workers'  
16 compensation insurance coverage.

17 (f) "Workers' compensation insurance" means insurance  
18 which provides all compensation and benefits required by  
19 this chapter.

20 (g) "Insurer" includes:

21 (1) A self-insured employer; and

22 (2) A private carrier.

23 (h) "Industrial Council" means the advisory group  
24 established in section five of this article.

25 (i) "Mutualization Transition Fund" is a fund over which  
26 the State Treasurer is custodian. Moneys transferred or  
27 otherwise payable to the Mutualization Transition Fund shall  
28 be deposited in the State Treasury to the credit of the  
29 Mutualization Transition Fund. Disbursements shall be made  
30 from the Mutualization Transition Fund upon requisitions  
31 signed by the executive director, and, upon termination of the  
32 commission, the Insurance Commissioner, and shall be  
33 reasonably related to the legal, operational, consultative and  
34 human resource-related expenses associated with the  
35 establishment of the company and the transferring of  
36 personnel from the commission to the company.

37 (j) "New Fund" means a fund owned and operated by the  
38 commission and, upon termination of the commission, the  
39 successor organization of the West Virginia Workers'  
40 Compensation Commission and consists of those funds  
41 transferred to it from the Workers' Compensation Fund and  
42 any other applicable funds. New Fund includes all moneys  
43 due and payable to the Workers' Compensation Fund for the  
44 quarters ending the thirtieth day of September, two thousand  
45 five, and the thirty-first day of December, two thousand five,  
46 which have not been collected by the Workers' Compensation  
47 Fund as of the thirty-first day of December, two thousand  
48 five.

49 (k) "New Fund liabilities" means all claims payment  
50 obligations (indemnity and medical expenses) for all claims,

51 actual and incurred but not reported, for any claim with a date  
52 of injury or last exposure on or after the first day of July, two  
53 thousand five: *Provided*, That New Fund liabilities begin  
54 with claims payments becoming due and owing on said  
55 claims on or after the first day of January, two thousand six.

56 (l) "Old Fund" means a fund held by the State Treasurer's  
57 office consisting of those funds transferred to it from the  
58 Workers' Compensation Fund or other sources and those  
59 funds due and owing the Workers' Compensation Fund as of  
60 the thirtieth day of June, two thousand five, that are thereafter  
61 collected. The Old Fund and assets in the fund remain  
62 property of the state and do not novate or otherwise transfer  
63 to the company.

64 (m) "Old Fund liabilities" mean all claims payment  
65 obligations (indemnity and medical expenses), related  
66 liabilities and appropriate administrative expenses necessary  
67 for the administration of all claims, actual and incurred but  
68 not reported, for any claim with a date of injury or last  
69 exposure on or before the thirtieth day of June, two thousand  
70 five: *Provided*, That Old Fund liabilities include all claims  
71 payments for any claim, regardless of date of injury or last  
72 exposure, through the thirty-first day of December, two  
73 thousand five: *Provided, however*, That Old Fund liabilities  
74 include all claims with dates of injuries or last exposure prior  
75 to the first day of July, two thousand four, for bankrupt  
76 self-insured employers that had defaulted on their claims  
77 obligations which have been recognized by the commission  
78 in its actuarially determined liability number as of the  
79 thirtieth day of June, two thousand five.

80 (n) "Private carrier" means any insurer or the legal  
81 representative of an insurer authorized by the Insurance  
82 Commissioner to provide workers' compensation insurance  
83 pursuant to this chapter. The term does not include a

84 self-insured employer or private employers but does include  
85 any successor to the commission.

86 (o) "Uninsured Employer Fund" means a fund held by  
87 the State Treasurer's office consisting of those funds  
88 transferred to it from the Workers' Compensation Fund and  
89 any other source. Disbursements from the Uninsured  
90 Employer Fund shall be upon requisitions signed by the  
91 Insurance Commissioner, and as otherwise set forth in an  
92 exempt legislative rule promulgated by the Workers'  
93 Compensation Board of Managers.

94 (p) "Self-Insured Employer Guaranty Risk Pool" is a  
95 fund held by the State Treasurer's office consisting of those  
96 funds transferred to it from the guaranty pool created  
97 pursuant to 85 CSR 19 (2007) and any future funds collected  
98 through continued administration of that exempt legislative  
99 rule as administered by the Insurance Commissioner.  
100 Disbursements shall be made from the Self-Insured Employer  
101 Guaranty Risk Pool upon requisitions signed by the  
102 Insurance Commissioner. The obligations of the fund are as  
103 provided in 85 CSR 19 (2007).

104 (q) "Self-Insured Employer Security Risk Pool" is a fund  
105 held by the State Treasurer consisting of those funds paid into  
106 it through the Insurance Commissioner's administration of 85  
107 CSR 19 (2007). Disbursement from the fund shall be made  
108 from the Self-Insured Employer Security Risk Pool upon  
109 requisitions signed by the Insurance Commissioner. The  
110 obligations of the fund are as provided in 85 CSR 19:  
111 *Provided*, That the liabilities are limited to those self-insured  
112 employers who default on their claims obligations after the  
113 termination of the commission.

114 (r) "Private Carrier Guaranty Fund" is a fund held by the  
115 State Treasurer's office consisting of funds deposited  
116 pursuant to this article. Disbursements shall be made from

117 the Private Carrier Guaranty Fund upon requisitions signed  
118 by the Insurance Commissioner. The obligations of the fund  
119 are as provided in this article. The Private Carrier Guaranty  
120 Fund terminates on the thirtieth day of June, two thousand  
121 eight, and any moneys remaining in the fund on the date of  
122 its termination shall be transferred to the Old Fund.

123 (s) “Assigned Risk Fund” is a fund held by the State  
124 Treasurer's office consisting of funds deposited pursuant to  
125 this article. Disbursements shall be made from the Assigned  
126 Risk Fund upon requisitions signed by the Insurance  
127 Commissioner. The obligations of the fund are as provided  
128 in this article. The Assigned Risk Fund terminates on the  
129 thirtieth day of June, two thousand eight, and any moneys  
130 remaining in the fund on the date of its termination shall be  
131 transferred to the Old Fund.

132 (t) “Comprehensive financial plan” means the plan  
133 compiled by the director for acceptance by the Insurance  
134 Commissioner identifying and forecasting cash flows,  
135 funding sources, debt terms and structures and scheduled  
136 amortization and permanent resolution of all Old Fund  
137 liabilities. The comprehensive financial plan shall provide  
138 for the retirement of the revenue bonds authorized by article  
139 two-d of this chapter and all realized and potential claims  
140 against the Old Fund shall be fully reserved. The  
141 comprehensive financial plan may include any other  
142 information the Insurance Commissioner may require as a  
143 basis for managing the post-transition fiscal soundness of the  
144 Old Fund.

145 (u) “Voluntary market” means the workers' compensation  
146 insurance market in which insurers voluntarily offer coverage  
147 to applicants who meet the insurers' underwriting standards  
148 or guidelines.

**§23-2C-10. West Virginia adverse risk assignment.**



1 (a) The Insurance Commissioner shall provide for the  
2 development and administration of an assigned risk plan to  
3 provide workers' compensation insurance coverage to  
4 employers who are unable to procure coverage in the  
5 voluntary market.

6 (b) To qualify for coverage under the plan, an employer  
7 must have been categorically declined coverage by at least  
8 two insurers that are not affiliated with each other. The  
9 employer has the burden of establishing that at least two  
10 unaffiliated insurers are unwilling to provide coverage at any  
11 premium level that is reasonably related to the risk presented  
12 by the employer. The assigned risk plan may also provide  
13 for other reasonable qualifications and for the termination of  
14 coverage under the plan for specified reasons.

15 (c) Any employer that satisfies the requirements of  
16 subsection (b) of this section and other qualifications  
17 established in the plan shall be provided coverage at a  
18 premium level to be determined or approved by the Insurance  
19 Commissioner, which premiums shall be actuarially sound,  
20 consistent with classification and rate-making methodologies  
21 found in the insurance industry, and calculated to enable the  
22 plan to be self-sustaining and, to the greatest extent possible,  
23 able to operate without subsidies from employers and  
24 insurers in the voluntary market. Rates may not be excessive,  
25 inadequate or unfairly discriminatory.

26 (d) The Insurance Commissioner may designate any  
27 third party, including any private carrier or rating  
28 organization with substantial experience in developing and  
29 administering similar programs in other states, to develop and  
30 administer the assigned risk plan for a period of three years,  
31 and thereafter, shall contract with any qualified party,  
32 including the then current administrator, to continue the  
33 administration of the assigned risk plan: *Provided*, That the  
34 Insurance Commissioner must approve the plan prior to the

35 plan becoming operative. The plan established pursuant to  
36 this section shall require that all private carriers participate as  
37 a condition of their authority to transact business in this state.

38 (e) In the event the plan incurs a deficit in one or more  
39 policy years, the Insurance Commissioner may assess all  
40 private carriers providing workers' compensation insurance  
41 in voluntary market funds as are necessary to cover the  
42 deficits. The assessments shall result in an equitable  
43 distribution of costs among private carriers based upon  
44 premiums received by the private carriers in the private  
45 market. Assessments made upon the policies of each private  
46 carrier pursuant to this section may be collected by each  
47 carrier in the form of a surcharge.

## CHAPTER 33. INSURANCE.

### ARTICLE 26. WEST VIRGINIA GUARANTY ASSOCIATION ACT.

- §33-26-3. Scope.
- §33-26-5. Definitions.
- §33-26-6. Creation of the association.
- §33-26-8. Powers and duties of the association.
- §33-26-12. Nonduplication of recovery.

#### §33-26-3. Scope.

1 This article applies to all kinds of direct insurance, except  
2 life, title, surety, disability, credit, mortgage guaranty and  
3 ocean marine insurance.

#### §33-26-5. Definitions.

1 As used in this article:

2 (1) "Account" means any one of the three accounts  
3 created by section six of this article.

4       (2) “Association” means the West Virginia Insurance  
5 Guaranty Association created under section six of this article.

6       (3) “Commissioner” means the Insurance Commissioner  
7 of West Virginia.

8       (4) “Covered claim” means an unpaid claim, including  
9 one for unearned premiums other than retrospective  
10 premiums or other premiums subject to adjustment after the  
11 date of liquidation, which arises out of and is within the  
12 coverage of an insurance policy to which this article applies  
13 and which policy is in force at the time of the occurrence  
14 giving rise to the unpaid claims if the insurer issuing the  
15 policy becomes an insolvent insurer after the effective date of  
16 this article and the claimant or insured is a resident of this  
17 state at the time of the insured occurrence, or the property  
18 from which the claim arises is permanently located in this  
19 state. “Covered claim” does not include: (i) Any amount in  
20 excess of the applicable limits of coverage provided by an  
21 insurance policy to which this article applies; nor (ii) any  
22 amount due any reinsurer, insurer, insurance pool, or  
23 underwriting association, as subrogation recoveries or  
24 otherwise from an insolvent insurer or the insured of an  
25 insolvent insurer to the extent of coverage under the insured's  
26 policy.

27       (5) “Insolvent insurer” means an insurer:

28       (A) Licensed to transact insurance in this state either at  
29 the time the policy was issued or when the insured event  
30 occurred; and

31       (B) Against whom an order of liquidation with a finding  
32 of insolvency has been entered by a court of competent  
33 jurisdiction in the insurer's state of domicile or of this state.

34       (6) “Member insurer” means any person who:

26 insurers separately for each account amounts necessary to  
27 pay the obligations of the association under subdivision (a)  
28 of this subsection subsequent to an insolvency, the expenses  
29 of handling covered claims subsequent to an insolvency, the  
30 cost of examinations under section thirteen of this article and  
31 other expenses authorized by this article. The assessments of  
32 each member insurer shall be in the proportion that the net  
33 direct written premiums of the member insurer for the  
34 preceding calendar year on the kinds of insurance in the  
35 account bears to the net direct written premiums of all  
36 member insurers for the preceding calendar year on the kinds  
37 of insurance in the account. *Provided*, That farmers mutual  
38 insurance companies that do not issue workers' compensation  
39 insurance policies may not be assessed to pay for the  
40 obligations of the association payable from the workers'  
41 compensation insurance account. Each member insurer shall  
42 be notified of the assessment not later than thirty days before  
43 it is due. No member insurer may be assessed in any one  
44 year on any account an amount greater than two percent of  
45 that member insurer's net direct written premiums for the  
46 preceding calendar year on the kinds of insurance in the  
47 account. If the maximum assessment, together with the other  
48 assets of the association in any account, does not provide in  
49 any one year in any account an amount sufficient to make all  
50 necessary payments from that account, the funds available  
51 shall be prorated and the unpaid portion shall be paid as soon  
52 after that as funds become available. The association may  
53 exempt or defer, in whole or in part, the assessment of any  
54 member insurer, if the assessment would cause the member  
55 insurer's financial statement to reflect the amounts of capital  
56 or surplus less than the minimum amounts required for a  
57 certificate of authority by any jurisdiction in which the  
58 member insurer is authorized to transact insurance. Each  
59 member insurer may set off against any assessment,  
60 authorized payments made on covered claims and expenses  
61 incurred in the payment of such claims by the member

62 insurer if they are chargeable to the account for which the  
63 assessment is made.

64 (d) Shall investigate claims brought against the  
65 association and adjust, compromise, settle, and pay covered  
66 claims to the extent of the association's obligation and deny  
67 all other claims and may review settlements, releases and  
68 judgments to which the insolvent insurer or its insureds were  
69 parties to determine the extent to which the settlements,  
70 releases and judgments may be properly contested.

71 (e) Shall notify persons as the commissioner directs  
72 under subsection (2), section ten of this article.

73 (f) Shall handle claims through its employees or through  
74 one or more insurers or other persons designated as servicing  
75 facilities. Designation of a servicing facility is subject to the  
76 approval of the commissioner, but the designation may be  
77 declined by a member insurer.

78 (g) Shall reimburse each servicing facility for obligations  
79 of the association paid by the facility and for expenses  
80 incurred by the facility while handling claims on behalf of the  
81 association and shall pay the other expenses of the  
82 association authorized by this article.

83 (2) The association may:

84 (a) Employ or retain persons that are necessary to handle  
85 claims and perform other duties of the association.

86 (b) Borrow funds necessary to effect the purposes of this  
87 article in accord with the plan of operation.

88 (c) Sue or be sued.

89 (d) Negotiate and become a party to contracts that are  
90 necessary to carry out the purpose of this article.

91 (e) Perform other acts that are necessary or proper to  
92 effectuate the purpose of this article.

93 (f) Refund to the member insurers in proportion to the  
94 contribution of each member insurer to an account that  
95 amount by which the assets of the account exceed the  
96 liabilities, if, at the end of any calendar year, the board of  
97 directors finds that the assets of the association in any  
98 account exceed the liabilities of that account as estimated by  
99 the board of directors for the coming year.

**§33-26-12. Nonduplication of recovery.**

1 (1) Any person having a claim against a solvent insurer  
2 under any provision in an insurance policy other than a policy  
3 of an insolvent insurer, which is also a covered claim, is  
4 required to exhaust first his or her right under the solvent  
5 insurer's policy. Any amount payable on a covered claim  
6 under this article shall be reduced by the amount of any  
7 recovery under the solvent insurer's policy.

8 (2) Any person having a claim which may be recovered  
9 under more than one Insurance Guaranty Association or its  
10 equivalent shall seek recovery first from the association of  
11 the place of residence of the insured except that if it is a first  
12 party claim for damage to property with a permanent  
13 location, he or she shall seek recovery first from the  
14 association of the location of the property, and if it is a  
15 workers' compensation claim, the person shall seek recovery  
16 first from the association of the residence of the claimant.  
17 Any recovery under this article shall be reduced by the  
18 amount of the recovery from any other insurance guaranty  
19 association or its equivalent.

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## CHAPTER 121

**(Com. Sub. for H.B. 4157 - By Delegates Kominar, Ashley,  
Barker, Perry, Moore, Walters and Schoen)**

[Passed March 7, 2008; in effect from passage.]  
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §33-3-1 of the Code of West Virginia, 1931, as amended, relating to allowing an insurer to collect premiums and otherwise service certain policies after its license is no longer in effect.

*Be it enacted by the Legislature of West Virginia:*

That §33-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.**

#### **§33-3-1. License required.**

1 (a) No person may act as an insurer and no insurer may  
2 transact insurance in West Virginia except as authorized by  
3 a valid license issued by the commissioner, except as to the  
4 transactions as are expressly otherwise provided for in this  
5 chapter.

6 (b) No license is required for an insurer, formerly holding  
7 a valid license, to enable it to investigate and settle losses  
8 under its policies lawfully written in West Virginia while the

9 license was in effect, and as authorized by the commissioner,  
10 to collect premiums, pay applicable servicing commissions  
11 to agents of record and otherwise service such policies, or to  
12 liquidate the assets and liabilities of the insurer as may have  
13 resulted from its former authorized operations in West  
14 Virginia: *Provided*, That nothing in this section allows an  
15 insurer to issue new policies or renew policies of insurance  
16 or collect premiums on those policies unless the insurer is  
17 authorized by a valid license issued by the commissioner,  
18 except as to the transactions that are otherwise allowed in this  
19 chapter.

20 (c) An insurer not transacting new insurance business in  
21 West Virginia but collecting premiums on and servicing of  
22 policies in force as to residents of or risks located in West  
23 Virginia, and where the policies were originally issued on  
24 nonresidents of or risks located outside of this state, is  
25 transacting insurance in West Virginia for the purpose of  
26 premium and annuity tax requirements but is not required to  
27 have a license therefor.

28 (d) A domestic insurer or a foreign insurer from offices  
29 or by personnel or facilities located in this state may not  
30 solicit insurance applications or otherwise transact insurance  
31 in another state or country unless it holds a subsisting license  
32 granted to it by the commissioner authorizing it to transact  
33 the same kind or kinds of insurance in this state.

34 (e) Any officer, director, agent, representative or  
35 employee of any insurer who willfully authorizes, negotiates,  
36 makes or issues any insurance contract in violation of this  
37 section is subject to the provisions set forth in article forty-  
38 four of this chapter.